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# Sustainable Development Impacts of Investment Incentives

## A Case Study of the Mining Industry in Vietnam

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Central Institute for Economic Management, Vietnam

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The Trade Knowledge Network is a global collaboration of research institutions across Africa, Asia, Europe and the Americas working on issues of trade and sustainable development. Coordinated by the International Institute for Sustainable Development (IISD), the TKN links network members, strengthens capacity and generates new research to assess and address the impact of trade and investment policies on sustainable development. The overarching aim of the TKN is to help ensure that trade and investment contribute to sustainable development, with social development and the environment equitably addressed in trade and investment policies. The TKN furthers this aim by generating compelling research with clear policy recommendations and communicating those effectively to decision makers nationally, regionally and globally.

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This study is part of a larger TKN project that seeks to better understand the impacts of investment incentives on sustainable development. Similar country case studies were carried out for the pharmaceutical industry in Singapore (by the Singapore Institute for International Affairs), the chemical industry in Indonesia (by the Center for Asia Pacific Studies at Gadjah Mada University, Indonesia) and the tourism industry in Malawi (by the University of Malawi and the South African Institute for International Affairs). In addition, a regional study examines the effectiveness of investment incentives in attracting FDI and promoting economic growth, social development and environmental protection in Southeast Asia. Finally, a checklist sets out some key issues and questions to be addressed when assessing the sustainable development impacts of investment incentives. The project outputs are available on the TKN website.

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- To conduct, in co-ordination with other departments of the Ministry, research and to work out legal documents on issues pertaining to the Institute's own research fields as assigned and directed by the Minister of Planning and Investment;
- To make synthesizes and proposals on the needed amendments to the existing policies or on new policies; to participate in research and appraisal of macroeconomic policies, mechanisms drafted by other Ministries and line state agencies;
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- To summarize the domestic economic management realities and international experiences;
- To research on theories and methodologies relating to economic management science and planning; to study the practical situation of Vietnam and help to develop its economic management science;
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- To publish the quarterly journal of *Economic Management*;
- To provide consultancy services on economic management; to conclude and implement research contracts; to take part in the training and retraining of economic management staff and to provide graduate and post-graduate courses in accordance with the laws and regulation.

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The authors would like to express our deep-felt appreciation for the foreign-invested enterprises in the mining and quarrying sector that devoted their valuable time to answering our questionnaires. Special thanks to Chevron Vietnam's management representatives for their meeting with us to share information about issues related to their investment project implementation in Vietnam.

Finally, the team of authors takes full responsibility for any errors or shortcomings in this report.


# Official Exchange Rate (VND/US$)[1]:

| | |
|---|---|
| 2001 | 13933 VND/US$ |
| 2004 (31 Dec.) | 15749VND/US$ |
| 2006 (30 Dec.) | 16101VND/US$ |

1 See more at the Website of the State Bank of Vietnam (www.sbv.gov.vn/vn/CdeQLNH/tygia.jsp)

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## Acronyms and Abbreviations

| | |
|---|---|
| ACIA | ASEAN Comprehensive Investment Agreement |
| ASEAN | Association of Southeast Asian Nations |
| BCC | business cooperation contract |
| BOT | Build – Operate – Transfer |
| BT | Build – Transfer |
| BTA | Bilateral Trade Agreement |
| BTO | Build – Transfer – Operate |
| CIEM | Central Institute for Economic Management |
| CIT | corporate income tax |
| EIA | environmental impact assessment |
| FDI | foreign direct investment |
| FIE | foreign invested enterprise |
| FIA | foreign investment agency |
| GATS | general agreement on trade in services |
| GDP | gross domestic product |
| GSO | general statistic office |
| IISD | International Institute for Sustainable Development |
| Lao PDR | Lao People's Democratic Republic |
| MNC | multinational corporation |
| MOU | memorandum of understanding |
| MPI | Ministry of Planning and Investment (Vietnam) |
| ODA | official development assistance |
| OECD | Organization for Economic Cooperation and Development |
| R&D | research and development |
| SCCI | State Committee on Cooperation and Investment (Vietnam) |
| SCM | subsidies and countervailing measures |
| SOEs | state-owned enterprises |
| TKN | Trade Knowledge Network |
| TRIMs | trade-related investment measures |
| TRIPs | trade-related aspects of intellectual property rights |
| USAID | United States Agency for International Development |
| VAT | value added tax |
| VCCI | Vietnam Chamber of Commerce and Industry |
| VND | Vietnam dong |
| WB | World Bank |
| WTO | World Trade Organization |

# Executive Summary

As a developing country in the region, Vietnam has had impressive achievements in attracting foreign direct investment (FDI) in the last two decades. Vietnam has gradually improved their legal system and investment policies to create very favourable conditions for foreign investors in compliance with basic principles of international trade and investment, as they relate to agreements of which Vietnam is a member (including the multilateral trade agreements of the World Trade Organization). Although there remains room for further improvement, Vietnam's investment environment has attracted international organizations and foreign investors. Together with other countries such as China and India, Vietnam has become a leading FDI destination.

Similar to other developing countries, Vietnam needs desperately to mobilize foreign capital sources for current and future economic development. In order to attract FDI inflow in the last two decades, Vietnam introduced a series of incentives for foreign investors, specifically tax, financing and investment services. However these incentives were not static, but gradually adjusted and improved over time. Since 2005, investment support policies were largely applicable to both domestic and foreign investors. Core principles of investment promotion policies—including non-discrimination, transparency, forecastability, protection of investor's ownership and contract enforcement—have been integrated in Vietnam's current legal documents and policy system. However, laws, regulations and policies have been only sporadically enforced. Foreign investors are still faced with difficulties when implementing their investment projects due to the delayed issuance of guiding documents, the inconsistency in policy implementation, and the frequent changes of current legal and policy system.

The mining and quarrying industry plays a significant role in the economy in general, and in the industrial sector of Vietnam in particular. Although this sector requires thorough investment verification by competent agencies upon the implementation of an investment project, it has attracted considerable interest from foreign investors with 9.9 per cent of registered capital. In addition, foreign invested enterprises (FIEs) in this sector are entitled to investment incentives that are available for certain sectors and locations. However for a sector that has great impact on the environment, current investment incentives seem to be divorced from the industry's social and environmental responsibilities. By law, projects are entitled to investment incentives if they qualify for investment incentive sectors and/or locations, regardless of whether or not they are oriented toward sustainable development.

Most FIEs in this sector have enjoyed investment incentives provided by the Government of Vietnam in one way or another. Tax incentives, especially corporate income tax incentives, were the most commonly exploited by enterprises. In addition, some enterprises also enjoyed preferential credit or support for training activities or research and development. Among types of investment incentives, most enterprises took advantage of tax incentives, which were most lucrative in comparison with other incentives. However, investment incentives were considered an important factor, but not a prerequisite, for the foreign investors' decisions to invest in Vietnam, or in the mining and quarrying sector in particular. In addition to investment incentives, the equal and transparent investment environment and the enforcement of the legal system were also crucial factors for investors in their investment decision.

Current government investment incentives are not a primary influence on FIEs' sustainable development behaviour in the mining and quarrying industry, possibly because current incentive tools have directed enterprises to investment-promoted sectors and locations, but have not encouraged a relationship between incentives and the sustainable development behaviour of enterprises. Although current laws already stipulate that the State must encourage enterprises to be socially responsible and

environmentally sustainable, these demands are not as strictly enforced as others and do not necessarily lead to socially responsible and sustainable behaviours. Until now, FIEs' socially responsible behaviour toward employees, community and the environment have mainly depended on policies held by the parent company abroad, the perfection of the legal system and its enforcement. The result reflects what goes on in the larger, global community of multinational corporations: passive rather than active roles on the part of enterprises when it comes to promoting and enforcing responsible sustainable behaviour.

In terms of economic sustainability, FIEs in the mining and quarrying industry outperformed domestic ones with such assessment indicators as productivity, technology level, increased stable investment capital and contribution to state budget. However the state budget losses due to tax incentives, especially corporate income tax incentives granted to enterprises, were not small: they accounted for between 0.5 and 0.7 percent of total industrial turnover in the sector during the period 2001–2006. So the question was whether the incentives policies for enterprises, which led to lost state revenue, were necessary when the foreign investors' decision to invest in Vietnam was not actually due to the incentive entitlement.

In terms of social sustainability, FIEs in the mining and quarrying industry have sought to maintain a reasonably high income for their employees (much higher than that in domestic enterprises in the same sector). However, enterprises have not demonstrated active attention to the social welfare of their employees with regard to vocational training, health care insurance, social insurance, and contribution to trade unions and other social organizations. While enterprises seem to have passively followed legal regulations, they have not been actively expanding their social responsibility. Perhaps monthly income is currently regarded as the most important factor to employees in Vietnamese enterprises, making them willing to accept lower quality working conditions and less regard for their social welfare. However, as the labour market and economy develop, enterprises must maintain an attractive social welfare policy to keep their employees, to be able to compete with other enterprises in the same sector and to avoid negative impacts on their production activity due to labour strikes.

In terms of environmental sustainability, mining and quarrying activity may potentially have negative effects on the environment. Though Vietnam has issued a basic legal framework to limit the negative impacts of industry operations on the environment, enterprises in Vietnam, and FIEs in particular, have not actively taken measures to prevent pollution during their production process. Environmental protection activities by enterprises were mainly performed to satisfy current legal regulations, but did not demonstrate a proactive stance in environmental protection work. Despite the lack of information about industrial compliance with environmental protection standards and regulations, based on the analysis in this report, it is difficult to conclude that FIEs have fully complied with environmental protection regulations (for example, they may make investments in environmental protection, but do not run pollution treatment equipment).

## Policy recommendations

Experience has shown that, once the national investment environment improves and creates favourable conditions for enterprises, and the legal system and investment policies have become transparent, clear, equal and effective, investment incentives introduced by the government will not be efficient in attracting both domestic and foreign investors. Although the favourable enterprise-oriented investment environment has evolved, the Government of Vietnam needs to further improve current policies so that the above-mentioned principles can be fully incorporated in the legal system of the State from the central to local levels. More importantly, it is essential to ensure the rapid and consistent implementation of investment policies by competent government agencies.

For Vietnamese investment incentives to influence enterprises to promote sustainable development, the State can consider the link between sustainable development targets and conditions for incentive entitlement. At present, although some laws have confirmed that the State encourages enterprises to develop sustainably, guiding documents on enterprise incentives have not been issued. Consequently, specific incentives for enterprises relating to sustainable development have only been applied individually depending on the local government's level of awareness. During the negotiation, verification and approval of investment projects, government agencies should be aware of the sustainable development objectives of the whole economy, as well as those of enterprises, to communicate requirements for enterprises and force them to comply with legal regulations.

Post-investment inspection and monitoring should be further considered by government agencies to ensure that enterprises are honouring their commitments. For enterprises to develop sustainably will not only depend on setting sustainable development targets for enterprises, but will also rely on serious compliance with legal regulations by the corporations. Enterprises should be monitored and inspected frequently—with the participation of stakeholders such as civil society organizations, research institutes and the public—to ensure they are complying with legal regulations and commitments.

The public should be involved in monitoring the enterprises' commitment to compliance. Investors should publish their intended commitments to protect the environment and make them available to the public. It would also be beneficial to recognize companies that comply with or exceed their sustainable development goals. Rewarding socially responsible behaviour with a prize or title creates positive publicity for both the company and the concept of social responsibility.

Dialogue between the state and enterprise should increase so that both parties inform policy issues, exchange information and propose solutions to issues regarding sustainable development for corporations. An increase in this dialogue in recent years between government agencies and the business community reflects an active measure to create policy dialogues between the public and the private sectors at the national and local levels. However, to make these activities really efficient, recommendations and questions from enterprises should be resolved or publicly answered by government agencies.

It is necessary to assess the efficiency of government incentives so as to make timely adjustments for individual periods. A first step is to thoroughly reassess the efficiency of tax incentives for enterprises to make suitable adjustments on incentive duration, incentive tax rates, etc.

The natural resource royalty system should encourage enterprises to conserve the non-renewable natural resources of Vietnam. In a positive step forward, the Ministry of Finance intended to submit to the Standing Committee of the National Assembly a draft amendment of the Resolution on the natural resource royalty framework, as stipulated in the Ordinance on Natural Resource Royalties. The amendment suggested that royalty rates for some natural resource categories be increased by 10 to 30 per cent. The increase in natural resource royalties for minerals is expected to limit the abundant exploitation, as well as to increase local state budget income to enable them financially to improve the environment and repair the infrastructure surrounding the exploited areas. Simultaneously, with the higher royalty rate, enterprises will have to calculate the exploitation output to balance economics and efficiency, and to invest in intensive processing, which then helps protect the natural resources and enhance the natural resource value.

# 1 Objectives and Methodology

## 1.1 Objectives and scope

To date, despite a number of studies on foreign direct investment (FDI) impacts on the Vietnamese economy, there have been a limited number of studies on the impacts of investment incentives. For example, Fletcher (2002) attempted to estimate the dimension of tax incentives for attracting FDI in the Lao People's Democratic Republic (Lao PDR), Cambodia and Vietnam. Nguyen *et al.*'s 2004 empirical study focused on corporate income tax investment incentives for domestic companies in Vietnam. Vũ Thành Tụ Anh *et al*. (2007) looked at the phenomenon called "fence-breaking," i.e., the provision of extra-legal investment incentive to investors by some provinces of Vietnam. Until now, however, there has not been any analytical study on the impact of investment incentives on sustainable development in Vietnam. As a result, this study was conducted to add another approach to research on FDI impacts on Vietnam. The major objectives of this study are as follows:

- Review and clarify the use of investment incentives in Vietnam to attract FDI inflow in the period of 2000–2006;
- Identify whether investment incentives in Vietnam have had any sustainable impact on investors' behaviours;
- Provide recommendations to ensure that incentive-induced FDI promotes sustainable development in Vietnam.

In order to meet these research objectives, this study will not analyze sustainable development impacts on FDI incentives at a national level, but look at these impacts at the enterprise level. Moreover due to time and budget limitations, this study will focus on the investment incentives' impacts on sustainable development in enterprises in one selected economic sector, namely mining and quarrying. The rationale for choosing this particular sector is as follows:

(i) Mining and quarrying is one of the most important industries in Vietnam, accounting for 10 per cent of total industrial output value, contributing to energy security and being an important input for other industries.

(ii) Minerals are non-renewable. The exploitation and use of natural resources will have a strong impact on sustainable development in Vietnam's future. So far, mining and quarrying have been mainly conducted by the domestic state and private enterprises on a small scale, with outdated technology, low efficiency and high losses in the extraction process. To call for foreign investment, Vietnam has introduced a series of investment incentives applicable to several types of investment projects in this sector. However, the question is whether investment incentives are an effective policy for attracting foreign investors to invest in this sector.

(iii) In recent years, a number of foreign investors have been interested in the mining and quarrying sector. As a result, FDI inflow in the mining and quarrying sector has grown significantly. The question is whether investors pour money into this sector specifically in order to enjoy investment incentives applicable in Vietnam. Have those incentives helped Vietnam meet FDI attraction targets set for this sector?

In reality, to attract FDI inflows, developing countries often apply a "package" of investment incentives for foreign investors. Despite some similarities, investment incentive "packages" used in individual countries may vary in terms of objectives, scale, scope, timing and duration. Within this framework, investment incentives selected for examination include three major groups: i) tax incentives; ii) investment support tools (for enterprises); and iii) incentives/support related to investment regulations.[2]

The study includes:

- An overview of investment incentives applied in Vietnam in recent years, especially those intended to attract FDI inflow into Vietnam in general, and FDI inflow into mining and quarrying industry in particular. This task is mainly accomplished by reviewing existing documents, including legal documents issued by government agencies.
- An overview of investment-related agreements endorsed or under negotiation between Vietnam and foreign partners, especially agreements related to investment incentives in general, and incentives for mining and quarrying industry in particular (if any).
- An assessment of whether applied investment incentives in Vietnam have had any impact on foreign investors' decisions to locate their project in Vietnam, especially within the mining and quarrying industry. To do so, the team selected several foreign invested enterprises (FIEs) to receive written questionnaires (see Appendix 3 of this report) and give personal interviews.
- A qualitative evaluation of the impacts of investment incentives on FIE sustainable development strategies in the mining and quarrying industry, based on the enterprise survey data conducted by General Statistic Office (GSO) (under Ministry of Planning and Investment [MPI]) during the period 2002–2006.

## 1.2 Methodology

To date, there has been no research material proposing a unified approach for (qualitative and quantitative) analysis of the sustainable development impacts of investment incentives. This may be explained partly by the difficulty in analyzing a correlation between investment incentives and the sustainable development of enterprises. More importantly, the impacts of sustainable development on investment incentives do not present themselves directly. In reality, objectives of investment incentives introduced by governments are mainly aimed at guiding investors into locations or sectors that the country wants to develop. As a result, investment incentives will first influence investors' decisions. However, whether the investments promote sustainable development or not will depend on other factors (see Figure 17). Hence, to analyze the impacts of investment incentives on sustainable development with regard to FIEs in the mining and quarrying industry, the research team selected an indirect two-step approach as follows:

- *Step one:* Examine investment incentive impacts on the investment decisions of foreign investors. Investment incentives, in reality, are only one of many factors that investors consider before deciding to invest in Vietnam. According to recent studies by the Organization for Economic Cooperation and Development (OECD),[3] in addition to investment incentives,

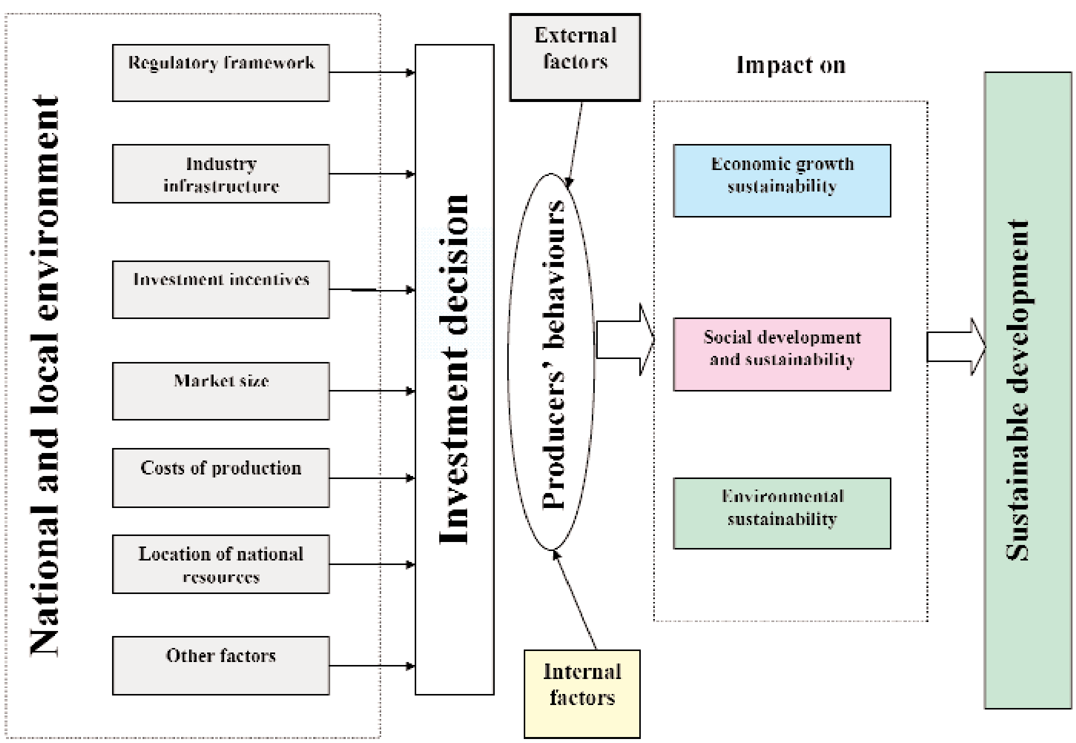
2 See IISD (2007).

3 OECD (2003).

factors such as legal framework, infrastructure conditions, market size, production costs and the availability of natural resources all affect the decision to invest in a country or sector. The impact of these factors on investors' decisions may therefore vary between cases.

- *Step two:* Examine whether foreign investors[4] will ensure sustainable behaviour, i.e., whether their production activities are economically, socially and environmentally sustainable. There are a number of studies identifying factors leading to sustainable development behaviour in enterprises. These factors can be categorized into two main groups:
  - *Group of external factors:* the efficiency and effectiveness of the Vietnam's legal framework (e.g., regulations on social and environmental issues); the effectiveness of incentives actually accessible to enterprises; market requirements (customers); pressure from communities and society on enterprises' sustainability practises, etc.
  - *Group of internal factors*: the policy of parent companies when investing in Vietnam; enterprise policies on social responsibility; perceptions of company leaders about sustainable development, etc.

Data used in this study came from official statistical sources in Vietnam, provided by the General Statistics Office (GSO) and Foreign Investment Agency (FIA; under Ministry of Planning and Investment [MPI]). In addition to data regarding the analysis of investment incentive impacts on investments and sustainable development, the research team sent questionnaires to several enterprises/investors in the mining and quarrying industry (for detailed questionnaire, see Appendix 3). This was combined with the data analysis from the 2002–2006 GSO survey on Vietnamese enterprises.




4 The foreign investors here include both those with and without investment incentives in the mining and quarrying sector.

# 2. Overview of FDI Promotion Policies in Vietnam

## 2.1 Targets for national development and Vietnam's FDI attraction policy

Starting at a low developmental level with low GDP per capita, Vietnam set the national development target for the 2001–2010 period at an average annual GDP of 7–7.5 percent, with the goal of becoming a middle-income country by 2010 and an industrialized country by 2020.[5] The socio-economic development plan for the 2006–2010 period emphasized the objective of "speeding up the economic growth rate, enhancing development efficiency and sustainability to quickly lift our country out of the poor development situation." The plan set an average annual GDP growth rate of 7.5–8 per cent for the whole period with a 40 per cent increase in investments compared with an average of 37.5 per cent from 2001 to 2005. It is estimated that domestic sources account for 65 per cent of social investment capital, while the remaining 35 per cent is covered by external sources,[6] of which FDI is expected to come in at $24–25 billion,[7] accounting for 17.1 per cent of the total social investment capital of the whole period.[8]

To meet these targets, one of the policies that has long been pursued by the Government of Vietnam mobilizes all available resources, including domestic and foreign investment capital, to serve economic development targets. As described in Figure 1, to achieve the average GDP growth rate of 7.5 per cent per annum in the last two decades, the proportion of investment over GDP continuously increased and reached 44 per cent of GDP in 2007. This showed that the growth of Vietnam in recent years was significantly increased by investment capital, including foreign direct investment (FDI). The ratio of FDI to total social investment capital fell in the 1997–2004 period due to the impact of the regional economic crisis, but gradually recovered and had a rapid increasing trend in recent years, especially in 2007 after Vietnam entered the World Trade Organization (WTO). FDI accounted for 21.2 per cent of the total social investment value in 2007, much higher than the rate of 15.9 per cent in the previous year,[9] demonstrating the positive impacts of WTO accession to foreign direct investment inflow to Vietnam[10] (Figure 1).

Vietnam has opened its economy and attracted foreign direct investment since 1987 with the enactment of the Law on Foreign Direct Investment. In the last 20 years, FDI always played an important role in the overall national growth and became an integral part of the Vietnamese economy. The contribution of FDI to national GDP increased from 2 per cent in 1991 to 17.4 per cent in 2007.[11] The growth rate of FDI was always higher than the average rate of the country (Figure 2). Recent studies affirmed the positive contribution of this sector to the Vietnamese economy, which was demonstrated by economic indicators such growth, investment, export value and budget revenue.[12] In addition, FDI was thought to have spillover effects on the economy via channels such as technology transfer, improved local management skills and labour skills, and enhanced competitiveness of domestic enterprises.[13] In reality,

5 Socio-economic development strategy in the 2001–2010 period.

6 It is noted that external capital sources here include Official Developmental Assistance (ODA).

7 Unless otherwise stated, $ amounts refer to US dollar.

8 The five year socio-economic development plan for the 2006–2010 period.

9 CIEM (2008).

10 Vietnam became official member of the World Trade Organization in November 2006 and started implementing its commitments in accordance with the agenda endorsed in early 2007.

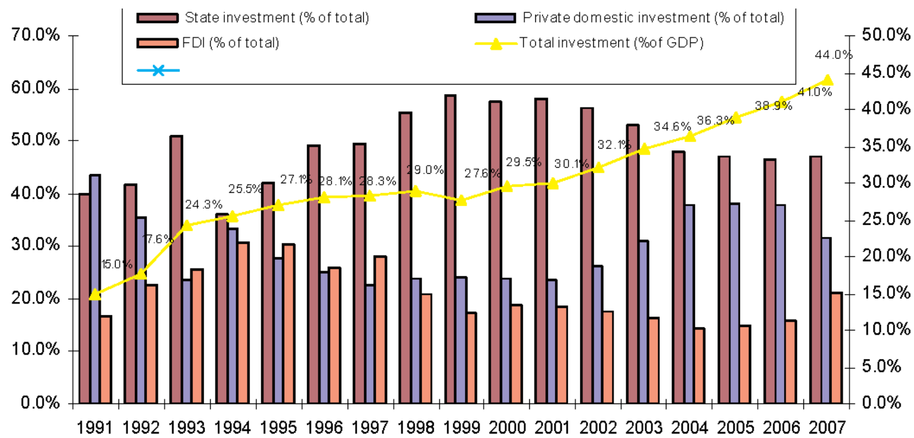
11 Statistical Year Books from 2002 to 2007 of the GSO.

12 FIA (2008).

13 CIEM (2006).

while there were a number of studies looking at the socio-economic impacts of FDI, few research projects have focused on FDI impacts over Vietnam's sustainable development, including the consolidation of economic, social and environmental protection aspects.[14]

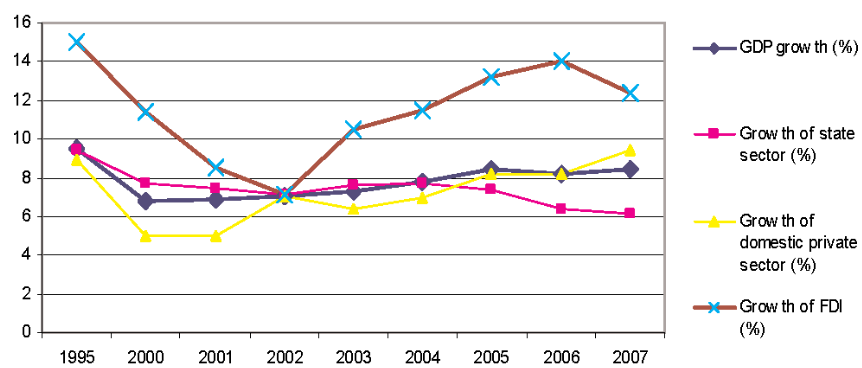
**Figure 1: Social investment composition of Vietnam by ownership type (1991-2007)**




Source: Statistical year books of (GSO, 1991–2007)

The legal framework and foreign direct investment attraction policies have gradually improved to create an attractive investment environment and enhance socio-economic benefits from investment activities. Core principles of investment attraction policies like non-discrimination, transparency, predictability, ownership protection for investors and contract enforcement[15] have gradually been established in Vietnam's legal framework and policies and implemented in practice. This has helped Vietnam become one of the more interesting targets for investment in recent years.[16]

**Figure 2: National and sector growth rates by ownership (1995–2007)**




Source: Statistical Year Books (various years, GSO).

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14 *Ibid*.

15 OECD and MPI (2008).

16 Business Environment Report by the World Bank (WB) in 2007 ranked Vietnam at 91/178 nations compared with 104/175 nations in the Report in 2006. World Investment Report (WIR) 2007 also showed that Vietnam was one of ten most attractive economies in terms of investment by transnational corporations in the 2007–2009 period.

Over the last 20 years, Vietnam's goal of attracting foreign direct investment has been demonstrated in its strategy and five-year plans. In particular, this policy materialized in related laws and by-laws in Vietnam. FDI attraction strategies have changed to match the development contexts in individual periods. Major changes in FDI attraction policies in the last two decades included:

## Legal framework

Prior to 2005, the investment promotion policy framework in Vietnam was governed by two major laws: the Law on Foreign Investment[17] and the Law on Domestic Investment Promotion.[18] In addition, Vietnamese investors have had to comply with other laws such as the Law on State-owned Enterprises, the Law on Enterprises, the Law on Corporate Income Tax, related professional laws and a system of by-laws.

The Common Law on Investment 2005[19] together with the new Law on Enterprises[20] enacted in 2005 and the Law on Intellectual Property Rights (2006) have unified fundamental regulations related to investment in Vietnam by domestic and foreign investors, gradually adjusting the investment mechanism in Vietnam to comply with WTO commitments, enhancing decentralization and providing further business autonomy to investors. Generally, changes in the business-investment environment in Vietnam have created more favourable conditions for investors, due to the legal reforms during the WTO accession process. Particularly, the Common Law on Investment has followed the non-discrimination principle (i.e., to accord equal treatment to foreigners and nationals) by unifying investment regulations in Vietnam for both domestic and foreign investors. Moreover the Common Law on Investment is consistent with Vietnam's WTO obligations.

## Policy objectives

Initially, FDI promotion policies in Vietnam mainly aimed at supplementing and bridging the difference between domestic savings and investment demands to meet economic development targets. With such an approach, FDI promotion policies focused on mobilizing as much FDI capital into Vietnam as possible. However, the objective of FDI attraction has gradually shifted toward a more sustained and mature direction. For instance, in addition to the target for committed FDI, the strategy and the five-year plan also set a target for disbursed FDI value. Moreover, the government issued a list of projects calling for foreign investors for the five year period[21] and clearly defined sectors and areas where foreign investors have been entitled to incentives during given periods. Investments in preferred sectors and areas are entitled to investment incentives as stipulated by law (to be discussed in the following section).

Since 2007, FDI attraction policies in Vietnam have been further directed in a more sustainable manner. At this stage, in addition to setting targets for higher FDI commitments and better-quality FDI disbursement, the central and local governments of a number of provinces and cities also wanted to ensure that this source of capital was being absorbed into the Vietnamese economy, aligning with the

17 First enacted in 1987; amended and improved in 1992, 1996, and 2000.

18 First enacted in 1994; amended in 1998.

19 This law was enacted to unify two previous laws, the Law on Foreign Investment (amended in 2000) and the Law on Domestic Investment Promotion (amended in 1998).

20 In principle, it is applied to all types of enterprises in all economic sectors, excluding cooperatives and business households.

21 For reference on the list of projects calling foreign investors in 2006–2010 period, refer to www.vir.com.vn of the Investment newspaper, Ministry of Planning and Investment.

national planning as well as the planning of individual provinces and regions. Most recently, the governments of some provinces even decisively refused FDI projects that had negative impacts on local environment and sustainable development.[22]

### Investment sectors

Prior to 2000, the list of business sectors in which foreign investors were allowed to invest was restricted by law and often narrowed further whenever there were temporary policy adjustments.[23] Some sectors that are considered strategic, such as power, telecommunication, insurance and banking, despite being open to foreign investment, have had restrictions placed upon them in terms of professional conditionality or state supervision. The expansion to other business sectors by foreign investors is subject to permission. Indeed it was generally difficult to get approval for this permit, in many cases as difficult as applying for a new project investment license. After the US-Vietnam Bilateral Trade Agreement came into effect,[24] such regulations were loosened. Sectors such as legal advice, telecommunication, audit and design consultancy became eligible immediately (2003), while others, such as banking and insurance, opened up later (in 2006).

According to the Common Law on Investment 2005 and its guiding documents,[25] the right to investment by investors has been improved from previous investment laws, transforming from a "list of permitted investment sectors, areas and locations" to a "list of exclusion and conditionality." Investors are allowed to invest in all sectors of the economy, excluding the forbidden and restricted ones. Restricted and conditional investment areas applicable to foreign investors are compliant with the international agreements endorsed by Vietnam. The government regulates investment projects by planning. Government agencies at all levels are responsible for issuing and publicizing information about land planning, infrastructure, urban areas, industrial zones, etc., which enable investors to make investment selections and decisions.

At present, the Common Law on Investment 2005 stipulates five sectors that are forbidden to all investors, nine sectors conditional to all investors and 14 sectors conditional to foreign investors (Appendix 1). In addition, for foreign investors conditional investment sectors also include those under the international commitment schedule stipulated in the international agreements endorsed by Vietnam. To invest in conditional sectors, investors have to satisfy certain requirements for company establishment, project scope, domestic/foreign ownership structure and legal organization. Besides forbidden and conditional investment sectors, foreign investors may make unrestricted investments in other sectors and areas.

### Investment forms

During the early years of implementing the foreign investment promotion policies, Vietnam only allowed three main investment forms: joint venture, 100 per cent foreign investment and business cooperation contract (BCC) [26], with priority given to BCC. In addition, the old law stipulated that FIEs

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22 For example the municipal government of Danang City refused the FDI project on steel production as they were afraid of possible negative impacts on local environment.

23 For example when there are too many projects in one sector, leading to supply surplus or unreasonable competition, the government may issue a banning order or temporarily stop issuing licenses for that sector for a certain period.

24 The US-Vietnam Bilateral Trade Agreement was signed in 2002, effective on January 1, 2003.

25 Decree 108/ND-CP of the government on September 22, 2006 regarding regulations and guidance for the implementation of several articles of the Common Law on Investment 2005.

26 A BCC is a partnership signed by two or more parties with the objective of conducting jointly one or more business operations in Vietnam, on the basis of mutual allocation or responsibilities and sharing of profits or losses, without creating or forming a legal entity in Vietnam.

were only permitted in the form of a limited liability company and there was no regulation on indirect investment. This restriction on investment forms troubled the operation of FIEs, especially limiting the capital mobilization of foreign investors in business activities.

The Common Law on Investment 2005 added more investment forms, such as the expansion of direct and indirect investment. Foreign investors are allowed to acquire, merge, sign BCCs, contribute capital or buy company shares. In addition, foreign investors are allowed to establish enterprises and register more than one business sector under a legal entity similar to that of domestic investors, that is to say they are allowed to establish their enterprises under any form of limited liability company, partnership, joint stock company or sole ownership; and allowed to make indirect investment by purchasing bonds and stocks or investing via securities investment funds and financial intermediaries. FIEs already established in Vietnam that have new investment projects can apply for a permit to implement such projects without establishing a new business entity. Moreover, to further simplify the administrative procedures and enhance the transparency of the investment laws, the Government of Vietnam has developed lists of projects calling for foreign investment for individual periods to create favourable conditions for investors to select investment forms and project sizes in Vietnam.[27]

### Investment registration procedures and investment incentives certificate

The Common Law on Investment 2005 unified and thereby simplified the investment procedures applicable to both domestic and foreign investors. Instead of "applying" for investment permits like before, foreign investors can now "register" for investment certificates applicable to projects capitalized at less than VND 300 billion (ca. $18.8 million) that are on the list of conditional investment sectors or the list of projects that are subject to the Prime Minister's approval (project group i, Table 1). Investment projects capitalized at more than VND 300 billion or on the list of conditional investment sectors (project group ii, Table 1) must go through the investment verification step. However, there are different investment procedures for domestic and foreign investors for projects capitalized at less than VND 15 billion (less than ca. $1 million) and on the list of projects subject to the Prime Minister's approval. For these projects, domestic investors, but not foreign ones, do not have to register their investments.

Investment incentives entitlement procedures are stipulated more simply under the new Law on Investment. Investors do not have to apply for a separate investment incentives certificate. Instead, investment incentives entitlements are included in the investment certificate. Under current regulations, the granting of investment certificates is decentralized to local authorities, such as the People's Committees of provinces and cities under central authority and Management Boards of industrial parks/export processing zones, excluding BOT (Build-Operate-Transfer), BTO (Build-Transfer-Operate) and BT (Build-Transfer) projects for which the Ministry of Planning and Investment (MPI) will grant investment permits.[28] However, during the investment project verification, local authorities should consult central government agencies such as MPI and related ministries for their appraisal as stipulated by laws before issuing an investment certificate. Hence, by establishing simpler and more reasonable procedures, the new Common Law on Investment has contributed to the transparency of the investment environment in Vietnam.

27 This list clearly defines criteria of project size, investment forms, investment locations, etc., and usually under the master planning of a certain industry or province.

28 According to Decree 78/2007/ND-CP, investment certificates for these projects are granted by MPI, not by local authorities.

**Table 1: Summary of investment registration procedures under the Common Law on Investment 2005**

| Project group | Project type | Project Size | | |
|---|---|---|---|---|
| | | Less than VND 15 billion | VND 15 billion to less than VND 300 billion | Greater than VND 300 billion |
| i) From the list of conditional investment sectors and the list of projects subject to the Prime Minister's approval | Domestic | No registration | Investment registration | Investment verification |
| | Foreign | Investment registration | Investment registration | Investment verification |
| ii) On the list of conditional investment sectors and the list of projects subject to the Prime Minister's approval(*) | Domestic and foreign | Investment verification | Investment verification | Investment verification |

(*) – See Appendix 1.

Source: Foreign Investment Agency, MPI[29]

## Right to business of foreign investors

The Common Law on Investment 2005 has removed restrictions on the investment rights of foreign investors compared with those of domestic investors as stipulated in previous laws, such as the right to access and use credit sources, land and natural resources; the right to hire and employ people; the right to direct export and import; and compulsory localization proportion. Previous regulations on the minimum capital contribution of foreign investors in joint ventures, and the proportion of legal capital over investment capital were removed, creating more capital mobilization opportunities for investors. In terms of employment, while foreign employers previously had to go through a domestic recruitment agency to hire domestic labourers, they are now legally allowed to recruit labourers directly. Restrictions on foreign investors due to a fixed export ratio and no export delegation were entirely removed and domestic and foreign investors have an equal right to do business. However, the Common Law on Investment 2005 and current regulations, including international commitments, still have different provisions on the right to invest for domestic and foreign investors. For example, in some service sectors (such as finance and banking), foreign investment is restricted by limited foreign ownership in share purchase transactions. Hence, for certain businesses, foreign investors should refer to other professional laws like the Code of Labor, the Law on Insurance, the Law on Banking and Credit Organizations, etc.

## Governance of FDI activities

National-level governance of FDI activities was initially assigned to the State Committee on Cooperation and Investment (SCCI). This agency was then moved to the Ministry of Planning and Investment. In the mid-1990s, the Central Management Board of Industrial Parks and Export Processing Zones was established to govern FIEs operating in industrial parks and export processing zones. Both the Ministry of Planning and Investment and the central Management Board of industrial parks and export processing zones previously had their branches at the local level. In 2003, the Central Management Board of Industrial Parks and Export Processing Zones was merged with the Ministry of Planning and Investment to unify national-level governance over FDI. However, these two agencies' local branches still operate separately and both belong to provincial People's Committees.

29 See more at www.fia.mpi.gov.vn

In recent years, Vietnam has gradually decentralized FDI governance functions to local authorities and industrial parks and export processing zone management boards. While all previous FDI projects should await approval by central agencies (government or Ministry of Planning and Investment) to get investment permits, current FDI projects that are not on the list of forbidden or restricted investment sectors as stipulated in the Common Law on Investment 2005 should apply to either of the following agencies:

- *People's committees of provinces and cities under central authority:* allowed to receive applications and grant investment certificates for FDI projects operating in provincial/municipal areas outside industrial parks or export processing zones; projects on developing industrial parks and export processing zones; and projects operating in industrial parks and export processing zones that have not been managed by any management board, including projects already approved by the Prime Minister.

- *Management boards of industrial parks and export processing zones:* allowed to receive applications and grant investment certificates for FDI projects operating within industrial parks, export processing zones or economic zones, including projects already approved by the Prime Minister.

Such FDI decentralization is aimed at creating favourable conditions for investors, and at the same time enhancing the accountability of local government agencies in FDI governance. To ensure efficient decentralization requires some essential conditions: governance capacity and analytical skills of local government officers, close cooperation and information exchange between central and local agencies, sustained central monitoring and investigation over local authorities, for example. However these prerequisites have not been assured. The poor governance capacity of local provinces, resulting in low productive decentralization and other arising problems, and the lack of comprehensive master plans of both sectoral development and regional development are resulting in an ineffective decentralization process and other arising problems.

## 2.2 Overview of investment incentives in Vietnam

Like other countries, Vietnam has issued a number of investment incentives to mobilize all available resources for economic growth and sustainable development. Before the Common Law on Investment 2005 came into effect, the investment incentives policy framework was spread across various laws and by-law documents due to the discrimination between domestic and FIEs. This troubled government agencies responsible for managing investment incentives as well as enterprises themselves responsible for understanding and applying for such investment incentives. Moreover, some investment incentives served objectives that sometimes conflicted with each other, resulting in unexpected outcomes. For example some incentives were aimed at attracting both high capital value and a high number of jobs; encouraging both export and import substitution; encouraging both economic development in difficult areas and the use of advanced technology and technology transfer.[30]

Complexity was further exacerbated when local authorities continued issuing specific incentives which went beyond the incentives framework issued by the government (a practice referred to as "fence-breaking"), leading to unhealthy competition in investment attraction[31] (see Box 1). International

30 http://vietnamnet.vn/wto/tuaz/2004/02/52681/

31 In 2005, an investigation by Ministry of Finance showed that 33/48 provincial or municipal authorities issued investment incentives violating general regulations, which were mainly incentives on corporate income tax and land issues. In addition provincial authorities also applied other preferential policies such as investment reward, quick depreciation, prolonged tax exemption duration, etc. See Vũ *et al*. (2007) for further details.

experience showed that investment incentives, while necessary for attracting more investment, are not necessarily sufficient for attracting foreign investors.[32] Meanwhile such "fence-breaking" competition among provinces in terms of investment incentives levels may lead to a "race to the bottom", putting a further strain on already low local budgets.[33] The "fence-breaking" behaviour was explained by a number of local authorities as the local "hunger for investment capital" due to the shortage of local budget to meet development spending demands. These localities are mainly poor provinces, especially those located in difficult regions in terms of natural conditions and infrastructure quality to attract private investment. In addition, this issue also raised a request for the government to review its investment incentives to make them more practical.

**Box 1: Case study of "fence breaking" in investment incentives in local provinces**

Although the Government has issued a common investment policy, 33 provincial and municipal authorities, due to their local interests, continued "fence breaking" by issuing a series of specific incentives to attract investors. According to a review by the Ministry of Finance in 2005, these provinces used their local state budget to support enterprises investing in local industrial parks by re-granting corporate income tax (CIT), Value Added Tax (VAT), land rent, investment supports, etc.

Eighteen provinces had unsuitable provisions on their budgets; 21 provinces had stipulations "beyond the framework" of land policy; 11 provinces had unsuitable provisions on corporate income tax incentives (many provinces had unsuitable provisions on both areas). Most of provinces had very high incentive for land tax, increasing the tax reduction period to 10–20 years. For instance, Ben Tre province stipulated that: "In addition to the entitlement of incentives stipulated by the Government, BOT, BTO and BT projects are entitled to the corporate income tax exemption of another four years and 50 per cent reduction for the following nine years. Quang Nam province applied the tax rate of 3–10 per cent lower than that of the government in three years. Ha Tinh province increased the land rent exemption period to 7–13 years; increased the land rent reduction period to five years or the whole project "life." Phu Yen province daringly stipulated that: At the end of the exemption and reduction period stipulated by the Government, investors are entitled to 50 per cent land rent value for 8–20 years. Nghe An province increased the land rent period to ten years for projects investing in Vinh City, Cua Lo township, and exempted another 20 years of land rent for projects investing in the delta area. Vinh Phuc province exempted 100 per cent land tax for projects investing in difficult areas."

Source: Consolidated by authors from newspapers issued from June to August 2005.

The Common Law on Investment 2005, enacted together with the Prime Minister's Decision 1387/QD-TTg on December 29, 2005 stopped local investment "fence breaking" and removed investment discrimination between domestic enterprises and FIEs. According to the Common Law on Investment 2005, investment incentives are identified by two criteria: investment location and investment sectors. The law categorizes investment locations into two groups: locations with difficult socio-economic conditions and locations with extremely difficult socio-economic conditions. The Law also categorizes investment sector into two groups: sectors with incentives and sectors with special incentives.[34] However, the Common Law on Investment 2005 does not specify clear investment incentive levels that are stipulated in other corresponding professional laws in terms of tax, land, export and import issues and other regulations.[35] Table 2 summarizes specific incentives for taxes and other

32 Blomström (2002).

33 Vũ (2006).

34 See Appendix 2 (a and b): List of investment incentive sectors and locations according to the Law on Investment (2005).

35 Such as the Law on Land, Law on Export and Import Duties, Law on Corporate Income Tax, etc.

government investment support for investment projects satisfying those conditions.[36] Clearly, the transparency in investment incentives as per current regulations has helped reduce the previous "fence breaking" situation in provinces.

It is important to note that investment incentive schemes indicated in Table 2 are applied after 2006. Before that time, different tax investment incentives were set for foreign and domestic firms. In the following section we will describe in detail the tax incentive scheme applied before 2006 for the mining and quarrying sector (Section 5.2.)

In addition to tax incentives and investment support policies, investors are also entitled to legal "incentives" via the simplification of certain administrative procedures. In recent years, a number of efforts have been made by the Government and government agencies in investment governance, such as transparency in investment application and permit granting, a "one door, one stamp" policy, publication of industry and locality development planning, issuance of a list of projects calling for foreign investment for each period, establishment of taskforce groups on the implementation of the Law on Enterprises and the Law on Investment, establishment of FDI promotion centres in three regions, regular dialogues between the government and foreign investors, etc. These efforts have facilitated access to information about investment policies in Vietnam for investors and enabled them to better forecast developments in the sector where they intend to make investment.

In terms of investment incentives, the Common Law on Investment 2005 and related legal documents have had more positive provisions than those in the former Law on Foreign Investment and the Law on Domestic Investment Promotion. However, the Common Law on Investment 2005 is still a "framing law" that needs other guiding documents issued by related ministries (this is usually very time-consuming). To date, Vietnam has not had sufficient by-law documents with clear and consistent provisions on the criteria of projects entitled to investment incentives. This is hampering the consistent implementation of investment incentives stipulated by law. In reality the implementation of this law in recent years showed that the identification of a project entitled to investment incentives was challenging and even differed among authorities. For example, the lack of a concrete explanation or guidelines in applying investment incentives in preferential sectors (Annex 2a) has resulted in the various local authorities interpreting the law differently. As a result, a project can be entitled to investment incentives if located in one province, but not if located in another province with similar socio-economic conditions.

36 This means an enterprise may have various projects entitled to investment incentives (see also GTZ-CIEM, 2007).

**Table 2: Summary of current investment incentives**

| Types of investment incentives | Under list of incentive sectors | | Under list of incentive locations | |
|---|---|---|---|---|
| | Sectors with special incentives (List A) | Sectors with incentives (List B) | Locations with extremely difficult socio- economic conditions (Location 1) | Locations with difficult socio- economic conditions (Location 2) |
| **I. Tax incentives** | | | | |
| 1.Corporate income tax: | Standard corporate income tax rate applicable to projects outside the incentive sectors and locations: 28% | | | |
| **1.1. Exemption and reduction of corporate income tax for:** | | | | |
| Newly - established business entity for new investment project. | Four-year tax exemption starting from the first profit-making year, 50% tax reduction for the next nine years | Two-year tax exemption starting from the first profit-making year, 50% tax reduction for the next three years. | Four-year tax exemption starting from the first profit-making year, 50% tax reduction for the next nine years. | Two-year tax exemption starting from the first profit-making year, 50% tax reduction for the next six years. |
| | Three-year tax exemption starting from the first profit-making year, 50% tax reduction for the next seven years when investing in incentive sectors (List B) and operating in incentive locations (location 2). | | | |
| Resettlement business entity | Two-year tax exemption, 50% tax reduction for the next two years for a business entity moving out of urban areas due to land planning (common application). | | | Two year tax exemption starting from the first profit-making year, 50% tax reduction for the next six years. |
| **1.2. Corporate income tax rate for:** | | | | |
| Newly- established business entity for new investment project. | 10% tax rate in 15 years. If having special impacts over the economy, tax rate of 10% is applied to the whole project's life. (Decided by the Prime Minister) | 15–20% tax rate in 10–12 years | 10% tax rate in 15 years | 15–20% tax rate in 10–12 years. |
| Ongoing business entity | Allowed to transfer losses to coming years, deductible to taxable income for a maximum of five years (common application) | | | |
| 2. Value added tax | Tax rate of 0% for some sectors, including science and technology activities | | | |
| 3. Export - import duties | Exemption of import duties in five years for import of project's fixed assets. | | Exemption of import duties in five years for import of project's fixed assets. | |
| 4. Natural resource royalty | | | Maximum of 50% reduction of natural resource royalty in three years starting from the first year of exploitation | |
| 5. Land use tax | Exemption of land use tax in 15 years maximum | | Exemption of land use tax in 15 years | Exemption of land use tax in 7–11 years |
| **II. Investment support** | | | | |
| 1. Technology transfer | Contribution by technology in investment projects; support technology innovation by the National Technology Innovation Fund | | | |
| 2. Training support | The government encourages and supports investors to establish a training support fund; the training support fund is not-for-profit; entitled to tax exemption and reduction as stipulated in tax laws; training cost of the business entity will be recorded in reasonable cost items for calculating taxable corporate income. | | | |
| 3. Development investment support and investment services | A number of support types: investment consultancy, management consultancy, technology transfer, market information supply, participation in organizations and associations, investment promotion, etc. | | | |
| 4. Support for infrastructure development inside and outside industrial parks/export processing zones | State budget to be used to support infrastructure developers and other supportive policies. | | | |
| 5. Custom clearance support | Foreign investors/experts and their dependants are granted multi-entry visas for a maximum of five-year period per issuance. | | | |

Source: Consolidated by the authors from laws and related legal documents.

## 2.3 Bilateral and regional investment treaties and negotiations

Right after opening the economy to foreign investment, Vietnam signed a number of investment-related bilateral and multilateral agreements. As of September 2007, Vietnam signed 50 bilateral agreements on investment promotion and protection. In addition, Vietnam has signed dual tax avoidance agreements with 49 countries and territories. Among the signed bilateral agreements, the Bilateral Trade Agreement between Vietnam and the U. S. (2002) is a special trade agreement, whereby provisions for direct investment are stipulated separately in one chapter and act as a foundation for later bilateral and multilateral commitments for Vietnam. Regarding multilateral agreements, as an Association of Southeast Asian Nations (ASEAN) member since 1996, Vietnam has endorsed several investment-related agreements within the ASEAN framework such as the ASEAN Agreement on Investment Promotion and Protection, the ASEAN Framework Agreement on Services, and the Framework Agreement on ASEAN Investment Area. Vietnam has also been an active member in the negotiation of a new ASEAN Comprehensive Investment Agreement (ACIA).

Vietnam's accession to the World Trade Organization (WTO) in 2006 has impacted FDI policies through four WTO agreements, namely: (1) the Agreement on Subsidies and Countervailing Measures (SCM); (2) the Agreement on Trade-related Investment Measures (TRIMS); (3) the General Agreement on Trade in Services (GATS); and (4) the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). In general, WTO accession commitments reflect in the most comprehensive manner Vietnam's commitments to WTO member countries. Vietnam has to conduct three types of commitments within the WTO framework, including commitments for trade in goods, commitments for trade in services and commitments for the legal framework related to trade and other WTO regulations. Among these three commitment groups, each has a different impact on the attraction and realization of foreign direct investment in Vietnam.

### Commitments on goods

Generally, Vietnam was willing to comply with all binding WTO agreements and regulations at the time of accession. However, due to its low development level, Vietnam requested and was granted a transitional period[37] to fulfil several commitments relating to import duties, special consumption tax, non-agriculture subsidies and right to do business.

Vietnam proposed commitments for export and import duties, tariff barriers and agriculture and non-agriculture subsidies on goods. Regarding import duties, Vietnam committed to reduce the average tariff rate from the 17.4 per cent in 2008 to 13.4 per cent in 5–7 years (by 2014). Meanwhile, they committed to reducing the tariff rate for agriculture products from 23.5 per cent to 20.9 per cent, and industrial products from 16.8 per cent to 12.6 per cent. The tariff cut commitments will have direct impacts on previous highly-protected investment areas (import-substitution industries such as automobiles, motorbikes, cement and steel) or strong exporting industries such as footwear, leather, garments and electronics. Both areas have the participation of FIEs, especially protected ones.

37 At the WTO accession time, Vietnam was considered as a non-market economy and the allowed transitional period was 12 years before December 31, 2018. The "non-market" regime is only meaningful in anti-dumping lawsuits and WTO members are not allowed to apply special self-protection mechanisms to export goods from Vietnam.

### Commitments on services

WTO commitments on services go beyond those of bilateral trade agreements (BTAs) but not much. For almost all service industries, including sensitive ones such insurance, logistics or tourism, Vietnam still keeps the level of commitment similar to that in the BTAs. Vietnam required further steps for telecommunication, banking and securities commitments but, generally, they were not too far from the current status and all of them suited the development directions that were approved for these industries.

Vietnam has commitments for eleven service sectors (110 sub-sectors), in which commitments on the right to penetrate markets of foreign investors vary in scope among industries. For some service types, Vietnam limits the ownership ratio of foreign service providers in Vietnam. For a limited number of services in which the foreign partners may immediately hold 100 per cent or majority ownership, the ratio of foreign ownership will be gradually increased to reach 100 per cent after several years. Generally, common commitments for service industries are similar to those of the BTAs. At first, foreign companies are not allowed to have commercial representation in Vietnam in the form of branches, unless permission is granted by the Vietnamese government for individual industries, which are very scarce. In addition, although foreign companies are allowed to send their managers to work in Vietnam, at least 20 per cent of their managers should be Vietnamese.

### Commitments on the legal framework

Vietnam agreed to comply with WTO provisions for commitments on the legal framework relating to investment and trade, however, as a developing country, Vietnam is entitled to a certain transitional period. Relating to foreign direct investment, laws such as the Law on Investment, Law on Intellectual Property Rights and Law on Enterprises are generally compatible with WTO regulations. This commitment has an impact on the overall business environment and creates a momentum for the government to continue its economic reform towards market direction, with special focus on transparency and equal treatment among enterprises.

In summary, the bilateral and regional agreements Vietnam has currently signed do not contain specific provisions about investment incentives, though there are several provisions to facilitate the investment process through, for example, simplifying administrative procedures, establishing one-stop investment centres, promoting the dissemination of investment information, etc. The main aims of these provisions are to promote the investment flows into a country. In contrast, there have not been specific provisions that require investors to respect minimum standards in i) protecting public morals and maintaining public order; ii) protecting human, animal, or plant life or health; or iii) complying with national laws or regulations.

# 3 Overview of the Mining and Quarrying Industry and Related Investment Incentives in Vietnam

## 3.1 Overview of development and investment policies in the mining and quarrying industry

The mining and quarrying industry plays an important role in the national economy of Vietnam, especially when Vietnam is promoting its industrialization and modernization. The industrial production value of the industry accounted for 11.2 per cent of the total industrial production value in

2005.[38] Vietnam has a natural advantage of approximately 60 categories of diversified and rich minerals. However, minerals in Vietnam have not been exploited and used efficiently. The three mineral categories of crude oil, natural gas and coal have accounted for 90 per cent exploitation output, but just 5.75 per cent of GDP.[39] Sparse investment, modest investment size, infrastructure shortages, poor mining equipment, outdated mining technology and low production efficiency due to a high rate of mineral loss in extraction (50 percent) are all considered basic causes hampering the development of the mining and quarrying industry.[40] In recent years, the growth rate of the mining and quarrying industry has shown a tendency to decrease, even experiencing negative growth rates in 2006 and 2007 (Table 3).

**Table 3: Role and development trends in the mining and quarrying sector within the Vietnamese industry (2000–2007)**

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007e |
|---|---|---|---|---|---|---|---|---|
| **Growth rate of industrial production value ( percent) – 1994's comparative price** | | | | | | | | |
| Whole industry | 17.5 | 14.6 | 14.8 | 16.8 | 16.6 | 17.1 | 17 | 17.1 |
| In which | | | | | | | | |
| Mining and quarrying | 11.2 | 6.4 | 4.2 | 8 | 14.4 | 2.4 | -1.6 | -2.4 |
| Coal | 15.5 | 13.9 | 18.4 | 15.7 | 28.8 | 28.6 | 13.6 | 10 |
| Crude oil and natural gas | 10.5 | 4.5 | 0.2 | 5.5 | 13 | -3.5 | -7.1 | -5.8 |
| Metal ores | 9.2 | 14.1 | 17.7 | 22.7 | 35.8 | 1.8 | 30.7 | -10.5 |
| Other rock mining and quarrying | 14.5 | 19 | 26.8 | 18.3 | 6.8 | 13.3 | 9.7 | -1 |
| **Sector structure by industrial production value ( percent) – current price** | | | | | | | | |
| Whole industry | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| In which | | | | | | | | |
| Mining and quarrying | 15.7 | 13.2 | 12.8 | 13.5 | 12.8 | 11.2 | 10.3 | |
| Coal | 1.2 | 1.2 | 1.4 | 1.3 | 1.5 | 1.6 | 1.6 | |
| Crude oil and natural gas | 13.5 | 10.9 | 10.3 | 11.1 | 10.4 | 8.7 | 7.8 | |
| Metal ores | 0.1 | 0.1 | 0.1 | 0.1 | 0.2 | 0.1 | 0.2 | |
| Other rock mining and quarrying | 0.9 | 0.9 | 1 | 1 | 0.7 | 0.8 | 0.7 | |

Source: Consolidated by the authors from annual Statistic Year Books (GSO, multiple years).

According to current regulations, all minerals within the territory of Vietnam's mainland, islands, sea territories and marine platform belong to Vietnamese people and are governed by the State.[41] Hence exploitation activities have long been dominated by state-owned enterprises (SOEs) which account for more than half of the total number of enterprises in this sector. However oil exploitation was opened very early to the first foreign investor—the Vietso Petrol joint venture between Vietnam and the former Soviet Union—which began in the early 1980s, before the enactment of the Law on Foreign Investment. According to the survey on enterprises conducted by the General Statistic Office, as of 2006 the number of enterprises in the mining and quarrying sector was 1,370—only one per cent of the total number of enterprises nationwide—but attracted 180,000 workers, or 2.7 per cent of the total number of workers in Vietnamese enterprises.

38 GSO (2007).

39 Wu (2007).

40 For example, mineral loss rates during the exploitation of mines is 40%–60%, appetite: 26%–43%; metal ores 15%–30%; construction materials 15%–20%; and oil 50%–60%. Source: "Việt Nam: Tổn thất khai thác tài nguyên quá cao!" ("Vietnam: High mineral losses in exploitation") Retrieved December 2008: www.vnn.vn/khoahoc/vande/2004/09/258742/

41 Article 1, Law on Vietnam Mineral Resources.

The development and investment policies of the mining and quarrying industry were mentioned in examination, exploitation and processing planning for individual minerals, provisions of the Law on Vietnam Mineral Resources (enacted in 1996 and amended in 2005), the Law on Petroleum (2008) and other related professional laws. Article 5 of the Law on Vietnam Mineral Resources (amended in 2005) stipulates that the State shall be in charge of basic planning and geological investigation of minerals. These plans are usually approved by the Government for a period of 10 to 15 years with major guidelines for investigation, exploitation and processing of individual types of minerals, clearly identifying a list of expected projects for the whole planning period.

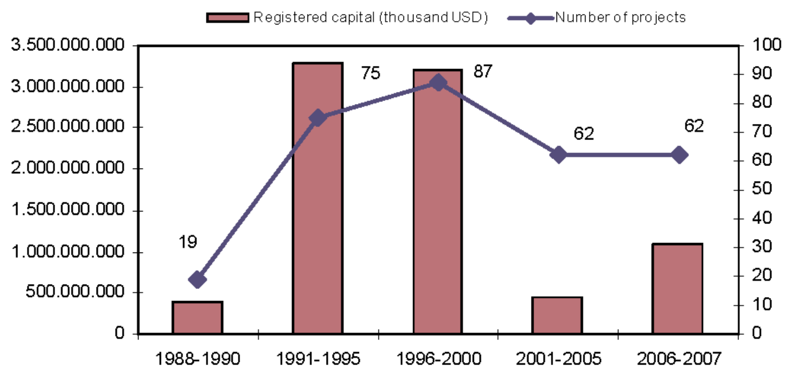
To date, the Government of Vietnam has approved the master plans of investigation, exploitation and processing of the most popular types of minerals in Vietnam, such as crude oil, coal, iron, chromium, manganese, lead, zinc, bauxite and titanium, up to 2010, and their vision extends to 2020 and 2025. At present, a number of master plans for other mineral sources (such as fluorite, gemstones, rare earths, silica sand and silver) have not been approved. It is more time-consuming to get verification and approval for investment applications in other minerals that have not yet been approved for master plans. This can be troublesome for foreign investors who are looking for investment opportunities in this sector. Moreover the quality of overall planning in Vietnam is not high, usually far from the actual demand and development of the industry, leading to rapid adjustments shortly after implementation. For instance, the overall coal planning that was approved in 2003 for the 2003–2010 period, with an eye to 2020, had to be replaced by another version in 2008 because the targets set out in the plan were not practical: The 2003 approved plan forecast that the coal exploitation output in 2010 would be 23–24 million tonnes, while the actual coal exploitation output in 2007 was 41.2 million tonnes—1.7 times higher than the forecast figure for 2010.

The Law on Foreign Investment in 1987 opened the door for foreign investors to be involved in mining and quarrying activities. The main objectives of attracting foreign investment in this sector were to i) mobilize a large capital source into this huge capital-intensive sector; ii) attract advanced technology to exploit minerals efficiently, reducing the current drain in mineral exploitation; and iii) promote the transfer of foreign advanced technology, forming a pool of highly-skilled managers and workers in the mining and quarrying industry (i.e., spillover effect). However, as this is a non-renewable resource exploitation area, according to the Common Law on Investment 2005 and other professional laws, the mining and quarrying industry is not an investment-promoted sector, but a conditional one (Appendix 1). Investment projects in this sector (including mineral investigations, exploitation and processing), regardless of size, must be subject to the Prime Minister's approval.

As of early 2008, Vietnam has attracted 305 FDI projects in mining and quarrying that were granted investment licenses with a total registered capital of $8.4 billion, or 9.9 per cent of the total registered FDI capital for the whole period of 1988–2007. FDI investment in mining and quarrying reached its peak in the 1996–2000 period in terms of registered capital and number of projects, then plunged in the 2001–2005 period, but quickly recovered in the last three years. The reasons for the dramatic drop of FDI in this sector during the period 2001–2005 were the impact of the regional financial crisis in the late-1990s and the enactment of several natural resource management regulations that required the investigation of new investment projects in the sector. However, FDI inflow in the mining and quarrying sector increased in 2006 and 2007. The registered FDI capital in this sector suddenly shot up to 2.5 times higher than the previous five year period of 2001–2005 (Figure 3).

According to the list of projects calling for foreign investment for the five-year period of 2006–2010, FDI capital attracted in mining and quarrying industry is expected to be $4.5 billion, two thirds of the total FDI capital invested in the mining and quarrying industry in the previous 18 years. Joint ventures dominated with 43 per cent of total registered capital, followed by business cooperation contracts with 39.2 percent, while 100 per cent foreign investment only accounted for 15.9 percent. Although FDI projects have been allowed to establish themselves in the form of joint stock companies since 2006 when the Common Law on Investment 2005 took effect, five new joint stock company projects have been registered, accounting for 1.8 per cent of the total registered FDI capital of the 1988–2007 period.

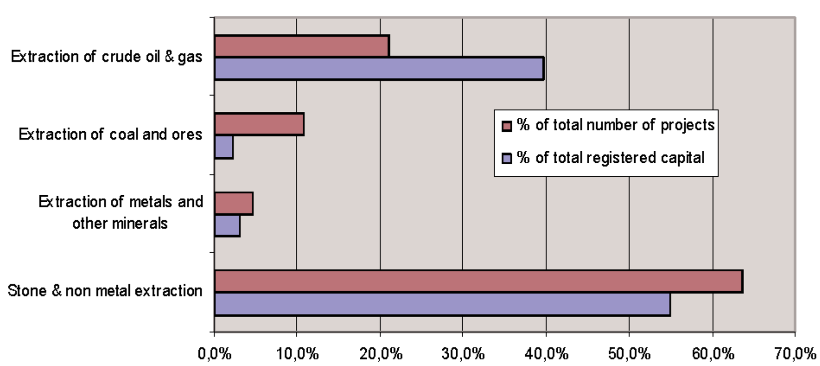
**Figure 3: FDI trends in the mining and quarrying industry (1988–2007)**




Source: Foreign Investment Agency (MPI, 2008)

The five major investors in mining and quarrying included Taiwan, Japan, Great Britain, the Netherlands and Singapore, accounting for more than half of registered FDI capital in this sector during the last 20 years. While projects from Taiwan and Singapore focused on non-metallic minerals, those from the Great Britain, Japan and the Netherlands concentrated on oil exploitation. In terms of mineral categories, FDI capital was mainly poured into rock and non-metallics exploitation, accounting for 55 per cent of the total registered capital and 63 per cent of the total number of projects in the mining and quarrying sector; followed by oil exploitation with respective proportions of 40 per cent and 21 per cent. The remaining capital was divided quite equitably into the remaining two categories: coal and ore exploitation (two per cent) and metallics and precious stone exploitation (three per cent) (see Figure 4).

**Figure 4: FDI composition in the mining and quarrying industry by category**




Source: Consolidated from data provided by the Foreign Investment Agency (MPI, 2008).

FDI projects in the mining and quarrying sector were concentrated in 49 provinces and cities and offshore within the sea territories of Vietnam. Projects located offshore accounted for 39 per cent of the total capital and 20 per cent of the number of FDI projects in the mining and quarrying sector, mainly oil investigation and exploitation. The following provinces also attracted a portion of FDI investment: Thanh Hoa (7.8 per cent); Quang Ninh (6.9 per cent); Binh Dương (6.5 per cent); Hai Phong (5.8 percent); Kien Giang (5.3 per cent); Ninh Binh (4.3 per cent); Hai Duong (3.5 per cent); Ba ria-Vung Tau (3.4 per cent); Dong Nai (2.8 per cent).

This analysis shows that, despite the decreasing proportion of the mining and quarrying sector in the overall industry due to the strong growth of the processing sector in recent years, mining and quarrying still play a crucial role in Vietnam's current and projected economic development strategy, especially in ensuring energy security and serving the national industrialization cause. The challenge for Vietnam is to clearly define a plan for the exploitation and use of this non-renewable natural resource in a sustainable way, avoiding its exhaustion and assuring its availability for future generations. In addition, it is essential to strengthen the state governance of the exploitation of natural resources to ensure that enterprises in this sector will comply with related regulations, exploiting this natural resource with efficiency-oriented thinking and minimizing negative influences on the environment due to the exploitation and use of natural resources.

## 3.2 Investment incentives in the mining and quarrying industry

As mentioned above, the mining and quarrying industry is categorized as a conditional investment sector. Hence, projects in this sector, in principle, are subject to strict government scrutiny primarily because Vietnam wants to restrict the exhausting exploitation of national natural resources, to prevent harming future sustainable development. In most cases, under the current regulations, investors in this sector are subject to several additional taxes, such as a natural resource royalty, environment tax/fee, deposit for exploitation rights and higher corporate income tax rate, among others. However due to high natural resource rents and rather low natural resource royalties, investors, especially foreign ones, continue to show strong interest in this sector.

Although mining and quarrying itself is not an investment promoted sector, according to the Law on Natural Resources (amended in 2005) the government still provides certain investment incentives for mineral exploitation projects linked with on-site processing in locations with difficult or extremely difficult socio-economic conditions (Annex 2b); projects with advanced technology or techniques, environmental protection, maximum recovery of useful substances, production of metals, alloy or other products with high socio-economic value and efficiency; and projects developed to process imported minerals to meet domestic and export demands.[42] Clearly, investors in this sector are still able to enjoy several investment incentives if their projects satisfy one out of four conditions: (i) they are located in an investment incentive location; (ii) they are located in an industrial park, export processing zone or economic zone; (iii) they use advanced technology and modern techniques in exploitation; and (iv) they use a large number of workers (more than 500 workers). Once satisfying one of those four conditions, investors will be entitled to several of the following investment incentives:

***Corporate income tax:***

Currently, mining and quarrying firms that fall into the investment incentives sectors are exempt from corporate income tax during the first 2 to 4 operating years (Table 2). However, incentives on corporate

42 Article 5, section 3: Amended Law on Mineral Resources (2005).

income tax are not applicable to the investigation and exploitation of oil and precious minerals. In this case investors have to pay the corporate income tax at 32 to 50 per cent depending on projects.[43]

In addition enterprises are entitled to other incentives stipulated in the Law on Corporate Income Tax, such as covering losses incurred during the tax exemption period by income incurred after (or before) that period;

***Export-import duties***[44]

Enterprises in the mining and quarrying industry are exempted from import duties if:

- Imported goods are used for petroleum-related activities, including:

  a) Equipment, machinery, spare parts, specialized vehicles for petroleum-related activities

  b) Essential materials for petroleum-related activities that cannot be manufactured domestically;

- Imported goods for direct use in scientific research and technology development, including machinery, equipment, accessories, transport vehicles unable to be manufactured domestically, and technology unable to be created domestically;

- Imported materials, accessories, spare parts for the production of projects on the list of sectors with special incentives or the list of locations with extremely difficult socio-economic conditions are exempted from import duties for five years starting from the first date of production.

***Value added tax***[45]

Technology transfer and the export of non-processing natural resources and minerals are not subject to this tax.

***Natural resource royalty***[46]

Enterprises with mineral exploitation projects (excluding petroleum) entitled to investment incentives are subject to a maximum of 50 per cent royalty reduction in the first three years, starting from the first date of exploitation. Common regulations on royalties for exploitation of petroleum and metals as stipulated in the Law on Petroleum and the Law on Mineral Resources include:

- Crude oil: Six to 25 per cent depending on contracts and calculated by actual exploitation output during the taxable period for individual petroleum contracts;

- Natural gas: Zero to 10 per cent depending on individual contracts;

- Petroleum investigation and exploitation activities are subject to an income tax rate of 50 per cent over taxable income during the taxable period.

In special cases, the Government of Vietnam may consider the exemption or reduction of these taxes.

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43 Law on Corporate Income Tax (2008), which takes effect on January 1, 2009.

44 Law on Export and Import Duties (2005).

45 Law on Value Added Tax in 2008.

46 Law on Tax on Mineral Resources in 1998.

***Personal income tax***[47]

A 50 per cent personal income tax reduction for persons with taxable income, including Vietnamese and foreigners working in economic zones. In addition, the laws also stipulate that organizations and individuals contributing capital by patents or technology are exempted from income tax for that contribution value.

Land use tax, land use rent: The government assures that enterprises are permitted to rent and use land for mineral investigation and exploitation for a maximum period of 70 years depending on project location and size. Incentives for land rent exemption and reduction will be decided by Management Boards of industrial parks or export processing zones or provincial People's Committees in accordance with the land quotation stipulated by the government. Procedures for land application and rent approval are subject to the Law on Land 2003.

***Technology transfer***[48]

Enterprises with technology transfer activities are entitled to a series of tax or credit incentives. Specifically, they can access the national Technology Innovation Fund, or enjoy corporate income tax exemptions (to a maximum of 50 per cent of total investment for technology innovation) in 4 to 9 years depending on types of technology and technology-receiving locations.

In addition to those incentives, promoted enterprises are entitled to accelerated depreciation; incentives on investment and reinvestment; reduction of social security contribution; deduction of taxable income depending on the number of workers or other labour-related costs; and a 10 per cent retention of their annual taxable corporate income for the establishment of company's science and technology development fund. Moreover, investors can enjoy the investment support policies of central and local governments as well as legal incentives (such as administrative procedures, land planning, land clearance support, etc.) as presented in the overview section above.

## 3.3 Trade-related investment measures in the mining and quarrying industry

Generally, the agreements on investment promotion and protection between Vietnam and other countries are framework agreements, stipulating non-discrimination principles for domestic and foreign investors in committed areas, but not specific investment incentives. In addition these agreements also limit discriminative subsidies. Regarding the mining and quarrying industry, Vietnam still keeps some provisional exclusions other than those in agreements signed between Vietnam and some other countries. Specifically:

- **Agreement on investment promotion and protection between Vietnam and the United Kingdom:** This agreement applies the most favoured nation status and non-discrimination principle between investors of the two countries, except in some industries, including petroleum exploitation;

47 Law on Corporate Income Tax in 2007 and Law on Technology Transfer in 2006.

48 Law on Technology Transfer (2006).

- **Agreement on investment promotion and protection between Vietnam and Australia:** The two sides will give each other the most favoured nation status in export-import licence issuance, as well as in issues relating to custom tax, and other taxes and fees imposed on or related to export and import goods in prioritized cooperation areas, including the energy and mining and quarrying industries.

- **Agreement on investment freedom, promotion and protection between Vietnam and Japan:** The two sides stipulate that there is no discrimination between investors of the two countries, except for 31 identified areas (for Vietnam), including the investigation and exploitation of petroleum and precious minerals. However the two nations have committed to equal treatment, which is not less favourable than any treatments provided to investors of any third country and their investment, within a similar context of investment activities.

- **Bilateral Trade Agreement between Vietnam and the U.S.:** In terms of mineral investigation and exploitation, Vietnam still has the right to keep exceptions for the application of most favoured nation status for investors in this sector. In addition, Vietnam also has some other restrictive requirements. For example, investment projects in some industries, such as cement, bricks, etc., have to export at least 80 per cent of their products and the U.S. investors have to contribute at least 30 per cent of the legal capital in joint ventures unless permitted by Vietnam competent agencies.

  In terms of government subsidies and support, the Government of Vietnam reserves the right to provide subsidies and support for domestic investors (including land grants, preferential credit or other support forms) without providing the like to U.S. investors.

- **WTO commitments:** There is no restriction on the right to business in the mining and quarrying industry, but there are some restrictions on petroleum-related activities. Specifically: (i) suitability with the petroleum development plan, or subject to the Prime Minister's approval if outside of the plan; (ii) establishment of joint venture with the foreign share of 49 per cent maximum; after three years from the date of WTO accession, 51 per cent maximum; and the following two years, permitted to establish 100 per cent foreign enterprise; and (iii) environment protection compliance.

In terms of commitments on the import tax rate in this industry, generally current tax rates are suitable with WTO requirements with the average rate of zero to five percent, except in the cement sector. This demonstrates the direction of Vietnam in the focus on sustainable development rather than exhaustive exploitation of domestic natural resources by concentrating on the import of external natural resources.

# 4 Impacts of Investment Incentives on Decisions of Foreign Investors: The mining and quarrying industry

Recent studies analyzing the impacts of investment incentives on decisions of foreign investors showed different views.[49] Some studies concluded that, provided that other factors such as the political-economic environment, infrastructure quality or production cost, are the same, investment incentives

49 For example, studies by Morisse and Pirnia (1999); Thomas (2007); OECD (2003); Schwartz, Pelzman and Keren (2008).

played a crucial role in directing investors to make decisions about investing in that nation. However when adding other factors (controlled factors) to the study, the result showed that investment incentives were not the decisive factor, by themselves, to direct foreign investors to invest in a nation. In reality, investor preferences in the form of tax exemptions and reductions, or capital support, are all financing items. Many economists believe that developing countries are applying excessive investment incentives that may lead to a "state budget spending burden" for the government, and which may not ensure an increased FDI inflow. If government financing is not sufficient to compensate for losses/costs borne by investors due to unfavourable infrastructure or investment environments, it is certain that such investment incentives are not attractive enough for foreign investors who always seek opportunities to maximize their return on investment.

To investigate the views and opinions of investors regarding investment incentives in Vietnam, the research team sent questionnaires to several FIEs in the mining and quarrying industry. Of 41 FIEs contacted, 10 enterprises (accounting for 24 percent) responded (Table 14), all of whom started their operation before 2000 with the average operation time in Vietnam being 14.8 years. That means that the investment incentives they enjoyed (if any) were under the framework of the Law on Foreign Investment and other related laws before the enactment of the Common Law on Investment 2005. The questionnaire was followed up with more in-depth interviews.

**Table 4: Structure of FIEs surveyed for the study**

| Sub-sectors of mining and quarrying | Per cent of FIEs in the sub-sector | |
|---|---|---|
| | Received questionnaires | Responded |
| Total | 100 % | 100 % |
| Petroleum and gas | 29.3 % | 30 % |
| Coal | 4.9 % | 10 % |
| Metals | 17.1 % | 20 % |
| Non-Metals | 48.8 % | 40 % |
| Total of FIEs | 41 | 10 |

Source: The authors' small survey of FIEs in mining and quarrying for the study.

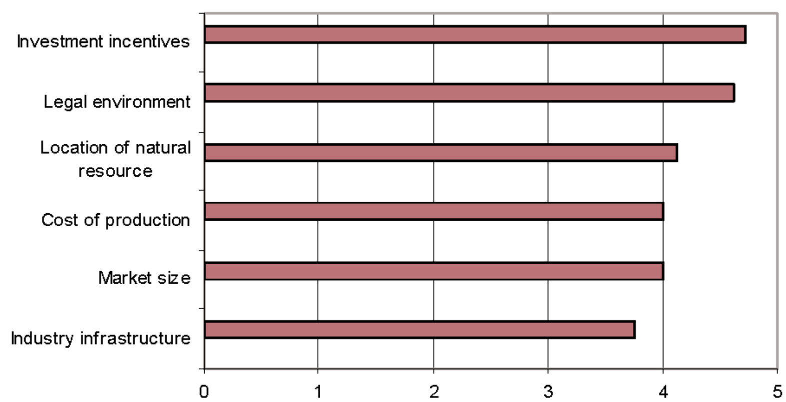
As mentioned above, before the Common Law on Investment 2005 took effect, investment incentives for foreign and domestic enterprises in Vietnam were considerably different. For example, the standard corporate income tax (CIT) applicable to domestic enterprises was 32 per cent, while that for foreign investors was 25 per cent. Foreign projects that are entitled to incentives of CIT rates may even be entitled to a tax rate lower than the standard CIT rate applied to foreigners, in some cases as low as 10 to 20 per cent depending on project location. In addition, foreign investors were entitled to other incentives such as the tax exemptions for the import of machinery or materials that cannot be produced domestically; personal income tax exemptions up to 50 per cent; reduction of land rent and no tax on land-use right transfer, among others.

Among respondents, six enterprises are joint ventures, two are 100 per cent foreign-owned; and two are business cooperation contracts (BCC). While enterprises operating in petroleum exploitation export 100 per cent and enterprises in coal sector export over 80 per cent of exploited output, those in construction material exploitation mainly serve the domestic market.

Although the respondents were not many in number or representative of FDI projects operating in the mining and quarrying industry, information gathered from answered questionnaires partly reflected the views of investors on investment incentives in Vietnam. Through information provided by FIEs, the research team was able to draw some conclusions on the role of investment incentives for enterprises as follows:

- According to the respondents, investment incentives and Vietnam's legal environment were considered to be the two most important factors affecting the investment decisions of foreign investors, which were scored at an average of 4.7 and 4.6 points respectively by investors (Figure 5). When being interviewed, the investors explained that they highly appreciated investment incentives because investment in mineral exploitation projects required huge capital and was subject to high risk levels, which made the support of the host government a crucial factor to investors. In addition, the clear and transparent legal framework for investment in the host country was seen as another important factor for investors' decisions.

**Figure 5: Investors' assessment of factors influencing their investment decisions (Scoring: 1 = unimportant; 5 = very important)**




Source: The authors' small survey of FIEs in mining and quarrying for the study.

- Although the mining and quarrying industry is not one of Vietnam's investment incentive sectors, FIEs operating in this sector stated that the Government of Vietnam had provided incentives in one way or another. Specifically, they were entitled to incentives by various criteria, such as being located in difficult locations, using advanced technology and employing many workers. Enterprises (8/10 respondents) explained that they received incentives on taxes, mainly corporate income tax (5/8 respondents), followed by land use tax (3/8 respondents), export import duties (2/8 respondents). Only two enterprises were entitled to preferential credit and training support, and two other enterprises enjoyed support on industrial park infrastructure.

- Enterprises that received incentives said that tax incentives were the most meaningful for them (with the average score of 4.75 out of five). Meanwhile, supportive incentives (on credit, training, investment services, infrastructure of industrial parks, administrative services, etc.) were not highly appreciated by enterprises in the mining and quarrying industry (with an average score of 1.6 for subsidies and 1.75 for other forms of support, including infrastructure) (Table 5). This situation could be explained as follows: i) although the government issued subsidies for enterprises in terms of credit, training, research and development, etc., in reality these policies rarely came into existence. Enterprises found it difficult to access these subsidies due to complicated application procedures, unattractive support, and high transaction cost to get the incentives;[50] and ii) in terms of size, tax incentives, especially reduced corporate income tax, have much higher value than other incentives.

50 This has been confirmed by many recent studies such as the study on "policies to encourage enterprises to invest in technology innovation" by CIEM in 2007, study on "Experimental Research on CIT incentives for domestic enterprises" by VCCI (2004).

- Most enterprises agreed that investment incentives applied by the Government of Vietnam to foreign investors were more attractive than those applied in other countries where they had investment projects (7/10 respondents). However 5/7 enterprises said that they would still invest in Vietnam if there were no such incentives because of low natural resource royalty and labour costs. Meanwhile, enterprises would be less likely to invest in Vietnam in the absence of incentives where the projects are located in difficult locations and they would not be able to make a profit without government subsidies and investment incentives. This result is in line with research conducted by the Vietnam Chamber of Commerce and Industry (VCCI) and United States Agency for International Development (USAID) (2004) on the impacts of tax incentives on 140 Vietnamese enterprises. According to this study, nearly 85 per cent of enterprises receiving corporate income tax incentives said that they had invested and would continue to invest irrespective of whether they received incentives on corporate income tax or not.[51] Obviously, foreign investors have to calculate the economic efficiency of their invested capital when they invest in a country. Thus, once the legal and the business environments in Vietnam have improved significantly, government investment incentives are the crucial factor, but not the *decisive factor* in their investment decisions.

**Table 5: Significance level of investment incentives for enterprises in the mining and quarrying industry (Scoring: 1 = unimportant; 5 = very important)**

| Type of incentives | Significance of incentives | Average (weighted) | Number of response |
|---|---|---|---|
| Tax incentives | Corporate income tax: 5<br>Asset tax: 5<br>Export import duties: 5<br>Land-use right tax, property tax: 4.3 | 4.75 | 12 |
| Subsidies | Cash: 1<br>Preferential credit: 1<br>Training: 2.5<br>Research and development: 1 | 1.6 | 6 |
| Others | Industrial park: 2<br>Administrative services: 1<br>Others: 1 | 1.75 | 5 |

Source: The authors' small survey of FIEs in mining and quarrying for the study.

- In order to be eligible for incentives, 8/10 respondents reported that they had made commitments to the local governments in some areas when implementing their investment projects. Table 6 illustrates the allocation of these commitments by economic, social and environmental issues. The most popular commitment type is environmental commitment in the form of Environment Impact Assessment (EIA) reports (7/8 respondents). This is due to the fact that under the Law on Environmental Protection of Vietnam (enacted in 1993 and amended in 2005), mining and quarrying and other industries that might impact the environment are required to complete EIA reports before project approval. Commitments on the use of local labour when the project came into operation were also signed by many enterprises with the local authorities (6/8 respondents). In addition, some enterprises (5/8) also made commitments to contribute to local development (such as contribution to social works, funds for the poor, charity fund, studying promotion funds, etc.). However, commitments relating to the spillover effect of FDI on the economy (for instance via technology transfer, management skill training or networking with domestic enterprises) do not seem to have been of concern to local governments.

51 See more on the research report of VCCI (2004).

**Table 6: Sustainable development commitments between enterprises and local governments**

| | Enterprise commitments | Number of respondents |
|---|---|---|
| Economic | - Technology transfer | 4 |
| | - Export ratio | 2 |
| | - Use of domestic materials | 1 |
| Social | - Use of local labour | 6 |
| | - Contribution for local development | 5 |
| Environmental | - EIA report | 7 |
| | - Environment deposit | 3 |
| Total number of respondents | | 8 |

Source: The authors' small survey of FIEs in mining and quarrying for the study.

Such information shows that the use of performance commitments relating to economic, social and environmental issues has been used by local governments to direct investors to sustainable development, especially for large projects with potential economic, social and environmental impacts in specific localities and country-wide. However, whether the application of these measures was efficient or not depended on the extent to which enterprises honoured these commitments as well as compliance monitoring by local governments. When asked, enterprises said that when they came into operation, the local authorities may have checked the commitment compliance of enterprises once or twice. Nevertheless, the sanctions for non-compliance were not serious. There were a number of reasons explaining this situation, including that current regulations for administrative punishment have been light; enterprises may have various excuses for their non-compliance, such as lack of financial resources or local labour unable to meet working requirements; and the examination and monitoring of local governments were not regular.

# 5 Analysis of the Impact of Investment Incentives for FIEs in the Mining and Quarrying Industry on Sustainable Development

As mentioned in Sections 2 and 3 of this study, Vietnam's investment attraction and incentive policies in general, and for FDI in particular, have generally aimed first at mobilizing capital. However since 2000, especially after the enactment of the Common Law on Investment 2005, the FDI mobilization policy in general, and capital mobilization in the mining and quarrying industry in particular, have been more sustainability-oriented, specifically in encouraging investment in advanced technology sectors, in environment protection and in difficult areas to create leverage for the economic development of such areas.

Nevertheless, Vietnam also applies some policies to restrict investment in some special sectors that impact political social security, natural resources and the environment, including mining and quarrying. Notably, the policy on directing investors to sustainable development is not only reflected in the investment policy framework stipulated in the Common Law on Investment 2005, but dependent on other legal provisions in professional laws such as the Law on Environmental Protection, the Labor Code, the Law on Social Insurance, the Ordinance on Natural Resource Royalty, the Law on Minerals, the Law on Petroleum, among others. These laws and their guiding documents have specific provisions on the economic, social and environmental responsibilities of enterprises. For example, the Labor Code (enacted in 1993, amended in 2002, 2006 and 2007) has provisions for the rights and responsibilities of employers to employees on such issues as the labour contract system, the salary system, operation of social organizations, working conditions for employees, vocational training and labour dispute settlement. This law is applicable to all types of organizations operating in Vietnam, including FIEs.

The Law on Environmental Protection (enacted in 1993 and amended in 2005) clearly stipulates the responsibilities of enterprises for environment protection, ranging from investment preparation and implementation, to production and sales. The Law requires enterprises to comply with environmental standards during their production and take necessary measures to minimize negative effects on the environment, with specific and strict sanctions for violations.

The Ordinance on Natural Resource Royalty (enacted in 1992 and amended in 1998) stipulates that domestic and foreign organizations and individuals that undertake natural resource exploitation activities within Vietnam's territory have to pay natural resource royalties as stipulated by law. According to this ordinance, natural resource exploitation activities subject to royalty payment include the exploitation of metallic and non-metallic minerals, crude oil, natural gas, natural forestry products, natural aquatic products and other natural resources, whereby natural resource royalties paid by enterprises are determined by the product of actual taxable exploited commercial product output and the royalty rate. Table 7 provides a comparison of royalty rates across some mineral commodities applied by selected countries and shows that the royalty rates of Vietnam are currently quite low compared with those in other countries in the region.

**Table 7: Comparison of Vietnamese royalty rates with other selected countries in Asia-Pacific (percent)**

| Country | Gold | Crude Oil | Natural gas | Coal | Iron ore | Copper |
|---|---|---|---|---|---|---|
| AUSTRALIA | 2–15 | 6–20 | 6–20 | 7.5 | 2–7.5 | 5–7.5 |
| CHINA | 4 | n.a. | n.a. | 1-3 | 2 | 2 |
| INDONESIA | 2 | n.a. | n.a. | 13.5 | 2.5 | 2.5 |
| MALAYSIA | n.a. | 10 | n.a. | n.a. | n.a. | n.a. |
| PHILIPPINES | 2 | n.a. | n.a. | n.a. | 2 | 2 |
| RUSSIA | 6 | 15–30 | | 4 | 4.8 | 8 |
| VIETNAM | 2–6 | 6–25 | 0–10 | 1–3 | 1–5 | 1–5 |

Source: Ordinance on Natural Resource Royalty (1998) for Vietnam's figures and http://treasury.gov.za/divisions/epifr/tax/mprb/notes.pdf for other countries' figures.

The Law on Minerals of Vietnam (1996) stipulates that enterprises with mineral exploitation activities must follow provisions of the Law on Environmental Protection to minimize negative effects on the environment and undertake restoration of the environment, ecology and soil after completing each stage or all mineral-related activities. Moreover, enterprises have to hold a balance at a Vietnamese bank—or a foreign bank permitted to operate in Vietnam—as insurance against damage to the environment. State agencies can use these funds to repair any damage to the environment caused by the companies' actions. They are responsible for the improvement, upgrading, overhaul and construction of new infrastructure consistent with approved feasibility studies on mineral exploitation and processing.

The Law on Petroleum (1993, amended in 2008) also stipulates that enterprises involved in petroleum exploitation must submit environmental protection plans that include pollution prevention, elimination of pollution risks and resolution of damages due to environmental pollution events.

## 5.1 Sustainable development determinants of FIEs

Sustainable development has been discussed in general all over the world and in Vietnam for many decades. While the concept of sustainable development for enterprises has long been a topic explored by many countries and international organizations, only within the last couple of years has the topic come to the fore in Vietnam. According to the International Institute for Sustainable Development and the World Council for Sustainable Development, "sustainable development at enterprises level is that enterprises apply their strategy and action plan to satisfy the current demands of the enterprises and other stakeholders, and at the same time, protect, maintain and improve the human resources and natural resources for the future."[52] This definition basically reflects the core nature of the concept of sustainable development, as proposed by the World Commission on Environment and Development in 1987. In addition, this definition clarifies that the development of enterprises does not only satisfy the demand of the enterprises themselves but also harmonizes it with the demands of stakeholders such as creditors, clients (customers), employees, suppliers and social communities—those who are directly affected by the operation of the enterprises at various levels. With this sustainable development behaviour, the enterprises will ensure the simultaneous achievement of three objectives—the three pillars of sustainable development: sustainable growth, social welfare and environmental protection.

The analysis in Section 4 shows that, for FIEs in the mining and quarrying industry, although current government investment incentives play a crucial role, they are not the only factor influencing the investment decisions of foreign investors in Vietnam. This also shows that, although the mining and quarrying industry is not an investment-promoted sector, many investors still seek Vietnamese investment opportunities in this area. However, after making an investment decision in Vietnam, not all FIEs will follow the sustainable development dimension as mentioned above. According to a number of published studies, the sustainable development behaviour of enterprises is determined by various factors, such as the awareness of managers and employees or the policy of the parent company. In addition, external factors may influence sustainable development behaviour of enterprises, such as customer demand, the legal system, the effectiveness of the legal system or community pressure.

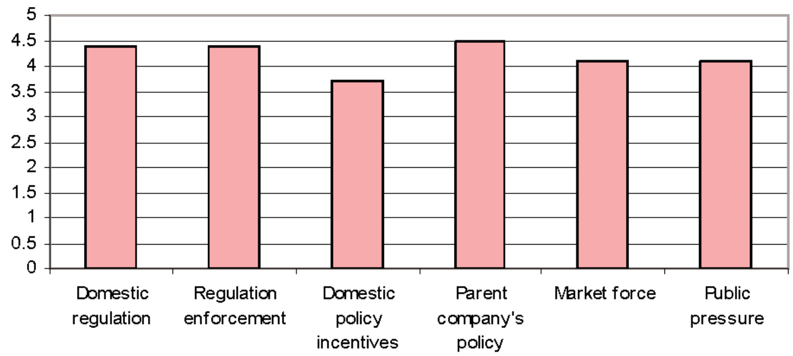
To evaluate the factors' impacts on sustainable development in enterprises within this study's framework, the research team selected some key factors and then asked firms for their own assessment. Factors selected for examination included: the existence of the legal system (social and environmental standards and regulations); the effectiveness of legal regulations; local incentives to enterprises[53]; the sustainable development strategy and policy of the mother company; the product market; and community pressure.

Responses from enterprises showed that there were three important factors influencing the sustainable development behaviour of enterprises: i) the policy of the parent company (average score 4.5); ii) current legal framework; and iii) legal enforcement (both have the same average score: 4.4). Among factors selected for examination, enterprises had the least appreciation for local incentives to enterprises with 3.7, showing that this was not the most important factor influencing the sustainable behaviour of FIEs (Figure 6). Implications for Vietnam's policies arose when they found that FIEs were influenced by legal and institutional factors in the host countries as well as the policies of their parent companies. To encourage FIEs to operate and develop sustainably, governments at all levels should focus on improving the current legal system and, more importantly, ensuring the effectiveness of that system. Government incentives may be also important, but should not be relied about too much to affect the sustainable behaviour of enterprises.

52 IISD and WBCSD (n.d.), p.1.

53 These could even be beyond the national regulated investment incentives as mentioned in Box 1, Section 2 of this report. For example, in order to get incentives, the FIEs are requested by local government to recruit local employees or contribute some infrastructure for social facilities.

**Figure 6: Enterprise assessment of factors influencing their sustainability-oriented behaviour (Scale: 1 = unimportant; 5 = very important)**




Source: The authors' small survey of FIEs in mining and quarrying for the study.

## 5.2 The impacts of FDI on sustainable development in the mining and quarrying industry[54]

In this section, the research team used the data from the annual enterprise surveys of the General Statistical Office during the 2001–2006 period to analyze the impacts of FIEs in the mining and quarrying industry on sustainable development. According to the survey data, the mining and quarrying industry has developed significantly in terms of the number of enterprises and the number of jobs during the 2001–2006 period: the number of enterprises increased 2.2-fold, while the number of jobs increased 1.4-fold. Compared to FIEs in other sectors, the number of enterprises in the mining and quarrying industry and the number of jobs increased 1.4 and 1.3 times faster than the average respectively.

**Table 8: Number of enterprises and employees as taken from the General Statistical Office surveys (2001–2006)**

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|---|
| Total number of enterprises nationwide | 51,680 | 62,908 | 72,012 | 91,756 | 112,950 | 131,318 |
| In which FIEs | 2,011 | 2,308 | 2,641 | 3,156 | 3,697 | 4,220 |
| Total number of enterprises in mining and quarrying industry | 634 | 879 | 1,029 | 1,193 | 1,277 | 1,369 |
| In which FIEs | 15 | 13 | 14 | 19 | 20 | 21 |
| Total number of employees (000 employees) | 3,933.2 | 4,657.8 | 5,175.1 | 5,770.2 | 6,237.4 | 6,715.2 |
| In which employees in FIEs | 489.3 | 691.1 | 860.3 | 1,044.9 | 1,220.6 | 1,445.4 |
| Total number of employees in the mining and quarrying industry (000 employees) | 129 | 155.5 | 162.7 | 165.8 | 175.2 | 180.2 |
| In which employees in FIEs | 6.5 | 7.2 | 7.7 | 7.6 | 8.2 | 8.7 |

Source: The enterprise surveys (2001–2006, GSO).

54 Unless otherwise noted, illustrative tables and figures in this section are based on the data from the enterprise surveys of the General Statistical Office.

The small number of FIEs in the mining and quarrying industry within the survey sample of the General Statistical Office compared to the number of registered FDI projects overall can be explained as follows: i) before 2001, the mining and quarrying industry was not open to foreign investors, which limited the number of registered FIEs in this sector; ii) many FDI projects were just registered and have not come into operation, therefore, they were not covered by the GSO survey;[55] and iii) the GSO survey sample did not cover all FIEs operating in the mining and quarrying industry.

Within this study framework, the research team used the following factors to analyze the sustainable development impacts of FDI in the mining and quarrying industry:

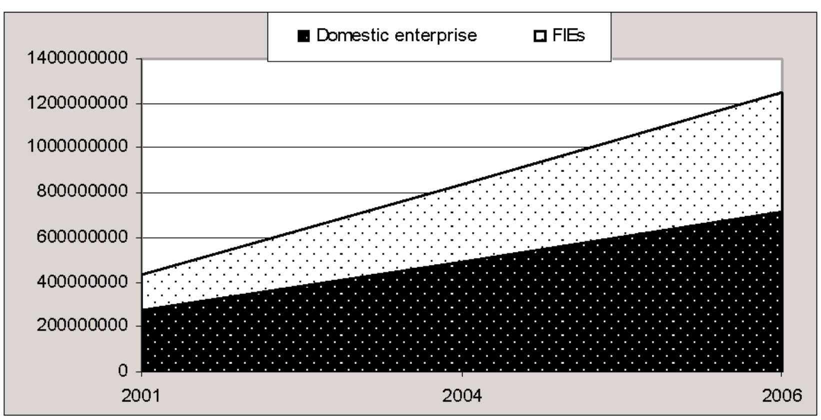
- The impact on economically sustainable development was tested through the following factors: growth, productivity, level of used technology, annual additional investment, tax contribution to the state;
- The impact on socially sustainable development was tested through the following factors: employee income, number of mobilized employees, professional and vocational training for employees; operation of social organizations; and enterprise's contribution to the community;

The impact on environmentally sustainable development was tested through the following factors: environment protection activities of enterprises, enterprise's investment in environment protection.

## FDI and the economically sustainable development of enterprises

Despite a very small proportion in the mining and quarrying industry in terms of the number of enterprises and the number of employees (1.5 per cent and 4.8 per cent respectively, in 2006), FIEs had a significant contribution on the industry's turnover. Specifically, while in 2001 FIEs contributed up to 36.4 per cent of the total turnover of the industry, in 2004 this figure was 40.8 per cent and in 2006, it increased to 42.9 per cent. This showed that the production scale and growth rate of FIEs were much higher than those of domestic enterprises (see Figure 7).

**Figure 7: Turnover of enterprises in mining and quarrying industry (2001–2006)**

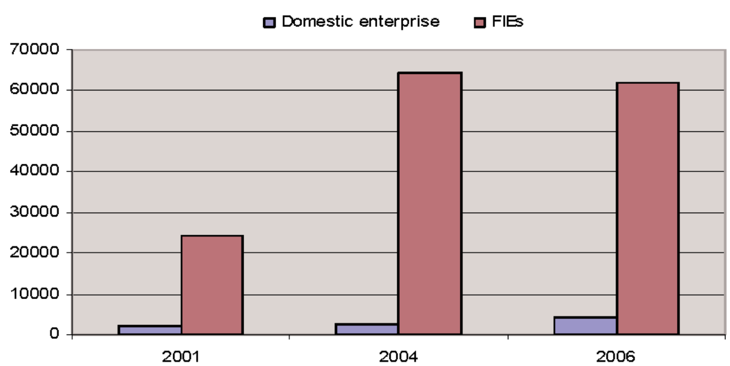



Source: GSO's enterprise surveys

55 Many projects, especially those which fell into the investment verification group and/or did not fall into the planning, had a long period of preparation so as to officially come into operation.

The productivity (calculated by turnover divided by employees) of FIEs in the mining and quarrying industry was several times higher than that of domestic enterprises during the 2001–2006 period. In this period, although domestic enterprises continuously improved their productivity, FIEs still demonstrated their outstanding performance (Figure 8). If considering the performance efficiency of enterprises by the average profit before tax per employee, the picture was also similar. FIEs had a profit, before tax, about 19 times higher than that of domestic enterprises in the 2001–2006 period. Clearly the FDI mobilization in the mining and quarrying industry has contributed considerably to the improvement of the industry performance in the last years.

**Figure 8: Productivity comparison between FDI and domestic enterprises (million VND/employees)**




Source: GSO's enterprise surveys

As mentioned above, one of the objectives of attracting FDI in the mining and quarrying industry was to encourage FIEs to use advanced technology in their projects. According to the enterprise survey in 2001,[56] 42.9 per cent of FIEs used modern technology and 50 per cent of them used medium technology. The respective ratios of domestic enterprises were 5.3 per cent and 72.9 per cent. This shows that although the proportion of FIEs using modern technology was much higher than that of domestic enterprises, many FIEs only transferred the medium technology to Vietnam. However, it is also noted that the application of modern technology in a country requires the human resources to have certain level of skills and knowledge to master such technology. In the case of Vietnam, the limited human resources with acceptable skills and knowledge may be one of the barriers to the application of modern technology by FIEs in the country.

Generally, enterprises in the mining and quarrying industry made new investments during the reported year, accounting for 69 per cent of the total number of enterprises in 2001, 59 per cent in 2004, and 61 per cent in 2006. This demonstrated the relatively stable development of enterprises in this sector. Notably, the average additional investment per FDI enterprise within a year was always many times higher than that of domestic enterprises (up to 15 times), reflecting the outstanding financial capacity of FIEs. This was again confirmed by enterprise surveys in 2004 and 2006 when the realized investment capital[57] of FIEs in the mining and quarrying industry was even higher than the charter capital[58] (Figure 9). Obviously, the ratio of realized investment capital over the charter capital of FIEs in the mining and

56 Only the enterprise survey in 2001 had questions about the technology level of enterprises.

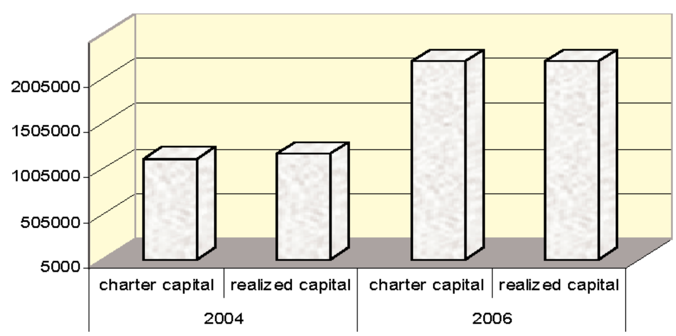
57 Realized (or implemented or sometimes called disbursed) capital refers to capital actually implemented by the investor through the project implementation. This is different from committed (or registered) capital, which is capital the investor registered with authorities from the beginning of the project. In practice, realized capital is usually less than committed capital.

58 Charter capital refers to the capital shareholders (investors) have committed to contribute for a certain period of time. This figure should be recorded in the company's charter (statutes).

quarrying industry was very high, about 106 per cent higher than the average ratio of 94.9 per cent of FIEs in industry sector and 81.4 per cent of FIEs in general.[59]

In Vietnam, one of the factors utilized to assess the contribution of FIEs to the economy is their tax (and other tax-related) contribution to the State budget. From the data of the enterprise surveys in 2001, 2004 and 2006, the research team calculated the tax contribution of these enterprises[60] to the State budget in comparison with firm's profit before tax. The result was quite interesting, as FIEs had a much smaller level of contribution than did domestic enterprises. While domestic enterprises had to pay on average 15–20 per cent of total profit before tax, FIEs only paid the average rate of 9–10 per cent of profit before tax. There are several reasons for this discrepancy: i) total profit before tax of domestic enterprises were much lower than that of FIEs in the sector; ii) their contribution to the State budget was higher in absolute term; iii) as mentioned in previous sections of the study, FIEs operating in the mining and quarrying industry may enjoy tax incentives as stipulated by law. Especially before 2000, these incentives were usually higher than those for domestic enterprises. In fact, FIEs in the mining and quarrying industry who were interviewed in enterprise surveys conducted by the General Statistical Office were established 8–17 years ago (i.e., before 2005), when there was a differentiation of investment incentives between FIEs and domestic enterprises. This result may differ for enterprises starting their business under the Law on Enterprises 2005, in which both domestic and foreign enterprises operate under a single legal and policy framework.

**Figure 9: Comparison of charter capital and realized capital of FIEs in the mining and quarrying industry (million VND)**




Source: GSO's enterprise surveys (GSO, 2004, 2006)

To identify the size of incentives on corporate income tax reserved for FIEs in the mining and quarrying industry, the research team estimated the value of incentives provided by the State to FIEs through corporate income tax incentives. The estimation method is as follows:

- Classify FIEs in the mining and quarrying industry into two groups: i) FIEs in the petroleum sub-sector and ii) FIEs in the other mining and quarrying sub-sectors. This classification follows the law that was in effect at the time of the enterprise surveys, where the corporate income tax rate for enterprises in the petroleum sub-sector was 32 per cent, while that for FIEs in other non-oil sub-sectors is the standardized CIT rate for foreign investors at 25 per cent. The standard CIT rate applied to domestic firms at that time was 32 per cent.

59 Calculation by the research team from the data of the Foreign Investment Administration of the Ministry of Planning and Investment.

60 Includes all kinds of taxes paid to the state budget by the firms according to law, including CIT, land rent transfer, VAT taxes, etc.

- Take the standard tax rate of 32 per cent for enterprises in the petroleum sub-sector, then apply this tax rate to FIEs in the petroleum sub-sector in the enterprise surveys to calculate the tax value that enterprises would have paid to the State budget. After that, compare the standard (minimum) CIT value that would have been paid with the actual CIR value paid to the state. The difference would be the CIT incentives enjoyed by FIEs in the petroleum sub-sector.

- Similarly, take the standard corporate income tax rate of 25 per cent to apply for FIEs in the remaining mining and quarrying sub-sectors to then determine the CIT value which would have been paid by foreign investment law. After that, deduct from this amount the actual corporate income tax value paid to the state budget to determine the corporate income tax incentives enjoyed by FIEs.

- The total investment incentive value enjoyed by foreign investors via the corporate income tax incentives in the whole mining and quarrying industry is determined as the aggregate of corporate income tax incentives enjoyed by enterprises in petroleum sub-sector and enterprises in non-petroleum sub-sectors.

The formula to determine the corporate income tax incentive for FIEs in the mining and quarrying industry can be expressed as follows:

$$\mathbf{IN_{CIT} = \Sigma\ \Sigma\ (\ STANDARD_{CITij} - REAL_{CITij}\ )}$$

In which:

- $IN_{CIT}$ = Total corporate income tax incentives enjoyed by FIEs in the mining and quarrying industry;

- $STANDARD_{CITij}$ = Standard corporate income tax rate of enterprise i in sub-sector j

- $REAL_{CITij}$ = Actual corporate income tax value paid by enterprise i in sub-sector j

- i –FDI enterprise

- j- = 1 if enterprise is in the petroleum sub-sector; = 2 if enterprise is in the non-petroleum sub-sector.

Table 9 presents the results of estimating the corporate income tax incentive value enjoyed by FIEs in the mining and quarrying industry based on the enterprise surveys conducted by the General Statistical Office in the 2001–2006 period.[61] Accordingly, the application of CIT incentives for FIEs in the mining and quarrying industry resulted in revenue losses for the Government of Vietnam of least VND 375.6 billion in 2001 (or $27 million), VND 1,552.6 billion in 2004 (or $98.7 million) and VND 680.9 billion in 2006 (or $42.3 million) in forgone revenue. The highest loss in State budget income arose from FIEs in the petroleum sub-sector, many times higher than the lost value from FIEs in the non-petroleum sub-sectors.

61 Here, the research team assumed that enterprises faithfully paid their corporate income tax as stipulated by law. There were no tax avoidance or tax debts, although these situations still happened in practice.

If we include in the above calculation the tax revenue loss as a result of a difference between standard CIT rates applied for domestic enterprises (at 32 per cent) and foreign enterprises (25 per cent),[62] the cost of CIT incentives Vietnam paid to attract FIEs in the mining and quarrying sector would be slightly higher than the above figures at VND 381 billion in 2001 (or $27.3 million); VND 1575.9 billion in 2004 (or $100.1 million) and VND 707.9 billion in 2006 (or $44 million). This cost accounts for between 0.5 and 0.7 per cent of industrial turnover of this sector for the period 2001–2006. In addition, the state budget would also lose many sources of income if enterprises were entitled to other tax incentives such as export-import duties, land tax or preferential credit. Perhaps this is the price paid by Vietnam to implement incentives with the aim of attracting FDI. However, this amount may not be efficient when many enterprises did not consider investment incentives a prerequisite for their decision to invest in Vietnam.

**Table 9: Estimate of corporate income tax incentive value for FIEs in the mining and quarrying industry (billion VND)**

| Operation area | 2001 | 2004 | 2006 |
|---|---|---|---|
| **Petroleum:** | | | |
| Non-incentive case | 10,000 | 19,807.7 | 20,044.7 |
| Actual corporate income tax paid | 9,624.4 | 18,255.1 | 19,363.8 |
| Incentive value | 375.6 | 1,552.6 | 680.9 |
| **Non-petroleum:** | | | |
| Non-incentive case | 5.5 | 29.9 | 33.9 |
| Actual corporate income tax paid | 1.5 | 13.1 | 14.4 |
| Incentive value | 4.0 | 16.8 | 19.5 |
| **Whole mining and quarrying industry** | | | |
| Non-incentive case | 10,005.5 | 19,837.6 | 20,078.6 |
| Actual corporate income tax paid | 9,625.9 | 18,268.2 | 19,378.2 |
| Incentive value | 379.6 | 1,569.4 | 700.4 |

Source: Calculation of the authors' from the GSO's enterprise surveys (GSO, multiple years)

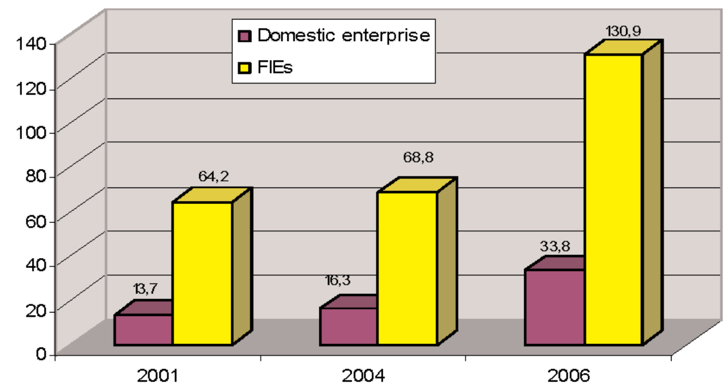
## FDI and socially sustainable development

The average income of employees working in FIEs in the mining and quarrying industry was many times higher than that of employees of domestic enterprises, although the gap tended to decrease in recent years (Figure 10). While in 2001, the average annual income of employees in FIEs was 4.7 times higher than that of employees in domestic enterprises, this difference shrank to 3.8 times in 2006. In reality the number of employees mobilized by FIEs only accounted for nearly 5 per cent of the total number of employees working in the whole mining and quarrying industry. Hence, only a small number of labourers in the mining and quarrying sector had high income levels. This ratio was much lower than the number of employees of FIEs nationwide, demonstrating the small job creation effect of FIEs in the mining and quarrying industry. (According to the enterprise survey in 2006, FDI employees accounted for 21.5 per cent of the total number of employees in enterprises.)

Figure 10 also illustrates the sudden increase in employee income in both domestic and foreign enterprises in 2006, whereby the employee income doubled compared to that in 2004. This phenomenon could be explained by two adjustments of the minimum salary during the 2004–2006 period. The first time was in 2005, from VND 290,000/month (or $20/month) to VND 350,000/month (or $22/month); the second time was in 2006, from VND 350,000/month ($22/month) to VND 450,000/month (or $28/month).

62 Similar to the method of tax revenue lost calculation by Fletcher (2002).

**Figure 10: Average employee income in the mining and quarrying industry (2001-2006) (million VND/year)**




Source: GSO's enterprise surveys (GSO, multiple years)

According to a short survey of enterprises, up to 82 per cent of FIEs in the mining and quarrying industry established social organizations such as trade unions and women's committees, whose efforts to protect the labourers' interests were greatly appreciated by enterprises. However, the contribution of FIEs to social insurance, health care insurance and union fees was not much higher than that of domestic enterprises, and was even lower in certain years. For example, in 2004 FIEs only paid VND 1.2 million/employee (or $76.2) for health care insurance, social insurance and union fee, compared to VND 1.5 million/employee (or $95.3) paid by domestic enterprises. In 2006, respective figures were VND 2.4 million (or $149) and VND 2.6 million (or $161.5). This seems to conflict with the high income of employees in FIEs as mentioned above.

One of reasons for this discrepancy was that FIEs seemed to focus on ensuring the current high income level for employees, but were not interested in maintaining their future working ability and social welfare. This situation was reflected in a number of previous in-depth studies on welfare conditions of employees. Accordingly, FDI employers did not pay the social insurance premiums, and even "borrowed" employee social insurance premiums for many years.

One of factors demonstrating the sustainable development direction of enterprises is the availability of vocational training activities, reflecting the enterprise's concern about human resource development. The enterprise surveys showed that only 10 per cent of FIEs in the mining and quarrying sector organized training and capacity-building activities for their employees in the surveyed years. This situation was similar in domestic enterprises where the rate was even smaller at just five per cent. This showed that Vietnamese mining and quarrying enterprises in general, and FIEs in particular, have not paid considerable attention to the sustainable development of their human resources. The integration and strong development elements of the mining and quarrying industry will make FIEs face the challenges of highly-skilled human resources, especially when the competition in the labour market in this sector increases. If there is a lack of appropriate investment in the development and improvement of skills for employees of enterprises, enterprises will face difficulties in human resource mobilization, which could negatively influence their long-term development.

## FDI and environmentally sustainable development

As mining and quarrying are activities with potentially significant impacts on the bio-environment, environmental protection by enterprises will be one of the crucial factors in helping them control possible negative impacts on the environment during their operation. Up to 90 per cent of FIEs in mining and quarrying sector that responded to our questionnaires said that they had already established a unit or had full-time staff on environmental protection. This is one of the key pieces of evidence reflecting the enterprise's concern for environmental issues. Up to half of the ten FIEs said that they had already received the ISO 14000 or 14001 certificates, compared with 4/10 enterprises who received the ISO 9000 certificates. This result is in line with the statistics that up to 90 per cent of enterprises receiving ISO 14000 certificates in Vietnam are foreign-owned.

Generally, FIEs and Vietnamese enterprises have not paid sufficient attention to investment in pollution treatment equipment. This was reflected in enterprise surveys in 2001, 2004 and 2006, when the proportion of FIEs with pollution treatment equipment/works was only 20 to 21 percent, although this was much higher than the rate of 8 per cent of domestic enterprises (Table 10). Similarly, the proportion of FIEs who have recurrent expenditures for environmental protection activities was also higher than that of domestic enterprises, although the number of FIEs with this type of recurrent expenditures tended to decrease over time, from 40 per cent to 19 per cent in five years. It was noted that in 2006 the proportion of enterprises (both foreign and domestic) with pollution treatment equipment/works was higher than that of enterprises with intra-year expenditures for environmental protection (logically, the number of enterprises with intra-year expenditures for environment protection should be higher than that of enterprises with pollution treatment equipment/works). The reason for this could be that, although the enterprises had pollution treatment equipment, they did not run it frequently, resulting in the lack of positive environmental results.

Only a very small number of FIEs that had annual expenditures for environmental protection activities said that they had projects on pollution treatment, with the rate of 6.7 per cent in 2001, 5.3 per cent in 2004 and 3.7 per cent in 2006. The rate of domestic enterprises was even lower, 4.8 percent, 2.1 per cent and 2 per cent in respective years (Table 10). With the low proportion of enterprises investing in environmental protection projects, there were significant challenges for the inspection and supervision of compliance with legal regulations on environment protection for Vietnamese enterprises, in general, and FIEs in the mining and quarrying industry in particular. Once enterprises do not have activities related specifically to environment protection, it cannot be assured that they will fully comply with environmental protection regulations and government standards, regardless of whether they are able to establish their own units specialized in this area.

**Table 10: Enterprise investment in environmental protection in the mining and quarrying industry**

| | 2001 | | 2004 | | 2006 | |
|---|---|---|---|---|---|---|
| | Domestic enterprises | FIEs | Domestic enterprises | FIEs | Domestic enterprises | FIEs |
| Proportion of enterprises with pollution treatment equipment/works | 8.1% | 20% | 5.6% | 21.1% | 2.4% | 21.0% |
| Proportion of enterprises with annual expenditures for environmental protection | 11.9% | 40% | 7.3% | 26.3% | 2.0% | 19% |
| The proportion of enterprises with intra-year expenditures for environmental protection | 4.8% | 6.7% | 2.1% | 5.3% | 2.0% | 3.7% |

Source: GSO's enterprise surveys (GSO, multiple years)

# 6 Conclusion and Policy Recommendations

This section of the report will begin with conclusions drawn from the analysis in the body of the report. The section will then focus on policy recommendations to improve investment incentives in Vietnam in the current context in order to make sure that these incentives aim at fulfilling the national development objectives and contribute to the sustainable development of enterprises. The last part of this section will point out some limitations of the research and make suggestions for follow-up research.

## 6.1 Main conclusions

- As a developing country in the region, Vietnam has had impressive achievements in attracting foreign direct investment (FDI) in the last two decades. Vietnam has gradually improved their legal system and investment policies to create very favourable conditions for foreign investors in compliance with basic principles of international trade and investment, as they relate to agreements of which Vietnam is a member (including the multilateral trade agreements of the World Trade Organization). Although there remains room for further improvement, Vietnam's investment environment has attracted international organizations and foreign investors. Together with other countries such as China and India, Vietnam has become a leading FDI destination.

- Similar to other developing countries, Vietnam needs desperately to mobilize foreign capital sources for current and future economic development. In order to attract FDI inflow in the last two decades, Vietnam introduced a series of incentives for foreign investors, specifically tax, financing and investment services. However these incentives were not static, but gradually adjusted and improved over time. Since 2005, investment support policies were largely applicable to both domestic and foreign investors. Core principles of investment promotion policies—including non-discrimination, transparency, forecastability, protection of investor's ownership and contract enforcement—have been integrated in Vietnam's current legal documents and policy system. However, laws, regulations and policies have been only sporadically enforced. Foreign investors are still faced with difficulties when implementing their investment projects due to the delayed issuance of guiding documents, the inconsistency in policy implementation, and the frequent changes of current legal and policy system.

- The mining and quarrying industry plays a significant role in the economy in general, and in the industrial sector of Vietnam in particular. Although this sector requires thorough investment verification by competent agencies upon the implementation of an investment project, it has attracted considerable interest from foreign investors with 9.9 per cent of registered capital. In addition, foreign invested enterprises (FIEs) in this sector are entitled to investment incentives that are available for certain sectors and locations. However for a sector that has great impact on the environment, current investment incentives seem to be divorced from the industry's social and environmental responsibilities. By law, projects are entitled to investment incentives if they qualify for investment incentive sectors and/or locations, regardless of whether or not they are oriented toward sustainable development.

- Most FIEs in this sector have enjoyed investment incentives provided by the Government of Vietnam in one way or another. Tax incentives, especially corporate income tax incentives, were the most commonly exploited by enterprises. In addition, some enterprises also enjoyed preferential credit or support for training activities or research and development. Among types of investment incentives, most enterprises took advantage of tax incentives, which were most lucrative in comparison with other incentives. However, investment incentives were considered an important factor, but not a prerequisite, for the foreign investors' decisions to invest in Vietnam, or in the mining and quarrying sector in particular. In addition to investment incentives, the equal and transparent investment environment and the enforcement of the legal system were also crucial factors for investors in their investment decision.

- Current government investment incentives are not a primary influence on FIEs' sustainable development behaviour in the mining and quarrying industry, possibly because current incentive tools have directed enterprises to investment-promoted sectors and locations, but have not encouraged a relationship between incentives and the sustainable development behaviour of enterprises. Although current laws already stipulate that the State must encourage enterprises to be socially responsible and environmentally sustainable (for example, promoting environmentally-friendly attitudes, behaving in a socially responsible way to employees, etc.); these demands are not as enforced as others and do not necessarily lead to socially responsible and sustainable behaviours. Until now, FIEs' socially responsible behaviour toward employees, community and the environment have mainly depended on policies held by the parent company abroad, the perfection of the legal system and its enforcement. The result reflects what goes on in the larger, global community of multinational corporations: passive rather than active roles on the part of enterprises when it comes to promoting and enforcing responsible sustainable behaviour.

- In terms of economic sustainability, FIEs in the mining and quarrying industry outperformed domestic ones with such assessment indicators as productivity, technology level, increased stable investment capital and contribution to state budget. However the state budget losses due to tax incentives, especially corporate income tax incentives granted to enterprises, were not small: they accounted for between 0.5 and 0.7 per cent of total industrial turnover in the sector during the period 2001–2006. So the question was whether the incentives policies for enterprises, which led to lost state revenue, were necessary when the foreign investors' decision to invest in Vietnam was not actually due to the incentive entitlement.

- In terms of social sustainability, FIEs in the mining and quarrying industry have sought to maintain a reasonably high income for their employees (much higher than that in domestic enterprises in the same sector). However, enterprises have not demonstrated active attention to the social welfare of their employees with regard to vocational training, health care insurance, social insurance, and contribution to trade unions and other social organizations. While enterprises seem to have passively followed legal regulations, they have not been actively expanding their social responsibility. Perhaps monthly income is currently regarded as the most important factor to employees in Vietnamese enterprises, making them willing to accept lower quality working conditions and less regard for their social welfare. However, as the labour market and economy develop, enterprises must maintain an attractive social welfare policy to keep their employees, to be able to compete with other enterprises in the same sector and to avoid negative impacts on their production activity due to labour strikes (as happened recently in several FIEs in Vietnam).

- In terms of environmental sustainability, mining and quarrying activity may potentially have negative effects on the environment. Though Vietnam has issued a basic legal framework to limit the negative impacts of industry operations on the environment, enterprises in Vietnam, and FIEs in particular, have not actively taken measures to prevent pollution during their production process. Environmental protection activities by enterprises were mainly performed to satisfy current legal regulations, but did not demonstrate a proactive stance in environmental protection work. Despite the lack of information about industrial compliance with environmental protection standards and regulations, based on the analysis in this report, it is difficult to conclude that FIEs have fully complied with environment protection regulations (for example, they may make investments in environment protection, but do not run pollution treatment equipment, etc.).

## 6.2 Policy recommendations

- Experience has shown that, once the national investment environment improves and creates favourable conditions for enterprises, and the legal system and investment policies have become transparent, clear, equal and effective, investment incentives introduced by the government will not be efficient in attracting both domestic and foreign investors. Although the favourable enterprise-oriented investment environment has evolved, the Government of Vietnam needs to further improve current policies so that the above-mentioned principles can be fully incorporated in the legal system of the State from the central to local levels. More importantly, it is essential to ensure the rapid and consistent implementation of investment policies by competent government agencies.

- For Vietnamese investment incentives to influence enterprises to promote sustainable development, the State can consider the link between sustainable development targets and conditions for incentive entitlement, especially social and environmental conditions. At present, although some laws have confirmed that the State encourages enterprises to develop sustainably, guiding documents on enterprise incentives have not been issued. Consequently, specific incentives for enterprises relating to sustainable development have only been applied individually depending on the local government's level of awareness. During the negotiation, verification and approval of investment projects, government agencies should be aware of the sustainable development objectives of the whole economy, as well as those of enterprises, to communicate requirements for enterprises and force them to comply with legal regulations.

- Post-investment inspection and monitoring should be further considered by government agencies to ensure that enterprises are honouring their commitments. For enterprises to develop sustainably will not only depend on setting sustainable development targets for enterprises, but will also rely on serious compliance with legal regulations by the corporations. Enterprises should be monitored and inspected frequently—with the participation of stakeholders such as civil society organizations, research institutes and the public—to ensure they are complying with legal regulations and commitments.

- The public should be involved in monitoring the enterprises' commitment to compliance. Investors should publish their intended commitments to protect the environment and make them available for the social community. In addition, it would be beneficial to recognize companies that comply with or exceed their sustainable development goals. Rewarding socially responsible behaviour with a prize or title creates positive publicity for both the company and the concept of social responsibility.

- Dialogue between the State and enterprise should increase so that both parties inform policy issues, exchange information and propose solutions to issues regarding sustainable development for corporations. An increase in this dialogue in recent years between government agencies and the business community reflects an active measure to create policy dialogues between the public and the private sectors at the national and local levels. However, to make these activities really efficient, recommendations and questions from enterprises should be resolved or publicly answered by government agencies.

- It is necessary to assess the efficiency of government incentives so as to make timely adjustments for individual periods. A first step is to thoroughly reassess the efficiency of tax incentives for enterprises to make suitable adjustments on incentive duration, incentive tax rates, etc.

- The natural resource royalty system should encourage enterprises to conserve the non-renewable natural resources of Vietnam. In a positive step forward, the Ministry of Finance intended to submit to the Standing Committee of the National Assembly a draft amendment of the Resolution on the natural resource royalty framework, as stipulated in the Ordinance on Natural Resource Royalties (Box 2). The amendment suggested that royalty rates for some natural resource categories be increased by 10 to 30 per cent. The increase in natural resource royalties for minerals is expected to limit the abundant exploitation, as well as to increase local state budget income to enable them financially to improve the environment and repair the infrastructure surrounding the exploited areas. Simultaneously, with the higher royalty rate, enterprises will have to calculate the exploitation output to balance economics and efficiency, and to invest in intensive processing, which then helps protect the natural resources and enhance the natural resource value.

**Box 2: Proposed increase to natural resource royalty by the Ministry of Finance**

The natural resource royalty rates for several minerals will increase to between 10 and 30 per cent, much higher than the current rates of one to 10 per cent. The rates will remain unchanged for some natural resource groups. Specifically, the rates for some minerals may be adjusted as follows:

| Exploitation activity | Royalty rate ( per cent) | |
|---|---|---|
| | Current | Proposed |
| Metal minerals | 1 – 5 | 10 – 30 |
| Non-metal minerals | 1 – 5 | 5 – 10 |
| Precious stones | 3 – 8 | 5 – 20 |
| Coal | 1 – 3 | 5 – 20 |
| Natural gas | 0 – 10 | 6 – 25 |
| Crude oil | 6 – 25 | 6 – 25 |

According to the calculation by the Ministry of Finance: using the proposed royalty rates will significantly increase the royalty for minerals: Mangan VND 30,000-75,000/tonne (currently VND 15,000/tonne); iron VND 30,000–75,000/tonne (currently VND 15,000/tonne); coal VND 20,000-80,000/tonne (currently VND 4,000–6,000/tonne).

Source: http://vietnamnet.vn/kinhte/2008/08/799574/ (Retrieved: August 19, 2008)

- Vietnam's existing bilateral and multilateral trade and investment agreements do not contain specific provisions to link investment and sustainable development. Specifically, they do not outline investors' obligations in ensuring that sustainable development policies are put in place. In the context of the ongoing investment agreement negotiation (i.e., ASEAN – plus; ASEAN–China, ASEAN–Korea, ASEAN–Japan, ASEAN–India, etc.), it is important that Vietnamese negotiators propose including relevant provisions on sustainable development in the agreement.

## 6.3 Notes and recommendations for further research

Despite research efforts and review of available information from interviews and enterprise surveys in Vietnam, this study cannot avoid some limitations. Specifically:

- The analysis and comments from this study only reflect the situation of the impacts of investment incentives on the decisions of foreign investors as well as on sustainable development with regard to FIEs in a specific industry, namely mining and quarrying. As a result, comments and conclusions may not represent the whole industrial sector or FIEs operating in Vietnam in general. To assess the impacts of investment incentives, the research team believes that there should be a study on this topic at the national level based on the methodology used in this study.

- FIEs interviewed or analyzed in this study were affected by investment incentives applied in Vietnam before the implementation of the Common Law on Investment 2005. Consequently, this study reflects only the impacts of investment incentives on investment decisions and sustainable development in enterprises up to the year 2005, and does not reflect the impacts of current investment incentives. Assessing the impacts of current investment incentives on sustainable development in Vietnamese enterprises (as both domestic and foreign enterprises now operate on a single legal platform) requires more time for testing, perhaps after 4–5 years.

- Due to time and budget limitations, the research team could not conduct a policy impact survey on a larger scale, but relied on the enterprise surveys conducted by the General Statistical Office. This method may lead to certain limitations, for example, necessary information for a sustainable development impact assessment was not reflected in the questionnaire of the enterprise survey. However, the team tried to compensate for the information shortage by sending supplemental questionnaires to several enterprises in the mining and quarrying industry, with questions directly related to the research topic. Unfortunately, the number of respondents was too small to ensure appropriate statistical representation.

- Based on the approach of this research, it is possible to expand the scope to the whole industrial sector or the whole economy. The impacts of investment incentives on sustainable development in Vietnamese enterprises can also be evaluated by using a quantitative method with the data from the enterprise surveys. However, assessment indicators and impact variables should be significantly narrowed.

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# Appendix 1: List of sectors on which investment is conditional as applicable to foreign investors (Issued with Decree 108-2006-ND-CP of the Government, September 22, 2006)

1. Broadcasting and television
2. Production, publishing and distribution of cultural products
3. Exploration and exploitation of minerals
4. Establishment of infrastructure for telecommunications network, transmission and provision of internet and telecommunications services
5. Establishment of the public postal network and provision of postal services and express services
6. Construction and operation of river ports, sea ports, terminals and airports
7. Transportation of goods and passengers by railway, airway, roadway and sea and inland waterways
8. Catching of aquaculture
9. Production of tobacco
10. Real estate
11. Import, export and distribution
12. Education and training
13. Hospitals and clinics
14. Other investment sectors in international treaties of which Vietnam is a member and that restrict the opening of the market to foreign investors

Investment conditions applicable to foreign investors with investment projects in the sectors stipulated in this Appendix must conform to the provisions in international treaties of which Vietnam is a member.

# Appendix 2a: List of domains entitled to investment incentives

## LIST A: Sectors with special investment incentives

***I. Manufacture of new materials and production of new energy; manufacture of products of high-technology, of bio-technology or of information technology; mechanical manufacturing***

1. Production of composite, light construction materials, precious and rare materials

2. Production of high-quality steel, alloys, special metal, sponge iron and steel billet

3. Investment for construction of establishments using solar energy, wind energy, biogas, geothermic and tidal energy

4. Production of medical equipment for analytical and extractive technology in the medical sector; orthopaedic equipment, specialized vehicles and equipment for the disabled

5. Application of advanced technology, bio-technology for production of medicine for treating humans with international GMP standard; production of antibiotic materials

6. Production of computer, telecommunication equipment, Internet, targeted IT products

7. Production of semi-conductors and electronic components with advanced technology; production of software products, items of digital information; provision of services on software, research on technology information and training on human resources on technology information

8. Production of and manufacture of precision mechanical engineering equipment; equipment and machine for examination and control of industry manufacturing safety; industrial robots.

***II. Breeding, rearing, growing and processing of agricultural, forest and aquaculture products; salt making; production of artificial strains, new plant varieties and livestock breeds***

9. Forest plantation and carrying

10. Agriculture, forestry and fishery development in barren areas, unused water surface

11. Long-distance marine fishing

12. Production of strains, propagation and hybridization of new seeding plants and animals with high economic efficiency

13. Production, extraction and manufacture of salt

***III. Use of high technology and modern techniques; protection of the ecological environment; research, development and nursery of high technology***

14. Application of high technology; application of technologies have not been used in Vietnam; application of bio technology

15. Pollution treatment and environmental protection; production of environmental pollution treatment, environmental monitoring and analyzing facilities/equipment

16. Collection, treatment of waste water, air, solid disposals; recycling and re-use of waste

17. High technology research and development (R&D) and development of incubators

***IV. Labour-intensive industries***

18. Project regularly employing from 5,000 employees or more

***V. Construction and development of infrastructures***

19. Investment in construction, providing infrastructure for industrial, export processing high tech. economic zones and other important investment projects under the decision of the Prime Minister

***VI. Development of education, training, health care, physical training, sports and national culture***

20. Investment in construction of facilities for treatment of tobacco or drug addiction

21. Investment in establishment of facilities for epidemic control

22. Investment in establishment of geriatric centres or centres for rescue and care of the disabled and orphans

23. Investment in construction of training centres for improvement of and achievement in sports, training for the disabled; construction of sport facilities with apparatus and facilities satisfying requirements for organization of international tournaments.

***VII. Other manufacturing and service sectors***

24. Investment in research and development (R&D) accounting for 25 per cent or more turnover

25. Salvage operations at sea

26. Investment in the construction of apartment buildings for workers working in industrial zones, processing zones, hi-tech zones and economic zones; investment in the construction of dormitories for students and construction of residential houses for people entitled to preferential social treatment

## LIST B: Sectors with investment incentives

***I. Manufacture of new materials and production of new energy; manufacture of high technology, bio-technology or information technology; mechanical manufacturing***

1. Production of soundproof, electrically insulated or high-heat insulated materials; synthetic materials used as a substitute for wood; fire-proof materials; construction plastics; glass fibre; special-use cement

2. Production of non-ferrous metals and refining of cast iron

3. Production of moulds and prototypes for metal and non-metal products

4. Investment in the construction of new power plants, in power distribution and transmission

5. Production of medical supplies and equipment, construction of warehouses for preservation of pharmaceutical products, reserves of medicines for human use in case of natural disasters and dangerous epidemics

6. Production of equipment used for testing toxic substances in foodstuffs

7. Development of the petrochemical industry

8. Production of coke and active coal

9. Production of plant protection drugs, pesticides, preventive and curative drugs for animals and aquatic creatures; veterinary drugs

10. Materials for the production of medicines or medicines for prevention or treatment of social diseases; vaccines; biological products; medicines produced from pharmaceutical materials; Eastern medicines

11. Investment in the construction of facilities for biological experimentation, assessment of the availability of medicines; pharmaceutical establishments satisfying GMP standards in producing, preserving, testing, and carrying out clinical tests of medicines; planting, rearing or harvesting and processing of pharmaceutical materials

12. Development of sources of pharmaceutical materials and production of medicines from pharmaceutical materials; projects for research or substantiation of scientific grounds for prescriptions for eastern medicines and formulation of standards for testing of prescriptions for eastern medicines; survey and statistics of types of pharmaceutical materials used for the production of medicines; collection, inheritance and application of prescriptions for Eastern medicines; finding, exploitation and use of new pharmaceutical materials

13. Production of electronic appliances

14. Production of machines, equipment and detail assemblies for the following sectors: oil and gas exploitation, mining, energy and cement; production of large-sized lifting equipment; production of machine tools for metal processing and metallurgy equipment

15. Investment in the manufacture of high- and medium-voltage electric devices or generators of large capacity

16. Investment in the production of diesel engines; investment in the repair or building of ships; equipment and spare parts for transportation ships and fishing ships; production of dynamic and hydraulic machinery and spare parts and compressing machines

17. Production of equipment, vehicles and machinery for construction; technical equipment for the transportation sector; locomotives and carriages

18. Investment in the manufacture of machine tools, machinery, equipment and components for agricultural and forest production; machinery for food processing; irrigation equipment

19. Investment in the production of equipment, machinery for textiles, garments and leather industries

***II. Breeding, rearing, growing and processing of agricultural, forest and aquaculture products; salt making; production of artificial strains, new plant varieties and livestock breeds***

20. Growing of plants for pharmaceutical purposes

21. Investment in the post-harvest preservation of agricultural products; preservation of agricultural and aquaculture products and foodstuffs

22. Production of bottled or canned fruit juices

23. Production and refining of feed for cattle, poultry and aquatic resources

24. Technical services for planting industrial and forest trees, husbandry, aquaculture, protection of plants and livestock

25. Production, multiplication or crossbreeding for new plant varieties or livestock breeds

***III. Use of high technology and modern techniques; protection of the ecological environment; research, development and nursery garden of high technology***

26. Manufacture of equipment for responding to and dealing with oil spills

27. Manufacture of equipment for waste treatment

28. Investment in the construction of technical facilities and works: laboratories and experimental stations to apply new technology to production; investment in the establishment of research institutes

***IV. Labour-intensive industries***

29. Projects regularly employing between 500 and 5,000 employees.

***V. Construction and development of infrastructures***

30. Construction of infrastructures serving production and business of cooperatives and life of communities in rural areas

31. Investment in and commercial operation of infrastructures and investment in the production of industrial complexes, industrial spots, complexes in rural trade villages

32. Construction of water plants and water supply systems for civil and industrial use; investment in the construction of water drainage systems

33. Construction and upgrading of bridges, roads, terminals, airports, seaports, railway stations, bus stations and parking lots; establishment of new railway routes

34. Construction of technical infrastructures of concentrated population areas in the geographical areas in Appendix II to this Decree

***VI. Development of education, training, health care, physical training, sports and national culture***

35. Investment in the construction of infrastructures for education and training establishments; investment in the construction of people-founded and private schools and education and training establishments at the levels of pre-school education; general education, vocational high-school education and tertiary education

36. Establishment of people-founded and private hospitals

37. Construction: physical training or sport centres, training facilities and physical training and sports clubs; establishments for production, manufacture and repair of equipment, supplies and equipment for physical training and sports

38. Establishment of national cultural houses; national dance, music and song troupes; theatres, film studios, cinemas; establishments for production, manufacture and repair of national musical instruments; maintenance and preservation of museums, national cultural houses and culture and arts schools

39. Investment in the construction of national tourist sites, ecological tourist sites and cultural parks for sports, entertainment and recreation activities

***VII. Development of traditional trades and occupations***

40. Development of traditional trades and occupations for production of fine-art and handicraft goods; processing of agricultural products and foodstuffs and cultural products

***VIII. Other manufacturing and service sectors***

41. Provision of Internet connections, access and application services and points for accessing public telephones in areas in Appendix II to this Decree

42. Development of mass transit, including transportation by ships, aircraft; railway transportation; road transportation of passengers by cars with 24 seats or more; transportation of passengers by modern and high-speed vehicles by inland waterway; container transportation

43. Investment in the relocation of production establishments to non-urban areas

44. Investment in the construction of class-I marketplaces and exhibition centres

45. Production of children's toys

46. Activities in mobilizing capital and lending capital of people's credit funds

47. Legal consultancy, services of consultancy on intellectual property and technology transfer

48. Production of various types of materials for production of pesticides

49. Production of base chemicals, purified chemicals, special-use chemicals and dyes

50. Production of materials for production of detergents and additives for the chemical industry.

51. Production of paper, cartons, artificial planks from domestic agricultural and forest materials; production of pulp

52. Weaving and fashioning of textile products; production of silk and fibres of all types; tanning and processing of leather

53. Investment projects on production activities in industrial parks established under the direction of the Prime Minister

# Appendix 2b: List of geographical areas entitled to investment incentives (Promulgated together with the Government's Decree No. 108/2006/ND-CP, September 22, 2006)

| No | Province | Areas with extremely difficult socio-economic conditions | Areas with difficult socio-economic conditions |
|---|---|---|---|
| 1 | Bac Kan | All districts and towns | |
| 2 | Cao Bang | All districts and towns | |
| 3 | Ha Giang | All districts and towns | |
| 4 | Lai Chau | All districts and towns | |
| 5 | Son La | All districts and towns | |
| 6 | Dien Bien | All districts and Dien Bien city | |
| 7 | Lao Cai | All districts | Lao Cai City |
| 8 | Tuyen Quang | Na Hang and Chiem Hoa districts | Ham Yen, Son Duong and Yen Son districts and Tuyen Quang town |
| 9 | Bac Giang | Son Dong district | Luc Ngan, Luc Nam, Yen The and Hiep Hoa districts |
| 10 | Hoa Binh | Da Bac and Mai Chau districts | Kim Boi, Ky Son, Luong Son, Lac Thuy, Tan Lac, Cao Phong, Lac Son and Yen Thuy districts |
| 11 | Lang Son | Binh Gia, Dinh Lap, Cao Loc, Loc Binh, Trang Dinh, Van Lang and Van Quan districts | Bac Son, Chi Lang and Huu Lung districts |
| 12 | Phu Tho | Thanh Son and Yen Lap districts | Doan Hung, Ha Hoa, Phu Ninh, Song Thao, Thanh Ba, Tam Nong and Thanh Thuy districts |
| 13 | Thai Nguyen | Vo Nhai anh Dinh Hoa districts | Dai Tu, Pho Yen, Phu Luong, Phu Binh and Dong Hy districts |
| 14 | Yen Bai | Luc Yen, Mu Cang Chai and Tram Tau districts | Tran Yen, Van Chan, Van Yen and Yen Binh districts and Nghia Lo town |
| 15 | Quang Ninh | Ba Che and Binh Lieu districts, Co To island district, islands and offshore islands under provincial authority | Van Don district |
| 16 | Hal Phong | Bach Long Vy and Cat Hal island districts | |
| 17 | Ha Nam | | Ly Nhan and Thanh Liem districts |
| 18 | Nam Dinh | | Giao Thuy, Xuan Truong, Hai Hau and Nghia Hung districts |
| 19 | Thai Binh | | Thai Thuy and Tien Hai districts |
| 20 | Ninh Binh | | Nho Quan, Gia Vien, Kim Son, Tam Diep and Yen Mo districts |
| 21 | Thanh Hoa | Muong Lat, Quan Hoa, Ba Thuoc, Lang Chanh, Thuong Xuan, Cam Thuy, Ngoc Lac, Nhu Thanh and Nhu Xuan districts | Thach Thanh and Nong Cong districts |
| 22 | Nghe An | Ky Son, Tuong Duong, Con Cuong, Que Phong, Quy Hop, Quy Chau and Anh Son districts | Tan Ky, Nghia Dan and Thanh Chuong districts |
| 23 | Ha Tinh | Huong Khe, Huong Son and Vu Quang districts | Duc Tho, Ky Anh, Nghi Xuan, Thach Ha, Cam Xuyen and Can Loc districts |
| 24 | Quang Binh | Tuyen Hoa, Minh Hoa and Bo Trach districts | Other districts |
| 25 | Quang Tri | Huong Hoa and Dac Krong districts | Other districts |
| 26 | Thua Thien Hue | A Luoi and Nam Dong districts | Phong Dien, Quang Dien, Huong Tra, Phu Loc and Phu Vang districts |
| 27 | Da Nang | Hoang Sa island district | |
| 28 | Quang Nam | Dong Giang, Tay Giang, Nam Giang, Phuoc Son, Bac Tra My, Nam Tra My, Hiep Duc, Tien Phuoc and Nui Thanh districts and Cu Lao Cham island | Dai Loc and Duy Xuyen districts |

| No | Province | Areas with extremely difficult socio-economic conditions | Areas with difficult socio-economic conditions |
|---|---|---|---|
| 29 | Quang Ngai | Ba To, Tra Bong, Son Tay, Son Ha, Minh Long, Binh Son and Tay Tra districts and Ly Son island district | Nghia Hanh and Son Tinh districts |
| 30 | Binh Dinh | An Lao, Vinh Thanh, Van Canh, Phu Cat and Tay Son districts | Hoai An and Phu My districts |
| 31 | Phu Yen | Song Hinh, Dong Xuan, Son Hoa and Phu Hoa districts | Song Cau, Tuy Hoa and Tuy An districts |
| 32 | Khanh Hoa | Khanh Vinh and Khanh Son districts, Truong Sa island district and islands under provincial management | Van Ninh, Dien Khanh and Ninh Hoa districts and Cam Ranh town |
| 33 | Ninh Thuan | All districts | |
| 34 | Binh Thuan | Phu Quy island district | Bac Binh, Tuy Phong, Duc Linh, Tanh Linh, Ham Thuan Bac and Ham Thuan Nam districts |
| 35 | Dak Lak | All districts | |
| 36 | Gia Lai | All districts and towns | |
| 37 | Kon Tum | All districts and towns | |
| 38 | Dak Nong | All districts | |
| 39 | Lam Dong | All districts | Bao Loc town |
| 40 | Ba Ria - Vung Tau | Con Dao island district | Tan Thanh district |
| 41 | Tay Ninh | Tan Bien, Tan Chau, Chau Thanh and Ben Cau districts | Other districts |
| 42 | Binh Phuoc | Loc Ninh, Bu Dang and Bu Dop districts | Dong Phu, Binh Long, Phuoc Long and Chon Thanh districts |
| 43 | Long An | | Duc Hue, Moc Hoa, Tan Thanh, Duc Hoa, Vinh Hung and Tan Hung districts |
| 44 | Tien Giang | Tan Phuoc district | Go Cong Dong and Go Cong Tay districts |
| 45 | Ben Tre | Thanh Phu, Ba Chi and Binh Dai districts | Other districts |
| 46 | Tra Vinh | Chau Thanh and Tra Cu districts | Cau Ngang, Cau Ke and Tieu Can districts |
| 47 | Dong Thap | Hong Ngu, Tan Hong, Tam Nong and Thap Muoi districts | Other districts |
| 48 | Vinh Long | | Tra On district |
| 49 | Soc Trang | All districts | Soc Trang town |
| 50 | Hau Giang | All districts | Vi Thanh town |
| 51 | An Giang | An Phu, Tn Ton, Thoai Son, Tan Chau and Tinh Bien districts | Other districts |
| 52 | Bac Lieu | All districts | Bac Lieu town |
| 53 | Ca Mau | All districts | Ca Mau city |
| 54 | Kien Giang | All districts, islands and offshore islands under provincial management | Ha Tien and Rach Gia towns |
| | Other localities | Hi-tech parks and economic zones entitled to preferences under establishment decisions of the Prime Minister | Industrial parks established under decisions of the Prime Minister |

# Appendix 3: Survey question asked of FDI firms in the mining and quarrying sector

1. **General Information about the firm:**

1.1 Name of the firm: ________________________________

1.2 Address of the firm: ________________________________

1.3 City/province: ________________

1.4 Year of establishment: ____________

1.5 Years of operation: ______________

1.6 Type of firms:
100 per cent foreign owned ☐
Join venture ☐
Business contract (BCC, BOT, BTO, BT) ☐
Other: ☐
________________________________

1.7 Country of origin: ________________________________

1.8 Address of subsidiary: ________________________________

1.9 Area of production:
a) Mining and extraction of coal, lignite, peat ☐
b) Extraction of crude petroleum and natural gas ☐
c) Mining of uranium and thorium ores ☐
d) Mining of metal ores ☐
e) Other non-metal mining ☐

1.10 Total registered capital: ______________ USD

1.11 Implemented capital: ______________ USD

1.12 New additional investment in the last five years ______________ USD

1.13 Export of your output:________ per cent of total output

1.14 How many FDI projects have you invested in in Vietnam apart from your firm? ______

In which area?
a) Mining and quarrying ☐
b) Refining or processing ☐
c) Other: ☐

2. **Role of investment incentives in the firm's investment decision:**

2.1 Please rank the importance of each of the following factors influencing your decision of investment in a foreign country in general:

| **Factors influencing the invt. decisions:** | **Rank the importance of the factors (1: not important; 5: very important)** |
|---|---|
| Legal environment | ______________ |
| Industry infrastructure | ______________ |
| Investment incentives | ______________ |
| Market size | ______________ |
| Cost of production | ______________ |
| Location of natural resource | ______________ |
| Other factors (please specify) | ______________ |

2.2 When investing in Vietnam, is your firm subject to enjoy any investment incentive provided by Vietnamese government?

YES ☐ NO ☐

Please evaluate the extent and importance of incentives provided by the Vietnamese government to your firm's investment decision as described below:

**Tax incentives:**

| **Type of incentives** | **Duration** | **Estimated value (VND)** | **Rank the importance of the incentive for the firm's investment decision (1: not important; 5: very important)** |
|---|---|---|---|
| Corporate tax exemption | __________ | ________ | __________ |
| Property tax exemption | __________ | ________ | __________ |
| Remission of export-import tariff | __________ | ________ | __________ |
| Remission of land use tax/fees | __________ | ________ | __________ |
| Other tax incentives (pls. specify) | __________ | ________ | __________ |

**Subsidies:**

| **Type of incentives** | **Duration** | **Estimated value (VND)** | **Rank the importance of the incentive for the firm's investment decision (1: not important; 5: very important)** |
|---|---|---|---|
| Cash grants | ______ | ______ | ______ |
| Preferable interest loans | ______ | ______ | ______ |
| Training subsidies | ______ | ______ | ______ |
| Grants for R&D | ______ | ______ | ______ |
| Other subsidies (pls. specify) | ______ | ______ | ______ |

**Regulatory incentives:**

| **Type of incentives** | **Duration** | **Estimated value (VND)** | **Rank the importance of the incentive for the firm's investment decision (1: not important; 5: very important)** |
|---|---|---|---|
| Infrastructure in EPZs or IZs | ______ | ______ | ______ |
| Services given by FDI promotion centres | ______ | ______ | ______ |
| Other subsidies (pls. specify) | ______ | ______ | ______ |

2.3 Do you think that the investment incentives provided in Vietnam are more attractive than what you have been offered in other countries?

YES ☐ NO ☐

2.4 If there were no investment incentives provided by the government, while other countries offer you investment incentives, would you still decide to locate your investment in Vietnam?

YES ☐ NO ☐

WHY ? ________________________________________________

________________________________________________

________________________________________________

________________________________________________

2.5 Have you actually received the incentives as you expected in process of your firm operation?

YES ☐ NO ☐

If NO, please explain WHY?: ________________________________

________________________________________________

________________________________________________

2.6 Were there any performance commitments/agreements signed/agreed upon by your firm with local government authorities?

YES ☐ NO ☐

If YES, pls. indicate their nature below:

- Commitments relating to economic aspects:
  Technological transfer ☐
  Export performance; ☐
  Domestic input requirements ☐
  Other requirements (please specify) ☐

  ________________________________________________

- Commitments relating to social aspects:
  Use of local employees ☐
  Contribution to local development ☐
  Other: (please specify) ☐

  ________________________________________________

- Commitments relating to environmental aspects:
  EIA appraisal ☐
  Environmental deposit ☐
  Other (please specify) ☐

  ________________________________________________

**3. Role of investment incentives to the firm's sustainable development behaviour:**

3.1 Please rank the importance of each of the following factors influencing your firm's behaviour to sustainable development:

| Determinants of SD behaviour of firms | Rank the importance of the factors (1: not important; 5: very important) |
|---|---|
| 1. National regulation framework: | |
| + Economic regulation | ______________ |
| + Social regulation | ______________ |
| + Environment regulation | ______________ |
| 2. National regulation enforcement: | |
| + Economic regulation | ______________ |
| + Social regulation | ______________ |
| + Environment regulation | ______________ |
| 3. Domestic policy incentives: (economic; social and environment) | ______________ |
| 4. Your parent company's policy (corporate and social responsibility, etc.) | ______________ |
| 5. Market forces (customer, exporters, international requirements, etc.) | ______________ |
| 6. Community (public) pressure | ______________ |
| Other factors: (please specify) | ______________ |

3.2 Please assess your contribution to the national/local sustainable development of Vietnam:

| **Determinants of SD behaviour of firms** | **Rank the firm's contribution (1: not significant; 5: very significant)** |
|---|---|
| Economic factors: | |
| – Growth of production overtime | ______________ |
| – Export performance | ______________ |
| – Government tax revenue | ______________ |
| – Investment generation in the industry | ______________ |
| – Development of downstream and up-stream industries | ______________ |
| – Technology transfer to domestic firms | |
| Social factors: | |
| – Employment generation | ______________ |
| – Income of labour | ______________ |
| – Local social development | ______________ |
| – Mass organizations activities | ______________ |
| Environment factors: | |
| – Environmental standards | ______________ |
| – Response to the use of local land impact | ______________ |
| – Environmental tax/fees. | ______________ |

3.3 Has your firm been granted any of the following ISO certificates:

ISO 9000 ☐

ISO 14001 ☐

Other: (please specify) ☐

______________________________

3.4 Is your firm inspected by local authorities in reference to the terms of your performance indicated in question 2.6?

YES ☐ NO ☐

How often? ______________________________________________

3.4 Please estimate your average annual expenditure for the activities ensuring your firm's sustainable social and environmental development over the last five years.

______________________ (VND)

3.5 Does your firm have the units or organizations listed below:

| **Unit** | **Yes or No** |
| --- | --- |
| Environmental management division/unit/personnel | ________________ |
| Trade union | ________________ |
| Women's union | ________________ |
| Technology and or R&D division | ________________ |
| Social works | ________________ |

**Thank you very much for your kind cooperation!**