

# Business Licensing Regulations: Constraints and Solutions

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## ABSTRACT

*The Vietnamese Government has made remarkable efforts in streamlining its business licensing regulations. Nevertheless, a significant number of constraints remain and their negative impacts on economic reform and development have not been effectively dealt with. This paper discusses the constraints in existing business licensing regulations and provides policy recommendations to improve their quality and enhance the capability of implementing agencies in order to maintain the sustainability of achievements and the quality of any upcoming regulations.*

*Key words: business license, regulations.*

## Introduction

Licenses are commonly used in all countries around the world as a state management tool. In Vietnam, a system of business licenses (BLs) has been formulated and applied in conjunction with the formulation and improvement of the country's business legal framework. BLs have increasingly grown in number and played a significant role in state management by the Vietnamese Government as a means of regulating and supervising business activities in the country. It can be said that the system of BLs has contributed to developing and improving the country's market institutions, maintaining macroeconomic stability, and protecting public interest (for instance, in ensuring social order, the ecological environment, and public health). Additionally, the system has facilitated the development of important economic sectors, especially the services sector.

Despite its positive effects, the system of business licensing regulations in general and

BLs in particular have a number of constraints. On one hand, these constraints have reduced the enforceability of state management over business licensing and been a key factor of corruption throughout the country. On the other hand, they create obstacles to economic reform and socio-economic development in general and to administrative reform in the business and investment environment in particular.

Aware of these negative effects, in recent years the Government has carried out business licensing reforms. Hundreds of BLs considered unnecessary or ineffective have been abolished or subjected to other management modalities<sup>1</sup>

Nevertheless, significant constraints remain and have not been effectively dealt with, and are actually increasing.

This paper is structured in the following manner. Section 1 identifies the key constraints of the Vietnamese system of business licensing regulations and BLs, and then analyzes the reasons why. Section 2 proposes key measures to enhance

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the quality of the legal framework on BLs and to improve the capability of state bodies governing BL issues. In doing so, the author wishes to contribute a meaningful voice to accelerating administrative reform and improving the business environment in Vietnam.

## 1. Constraints of current business licensing regulations

Despite considerable efforts by the Government in streamlining the system of BLs, existing regulations still contain many constraints, as follow.

### 1.1. Diversification of business licenses

Business licenses exist under a variety of labels and are scattered throughout different legal documents. Indeed, BLs can masquerade under many different forms, such as a "license", "certificate", "registration", "professional permit", "card", "authorization", "notification"; "decision", "confirmation", "commitment", "acceptance", and "degree"<sup>2</sup>. As such, there are no common concepts on or awareness of business licensing, and no tool to effectively govern the relationships between the State and enterprises. "Notifying" and "registering" have not been paid adequate attention. "Licensing" is practiced under many forms. The opaqueness and diversity of BLs have created additional difficulties in identifying some BLs and, in particular, created many modified forms of BLs (known as "baby" BLs) that have replaced abolished licenses.

It is worth noting that regulations on each BL are scattered. Typically, each BL is stipulated in three legal documents (including a law or ordinance and a decree, circular, or decision stipulated by line ministries), and in some cases are specified in ten different legal documents. The key content of BLs applied in reality can be found in circulars or decisions issued by line ministries<sup>3</sup>. As such, regulations on business licensing are

"stipulated" by line ministries to exercise the state management function over their sectors/areas, creating favorable conditions for them.

### 1.2. Legitimacy of BLs

BLs stipulate business conditions for sectors/areas requiring state management by licensing. Pursuant to Items 3 and 4, Article 4 of the Enterprise Law 1999, and Items 2 and 5, Article 7 of the Enterprise Law 2005, a business license is considered legitimate if the sectors/areas or business activities expressed in it are subject to administration by licensing, and conditions/criteria for license issue or refusal shall be regulated by a law, ordinance, decree or Prime Ministerial decision. Under such an understanding, a majority of current BLs have problems in legitimacy because the conditions/criteria for their issue or refusal are regulated by circulars or decisions made by ministers and ministry-level organizations.

A situation can be seen where laws and ordinances normally do not regulate licensing or regulate it at a too generic level and unclear manner. This situation can lead to (i) discretionary interpretation; (ii) state management guidance by licenses, and (iii) upper level legal documents not requiring licenses but lower levels requiring licenses.

### 1.3. The necessity of BLs

The necessity of a BL can be judged from two aspects: (i) having clear, concrete and feasible objectives, and (ii) such objectives are reached by different management tools with the highest efficiency (i.e at the lowest cost, in both administrative costs and the legal compliance costs of licensees). However, the objectives of current BLs are opaque or too generic as policy guidance rather than a legal definition<sup>4</sup>, and management subjects are normally taken as management objectives.

#### 1.4. Adequacy of business licensing regulations<sup>5</sup>

Current regulations on all forms of BLs in Vietnam are not yet sufficient. The contents of business licensing are deficient in criteria/conditions, the process and procedures for license issuance, license validity and enforceability; the process, procedures, and conditions for license extension; cases subject to revocation and the judicial consequences of license revocation; and concrete mechanisms for appeals and complaints.

#### 1.5. Specificity

There are unclear, unspecific subjects requiring licensing, objects/activities subject to administration by licensing, and conditions/criteria for licensing. According to current regulations, business conditions can be classified into three groups: (i) conditions for business activities administered by licenses; (ii) conditions for business entities; (iii) conditions for services and products that are objectives of business activities.

The conditions for business operation are stipulated as having: (i) a business location/site conforming to the master plan; (ii) appropriate equipment and machinery; (iii) managers with expertise and suitable experience; and (iv) feasible business plans/projects, etc.

#### 1.6. Application files

A majority of application files are yet to be standardized in terms of content and formality. The structure of file documents is not clear or uniform. A definition of a "valid file" is widely used but there are no uniformed guidelines on file "validity". As a result, the interpretation of a "valid file" becomes discretionary, depending on the subjectivity of licensers<sup>6</sup>. In many cases, the licensers "know" and are competent in deciding file validity, and their decision is final.

There are a number of integrated file

documents that are *de facto* licenses masquerading as "permits", "approvals", or "confirmation letters" from localities or other authorities. As such, these become a "license for a license". Hence, in order to complete an application file, licensees have to 'go around' numerous state bodies at almost all levels to "gather" integrated file documents. It is worth noting that, in the abovementioned cases, relevant legal documents do not stipulate clearly the process, procedures, conditions, and time limits for licensing, so that a license could be "confirmed", "certified", or "agreed", or in need of obtaining "written opinions", etc. Furthermore, they also do not regulate the rights to lodge an appeal/complaint in case of refusal. As a result, applications for component documents to complete a licensing file can face more difficulties and bear more costs than that of a "master" license.

#### 1.7. Licensing process issues

It should be noted that, to date, there have not been:

- (i) Clarity in regulations on where and how businesses shall submit and receive licensing files, especially licenses issued by ministries and central bodies as competent agencies. Consequently, applicants must submit files directly to the competent bodies.
- (ii) Clarity regarding licensing time limits, as this is determined as being when competent agencies receive a "valid licensing file", while what constitutes "validity", as noted earlier, is not clear.
- (iii) A clear-cut determination on time limits for supplementing and amending a licensing file if necessary, and the number of times applicants are eligible to request permission to do so. This deficiency can lead to a circumstance where the direct recipient and processor

of files may notify and request supplementing and amending information for the file at the "last minute" of the time limit stipulated by law, or may request applicants address just *one* or *some* errors and omissions rather than *all of them*. As a result, this practice has resulted in legal provisions on licensing time limits become meaningless and ineffective. In many cases, competent licensers can prolong the licensing time limit on their own whim yet stay within the law.

- (iv) Clear regulations on the confirmation of submission/receipt of application files. As a result, applicants have no legitimate grounds to complain/lodge an appeal against violations of regulations on licensing time limits; and
- (v) Regulations on the processes and procedures for file appraisals and inspections implemented jointly by units of an organization or different organizations. In reality, applicants cannot know the current "status" of their applications. As such, the actual licensing time limit in many cases exceeds the legal time limit.

### 1.8. Licensing time limits

The licensing time consists of the time for file preparation and the time limit for license issuance (from the time of file submission to obtaining a license). Due to the fact that component documents of a file "should" be "confirmed", "accepted", or "appraised", etc. by relevant administrative bodies, file preparation can last for several months or years. The time limit for issuing licenses is dependent upon the subjectivity and discretion of the licensers rather than any legal provisions. Consequently, the licensing time, especially if the applicants are newcomers, can be prolonged for months or years at significant cost and lost time.

### 1.9. Valid term of licenses and validity extensions

A valid term has been specified for the majority of business licenses. Limiting the validity appears to be aimed at overseeing and monitoring by relevant state agencies. Nevertheless, the conditions for extending licenses are not clarified or specified, including as regards application files, processes, and procedures. Thus, extension of licenses is not autonomous and is subject to an application for an extension<sup>7</sup>. Files, processes, and procedures for extension are normally the same as in applications for initial issuance.

### 1.10. Licensers

There are 155 licenses issued by central bodies, 56 by localities, 69 by both central bodies and localities, and seven by unknown agencies<sup>8</sup>. The number of licenses issued by central state agencies are as follows: 22 by the State Bank of Vietnam, 22 by the Ministry of Finance, 18 by the Ministry of Culture and Information, 20 by the Ministry of Posts and Telecommunications<sup>9</sup>, 13 by the Ministry of Science and Technology, and eight by the Ministry of Agriculture and Rural Development. For applicants, obtaining BLs issued by central organs normally presents more difficulties and bears more costs than those issued by provincial licensers. It is even more burdensome in cases where applicants must submit a licensing file to the provincial people's committee but the license is ultimately issued by a central agency<sup>10</sup>.

Generally, the assignment to and decentralization of business licensing amongst ministries and people's committees of cities and provinces under central authority remain unclear and lack firm scientific and practical grounds. And some ministries have not decentralized licensing and the administration of business activities by licensing, and instead have directly issued BLs. The fact that ministries stipulate regulations on

business licensing, and at the same time issue BLs, is the same as "being the football player and the referee".

### 1.1.1. Other issues

In respect to state administrative bodies, some issues are emerging and should be adequately addressed. They are:

(i) Business licensing activities implemented under a low-quality system of regulations are not easily carried out efficiently and are costly in terms of human and financial resources. Many state bodies and staff have *de facto* involvement in business licensing.

(ii) Due to unclear, unspecific and inappropriate stipulations, state bodies and officials directly involved in business licensing in many cases must seek or refer to the "opinions" of other related organizations in order to issue BLs. Or they can interpret and apply relevant legal provisions at their discretion. Both cases provide "good" opportunities for state officials and bodies to improperly (but legitimately) intervene in the business activities of Vietnamese enterprises, and create an undesired burden on society in general and businesses in particular.

(iii) License issue and use to a certain extent can be used as a rent-seeking device by some stakeholders<sup>11</sup>. Consequently, this can reduce the effectiveness of licensing as a state management tool and increase the social cost of license issue and use.

(iv) The system of low-quality regulations has significantly hindered the administrative reform process, especially the reform of administrative procedures in the state-businesses-people relationship.

(v) To date, the number of regulations on business licensing and BLs has rapidly increased but Vietnam is yet to have an effective tool to control the situation. Hence, the problems and

negative impacts of the licensing system are being exacerbated both in scope and scale. This is a major concern for the business community and stakeholders.

## 2. Reasons for the constraints

It can be said that, after 20 years of economic renovation (*doi moi*), market-based institutions in Vietnam have been formulated and continuously improved. The establishment, development and improvement of the legal framework have significantly contributed to these achievements. The system of business licensing regulations is a component of the entire legal framework and has become an important tool for state management. The use of licenses has contributed to replacing administrative planning in the governing of business activities in particular and social life in general. As such, the system of BLs has played an important role in the establishment and improvement of market economy institutions in Vietnam.

The system of business licensing regulations and BLs still suffer many shortcomings: inappropriateness, lack of clarity, specificity, deficiency, inconsistency, lack of transparency, unpredictability, inefficiency, and ineffectiveness.

The aforementioned constraints of the system have been a factor hindering business development in sectors/areas that require licensing, and thus undermines the attractiveness and competitiveness of Vietnam's business environment. The negative aspects can be seen as follows:

*First*, burdensome licensing can raise business costs in general and the costs of market entry into sectors/areas requiring licensing in particular. Businesses cannot understand or know about what to do or how to do it "properly" and "comply" with legal provisions. As a result,

they cannot afford to predict whether business licensing applications will be successful. These factors have forced businesses to break the law, creating uncertainties and risks in their business activities.

*Second*, there has been inequality in terms of business opportunities. Experienced applicants can normally obtain BLs faster and at a lower cost than newcomers. This creates fertile soil for well-connected relationships between licensers and licensees. In such a circumstance licensing can turn out to be not a tool for state management but rather used to maintain a business monopoly or unfair competition. These consequences can discourage resources mobilization and business renovation and ideas, and hinder the country's socio-economic development.

The weaknesses in the system of business licensing regulations can be traced to the following factors:

(1) A lack of proper methodology for business licensing. There are no consistent concepts based firmly on a scientific legal framework and standards on the content of BLs, and no common perception about the public benefit that the state management is targeting by having BLs. Inadequate attention has been paid to the role of BLs, especially the impacts of business licensing (including negative impacts) on state management and the business environment, and to developing an effective system of BLs in the country. Moreover, Vietnam does not yet consider business licensing as a focal part in reforming institutions and the administrative system, improving the business environment, and enhancing the efficiency of the national economy and enterprises<sup>12</sup>.

(2) An absence of effective and efficient institutions for legislating and stipulating regulations on BLs, which have long been in place for other regulations and strongly influenced by ministries. The role and participation of

stakeholders, particularly the business community, have not been addressed adequately. BL specifications (i.e. conditional businesses) continue to be stipulated by non-competent bodies. Vietnam is yet to have an effective mechanism for regular review and revaluation of business licensing to amend discrepancies in business licensing and to enhance the quality of BLs and business licensing regulations. Regulations on business licensing have been drafted and promulgated without a firm scientific and practical basis, so subjectivity and the "incorporation" of vested interests in the legal documents are unavoidable.

### 3. Policy recommendation

Policy recommendations for further improving the regulatory reform can be divided into two groups. The first consists of measures to improve the quality of the system of business licensing regulations. The second is to strengthen the legal framework and enhance the capability of implementing agencies in order to maintain sustainability of achievements made and the quality of upcoming regulations.

Regarding the first group of measures, it is necessary to abolish BLs that contradict the Enterprises Law and are unnecessary<sup>13</sup>, while supplementing and amending regulations towards the 168 remaining BLs. Supplements and amendments should be made in the following direction:

- Specifying clearly the business activities subject to administration by business licensing, and the validity of the BLs;
- Removing discrepancies in content amongst laws, ordinances, decrees, circulars and decisions stipulated by ministries on BLs;
- Removing licensing conditions and files that are unnecessary, overlap or not in line with licensing conditions and files

stipulated by laws, ordinances and decrees; and

- Specifying and streamlining conditions/criteria for all BLs, ensuring that they can be quantified, interpreted and applied uniformly. Conditions should be reasonable and efficient in terms of protecting the public interest.

Application files should (i) be qualitatively specified and standardized in terms of formality and contents; (ii) clearly define a "valid file"; (iii) and abolish or minimize requirements for "confirmation", "certificate", "acceptance", "agreement", "giving opinion in written form", etc. in component documents in application files.

Other issues include shortening licensing time limits; defining consistently that the licensing time limit is taken from the date of file submission<sup>14</sup>; providing concrete time limits required for file supplementation and amendment; specifying a *single time* in supplementing and amending overdue files and if there is no requirement for file supplementation and amendment then this means the submitted file is legitimate; defining a concrete location for receiving application files and stipulating that application files can be submitted at any time within working hours<sup>15</sup>; when business licensing is appraised by several agencies, the contents and modalities of appraisal by each agency and the timing and conditions for appraisal should be clearly specified, and; at the same time, confirmation that if an appraisal is not conducted after the due date then a BL is taken to have been issued.

The organization of business licensing issuance and the monitoring of its implementation in the post-issuance period should be completely decentralized to provincial people's committees. Ministries should maintain licensing issuance and

administration of sectors/areas that are closely related to the macroeconomic balance and stability and national security.

Lastly, other basic contents that are absent in regulations for each type of BL, especially the objects, processes, procedures and modalities for appeals and complaints of applicants, should be included.

Regarding the second group of measures, it is necessary to establish an affiliate/unit that is fully competent in, capable of and responsible for regulatory reform<sup>16</sup> in order to maintain the success and efforts in reforming the licensing system, at the same time extending the reforming of regulations on business activities and enterprises. In this regard, it is proposed to consider and continue to apply the recommendations of the Ministry of Planning and Investment in the draft decree on state administration for business licensing, which were submitted to the Prime Minister in 2006. □

### Notes:

- 1 For example, Decision 19/2000/QĐ-TTg dated 3 February 2000 from the Prime Minister on the abolition of business licenses, which does not comply with the Enterprise Law; Decree 30/2000/ND-CP dated 11 August 2000 from the Government on the abolition of some BLs and the transformation of some BLs into conditional business. Decree 59/2002/ND-CP dated 4 June 2002 from the Government on the abolition of some BLs and the replacement of some BLs with other management modalities.
- 2 There are three tools regulating the relationship between competent agencies and investors/businesses with different degrees of intervention: "notifying", "registering" and "licensing". Notifying means that businesses only notify standard content to competent bodies and need not obtain approval or acceptance. Registering refers to confirmation from competent bodies in regards to the rights and interests of individuals and enterprises as stipulated by law. Licensing means that competent bodies review and appraise

- application files and, based on current regulations, grant permission/approval to individuals/enterprises (licensees) to practice one or some activities. As such, if there is no written approval from the competent bodies those activities will not (yet) be permitted. Although not classified as "licenses" and labeled differently, these papers are *de facto* licenses.
- 3 Again, this fact shows that reviewing and re-evaluating BLs in each individual legal document according to standardized procedures as stipulated by law would not bring about the desired effectiveness, and cannot prevent or mitigate the promulgating of unnecessary provisions (inappropriate in terms of sectors and areas) in general and BLs in particular.
  - 4 For example, Article 1, Decree 11/2006/ND-CP stipulates that "cultural activities and cultural business activities shall target at formulating an advanced culture, with the prominence of national identity; educating people in a healthy lifestyle and highly-educated ethics; inheriting and promoting the national traditions of humanity and good customs; enhancing the people's knowledge and artistic perceptions; enriching the people's spiritual lives; avoiding aggression and alleviating cultural items with 'poisoning' content; and contributing to accelerating the country's socio-economic development".
  - 5 A license is considered to be sufficient if it contains clear and concrete regulations on the following ten items: (i) name; (ii) legitimacy; (iii) object of licensing; (iv) business activities subject to administration by licensing; (v) entities to be licensees; (vi) files, procedures, conditions for initial licensing; (vii) valid time of license; (viii) file, procedures and conditions for supplementing, amending or extending license validity; (ix) revocation of licenses, including revocation context, competent agency deciding on revocation, and revocation procedures; (x) processes and procedures of appeal, modalities of appeal settlement or administrative appeal in regard to cases where licensing is refused.
  - 6 Some enterprises have complained that in many cases application files with grammatical errors were considered invalid and returned to them.
  - 7 Some licenses are non-extendable and can only be reissued under the same procedures as the original issue.
  - 8 If individual and organization applicants are subject to administration by central bodies, licenses are issued by ministries. If applicants are under localities, then the licenses are issued by the provincial Department of Planning and Investment.
  - 9 All licenses in the posts and telecommunications sector are issued by state agencies (the Ministry or General Department).
  - 10 For example, a BL for expediting and exploiting mines.
  - 11 In some cases, licensing applications and issuance are not merely the acts of legal execution and abidance but are acts of license trading by stakeholders.
  - 12 Members of the Organization for Economic Cooperation and Development (OECD) have long reformed their system of BLs and licensing regulations as a focal part of institutional reform and improvements to the business environment.
  - 13 To date, there were 122 BLs abolished, of which 68 were totally excluded and the remaining 54 were abolished and transferred and administered by other management modes such as "notification" or "registration".
  - 14 This has been regulated by Enterprise Law (Item 3, Article 12, Enterprise Law 1999 and Item 2, Article 15, Enterprise Law 2005). Reality shows that that regulation has significantly contributed to shortening business licensing time limits, minimizing time consumed and the costs of market entry for the businesses. The contribution can be observed since 2000.
  - 15 The file receipt time should be specified as being on working days, or even during specified working hours (in the morning or evening).
  - 16 There is a Department for Regulatory Reform of OECD and state agencies responsible for regulatory reform in its members. For over thirty years members have always taken regulatory reform into account, particularly that of business licensing, as an integrated and focal part of enhancing the competitiveness of the national business environment. Australia, the Republic of Ireland, South Korea, and Singapore have been amongst the most successful in regulatory reform, which has significantly contributed to sustaining high and stable economic growth in these countries.