



TRAINING MANNUAL ON POLICY ADVOCACY  
AND MEMBER CONSULTATION  
FOR  
VIETNAMESE BUSINESS ASSOCIATION

**AUGUST 2010**



MUTRAP IS FUNDED BY THE EUROPEAN UNION  
JOINTLY IMPLEMENTED BY THE MINISTRY OF INDUSTRY AND TRADE OF VIETNAM



# CONTENTS

<b>PREFACE</b>	5
<b>PART I – BUSINESS ASSOCIATIONS AND POLICY ADVOCACY</b>	7
I. VIETNAMESE BUSINESS ASSOCIATIONS	8
II. THE STATE’S REGULATIONS ON THE ROLE OF VIETNAMESE ASSOCIATIONS IN POLICY ADVOCACY	8
III. BUSINESS ASSOCIATIONS AND POLICY ADVOCACY, OPINION CONTRIBUTION FOR POLICY MAKING	10
1. What is policy advocacy?	10
2. What policy advocacy is not?	11
3. The role of business association	11
4. The important of policy advocacy	11
IV. BUSINESS ASSOCIATIONS AND MEMBER CONSULTATION ACTIVITIES	13
<b>PART II - THE PROCESS AND SKILLS USING FOR POLICY ADVOCACY AND CONTRIBUT- ING COMMENTS.</b>	15
I. INTRODUCTION OF ECONOMIC AND TRADE POLICY	16
1. Authorized agencies and types of legal documents relating to economic and trade policy	16
2. The contents of policy groups	17
3. The impact of policy	18
4. The process of promulgating policy	18
5. Policy making process	19
II. FORMS OF POLICY ADVOCACY AND OPINION CONTRIBUTION	20
1. Participating at the stage of policy initiatives	21
2. Participating in the Drafting Board and Editing Group	22
3. Policy advocacy through comment for the draft	23
4. Other forms	25
III. SKILLS USING IN POLICY ADVOCACY AND GIVING COMMENTS	23
1. Doing investigation, doing enterprise surveys and doing research of concerned issues	25
2. Using international methods which are sucessfully institutionalized in Vietnam	26
3. Organizing public-private dialogues and dialogue with government agencies	29
4. Sending written comments on drafted policies and regulations	32
5. Taking avantage the role of the press	33
6. Preparing position papers representing business associations’ opinion	34
7. Business associations’ information channels (websites, bulletins)	34

<b>PART III – PROCESS AND SKILLS USED FOR BUSINESS ASSOCIATION’S MEMBER CONSULTATION</b>	36
I. GENERAL PRINCIPLES AND FORMS OF MEMBER CONSULTATION	37
1. General principles	37
2. Different levels of involvement	38
II. THE PROCESS OF MEMBER CONSULTATION	39
1. Planning and preparation	39
2. Providing information for Consultees	42
3. Consulting with members and analyzing the result of the consultation	42
4. Using the Results of Consultation to Develop Services	42
5. Providing Feedback	43
6. Evaluation of Consultation	43
7. Other issues	44
<b>ANNEX</b>	47
Annex 1: Policy procedure and the business association's capacity for policy advocacy	48
Annex 2: Legal Document Draft Review and Comment Criteria Table currently used by VCCI	51
Annex 3: Practical experience in policy advocacy of some business associations	54
Annex 4 - EC's Principles and Minimum Standards in Public Consultation	56
Annex 5 - Canadian Guiding Principles for Public Participation	60
<b>REFERENCES</b>	62

# PREFACE

*Policy advocacy and contributing opinions for the policy making and policy implementation process is one of the most important tasks of business associations. This has great significance in improving certain public policies and other promulgated legal documents in terms of quality, efficiency, and their feasibility during the implementation process. It is also an important “public good” that business associations need to provide its members when performing its functions to protect their members’ rights and as well as to represent their business community’s voice.*

*As part of the “Multilateral Trade Assistance Program III” (MUTRAP III), EuroCham has been assigned by the European Commission to a project “Capacity building on trade policy for Vietnamese Business Associations”. The project aims at strengthening the capacity of Vietnamese business associations via some activities such as: Training Needs Assessment, Training Manual Design, and Training of Trainers Course and workshops delivery for 8 business associations – official partner of EuroCham including VITAS, LEFASO, VASEP, Hanoi SME Association, Ho Chi Minh Youth Business Association, Handicraft and Wood Industry Association of HCMC (HAWA), VCCI Ho Chi Minh and Can Tho Business Association. Besides, a business information center will be established, along with one White Book on Vietnamese Business Association.*

*To develop and implement capacity building activities for members of business associations, we have carried out a training needs assessment (TNA) . Based on the TNA, our experts have designed a training manual with 4 topics: (1) policy advocacy and member consultation; (2) better Strategic Management and Administration; (3) How to provide effective services to members; (4) skills to write project proposals and press releases.*

*This training manual is compiled to serve the training activities and sharing experience in policy advocacy and member consultation to business associations. It can also be used as a reference when business associations perform this function in reality.*

*We hope that the information in this training manual will be useful for readers, especially for Vietnamese Business Associations.*

**Alain Cany**  
**Chairman**  
**European Chamber of Commerce in Vietnam**  
**August, 2010**





**PART I**

**BUSINESS ASSOCIATIONS  
AND POLICY ADVOCACY**



### I. VIETNAMESE BUSINESS ASSOCIATIONS<sup>1</sup>

There is no official and accurate statistics on the number of business associations in Vietnam from state agencies. In reports released by Ministry of Home Affairs, which is responsible for managing associations, there are approximately 300 associations operating nationwide, in which 70 associations operate in the economic field, others operate in arts, international relations, social, charity, sports. There are over 2.150 associations operating within the scope of provinces, cities directly under the Central Government.

However, based on a VCCI's rough estimation, by the end of 2009, there have been about 300 business associations all over the country. Among these, business associations are mainly located in big economic regions of the country such as Hanoi, Ho Chi Minh City (HCMC), Ba Ria-Vung Tau, Da Nang, and Hai Phong city. Business associations which are located in Hanoi and Ho Chi Minh City account for 42% of the total number.

The number of business associations increases rapidly after the Decree 88/2003/ND-CP 2003 by the Government on managing the establishment, operations, and management of associations took effects<sup>2</sup>. According to estimation, before 2003 there were only about 50 business association established.

Previously, business associations were mainly set up by the government, and their members were state-owned enterprises. Currently, there are many private enterprises having associated and established their own business association to satisfy their demands in business activities.

In Vietnam, there are various types of business associations. In terms of business activities, there are two types of associations: (i) Multi-business-line business association such as VCCI, Vietnam Cooperative Association, Commerce and Industry Association, Vietnam Young Entrepreneurs Association, and (ii) Business Association of single-business-line such as Vietnam Coffee and Cocoa Association, Vietnam Food Association, Vietnam Association of Banks.

Categorized by operating area, there are 2 types of associations: (i) National business associations such as Vietnam Automobile Transportation Association, Vietnam Textile and Garment Association, and Vietnam Plastics Association; and (ii) Local business associations such as Haiphong Road Transportation Association, HCMC Association of Garment and Textile Embroidery – Knitting, and HCMC Plastics Association.

### II. THE STATE'S REGULATIONS ON THE ROLE OF VIETNAMESE ASSOCIATIONS IN POLICY ADVOCACY

There has been significant change in the role of business associations in the socio-economic life. In the planned economy, the government played an important role in every aspect of the society. The role of business associations at that time was an "extended arm" of the Government, implementing all targets and plans of the Government. Not only small quantities and bureaucratic organizational structure, hardly could associations promote its role in the "top-down" policy making process during that period.

(1) Most of this part is based on *Business Associations as Policy Advocates*, GTZ – VCCI, 2005.

(2) Replaced by Decree 45/2010 dated April 21 2010



When the management mechanism was shifted into market-oriented, many complicated socioeconomic relations appeared, the government could not be maintained its “omnipotent” role as before. The participation and supervision of other social forces, associations are essential in policy making process. Interest groups in the society also need to protect their own rights and benefits.

The year 2002 is one turning point for all associations in Vietnam when the role of associations in policy advocacy was recognized by the Decision 22/2002/QĐ-TTg issued by the Prime Minister, allowing Vietnam Union of Science and Technology Association (VUSTA) review and evaluates government policies<sup>3</sup>. According to this Decision, VUSTA can perform advisory, review, and social assessment tasks which relate to policies, programs, projects in socioeconomic development, education and training, science, technology, and environment.

For business associations, the government promulgated important policies to encourage the participation of associations in building and improving policies, especially recognize the role of VCCI, on national business association “gathering and representing for the business community, employers and business association in Vietnam”<sup>4</sup>.

The roles of VCCI and other business associations are asserted in important Party documents. The Resolution of the 5th Plenum of the 9th Party Central Committee in 2002 in relation to continually renovating mechanisms and policy, and encouraging and promoting the development of the private economic sector (the 5th Central Resolution, for short) states the need to promote “the role of the Vietnam Chamber of Commerce and Industry and other business associations”<sup>5</sup>.

In 2005 this provision was codified in Decree 161/2005/ND-CP of the Government (dated 27 December 2005) that provides details and guidelines on the implementation of the Law on Promulgation of Legal Instruments. Article 27 of this Decree specifically defines the role of VCCI in the process of promulgation of legal instruments: *“With respect to draft project documentation and draft legal instruments in relation to the rights and obligations of businesses, ministers and heads of ministry-equivalent bodies, heads of offices directly under the Government that are in charge of drafting shall forward drafts to the Vietnam Chamber of Commerce and Industry for gathering enterprises’ comments thereon. Within the period of twenty (20) working days from the receipt of any draft project documentation or draft legal instruments, the Vietnam Chamber of Commerce and Industry shall solicit enterprises’ opinions, then make a report to the Ministry of Justice, the Prime Minister’s Office, Ministries, ministry-equivalent bodies and offices directly under the Government which are in charge of drafting.”*<sup>6</sup>.

In accordance with Decree 161, the role of Vietnamese business associations in the law-making process of the State of Vietnam is officially acknowledged. The obligations of VCCI are also specified by the Government in the existing law-making process. However, very few state agencies see VCCI’s role as anything more than a formality.

(3). Decision No.22/2002/QĐ-TTg dated January 30 2002 of the Prime Minister on activities for consulting, critic and society appraisal of the Vietnam Union of S-T Associations.

(4). Article 1 VCCI’s Charter. This Charter is approved by the Fifth VCCI National Congress on April 27 2003 and by Prime Minister in Decision 123/2003/TTg dated June 12 2003.

(5). The full text of this resolution and other resolutions of the Party can be viewed at the website:[www.dangcongsan.org.vn](http://www.dangcongsan.org.vn)



The present regulations only require state agencies to solicit enterprises' comments prior to the promulgation of legal documents. There is still an absence of provisions with regard to the policy advocacy process performed by associations and businesses (for example, operation regime, fund raising and information disclosure).

### **III. BUSINESS ASSOCIATIONS AND POLICY ADVOCACY, OPINION CONTRIBUTION FOR POLICY MAKING**

Policy advocacy and contributing opinions for policy and legal documents are some important activities of business associations. Policy advocacy can be actively performed by enterprises to legal documents, policies directly affecting the business community, especially member enterprises. It can be performed when the business associations are requested by government agencies and organizations responsible for drafting policies. In some cases, member enterprises can foster the active participation of the association in policy advocacy to protect their members' rights. Contributing opinions to the making process of policies can be done through other methods such as public and private dialogue, government and enterprises dialogue, or in written forms.

#### **1. What is policy advocacy?**

Policy advocacy is used with the aim to influence and change specific public policies. Those policies might include laws, regulations relating to trade, labor, transportation, finance, taxes, and other business-related fees. In addition, there are court decisions, administrative decisions and orders, and other administrative procedures. In other words, public policy advocacy involves speaking out in favor of and gathering support for particular positions concerning specific public policies. The position might be to approve, repeal, reject or amend a said policy. Advocacy, especially public policy advocacy, can be challenging. Because many public policies directly affect business activity, the business communities need to make its voice heard so that they can improve certain public policies, ultimately the business environment.

Crucial issues to enterprises include regulations concerning their business activities and business environment, for instances:

- Set up business: Creating favorable conditions for the registration, establishment of business (particularly small and medium enterprises), credit and capital, assistance in business establishment.
- Corporate governance: corporate management, property rights, labor issues, labor costs, safety regulations, finance, tax, transportation.

Competition in the economy: competition and antitrust, contract enforcement, technology development, trade rules.

#### **2. What policy advocacy is not?**

Understanding what policy advocacy is not is important as understanding what it is. From the

*(6). The full text of this resolution and other resolutions of the Party can be viewed at the website: [www.dangcong-san.org.vn](http://www.dangcong-san.org.vn)*



perspective of business associations, public policy advocacy is geared towards creating a hospitable business climate for all its members. It is not designed to:

- Obtain preferential treatments for one enterprises or groups of enterprises
- Solve problems concerning members' day-to-day business activities. (If, however, daily obstacles are indicative of a larger problem plaguing the business community at large, then public policy advocacy is warranted. In such cases, special attention needs to be given to attack the real cause as opposed to the symptom.)
- Provide members with daily problem-solving services related to conducting routine business transactions or settling disputes between members and the government. To resolve such matters, members should obtain the services of lawyers, debt collection, consulting and so forth<sup>7</sup>.

### 3. The role of business association

- From the perspective of business community, the opportunity to participate in policy issuance process not only ensures the transparency and anticipation requirement but also influences the policy in the way that benefits enterprises. Vietnamese business associations – organizations gathering enterprises – will be the one that best perform this responsibility:
- Business association represents member enterprises to speak out difficulties, problems as well as provide recommendations on government policies, attitudes, behaviors of authorities. That each enterprise directly performs this function will be sometimes risky. Vietnamese enterprises often find it difficult and hesitate to criticize certain public policy or one government agency
- Different from the opinion from individual enterprise, the business association's opinion represents the common voice of different enterprises and is of higher value to policy makers. In another perspective, the Government finds it difficult to listen to the voice of every business, because of time limitation and cost expensed.
- Normally, business association has much information of its own. Thus, instead of reflecting individual, specific issues of each enterprise, the opinion from business association can reflect the current situation of the whole industry or economic sector.
- Business association often has a team of experts having experience in dealing with government agencies. As a result, cooperation with those agencies will be much easier.

### 4. The important of policy advocacy

#### ***Making the voice of business heard***

Effective advocacy makes crucial, policy-relevant information widely available to several key audiences that influence public policy. These include:

- **The media** who benefit greatly from business associations and think-tanks' commentary and criticism. Journalists gather a great deal of their information from official government

(7) *How to Advocate Effectively: A Guidebook for Business Associations, The Center For International Private Enterprise, January 2003*



- sources, but they are better able to analyze this information once they have listened to the alternative voice of business associations and think tanks.
- **Lawmakers** who need sound information because they make policy decisions that affect their citizens' lives. These citizens, in many cases, will decide on whether or not to re-elect these same legislators. Sound policies foster a favorable business environment, advance market-oriented reforms and benefit society as a whole. A hospitable business climate attracts investment and stimulates entrepreneurship which, in turn, generates economic growth and well-paid quality jobs. All citizens can take advantage of these new opportunities.
  - **State's officials, civil servants and staffs** who, when provided with solid information about the underlying objectives of specific policies and regulations, are able to do a better job in implementing and enforcing policies and regulations.
  - **The general public including business association members** who can influence policymaking decisions. Having access to key information about policies under consideration educates business association members and the public on policies that affect them and helps them know what elected officials are doing or failing to do

### ***Strengthening business associations***

Policy advocacy is also vital to a business association's survival and growth. Business associations aim to serve members. To this end, they offer many services such as business education and training. Yet these efforts may be in vain if laws and regulations make it very difficult to be a successful entrepreneur. In these circumstances, policy advocacy is needed in order to eliminate these barriers so that association members' businesses can survive and prosper.

### ***Characteristics of business associations with successful advocacy initiatives***

Business associations that advocate effectively are known to:

- **Articulate members' concerns as a unified voice** thereby quickly attracting policymakers' attention
- **Meet regularly with decision-makers** to discuss key policy issues and to provide well researched publications
- **Establish regular channels of communication and close working relationships with government officials**
- **Use these channels to promote members' interests** by influencing the pace and direction of specific laws and policy proposals. Moreover, through these activities, policymakers may begin to consider business associations as key participants in the policymaking process and as providers of sound policy-relevant information. (In some countries, thanks to CIPE-funded business association advocacy projects, policymakers automatically turned to business associations for policy advice.)
- **Engage in both pro-active and reactive advocacy to their members' benefit.** By communicating regularly with policymakers, business association representatives can help to set the policy agenda by voicing concerns and proposing specific policies they endorse as opposed to only reacting to others' proposals. Moreover, frequent contact also helps business associations to keep abreast of imminent and current policy proposals so that they can thoroughly examine the issue and prepare a sound policy response



- **Help prevent frequent changes to the business-related legal and regulatory framework** which frighten investors and hinder entrepreneurship
- **Monitor the implementation of policies** to ensure that enacted provisions of interest to their members are carried out fairly, consistently and swiftly thereby strengthening the rule of law.

By actively engaging in advocacy, a business association becomes an important player in the policymaking arena and strengthens itself. Successful advocacy raises an organization's profile amid policymakers and enhances its reputation within the business community as a useful membership service provider. This increases contributions from existing members and attracts new members. With more funding, business associations can devote more resources to advocacy and thereby enhance advocacy strategies and tactics. A larger membership means more voting constituents and thus more clout amid elected policymakers. In short, advocacy equips business association members with the necessary information, motivation and tools with which to protect and improve the business climate and thereby service its members.

#### IV. BUSINESS ASSOCIATIONS AND MEMBER CONSULTATION ACTIVITIES

In order to perform well public policy advocacy, specifically to comment on government agencies' policies and legal documents, business associations should organize activities to consult its members. The implementation of legal documents or public policies in reality often encounters many shortcomings or inefficiency, which creates difficulties in the production, operation of member enterprises. Business association, with its role and obligation, need to realize, research on those difficulties, problems, and organize dialogue or propose to authorize agencies to amend or repeal unreasonable articles. The most effective way for associations to fulfill this task is to consult member enterprises for opinions.

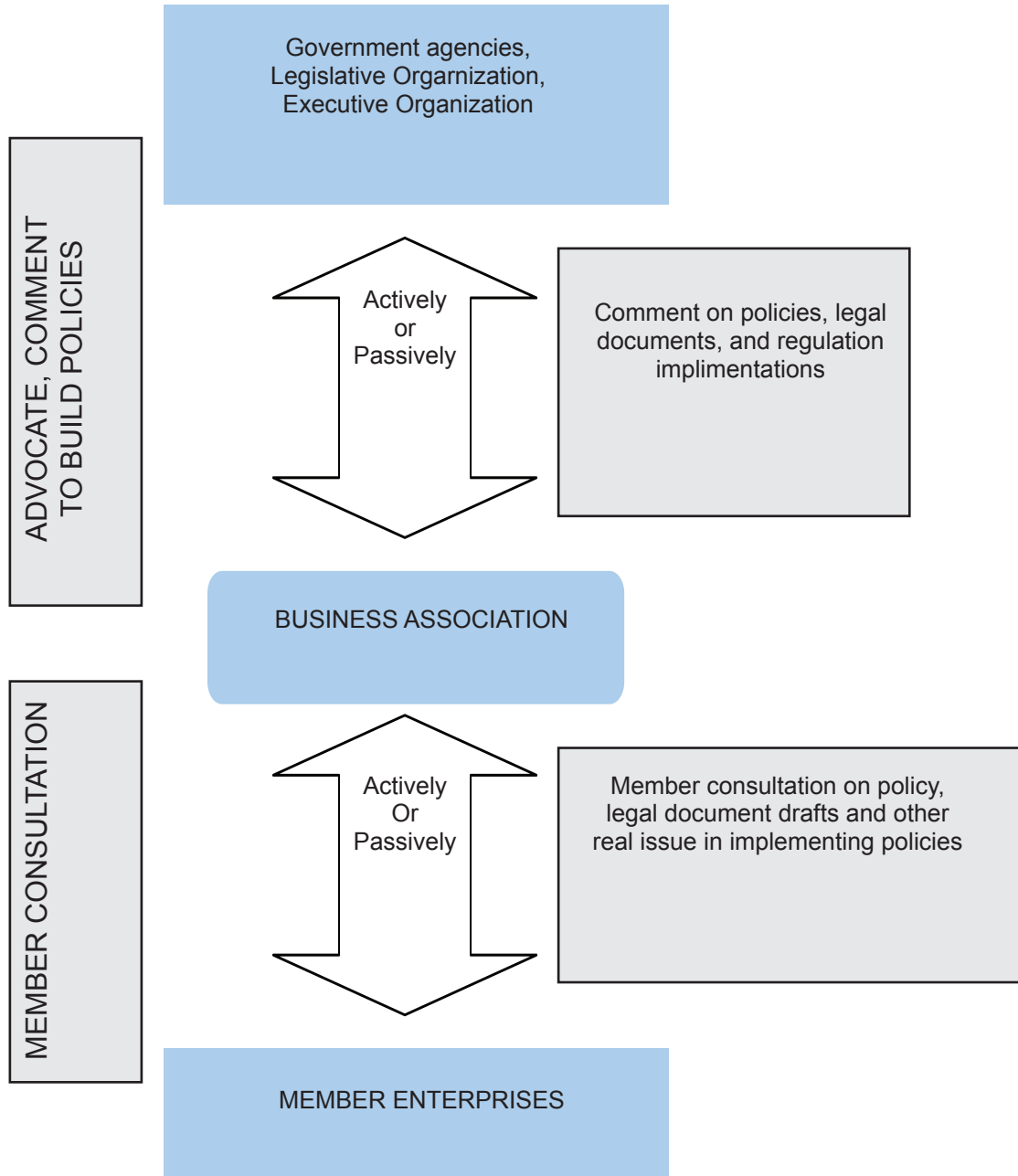
In some circumstances, before issuing legal documents or one policy related to enterprises, some government agencies have actively consult enterprises to ensure that the policy to be issued in accordance with reality or the benefits of enterprises subject to the effect of the policy are considered.

Member consultation is considered as one effective tool to advocate public policy and protect members' rights.

Some forms, procedures, and specific skills serving the public policy advocacy and member consultation will be presented in following parts of this report.



Figure 1: Policy advocacy and Member Consultation of Vietnamese Business Associations





## **PART II**

# **THE PROCESS AND SKILLS USING FOR POLICY ADVOCACY AND CONTRIBUTING COMMENTS.**



In business law system as well as in activities of economic management in Vietnam. “economic/ trade policy” is frequently mentioned. However, the legal definition of “economic/ trade policy” does not exist. A specific process of “economic/trade policy Formation” also has never been mentioned yet.

In some cases, some policies are defined relatively clear in resolutions enacted by the Communist, the National Assembly or the Government on macroeconomic issues or when policies are implemented to handle particular economic issues in certain periods. However, in general, policies are not expressed in detail and determined by particular base.

Policies, though expressed under whichever form, must be “transformed” into regulations for creating full power and achieving desired impact to the stakeholders in reality (ie. the provisions in the legal documents with different legal value).

Thus, the consideration of economic policy formation in Vietnam below will primarily focus on the process of drafting and promulgating legal documents which related to business’s investment and operation. Other ‘pure” economic policies also be briefly mentioned. In addition, recommendation about role and methodology of business associations to effectively participate in the economic policy formation process are also implemented.

**I. INTRODUCTION OF ECONOMIC AND TRADE POLICY**

**1. Authorized agencies and types of legal documents relating to economic and trade policy**

In current law and policy system, economic and trade policies are prepresentd in the following documents in ascending order:

**Groups of legal documents**

Authorized agencies	Types of legal documents
National Assembly	Constitution, Law, Resolution
Standing Committee of the National Assembly	Ordinance, Resolution
President of the State	Order, Decision
Government	Decree
Prime Minister of the Government	Decision
Minister, Head of Minister-level Agencies	Circular
Justice Council of the Supreme People’s Court	Resolution
President of the Supreme People Court; Director of the Supreme People Procuracy	Circular
General State Auditor	Decision
Standing Committee of the Nation Assembly, Government and Central socio-political Organizations	Joint Circular
People’s Council	Resolution
People’s Committee	Decision, Direction



Other documents (which are not legal documents but contains policy)

Authorized agencies	Types of legal documents
Party agencies (Central Committee, Provincial Committees )	Congress's Political Reports, and Resolutions.
Negotiating Delegations (International trade negotiation)	Views and the results of the negotiations (which are the framework for domestic regulations on trade)
Prime Minister and the Government's General Office	Documents containing the views of the Prime Minister

In fact, the content of policy does not depend solely on decisions of issuing authorities, but it can be adjusted and modified by many stakeholders in the formation process. Thus, policy advocacy of business associations must gear to the following beneficiary:

- Agencies in charge of issuing policies ( and organizations which are not issuing bodies, but has authority to assign other bodies to draft policy documents )
- Agencies in charge of drafting policies
- Agencies in charge of reviewing policies (including organizations responsible for examining and verifying policy initiatives and drafting policy documents )

## 2. The contents of policy groups

Among documents contain policy, there are three groups in which economic policies are directly mentioned (only pure policy, means that policies are not being specified into rights and obligations). These "pure policy" group includes:

- Documents of the Committee, Resolution of the Party
- Resolutions of the National Assembly
- Decrees of the Government and
- Decisions of the Prime Minister<sup>8</sup>

For the other cases, policies are reflected in regulations specified on rights and obligations to business enterprises and the State administrative agencies. These forms of policy mainly reflected in the following type of documents:

- Laws, Resolution of the National Assembly
- Ordinances of the Standing Committee of the National Assembly
- Decrees of the Government

(8) From regulations of Law on Promulgation of Legal documents 2008 about the content, we can see that:  
 Article 11.3: Resolution of the National Assembly are enacted to define the duty for developing economy- society  
 Article 14.2 : Resolution of the Government regulated specific solutions for implementing policies in field of economy, society, national defense, security, finance, monetary, State budget, tax, nation, religion, culture, medicine, education, science, technology, environment, rights and obligations of civil and other medicine, education, science, technology, environment, rights and obligations of civil and other issues under the Government's management;



- Decisions of the Prime Minister
- Circulars of Minister, Head of minister-level agencies

### 3. The impact of policy

Policy is the backbone of regulations and administrative methods toward different groups operating in the economy that impact on business associations' interest. Thus, it is important to stand on the perspective of business association to comment for the formation process.

However, in fact, the impact of policy on enterprises, association is not similar:

The “**pure policy**” group has low impact and the participation of this group is ineffective because:

- The content is general, almost are direction characterized by opinion, not specifying the rights and obligations.
- Some policies are made under form of purpose, simply target, not have much meaning in practices.

Group of legal documents (policies are specified) have bigger impact on enterprises and associations in comparison with pure policy due to the following reasons:

- Legal documents contain the rights and obligations on specified objectives, which have directly impact on business activities ( mainly documents at central level <sup>9)</sup>)
- Some legal documents even not based on any specified policy but still contain regulations which directly influence on enterprises, thus, if only focus on policy, the important issues might be ignored.
- Some rare cases of policy for legal documents should have been prepared before but to ensure legal document compliance with these policies is still limited. Therefore, the best way is advocacy must gear directly to the regulations of the draft.

From enterprises' perspectives, the content of policy is not the most important, but the rights and obligations of enterprises (member of association, business community) accompany with the policy, the benefit can be obtained and the influence may be faced from implementation of the policy. Besides, the policy advocacy effectiveness also needs to be taken into consideration.

### 4. The process of promulgating policy

**For legal documents:** Mechanism to promulgate legal documents has been institutionalized in many documents (Law on Promulgation of Legal documents 2008 and Law on Promulgation of Legal documents enacted by People's Council, People's Committees). The associations participate in the issuing process are recognized in various forms, especially in the right of contributing comments.

**For other groups:** Lack of regulation on the issuing mechanism (except for the internal pro-

*(9) According to Laws on Promulgation of Legal document 2008 (Chapter II), can understand as right of enacting policy, regulations on rights and obligation of the State- level objectives. The State- level agencies at local only enact regulations which serve for the implementation of policies and ensure managing daily administrative activities at local.*



cess), thus, transparency is limited. Collecting ideas of association and the effectiveness of policy advocacy, therefore, mainly based on subjective opinions, level of openness of issuing organizations.

With different characteristics of the two policy groups, obviously, it is essential for associations to focus more on the group of legal documents.

## 5. Policy making process

The policy making process<sup>10</sup> (contain pure policy or policy specified in rights and obligations) are assigned in the following regulations:

- Law on Promulgation of Legal documents and Instructions to implementation (regulations on the process of building legal document) Law on Promulgation of Legal documents and guideline for implementation (regulations to construct legal documents of the central agencies)
- Law on People's Councils and People's Committee and guideline for implementation (defined on the process of building legal documents of State agencies in the local).

Under these regulations, participation of the association is different toward different legal documents.

Basically, the major policy issues (including rights and obligations of businesses, associations), are in Laws, Ordinances, Resolutions of the National Assembly, Decree of the Government and Decision of the Prime Minister. Thus, the report will summarize the formation process of above documents and evaluate the capability of business associations in policy advocacy corresponded with in each period.

The process and the business association's capacity to advocate are described in detail in the Annex 1.

The process of promulgating Decree of the Government and the Prime Minister is similar to the process of promulgating Laws, Ordinances, and Resolutions of the National Assembly in general, but more simple. There will not include steps 8 to 10 as in the Annex 1.

## II. FORMS OF POLICY ADVOCACY AND OPINION CONTRIBUTION

Policy advocacy should be close to the process of policy promulgation as mentioned below:

- Participate in the stage of policy initiatives
- Participate in the Drafting Board and Editing Group
- Comment on the draft of legal documents
- Other forms

*(10) Policy making process regulated in the document which is not legal documents (such as Party Congress Resolution) do not belong to the scope of adjustment of Law on Promulgation of Legal documents, it belongs to regulations of related associations, applied internally. These processes are not examined here.*



Here is some analysis of the advantages and disadvantages of each form above and suggestions related for the associations:

### 1. Participating at the stage of policy initiatives

Policy initiatives are proposals for legislation on certain issues (mostly problems have arisen in practice but not being adjusted in legal documents, or issues were adjusted but still not suitable in practice). Policy advocacy at this stage is proposing policy initiatives and persuading the authorities to accept the initiatives and build corresponding legal documents (new documents or modified existing documents).

#### Types of Documents:

The association can contribute policy initiatives for: (i) Laws, Resolution of the National Assembly; (ii) Ordinances of the Standing Committee of the National Assembly; (iii) Decrees of the Government.

#### Mechanism of Policy Advocacy:

For Laws and Ordinances' initiatives: Participate indirectly through proposing initiatives with authority organizations (mainly are the Vietnam Fatherland Front, Government, Committee of the National Assembly and Member of National Assembly<sup>11</sup>);

For Decrees's initiative: Participate directly (raising initiatives directly to the authorized organization responsible for building Decrees including Office of Government, Ministry of Justice).

#### Advantages:

- The Associations are active in proposing policies consistent with their objectives and business activities. (Should add any document? Should amend any document?);
- The Associations are active in ideas, policy directions for new legal documents;

#### Disadvantages:

- The Associations do not have the right to give policy initiatives directly, the initiatives are given indirectly through other entities, thus, the effectiveness and feasibility is low.
- Law initiatives require sufficient arguments about the need and specific objects to issue the documents. The adjusting scope of regulations, opinions, basic policies, main contents of the documents and estimated resources must be clear. Also need to create a favorable condition for drafting and assessing the impact of regulations. Therefore, it requires huge efforts and investment of the Association (especially when the Associations have no right to propose initiatives directly to authority organizations. The association, thus, has to convince these organizations first);

*(11) In case representatives of the associations are representatives of the National Assembly (such as VCCI, Vietnamese Small and Medium Enterprise ) can directly contribute initiatives through their representatives.*



- Original opinions and policy initiatives are not always guaranteed to be in compliance and accuracy with the content of draft in the future. Thus, the effectiveness of policy advocacy might be limited.
- In fact, many associations do not succeed in advocating policy initiatives.

## 2. Participating in the Drafting Board and Editing Group

Participating in the Drafting Board and Editing Group is kind of direct policy advocacy under which the Association sends their representatives to take part in the Drafting Board and Editing Group to raise ideas for issues relating to their industry. The objectives of the association will be reflected in the the representatives' opinions.

### Types of Document:

In principle, as stipulated in the Law on Promulgation of Legal Documents, 2008, the Association can participate as related organizations in the Drafting Committee to the following documents: (i) Laws and Resolutions of the National Assembly, (ii) Ordinance, Resolution of the Standing Committee of the National Assembly, (iii) Decree of the Government, and (iv) Circular of Ministries, Minister-level Agencies.

### Mechanism of Policy Advocacy:

Policy advocacy is carried out directly through: the opinions and ideas of the association's representatives in activities of drafting and editing legal documents, propose draft (as member of the Drafting Board, Editing Group)

### Advantages:

- The views and objectives of the association can be put directly into the draft and other relevant reports;
- The association have opportunities to protect their opinions (argue and explain) during the process of promulgation (in front of other beneficial groups, Examining Agency, Investigating Agency and Promulgating Agency);
- The associations have favour conditions to monitor the whole drafting process.

### Disadvantages:

- The authorized agencies decide member of the Drafting Board<sup>12</sup>, thus, it is not guaranteed that the associations always have representatives on the Drafting Board and Editor Group, even when the documents belong to the association files.
- The Association does not have status as representatives of ministries and agencies in the Drafting Board and Editing Group<sup>13</sup>, thus, the effectiveness of impact depends greatly

*(12) Law on Promulgation on Legal documents 2008 only regulates member of the Drafting Agencies are representatives of organizations, related association, experts, science (Article 31, 60). The standard to decide which organization is related organization, who are "science, expert" depend much on the assessment of the authorized agencies.*

*(13) In general, the Drafting Board in theory, the body in charge of drafting are the Editing group or smaller group (normally are experts of the chair agency).*



- on qualifications, reputation and enthusiasm of representatives.
- Some of the Drafting Boards do not work; the basic and important contents of the draft are decided by the Editing Group. Therefore, if the association have representatives on the Drafting Board only, the impact on the draft content of the Association will also be limited;

### 3. Policy advocacy through comment for the draft

Contributing ideas to the draft is other type of policy advocacy, which considered a separated stage in the whole process of drafting legal documents. Eventhough, there is still some limitation in practice; the method is more effective in comparision with other methods of policy advocacy.

#### Types of Document:

Gathering opinions from relating organizations, individuals directly affected by regulations is compulsory in the process of promulgating policies and laws. Therefore, methods for policy advocacy through comments on the draft can be made for all documents, in any stage of the drafting process (most focus on Step 6 - See Table The process of enactign laws and ordinances above).

#### Mechanism of Policy Advocacy:

Mechanism of the law: the Law on Promulgation of Legal Documents 2008 officially recognized the feedback form below:

- Suggestion directly to the Drafting Board;
- Send comments to agencies in charge ;
- Contribute ideas at seminars;
- Suggestion through the website of the Government and agencies in charge;
- Raising ideas through mass media;

Other mechanism: the Association may use other suitable mechanisms to bring their ideas to the Drafting Board. For example:

- To study/ assess impact of regulations on existing documents and in adjusted drafts, and then sending the result to the Drafting Board;
- Conduct a survey on opinions of the business and organizations as well as people affected and announced the results to the Drafting Board etc)

#### Advantages:

- Raising ideas is the official right of organizations and individuals, especially objects directly affected by regulations ;
- Gathering opinions and receive comments is a mandatory responsibility of the Drafting Board ;
- The process contains required procedures and mandatory conditions to ensure the right and the effectiveness of comments (for example, regulations on publishing the draft,



form of gathering opinions, required period, objectives receive and responsible for amending comment etc);

- Comment is directly carried out toward the Draft specific contents, thus, it results more advantages and effectiveness than to general policy;
- Comment is directly sent to the Drafting Agency, thus, opinion are absorbed quickly and accurately; the chance for comment transferred into written documents is higher;
- Activities to raise opinion at this stage usually done extensively with the participation of mass media. Therefore, taking advantage of public support and create pressure on the Editing Agency;
- Various forms of feedback suitable for condition and objectives (seminars, direct consultation, written comments, comments via website of government and drafting agency, comments via mass media).

#### **Disadvantages:**

- The Drafting agency still lack of feedback mechanism toward comments of the association (How comment are acquired? How to adjust the draft? Why?) resulting comments might be ignored. Therefore, the association need to closely monitor and put pressure on the Drafting Board in order to the comments are taken into account;
- Comments often focus on specific issues, which is appointed by the Drafting Board and might not really important to the association's operation, therefore, the Association must actively study and survey about the matter which is strongly affect association's activities to discuss and comment in the direction which suitable with the association's goal.
- The draft specific contents (versions) usually are changed; therefore, comment soon to become out of date. Closely monitor, and giving timely and regularly feedback is essential to solve this issues;
- The Drafting Board interest (in management aspect) is not consistent with the businesses interest (objects being managed), thus the adoption of agency's opinion might not satisfactory. In such cases, the associations need to have proactive solution to create pressure on the agencies in the adjusting process;
- Not only an association but many other interest groups involving in the advocacy process with suggestion suitable for their interest. Thus, adjusting the draft following different opinions can lead to inconsistencies and even contradictions between the draft contents and the associations's initial purpose. The Association must ensure that the comments must be conducted for interest of the whole group.
- An association is often seen a local interest groups that protect the interests of their group and their operating areas; thus, in order to contribute meaningful comments, the Association should improve quality of comment, and take consideration other interest groups to make a reasonable and acceptable suggestion.



## 4. Other forms

Policy advocacy includes all activities that an association can carry out to influence on the policy formation to ensure that regulations act for the interest of the association. Therefore, beside the official forms of policy advocacy above, other unofficial forms can be conducted to achieve those objectives.

In fact, effective forms of policy advocacy can be used including:

- *Indirect forms of policy advocacy:* creating public supportive opinion on relating policy (such as articles, discussions, interviews, debate, science talk etc on policies and laws are being drafted or executed);
- *Direct forms of policy advocacy:* providing information, and giving convincing arguments to agencies which in charge of drafting regulations (such as researchs are sent to the verifying agencies, representatives of the National Assembly responsible for the policy, holding meetings between experts and members, releasing publications for the National Assembly etc)

Forms of policy advocacy have common characteristics as follows:

- Use information as a primarily tool (providing indirect information on the media or directly sent to the authorized organizations and individuals)
- Can be used at any stage of the policy formation process, especially in the evaluation stage. Those forms can also be used in the implementation process to reflect shortcomings and push for changing policy if necessary;
- There is no specific mechanism for receiving, handling feedbacks from authorized organizations and individuals in the formation process;
- Depending on openness and activeness of organizations and individuals perform policy advocacy

### Advantages

- Advocating policy using information the form can bring good result in long term due to information can naturally affect the awareness and opinion of authorized organizations, individuals, ( provided information must be truthful and realistic);
- The form (especially through the mass media) can take advantage of pulic support, favor pulic opinion, which put pressure on the agency of drafting, promulgating legal documents, force the agency to fully consider the relateting issue;
- Individuals and organization participating in the policy formation process also need to receive information from multiple dimensions (especially for evaluation and verification agencies, which can be presumed objective because their interests not directly related to the process), so this tool more easily accessible;
- Advocacy can be performed flexibly for specific circumstances, not bound by time limits.

### Disadvantage

- Feedback to the association's comments is not mandatory, thus, the association can



- not sure their comments received and handled by the authorized agencies;
- Advocacy effectiveness depends much on the association's effort (to choose time, objects, form etc to advocate). However, not all association have sufficient resources to carry out these efforts;
- Public advocacy (on the mass media) can cause conflicts, dissent between associations with other entities and the associations must be ready to deal with these conflicts;
- Corruption might be happened when working directly with authorized entities in the formation process ( as fact in many countries around the world)

### III. SKILLS USING IN POLICY ADVOCACY AND GIVING COMMENTS

#### 1. Doing investigation, doing enterprise surveys and doing research of concerned issues

The enterprise surveys provide quantitative data will increase conviction for the business associations's recommendations to authorized agencies. The surveys represent the general voice of many enterprise members, avoiding reflecting only a small number of members in the industry. This is significant when the association is comprised of various members which have interests conflict in business activities.

In the process of conducting investigation and research businesses, some matters need to be noticed as follows:

The association's officer should be equipped with necessary skills such as designing survey questionnaires, talking samples, conducting surveys, data entries, data processing and making reports.

In general, there are some forms of investigative surveys such as: survey via mail (sent through post office), face-to-face interview, telephone interviews, survey via website, survey via e-mail etc. The objectives of investigative surveys are all members of business associations or a certain number of enterprises, representing the interest of the whole association. Depending on the investigation initial purpose, the scope of the survey could be limited for certain sectors and certain geographical areas. There are three common forms of enterprise surveys are mail surveys, direct interviews and other forms such as telephone interviews, via e-mail, website etc.

- Survey via mail has many advantages such as low cost, large investigated areas, independent and objective response. However, it also has disadvantages such as time consuming, low response rate in Vietnam, which make the result of the survey not objective and not represent for the association's interest as the whole. This form is relatively consistent with annual survey on business conditions, especially, when the objectives operating in many different areas. To increase the response rate and motivate quick response, this method can be carried out together with telephone method. The average response rate of survey via mail of Vietnam is from 10% to 20%.
- Face-to-face interview has advantages. Enterprise can exchange ideas and discuss issues deeply, find out causes and nature of the issues. However, this method often causes high costs (training cost, labor cost) and often stop at certain number of enterprises. This form is more suitable for the issues requiring deep discussion for certain number of enterprises.



- Other methods such as surveys via telephone, internet, website etc still not popular in Vietnam. Restrictions in using this method in Vietnam are 1) high cost: call charges relatively high in Vietnam, 2) low quality: quality of phone line is not guaranteed for long conversation, especially in remote provinces, 3) limited use and application of information technology: internet coverage and the capacity of using internet of business currently not meet requirements of the surveys via internet etc

When conducting the business survey, one of necessary skill is designing questionnaires, in which questions and selected issue must be simple, clear and easy to understand and respond etc.

## 2. Using international methods which are successfully institutionalized in Vietnam

There are two models successful applied in Vietnam to advocate policy: Regulatory Impact Analysis (RIA) and Standard Cost Model (SCM). These methods are used in most OECD countries and increasingly popular in many countries around the world. In Vietnam, RIA has been institutionalized and become mandatory requirements in the process of building legal documents (as stipulated in the Law on Promulgation of Legal Documents 2008). SCM also has been introduced, adjusted to suit for Vietnam conditions and widely introduced in the administrative reform program in Vietnam (Project 30). In the process of policy advocacy, business associations should consider the following procedures:

### 2.1. Regulatory Impact Analysis (RIA)<sup>14</sup>

RIA is the process of analysing all possible impacts may happen if there is any change in regulations and providing various options to deal with these change. The tool is used to examine:

- Potential impact- in society, environment, finance, economy.
- Official regulations such as legal documents (laws, ordinance, decree, decision, plans) and unofficial regulations such as guideline on implementation, programs enhancing public's awareness etc)
- Distribution of impact on different consumers, enterprises, workers in rural and urban area.

***RIA is conducted following the below steps:***

- RIA begins with consideration for the need of recommendation
- RIA will be conducted preliminary survey before the formal consultation and adding to consultancy materials
- RIA includes detail analysis, and contain the consultation result.

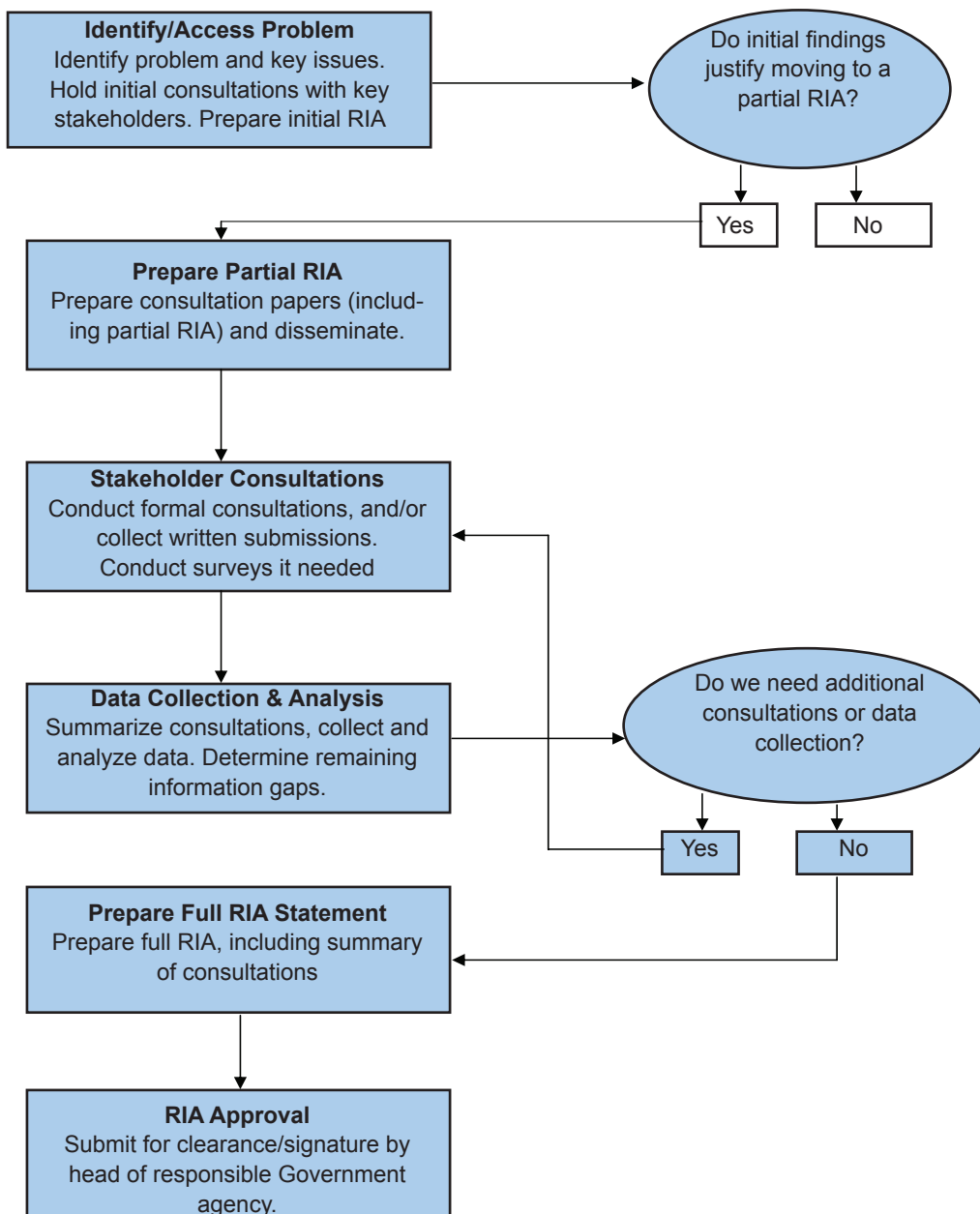
The main objectives of asking Ministries, Departments for constructing RIA is to ensure for higher quality of legal documents. Other key principles are to enhance the quality of legal documents includes:

- Only making regulations if necessary;
- Consider all possibility, including possibility of "Do nothing";
- Making reasonable regulations corresponding with risks of the issues if necessary;
- Reduce and make regulations simple as much as possible;

(14) Raymond Mallon and Le Duy Binh, *Effective Implementation of a Regulatory Impact Assessment Process In Vietnam*, GTZ, 2007.



Hinh 2: Key Steps in the RIA Process



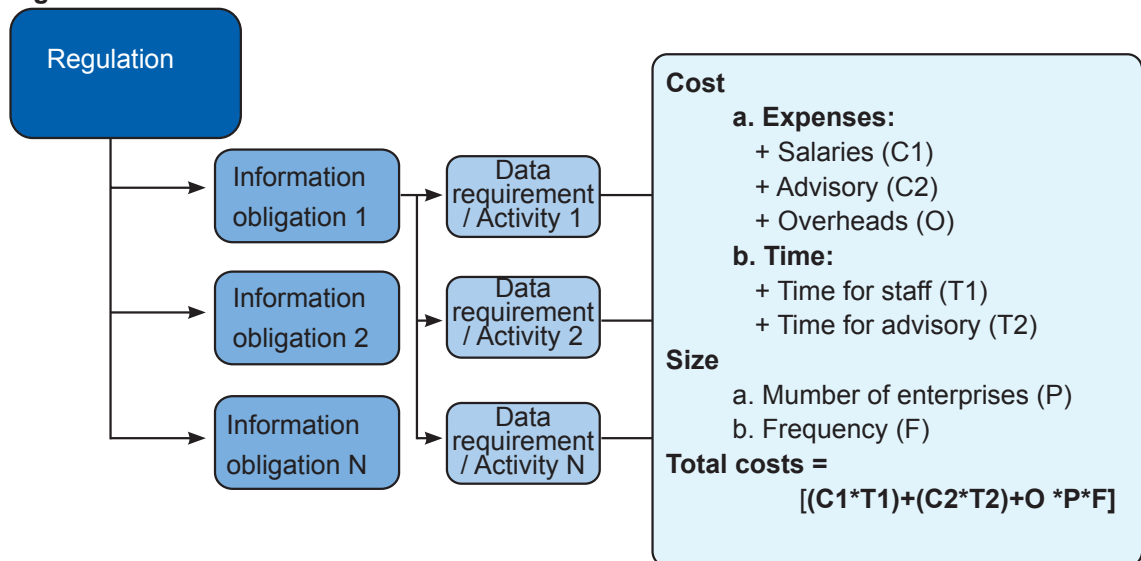


## 2.2. Standard Cost Model (SCM)<sup>15</sup>

SCM is now the most widely applied methodology for mesuaring compliance cost, that businesses incurred when complying with obligations and regulations. Total compliance cost of a regulation to businesses is all the cost of complying with that regulation. Total cost of a legal document to businesses is all the cost of complying with that document.

Measuring compliance cost is summarized in the below figure:

**Figure 2: The Structure of the Standard Cost Model**



Implement the reform program will require simultaneous use of several different tools. Thus, the application of SCM should consider the basic characteristics of this method as follows:

- SCM do not focus on analyzing why that regulations needed, but focus on how to create an effective regulations , which is economic for businesses and the society;
- The compliance cost is calculated, result in quantitative data. Thus, this method effectively provides clear evidence for the benefit- cost saved from the administrative reform;
- SCM does not show the benefit of a regulation because this method is assumed that the necessary of regulation is ignored;
- SCM focuses on measuring a part of total cost and risks that a regulation can create, for example: this method does not measure corruption cost, opportunity cost (loss for enterprises due to late of handling procedures) and other risks.

International experience shows that SCM method is useful in the reform program in order to create the more convenient regulations, easier and less costly to organizations, individuals, especially, businesses, in particular:

(15) Refer to the Australian specific regulation to ensure the quality of legal document (Annex 4).



- SCM helps to identify the priority in the reform process by pointing out where (sectors etc) incurring largest cost. The reform, thus, could focus on the “place” which incurred largest compliance cost
- Supporting evidence for recommendation to the administrative reform by pointing out benefits from costs saved before and after the reform
- Orienting for recommendations such as: (i) remove unnecessary requirements or consolidate similar regulations, (ii) construct clear regulations with specific requirements, and (iii) reducing costs through simplify forms, extend required time to provide information, enhance information sharing among state agencies etc

### **3. Organizing public-private dialogues and dialogue with government agencies**

Business associations can organize seminars and direct dialogues with government to transmit ideas of enterprises, experts, practical officers and other objects on policy or proposed law. This form is frequently used in Vietnam and if paying much attention in design and preparation, it also reaches valuable impact.

Depending on characteristics of objects, feedbacks needed by whom (big or small social impact, specialized or not etc) and related condition (associations' fund, time of policy publication, level of enterprise interest etc), the business association may select methodology to organizing workshops or dialogue activities.

Summary and note for advocacy methodology through enterprise consultative workshops that association may apply are mentioned below.

#### **3.1. Organizing large-scale dialogues and workshops with related government bodies**

Major workshop is a form to get ideas and recommendations through discussing in large scope with an expectation to create deep impact in society and related objects. Organizing major workshop needs a great investment and careful preparation for content.

##### ***Content of policy needed to consult with members***

Policy and law that create impacts (especially negative effect) on large group enterprises (documents on main problems of law on business environment such as investment, enterprise, commerce, competition etc);

Policy and law on some issues that attract many interests from business community (major shortcomings in practice, pressing matters in community etc)

##### ***Participants***

Related State representatives (Editing /inspectating/verificating Agencies in case of issuing new documents; related management office to reflect inadequacies in policy/law): this group's participation plays an important role in idea contribution process (direct comment at conferences/workshops and feedback discussing) and attracts interests from other participants.

Related enterprises, associations: The purpose of raising this group involvement is not only for ideas sharing but it also for enhancing public and enterprise's awareness to related activities.



Experts, scientists, and practical officers: this group could bring legal and scientific feedback for technical issues;

The Press (newspaper, media and internet): this group holds the role in spreading seminar messages to related objects, forming public opinion and creates pressures on authorized Agencies.

### **Activities prepare for the contents**

#### *(i) Selecting discussed issues*

Selecting discussed issues is the orientation of discussion in the workshop<sup>16</sup>. This is an important factor to control advocacy's progress and effectiveness through workshop.

Selecting discussed issues should consider these following matters:

- Priority 1: Selecting important and meaningful issues that need to be adjusted (problems that have bad effect on enterprises and need to be abrogated, problems that have positive effects that need to be improved)
- Priority 2: Selecting issues that fit public opinion and/or issues that selected by the Drafting and Implementing Agencies.

After this step, selected issues are presented concisely and in question form (agree/not agree, why) to make discussions during workshop focused.

#### *(ii) Prepare main speeches and feedbacks at seminar*

This factor is to ensure minimum efficiency of the workshop. Preparation for ideas for debate, discussion (avoid one-way discussion and ensure dialogues are characterized by constructiveness, free to exchange ideas between authorities and business associations, member enterprises and others)

### **Preparation for discussion is made with the following notice:**

- Prepare a short speeches , which focuses on main policy so that participants can understand the overall matter (such as introduction of the policy draft need to be adjusted; introduction of the conflict in policy need to consult )
- Contact with professional experts, experienced enterprises to present the topic (especially groups have or may have supportive ideas for the association's opinion);
- Note: Length of discussion must be suitable and manageable ( avoid the situation that time only enough for presentations, lack of time for discussion)

#### *(iii) Monitor seminar*

Monitoring seminar is important step which decides the success of discussion.

*(16) Obviously, this does not mean that the business association can totally manage the progress and discussion of workshop.*



- The program of the seminar must be prepared before the seminar begins include arranging topic of discussion, time needed for each issue, content of seminar);
- Monitors need to understand the content of discussion topic in order to participate in discussion and orient the discussion gearing to the advocacy objectives.

(iv) *Summarize the result of seminar*

Summarizing the result of discussion in written document is essential. These activities ensure that all discussions in the seminar do not be “forgotten”. Summary should be carried out with the following notice:

- Summarize discussion into specific topic which are arranged according to logic rather than following timeline of discussion ( for example, arrange by pointed policies with arguments and evidences surrounding) ;
- Only gather clear and logical comments( reject unrelated comments) ;
- The report summary should be sent to the agencies: the agency of drafting and implementing , the agency of investigating the draft; other enterprises which have ability to influence on the related policies, the Press ( if necessary)

### **3.2. Dialogue**

Unlike seminars, dialogue is a form of raising opinions through meetings and discussions in small scale and with a limited number of entities involved. Discussion can organize flexibly and quickly, which also does not require intensive labor. This form suitable for the type of problem needs to respond quickly and promptly.

#### ***Type of policy need to consult***

- Regulations, laws have impact on small group of enterprises (for example legal documents, legislation to adjust a small business segment) ;
- Policy and legislation issues focus on professional / technical areas, not popular.

#### ***Participants***

- Representatives of the related State agencies
- Related enterprises, associations: only invite businesses have practical experience or facing urgent problems
- Expert, scientists, practical officers: limited in number

#### ***Activities preparing for the contents***

Activities preparing for contents are similar to seminar, but simpler. For example:

- Select issues which the association suppose that having bad impact to enterprise for focused discussion;
- Not necessary to prepare written reports, only need to ensure all representatives participate in seminar have already prepared for their ideas;
- Make seminar process simple, focusing on discussion (not require reading discussion report)



- Summarise the result of seminar under the written documents calls dialogue summary or collect into the association's official documents and send to related units.

#### 4. Sending written comments on drafted policies and regulations

Currently, sending comment to authorized agencies in form of written documents is common used in policy advocacy.

The associations can actively use this method on the process of drafting and promulgating policies and laws at whichever stage. Moreover, advocating policy using this method also more effectively (because in the form of document, opinions expressed into more convincing arguments and formal forms has more chance to get respond from authorized agencies )

##### ***Content of comment***

To get quality highly persuasive comment serving for the advocacy's objectives, the comments should be drafted to ensure the following contents:

##### *Clarify the association's approach*

Each object has different approach to the policy, which depends on their position, interests and purposes. Therefore, to have logical, easy to understand comment, the Association must highlight its policy approach. The specific comments afterward will follow these opinions.

Note: to ensure the association's comments are easily to adopt by the authorized agencies, the comments should base on common opinions/ principles, which have been widely recognized (for instance, legal system are uniform, not duplicated; freedom of doing business are limited interference in business activities and transparency in procedures.

##### *Clarify issues need to be adjusted*

To ensure written comments are focusing, the Association should select a certain group of regulations which can impact on business activities of their members currently or in long-term to giving comments (should not sunk into details, except for the case use of word strongly affect regulation application)

##### *Analyze why the policies and laws that needs to be adjusted and modified?*

This is important content to be focused to create persuasive arguments. These arguments can be used including:

- From practical aspects: how policy and regulation impact (negatively) on enterprise's operation?
- From legal aspects: the constitutionality and legality of regulations, the consistency of the legal system, trends and perspectives related to management, international practices, lessons learned in the past.
- From expense – benefit aspect: Which benefit i policies and regulations can bring to if they are implemented? For whom? At which level? Are benefits enough to offset the costs that the State, enterprises, society spent or not?



*Solution for policy adjustment:*

In order to have convincing solutions, the Associations should consider:

- Select feasible solution which are accepted by both enterprises and Stage Mangement Agencies ( such as taking into account concern of the Drafting agency) ;
- Prepare alternative solution placed in the priority order in case the best solution are difficult to be achieved

**Source of comments**

“Input” for the comments can be drawn from the association opinions combined with results of consultation in other communities, for example:

- Results of seminars, dialogue for raising opinion;
- Experts’ opinion ( freelance);
- Gather comments from other public sources (comments on the mass media, opinion from the published research, references in the relevant units)

**5. Taking advantage the role of the press**

Advocating policy using mass media (the Press) are indirect forms (because via media, comments are immediately known by authorized agencies without having to send the document directly)

Because the press can have a great impact on policy (both in forming new policies, proposing adjustments and amending for inadequate policies) through disseminating of views and creating public opinion, providing information and creating pressure on the authorized agencies. So, this type of advocacy is important and effective for policy advocacy as well as the associations.

Specifically, the association may use the Press for advocacy efforts under two forms:

- Directly use newspapers as a mean of policy advocacy (collaborate to set up news’s collum, open forums and categories of policy issues that associations interest);
- Mobilizing the media participation in apolicy advocacy activites (for example, publish news of the workshops, seminars, comments) to create “extending” effects of advocacy activities.

***The uses of media to advocate also need to notice the following issues:***

*(i) Need to provide adequate and accurate information to the Press*

Always assumed that not all journalists are expert on law and economic issues to write exactly on policy advocacy issues

Events conducted by the associations (workshops, seminars) should be released in the Press under written documents. The purpose of this announcement is to highlight important information in concise and accurate ways as well as the association’s contacts so that the Press can contact with association again.

For other cases: review of information (the content of interview, articles provided by the association after being edited) may be necessary.



Association may appoint a member of the management board to represent for the association to contact with, in some cases act as the official spokesperson of the association.

### (ii) Choosing the Press appropriately

For events advocacy (workshops, seminars): Select the press operating in the same or related areas with the association. Especially, list of reporters responsible for area, which the associations are operating in, should be gathered (because in case, the association only need to send a notice to the newspaper office, the appointed sender may not understand the problem);

In case there is not a specific event (workshops, seminars), only launching advocacy campaign, the association should select appropriate media (determined by contents, popularity level, operating area, type of readers ...)

Select the appropriate newspapers is an essential skill. In Vietnam, each newspapers has its own managing agencies, and normally Ministries or Departments often have their own newspaper. Experience has shown, newspapers directly under the charge very little information to back the policy review that the issue of managing it.

## **6. Preparing position papers representing business associations' opinion**

Business associations can construct a report or a document to represent their own opinion toward a specific policy issue, drafts of legal documents or any related matters. To do this job, business associations should conduct research on the matter, conduct consultation with member companies (see the next part of this document), and prepare position papers to express their views. These documents should show the problem and make specific recommendations.

## **7. Business associations' information channels (websites, bulletins)**

In certain extent, associations can create their own channels of information (such as building its own website, publish regular bulletins on policy issues related to the association).

The advantages of this form is that business associations can be active in choosing forms, types of information and the time of posting. So the association can manage information and can be active in improving the effectiveness of advocacy through these channels

However, the disadvantage of this method is that the association's communication channels are less popular (with a limited amount of access), therefore its impacts as well as spreading are limited. In addition, to maintain their own information channels, business associations needs a group of staffs or collaborators specializing in advocacy issues new (to provide input, processing and publicity). Funds for building and developing websites, publish regular newsletters can be obstacles for many business associations, particularly small ones.



## Five recommendations for Vietnamese Business Associations on Policy Advocacy

**1. Business associations should professionalize activities in relation to participation in policy development.** State agencies and drafting committees may reject the opinions of Vietnamese business associations because of poor and inappropriate means of communication. Too few business associations have sufficient staff qualified to participate effectively in the policy- and law-making process. The members of business associations that lack qualified full-time staff ought to seek the assistance of experienced and skilled experts.

**2. Business associations should make policy-related proposals and recommendations to the State.** Associations should propose specific policies to the State. VUSTA's draft Law on Associations to complement the version drafted by the Ministry of Internal Affairs may be deemed as good practice for other business associations

**3. Policy dialogue should be a continuous process.** Business associations have not built a mechanism for effectively supervising and monitoring the opinions and commitments of state agencies. Such a mechanism will enable business associations bring to account state agencies that do not meet their commitments.

**4. Associations should learn from successful experiences.** For example, organizational structure, methods of collecting members' opinions and mobilizing potential allies.

**5. Unity and solidarity within a robust business association is vital if enterprises' interests are to be protected in a period of increasing international economic integration.** To support the Government's negotiations over complicated and costly anti-dumping cases, relevant enterprises' opinions should be gathered and large-scale and in-depth research on international and domestic policies and markets should be conducted.

Sources: Vietnamese Businesses Association as Policy Advocates , VCCI and GTZ, 2007



## **PART III**

# **PROCESS AND SKILLS USED FOR BUSINESS ASSOCIATION'S MEMBER CONSULTATION**





Member consultation is a very important process for business associations to perform their functions such as policy advocacy, contribution for policy consultation and measures to implement government policies of authorized agencies and governments. Consultation can be used to identify issues emergend in practices faced by member enterprises in the process of implement state policies and regulations, and mobilize knowledge and the participation of member enterprises for public dialogue with state agencies. Member consultation is also a measure to make a collective voice, representing a view of the business association about an issue relating to a policy or policy implementation. This part introduces the process and fundamental skills used for member consultation<sup>17</sup>.

## I. GENERAL PRINCIPLES AND FORMS OF MEMBER CONSULTATION

### 1. General principles

Member consultation should follow some general principles. These principles should be paid attention in initial steps of the consultation process in order to ensure the success and effectiveness of member consultations which will be done by business associations.

Business associations can self-determine different principles for each member consultation. However, there are some general principles for member consultations. These are:

- Member consultation should aim to serve the setting and prioritising of the associations' objectives, so that the association can protect their members' interests and legal rights, and deliver their services cost effectively.
- Consultation is an integral part of promoting a "good governance" and harmonizing interests of all groups in the association in particular and in the economy in general.
- When consulting, the business association should play the role to balance the different needs of members of the association.
- Effective consultation is an essential to meeting the association's goals and becoming an excellent association.

Before any new consultation begins, a thorough search will be made to find out whether relevant questions have already been asked of the members. The association should avoid unnecessary repetition and take into account existing information before carrying out further consultation. This consideration will help the business association avoid wasting their financial resources and human resources for the consultations.

Consultation will aim to be inclusive. To achieve this, the association will give particular consideration to the needs of members termed 'hard to reach'. It is the associations' job to ensure that those, whose views are frequently excluded or overlooked, are actively sought as part of consultation. This will result in the consultation being representative of the community as a whole. The consultation process should be open and transparent to consultees about the reasons for consultation and the way in which the outcomes of the consultation will realistically influence the decision. It is important to be clear about what participants can contribute to the process, what they will gain from taking part and the extent to which their input can influence decision-making.

(17) This part is based on the East Devon District Councils' Consultation Guide 2005.



Business associations should endeavour to show respect for both stakeholders and taxpayers by giving consultation the appropriate priority, time and resources, and demonstrating that it is a genuine attempt to understand and incorporate other opinions.

It is important to ensure that timescales will allow for good quality consultation. We will give consultees adequate time to prepare their response and allow sufficient time for the results of consultation to be collated, analysed and considered.

In addition, consultations should ensure the responsiveness. Those being consulted must perceive that their voice will be taken seriously. There is no point in spending time and money on a consultation exercise if there is no willingness to listen to the results.

Business associations should provide accessible feedback both on the results of the consultation and on how they have been used, in order to encourage greater participation in the future.

Business associations should adopt clear processes of consultation which, where possible, produce results that are measurable and can be evaluated objectively.

During the consultation process, there are some issues should be paid attention such as prevent one group being consulted too heavily – “consultation overload”, prevent duplication, monitor effectiveness, Learn good practice from each other and cost effectiveness

## 2. Different levels of involvement

Consultation can take a number of forms. It may be a one-off exercise or extend over a period of time. The table below outlines the different types of consultation available:

**Table 1: Different levels of involvement**

Type	When to use it	Explanation
1. Informing	Where a decision has been taken and consultation is not required.	Telling members what the government is planning, which may have influenced on their business activities.
2. Researching	Where information is needed to help make a decision.	Gathering information on general opinions, attitudes and priorities to inform decision making.
3. Consulting	Where we are asking for ideas and encouraging involvement in making a decision.	Obtaining specific views on proposals or initiatives and taking them into account when decisions are made.



4. Involving	Where we are asking for ideas and encouraging involvement in making a decision.	Seeking out new ideas and suggestions and encouraging members to participate in the decision-making process.
5. Partnership	Where we are making a decision with others.	Initiating joint working and decision-making with the local community and other stakeholders

## II. THE PROCESS OF MEMBER CONSULTATION

The consultation with members can be done through 6 steps. They specially include: (1) planning and preparation; (2) providing information for consultees; (3) consultation and analysis findings; (4) using the results to avocady; (5) providing feedback to consultees; (6) evaluating the consultation. These steps are mapped as following:

### 1. Planning and preparation

Planning and preparation for the conduct of consultation with members are significant to the success of an effective consultation. Before conducting the consultation, the association's leaders and those involved should be thoroughly discussed about the consultation.

To plan and prepare for a consultation with members, associations need to answer the following questions:

- Why is the association consulting with its members? Is there a decision to be made?
- How will the findings be used to inform the decision?
- Has there already been consultation on this issue?
- Who does the association want to consult with?
- What status will the views of those consulted have in the decision making process?
- What information does the association need to provide to the consultees to enable them to participate effectively?
- What timescales are necessary for effective consultation, and how can our planning timescales accommodate these?
- What arrangements need to be made to ensure the consultation includes all relevant member groups?
- What resources and support are needed for this consultation to be effective?
- How will the data be analysed and presented?
- How will the consultation be evaluated?
- Can we work in partnership with another organization to undertake the consultation?

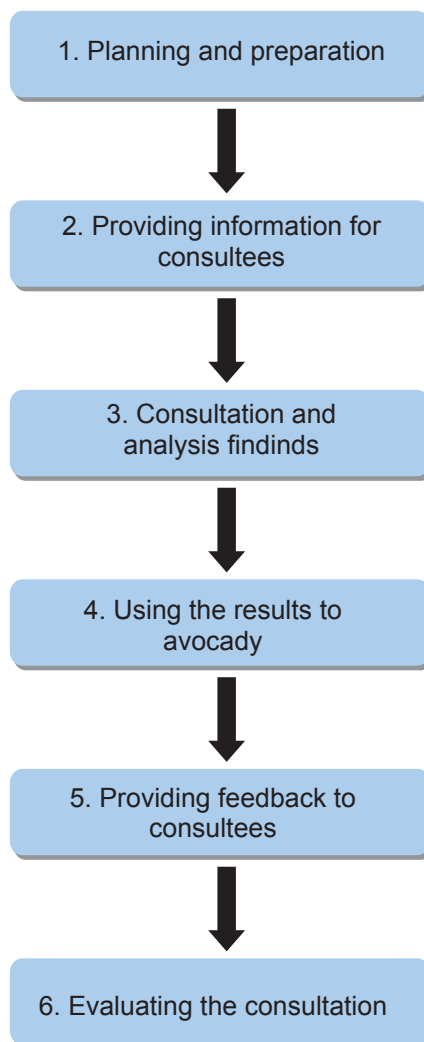
### ***Controversial situations***

Where situations are controversial, some methods of consultation will be more suitable than others. It is important that the methods chosen allow stakeholders to be involved from the start and



to compare and explore each others interests. This may lead to them being less blinkered in their thinking and help them to understand others points of view. In some circumstances it may prove beneficial to involve an independent facilitator or mediator to manage the situation. **When NOT to consult?**

Figure 3. Six-step process of consultation with members





There are situations where consultation may do more harm than good:

- When the Council cannot demonstrate that there is real commitment to the process.
- When all of the key decisions have already been made and consultees would have no real influence or input.
- Where there is insufficient detailed knowledge (about the areas of conflict or interests of stakeholders)
- Where there is not enough time (see Consultation Process flowchart for timeline)
- Where there are insufficient resources to do the job properly.

### ***Identifying Stakeholders***

You need to have an understanding of the different groups affected by the issue at stake before deciding who to involve and which methods to use.

It is important to think broadly about your target audience beyond the direct users or organisations that have a known interest. Your policy/ decisions may impact on other sections of the population. It is important to think about the things that will motivate individuals to participate and any potential barriers to their participation before you issue invitations.

### ***Categorising Consultees***

There are several ways of categorising people who have been consulted. You may find it useful to view your members as falling into following categories, although this is not an exhaustive list:

- The public group: The public will generally offer different perspectives on policy or service delivery issues according to whether they are involved as customers or citizens. Involving the public as citizens will often provide a longer term or broader view on a particular issue, whereas the views of customers of particular services or those who are affected by the policies are likely to be shaped by their direct experience of them.
- Specific population groups. These can include members under the direct impacts of the policy or members who are rarely consulted.
- Staff/employees: These can range from front-line staff to chief executives
- Other organizations who may have an interest in a particular consultation.

### ***Preparation of human resources***

Right from the first step of the consultation process, the associations need to choose officials to conduct consultations. The association may establish a committee or an implementation consulted members, responsible for leading and direct contact with leaders of the association. Officials conducting the consultations should have some skills as following:

- Good communication skills
- Have knowledge of members
- Respect the views of those consulted
- Commitment to the objective of the consultations.



## 2. Providing information for Consultees

It is often useful to raise public awareness of your consultation and how people can contribute to it. The best way of doing this will vary according to the nature of your consultation. It can often be as simple as putting out a press release or placing an advert in a publication.

Key points for all methods of consultation need to be borne in mind to help communicate your message to your consultees:

- Explain fully why you are consulting, what on, what the results will be used for and what feedback can be expected
- Use clear, plain English or language suitable for your target group
- Avoid jargon and acronyms
- Have translation versions available if appropriate
- Have large print, audio and visual presentation options available
- Consider how you are going to distribute any information, such as by post, or e-mail

Any materials produced for consultation whether displays, pictures, printed information or surveys need to make sense to the target group and to be distributed in a way that will make sure that they get to that group.

## 3. Consulting with members and analyzing the result of the consultation

### *Consultation Analysis*

The precise method of analysis will depend on which methods of consultation are chosen. In general the following can be applied:

1. Ensure that accurate and complete records are kept of all responses
2. Try to sort the responses into particular types to help you identify variations in perspectives on issues such as business groups, employee's representative groups, and individual views
3. Identify the key policy issues, themes and proposals emerging and summarise the primary viewpoint into a 'framework grid'
4. Examine the primary viewpoints and consider the implications for each. Separate the practical/realistic solutions from those that you know cannot be pursued
5. Prepare an outline response setting out the key themes identified through the consultation and how you propose to resolve them

## 4. Using the Results of Consultation to Develop Services

Consultation results should be presented in the forms suitable for reflecting readily to policy making agencies. Related to this content there were specific suggestions in Part II. However, some following issues should not be ignored:

- The results of the consultation should be presented to emphasize the relationship with policy and decision.
- The results of the consultation should reflect the collective view of the association.



- The association should prepare long-term proposals for the amendment of policies
- The association should provide a comprehensive analysis of the policies involved and the impact of the amendment proposed
- To keep close contact and discussion with involved policy-making agencies to achieve common understanding

## 5. Providing Feedback

Members take time out of their busy lives to contribute to involvement exercises and it is therefore important for them to know how their views have been taken into account. Without feedback, people will assume that the association is not listening to their views. Feedback should include three elements: (1) the outcomes of the exercise; (2) any resulting decisions; (3) long term outcomes

Feedback to the consultees can enhance the fame of the association by showing that it the public were involved in the policy-making process. It should be viewed as a crucial part of the communication strategy for the consultation exercise.

Providing feedback is vital! Good feedback tells consultees what the overall findings of the consultation are, how these have influenced the decisions made, and the reasons behind the final decision. It does not have to be costly; existing communication mechanisms can be used.

By demonstrating that the association have paid attention to what consultees have said, feedback can help strengthen the credibility of consultation work. It also helps to ensure the participants feel valued in the consultation process, and builds a more trusting relationship. This will increase the likelihood that consultees will take part in future pieces of work.

### ***Some forms of feedback:***

- Where individuals are consulted and contact details are known, direct feedback can be given by customers preferred method such as by letter, text message or email.
- Press release, news item.
- Reports back to focus groups.

## 6. Evaluation of Consultation

It is good practice to undertake an evaluation of both consultation exercises and ongoing consultation work to measure the effectiveness of the methods used against the original consultation objectives. This will provide information about:

- The effectiveness of consultation methods used, so that future consultation exercises can be improved.
- How the views and priorities of the association's members have been taken into account in coming to decisions on service delivery
- The satisfaction levels of consultees with various aspects of the process.

Evaluating the effectiveness of your consultation should not be left until the end of the process. It will be much easier to do if you have included it in your initial planning. If you've planned properly,



identified the objectives of the consultation, and how you are going to measure them, then the evaluation process should be straightforward.

### ***Key areas to consider***

- Purpose/Objective
- Who you consulted and level of response
- Methods
- Timescale
- Information provided to consultees
- Effect of the consultation
- Costings

Reporting the evaluation: Need to put into final report, and need to share the evaluation and lessons learned. Ensure that the results of the evaluation are used to improve future consultation processes.

### **7. Other issues**

During the consultation process, there are some additional issues need to be considered.

#### ***Legal issues and confidentiality of information***

Prospective participants of any consultation should be made aware of their right to refuse participation whenever and for whatever reason they wish. When inviting members to participate in the consultations, the association needs to clearly explain their rights.

The confidentiality of the consultation should also be given when inviting members to participate in consultation. Accordingly, the personal information of the consultees should be protected. Where such personal information needs to be shared with other agencies, the participants consent must be obtained. Responses from participants must be stored securely, and only retained for as long as is necessary. Once the consultation results published, the identity of the participants should not be published without their consent.

#### ***Risk Management***

There are risks that can occur in any project such as exceeding budgets and slippage of milestones.

- In addition, when consulting, think about the following risks:
- Lack of engagements and commitment to the consultation
- Issues too complex (or not clearly presented) to be understood
- Low participation and/or response rates
- Narrow range of respondents
- Lack of agreement about the issues or conclusions
- Public perception of low commitment from EDDC
- Poor trust or understanding by stakeholders
- Mistaking stakeholders participation for the views of the users



It is important to identify which of these risks are most likely to affect your piece of work or have the highest impact and decide what action you will take to control these risks.

***Strategies that may help include:***

- Complying with the association's strategy.
- Consulting thoroughly in the executive board of the association.
- Allocating enough time to identify all of the stakeholders and planning their participation in the consultation
- Effective stakeholder engagement from the beginning (especially where there may be areas of conflict)
- Building the capacity of groups and individuals to participate in the consultation
- Ensure that the methods used are best for the piece of work you are carrying out
- Being transparent about the objectives
- Planning for what to do if things go wrong
- Ensure that legal and ethical implications are considered.

***Understanding your members***

You will need to develop an understanding of your target group and any specific needs the group may have. Ways of doing this include using census information, drawing on previous research or guidance, and talking to the target group directly and/or organisations that represent or work closely with them.

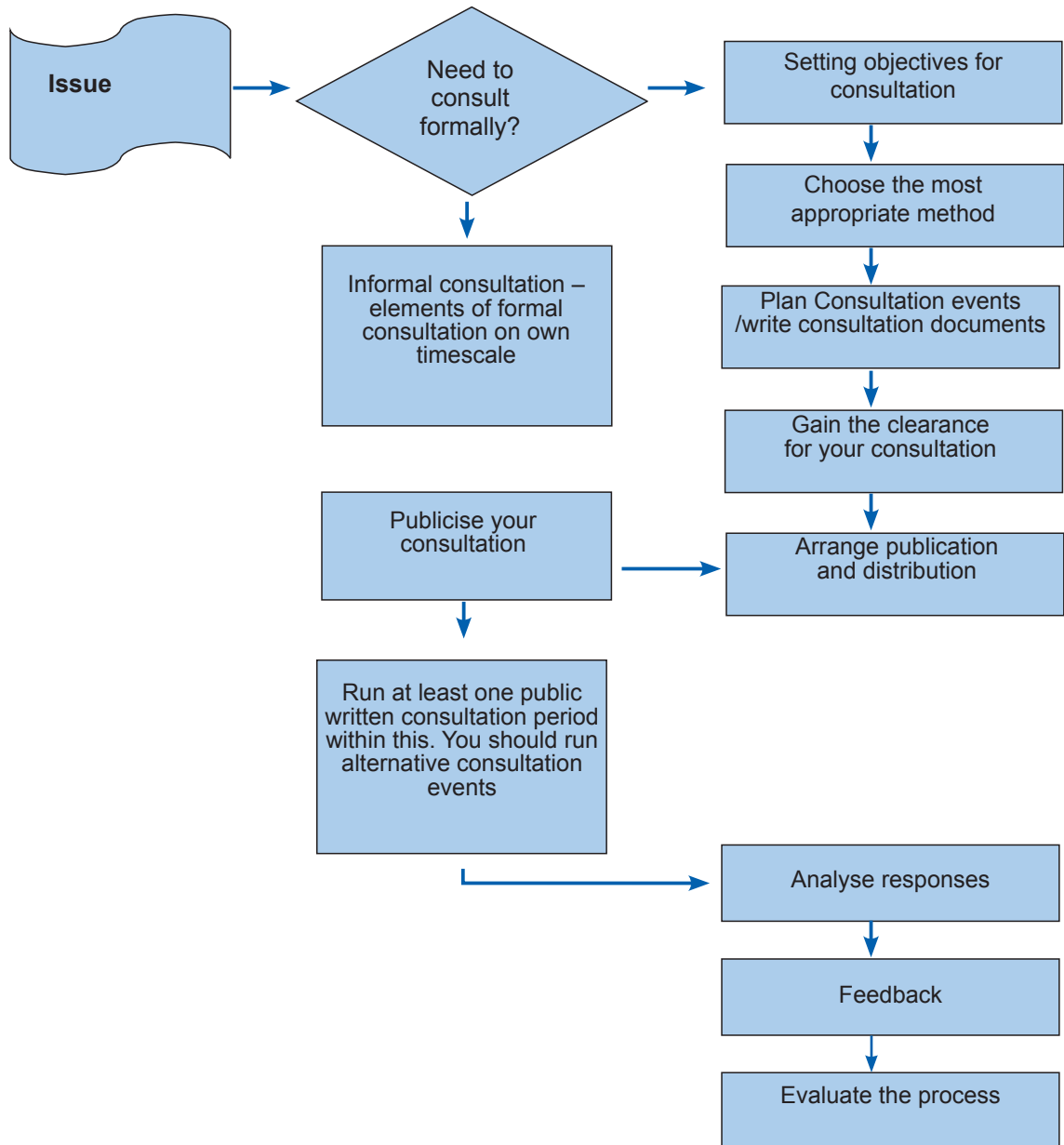
Based on this knowledge, decision makers will need to respond sensitively and consider what actions need to be taken to enable their involvement. For example: Small businesses are often disproportionately affected by new policies and legislation. It is therefore important to ensure effective consultation with them. Small businesses usually have far less resource to handle consultations and are often not thinking that far ahead. You will need to think innovatively to capture their attention.

***A few helpful tips:***

- Keep consultations as simple as possible. A summary or short version should be produced if possible.
- Think about the format of the consultation and use as many methods as you can. Online may be ideal for some small businesses, but others will require alternative methods of communication.
- Including small firms early in the consultation process will help ensure that their direct experience informs the development of the policy and will help avoid any unintended consequences.
- Small businesses are busy. You may need to be more proactive and understanding in obtaining their views.



Figure 4: Consultation Process Flowchart





**ANNEX**



**Annex 1: Policy procedure and the business association's capacity for policy advocacy**

Step	Activities	Contents	Associations' capacity for policy advocacy	
			Objectives	Subjectives need advocating
Setting up plans for instituting law, ordinance				
1	Law, Ordinance Proposal	Prime Minister, National Assembly Standing Committee, Ethnic Council and National Assembly Committees, Government, Supreme People's Court, Supreme People's procuracy, Vietnam Fatherland Front and its member organizations, National Assembly Delegate propose the law, ordinance to the National Assembly	Business Association can advocate to: (i) express legal opinions, requests on interested issues; or (ii) propose, request law, regulations including interested issues	Vietnam Front and its member organizations Ministry of Justice
2	Verifying the law, ordinance proposal	Law Committee of the National Assembly presides over and coordinate with other Committees of the National Assembly to verify law, ordinance proposals.	Advocate to make law/ ordinance proposals approved	National Assembly's Committees, specifically the Law Committee
3	Decide the program of instituting laws, ordinances	National Assembly Standing Committee will set up the program The National Assembly approve the program (discuss the scheduled program, send back to related authorities for adjustments, voting)	Advocate to make the law/ordinance proposal officially approved	National Delegates Authorized organizations responsible for adjustments
<b>Drafting law, ordinance, decree of the National Assembly</b>				
4	Establishing Drafting Committee	The Government assign one Ministry to preside over drafting the law and establish a Drafting Committee (in case the law is proposed by the Government) Agencies, organizations propose the law are responsible for drafting and establishing Drafting Committee National Assembly Standing Committee establishes Drafting Committee and assigns an organization to preside over this task in case this law is proposed by National Assembly Delegates, National Assembly Standing Committee or related to different industries	Business Association advocate to: <ul style="list-style-type: none"> <li>• Have representative in the Committee and/or</li> <li>• Have a member of the Drafting Committee or Editing Team</li> <li>• Presenting/having the same opinions with the business association</li> </ul>	Organization presides over drafting the law/ordinance



5	<p>Drafting the contents of the Law/Ordinance</p>	<p>Drafting Committee carries out the following activities:</p> <ul style="list-style-type: none"> <li>• Develop a draft outline</li> <li>• Discuss basic policies, draft contents</li> <li>• Summarize reality, evaluate the actual situation, study practices and international agreements</li> <li>• Constructing detailed draft, statement, presentation, and explanations the opinions received from other entities</li> <li>• Study, evaluate the impact of the draft (each problem, solution and evaluate the costs and benefits of each solution)</li> </ul>	<p>Association advocates so that activities in the drafting process are considered to reflect the benefits that the association supports or desires.</p>	<p>Drafting Committee Editing Team Entities having the same interests, opinions (especially other associations)</p>
6	<p>Getting opinions on proposed Law, Ordinance</p>	<ul style="list-style-type: none"> <li>• Consult issues with appropriate subjects;</li> <li>• Publicize drafted documents;</li> <li>• Organizations and individuals subject to effects of the proposed law give opinions, comments</li> <li>• Summarize, research, and acquire recommendations</li> </ul>	<p>Association directly show opinions and advocates other entities to give opinions so that the draft's contents are adjusted reasonably as the association desire.</p>	<p>Drafting Committee Editing Team Entities having the same interests, opinions (especially other associations)</p>
7	<p>Verifying the law/ ordinance draft to send the Government</p>	<p>The project submitted by the Government:</p> <ul style="list-style-type: none"> <li>• Ministry of Justice evaluates prior to submission to the Government;</li> <li>• Drafting agencies receive evaluation ideas and revise the draft to submit to the Government</li> <li>• Office of Government meeting of representatives of organizations and individuals concerned in cases where documents have many different opinions;</li> <li>• Government discuss and vote on the law and ordinance</li> </ul> <p>Projects not submitted by the Government: Government comments on draft documents within 20 days (with the assistance of the assigned ministry and the Ministry of Justice)</p>	<p>Association advocates so that contents approved by the association are considered during the verification and draft revision process</p>	<p>Ministry of Justice (relevant professional department) Government Office (Legislative Department)</p>



<b>Approving the law, ordinance, decree of the National Assembly</b>				
	Verify- ing law, ordinance projects	The Committees chaired by the National Assembly and/or participating in project evaluation <ul style="list-style-type: none"> <li>• Invite representatives of agencies, related organizations, experts, affected subjects to comments</li> <li>• Request the drafting agencies to present, organize workshops, survey issues in the draft in reality</li> <li>• Prepare Verification Report</li> </ul>	construction of Verification Report	Members of National Standing Committee
8	National Assembly Standing Committee gives opinions	<ul style="list-style-type: none"> <li>• National Assembly Standing Committee organizes meeting and give opinions on the project after working with drafting agencies, assessing agencies, and other organizations</li> <li>• Participating individuals present ideas</li> <li>• Drafting agencies revise the project based on the opinion from National Assembly Standing Committee</li> </ul>	Business Association advocates to make the supported contents considered by National Assembly Standing Committee, organizations, and individuals participating in the meeting	
9	National Assembly considers and approves	<ul style="list-style-type: none"> <li>• The Assembly considers and approves the project in one or two Congress sessions:</li> <li>• The project is submitted to the National Assembly (and delegations, Committees of the National Assembly)</li> <li>• At the session: Drafting Agency presents; Verification reports; Discussion (in groups and in plenary session)</li> <li>• National Assembly Standing Committee organizes the revision, receive comments (verification agencies chaired the revision) and report the Assembly</li> <li>• The Assembly votes to approve the draft</li> </ul>	Business Association advocates to make its opinions known to, supported and/or discussed by member of National Assembly Committee	National Delegates National Committees Assembly Assembly
10				



Annex 2: Legal Document Draft Review and Comment Criteria Table currently used by VCCI

Order	Criteria	Specific Contents	Note when commenting
1	Effectiveness	<ul style="list-style-type: none"> <li>The drafted regulation is aimed to handle which shortcomings in practice? At what level? In which conditions the shortcomings can be thoroughly solved? When will that conditions can be satisfied? In case there is no or not yet such conditions, will the draft be effective?</li> <li>If the regulation is approved, what will be the state management effectiveness?</li> <li>What is the effectiveness in protecting the public interest, if any?</li> <li>What is the effectiveness of fair competition? How are other effects (investment attraction, social impact ...)?</li> </ul>	Factors to consider in all drafts, particularly the amending draft of current regulations to meet new demands
2	Particularity	<ul style="list-style-type: none"> <li>What are the typical characteristics of the sector (compared to general business operations)? How are they reflected in which regulations, on what basis?</li> <li>The draft contains any different provision which is not based on characteristics of the industry?</li> </ul>	Factors to consider in all industry-specific legal document drafts
3	Transparency	<ul style="list-style-type: none"> <li>Have the draft provisions correctly identified requirements for enterprises, implementing agencies and/or the procedure?</li> <li>If you need additional guidance documents, does the draft clearly identify that document or the authorized agencies issuing that documents? Does the draft specify principles that the guidance document should comply?</li> </ul>	Factors to consider in all drafts, (particularly those related to licence, procedures)
4	Legality	<ul style="list-style-type: none"> <li>Are provisions consistent with the legal documents having higher validity?</li> <li>Is there any duplication, overlap, conflict with other laws?</li> <li>Is it consistent with the relevant legal documents? Does it contribute to the unification (codification) and complete legal system? (Note the common law relationships - private law)</li> <li>Are terms used correctly? Are there different explanations?</li> </ul>	Factors to consider in all drafts



5	Feasibility	<ul style="list-style-type: none"> <li>• Can provisions of the draft be implemented in reality? (From the standpoint of business, are such conditions are difficult? From the standpoint of the State, are there enough human resources and facilities to make complete and effective enforcement?)</li> <li>• Are there are any institutions or measures to ensure that the provisions will be fully implemented in practice?</li> </ul>	Factors to consider in all drafts, particularly those related business registration requirements and preferential treatments to businesses
6	Fairness	<ul style="list-style-type: none"> <li>• Are there any provision which discriminates subjects having the same conditions? Are those discriminations based on any rational, legitimate basis?</li> <li>• Are there any provision which does not discriminate in formality but leads to the discrimination in reality? If so, how is it explained?</li> <li>• Is there any unfair rule (in formality and / or consequences in reality) to specific target groups (which should be prioritized or should be encouraged to operate...)?</li> </ul>	Factors to consider in all drafts, particularly those related business registration requirements and preferential treatments to businesses (economic benefits)
7	Rationality	<ul style="list-style-type: none"> <li>• Does the regulation create incentives to businesses, investors to perform socioeconomic objectives that the government set for these forces?</li> <li>• Do provisions of the draft contribute to facilitate and maximize the profits of enterprises and the economy? (Excluding the public interest factors considered in other sections)</li> <li>• Are provisions of the draft consistent with the general trend in society? (responsibilities of enterprises, consumer awareness, development of related institutions, supply and demand relations and self-rejection of the market ...)</li> </ul>	Factors to consider in all drafts,
8	Ensure the right of free trade	<ul style="list-style-type: none"> <li>• Does the draft create more procedures, conditions, expenses to the business during the process of market accessing and / or operation activities? Does it interfere the discretion right of the business?</li> <li>• If so, is this provision aimed to protect one or some public interests?</li> <li>• Is efficiency gained from regulations enough to offset the costs that society, the State, and enterprises to comply with the provisions ?</li> </ul>	Factors to consider in all drafts, particularly those related business registration requirements



9	Ensure State Management to business activities	<ul style="list-style-type: none"> <li>• What are provisions reflecting the direct government control (administrative ones) over the business? What is the basis for that management and why?</li> <li>• Are there any regulations leading to the inefficient management of activities need governing and/or managing activities that do not need controlling or impossible to control.</li> <li>• Does that lead to bribery, corruption?</li> <li>• Does that bloat state apparatus?</li> </ul>	Factors to consider in all drafts, particularly those related procedures and other administrative management methods
10	Suitability to international practices	<ul style="list-style-type: none"> <li>• What international experience do regulations in the draft learn from? Does that experience show the common modern and effective trend?</li> <li>• Are the draft provisions of difference from international practices (especially common commercial practices, the laws of countries with similar conditions like Vietnam?) How the difference is explained? (why Vietnam needs different regulations?)</li> </ul>	Factors to consider in drafts related to new fields or issues



## Annex 3: Practical experience in policy advocacy of some business associations

### 1. Hanoi Association for Industry and Trade

After more than 10 years performing the business' representative function to protect their legal rights and doing review and policy advocacy activities, we find that: In order to succeed, they must first build honesty and credibility for partners' belief. Specially, whether the issues are small or big, simple or complicated, they have to:

- a. Investigation, Research and Information update from multiple sides and seriously resolve problems to make essential and objective. Working is not only for our own benefits but for other enterprises or communities that we represent for.
- b. Selecting and consulting about suitable time. Because it depends on the government priority, even a good proposal will not be approved in improper time.
- c. There is a necessity to consider policy advocacy as a responsible job because it will propagate expectations of persons who do not have chances to communicate with legal office, government authorities or responsible officers. Policy advocacy can be propagated through workshops, meetings, free materials or consultation function of partners. However, despite of whatever way, it cannot be measured as a "pressure side" in unfair meaning.
- d. In accordance with recommendations, there are also proposed resolutions for each matter and mentioned the beneficiaries.

(Sources: Hanoi Association for Industry and Trade - Ten years of policy advocacy, speech of Vu Duy Thai (chairman of Hanoi Association for Industry and Trade) at policy advocacy workshop: Practice and Law from VCCI and CODE, 7 and 8 December, 2007).

### 2. Hai Phong Association for Road Transportation (HATA)

- a. Policy advocacy should be the strategic activities and the important link of administrative and legal reform;
- b. An important thing in policy advocacy is the voice of representative office, therefore the association need to be divided in specialized groups that members have same missions or values;
- c. Reaching the goal in policy advocacy requires co-operative, patient and convincing communication. Furthermore, when convincing, policy-makers should have a deep understanding about the matters and a respective attitude towards partners, even they are not really right and you may then attack them in other fields...
- d. The current associations pay heavy attention to administrative management, therefore each organization need a specialized department or strategic partners to analyse and study members' feedbacks contributing to recommendation building for advocacy process;
- e. An important factor that contributes to the success of policy advocacy is building an alliance that has the same voice with policy-maker. Besides, association need to take advantage of support from media and communication timely to create public pressure if necessary;
- f. Selecting time and place to publish community recommendations, and importantly bring solutions to discuss;



- g. The relationship with policy-makers plays an important role in policy advocacy because it directly determines approaching and advocacy process. Hence, exploiting and convincing prestigious relationships are really helpful.

### 3. Vietnam Insurance Association

- a. For document having few factors related to insurance activities: The association sends an official dispatch and proposed policy document through fax, email to members and make deadline for ideas contribution.
- b. For document having a lot of factors related to insurance activities: The association sends an official dispatch and proposed policy document to members and organizes workshops for ideas contribution. Besides the participation of all members, there are also experts, the Editing Group, representatives from Insurance Department and Finance Ministry. The organization holds a number of workshops discussing some important law such as Insurance Business law, Maritime Law, Tourism law etc
- c. For specialized document: The association organizes survey or consultative conferences such as the government Decree on compulsory fire insurance, government decree about compulsory insurance for inland waterway transporters... Surveys will be prepared carefully both in survey content, location, time and expenditure after members' agreement about expenses. The survey's result (collective report, recommendations) will contribute to finish the proposed law...
- d. For short deadline documents: In case there are only 5 days for idea contribution, responsible department will study and give feedback to proposal document.

(Source: Vietnam Insurance association, Situation and Solution for capacity building in Vietnam Insurance association report, June 2006).



### ANNEX 4 - EC'S PRINCIPLES AND MINIMUM STANDARDS IN PUBLIC CONSULTATION

The European Commission (EC) adopted, on 11 December 2002, a communication entitled 'General principles and minimum standards for consultation of interested parties by the Commission' COM(2002)704. General principles and minimum standards apply from 1 January 2003<sup>18</sup>. According to this communication, 'consultations' means those processes through which the Commission wishes to trigger input from outside interested parties for the shaping of policy prior to a decision by the Commission.

#### A. GENERAL PRINCIPLES

**Participation:** The Commission is committed to an inclusive approach when developing and implementing EU policies, which means consulting as widely as possible on major policy initiatives. This applies, in particular, in the context of legislative proposals.

**Openness and Accountability:** The Commission believes that the processes of administration and policy-making must be visible to the outside world if they are to be understood and have credibility. This is particularly true of the consultation process, which acts as the primary interface with interests in society. Thus consultation processes run by the Commission must also be transparent, both to those who are directly involved and to the general public. It must be clear: (i) what issues are being developed; (ii) what mechanisms are being used to consult; (iii) who is being consulted and why; and (iv) what has influenced decisions in the formulation of policy. It follows that interested parties must themselves operate in an environment that is transparent, so that the public is aware of the parties involved in the consultation processes and how they conduct themselves. Openness and accountability are thus important principles for the conduct of organizations when they are seeking to contribute to EU policy development. It must be apparent: (i) which interests they represent; and (ii) how inclusive that representation is.

Interested parties that wish to submit comments on a policy proposal by the Commission must therefore be ready to provide the Commission and the public at large with the information described above. This information should be made available either through the CONECCS 22 database (where organizations are eligible for this database and wish to be included on a voluntary basis) or through other measures, e.g. special information sheets. If this information is not provided, submissions will be considered as individual contributions.

**Effectiveness:** Policies must be effective and timely, delivering what is needed. To be effective, consultation must start as early as possible. Interested parties should therefore be involved in the development of a policy at a stage where they can still have an impact on the formulation of the main aims, methods of delivery, performance indicators and, where appropriate, the initial outlines of that policy. Consultation at more than one stage may be required.

In addition, both the Commission and outside interested parties will benefit from understanding the perspective of the other. The Commission operates within a policy and political framework that is influenced by many factors. For example, it must take account of its obligations to the other

(18) See more on [http://ec.europa.eu/civil\\_society/consultation\\_standards/index\\_en.htm](http://ec.europa.eu/civil_society/consultation_standards/index_en.htm)



European institutions under the Treaties, and of its international obligations to third countries and international organizations. A prerequisite for effectiveness is respect of the principle of proportionality. The method and extent of the consultation performed must therefore always be proportionate to the impact of the proposal subject to consultation and must take into account the specific constraints linked to the proposal. A better understanding of such factors and of how the Commission works will help outside interested parties to have realistic expectations about what can be achieved.

**Coherence:** The Commission will ensure that there is consistency and transparency in the way its departments operate their consultation processes. The Commission will include in its consultation processes mechanisms for feedback, evaluation and review. This will be ensured through appropriate co-ordination and reporting in the context of the Commission's "better law-making" activities. The Commission encourages interest groups to establish their own mechanisms for monitoring the process, so that they can see what they can learn from it and check that they are making an effective contribution to a transparent, open and accountable system.

## B. MINIMUM STANDARDS

**Clear content of the consultation process** - All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses. The information in publicity and consultation documents should include:

- A summary of the context, scope and objectives of consultation, including a description of the specific issues open for discussion or questions with particular importance for the commission
- Details of any hearings, meetings or conferences, where relevant
- Contact details and deadlines
- Explanation of the commission's processes for dealing with contributions, what feed-back to expect, and details of the next stages involved in the development of the policy
- If not enclosed, reference to related documentation (including, where applicable, commission supporting documents).

**Consultation target groups** - when defining the target group(s) in a consultation process, the commission should ensure that relevant parties have an opportunity to express their opinions. For consultation to be equitable, the commission should ensure adequate coverage of the following parties in a consultation process: (i) those affected by the policy; (ii) those who will be involved in implementation of the policy, or (iii) bodies that have stated objectives giving them a direct interest in the policy.

In determining the relevant parties for consultation, the commission should take into account the following elements as well:



- The wider impact of the policy on other policy areas, e.g. environmental interests or consumer policy
- The need for specific experience, expertise or technical knowledge, where applicable
- The need to involve non-organized interests, where appropriate
- The track record of participants in previous consultations
- The need for a proper balance, where relevant, between the representatives of: (i) social and economic bodies; (ii) large and small organizations or companies; (iii) wider constituencies (e.g. Churches and religious communities) and specific target groups (e.g. Women, the elderly, the unemployed, or ethnic minorities); (iv) organizations in the European Union and those in non-member countries (e.g. In the candidate or developing countries or in countries that are major trading partners of the European Union).

Where appropriate, the Commission encourages contributions from interested parties organized at European level.

Where a formal or structured consultation body exists, the Commission should take steps to ensure that its composition properly reflects the sector it represents.

If this is not the case, the Commission should consider how to ensure that all interests are being taken into account (e.g. Through other forms of consultation).

**Publication** - The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the internet and announced at the “single access point”. For addressing the broader public, a single access point for Consultation will be established where interested parties should find information and relevant documentation. For this purpose, the Commission will use the ‘your-voice-in-Europe’ web portal.

However, at the same time it might be useful to maintain more traditional alternatives to the internet (e.g. Press releases, mailings). Where appropriate and feasible, the Commission should provide consultation documents in alternative formats so as to make them more accessible to the disabled.

**Time limits for participation** - the Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings. The main rule is to give those participating in Commission consultations sufficient time for preparation and planning. Consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision-making. In urgent cases, or where interested parties have already had sufficient opportunities to express themselves, the period may be shortened.

On the other hand, a consultation period longer than eight weeks might be required in order to take account of:

- The need for European or national organizations to consult their members in order to produce a consolidated viewpoint



- Certain existing binding instruments (this applies, in particular, to notification requirements under the wto agreement)
- The specificity of a given proposal (e.g. Because of the diversity of the interested parties or the complexity of the issue at stake)
- Main holiday periods.

When the deadline for transmission of comments has expired, the commission will close the consultation and take the next steps in the administrative process (e.g. Prepare for the decision by the commission).

Acknowledgement and feedback - Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on Websites linked to the single access point on the internet. Depending on the Number of comments received and the resources available, acknowledgement Can take the form of: (i) an individual response (by e-mail or acknowledgement slip), or (ii) a collective response (by e-mail or on the commission's single access point for consultation on the internet; if comments are posted on the single access point within 15 working days, this will be considered as acknowledgement of receipt).

Contributions will be analyzed carefully to see whether, and to what extent, the views expressed can be accommodated in the policy proposals. Contributions to open public consultations will be made public on the single access point. Results of other forms of consultation should, as far as possible, also be subject to public Scrutiny on the single access point on the internet.

The commission will provide adequate feedback to responding parties and to the public at large. To this end, explanatory memoranda accompanying legislative proposals by the commission or commission communications following a consultation process will include the results of these consultations and an explanation as to how these were conducted and how the results were taken into account in the proposal. In addition, the results of consultations carried out in the impact assessment process will be summarized in the related reports.



### Annex 5 - Canadian Guiding Principles for Public Participation

The Policy Statement and Guidelines for Public Participation issued by the Canadian Department of Justice states that “The Government of Canada has recognized that the legitimacy of public institutions, the quality of public policy, and the responsiveness of public services will require new and better mechanisms for engaging citizens and civil society in governance.” It also defines that public participation has several facets and dimensions ranging from public information and education through to partnerships. In terms of the departmental commitment, public participation primarily refers to processes of public consultation and citizen engagement.

Meanwhile the Statement describes that consultation refers to processes through which governments seek the views of individuals or groups on policies, programs or services that affect them directly or in which they have a significant interest. Consultation can occur at various points in the policy development process and can be used to help frame an issue, identify or assess options and evaluate existing policies. Consultation includes processes such as public meetings, advisory committees, polling and focus groups.

The Policy Statement and Guidelines emphasizes that public participation processes undertaken by the Department of Justice should respect the following guiding principles<sup>19</sup>:

- **Commitment:** all Sectors, Branches and Divisions share in Justice Canada’s commitment to the process of public participation and its integration into the policy-making process;
- **Clarity:** Justice Canada shall ensure that a clear mutual understanding of the objectives, purpose and process of participation and feedback exists and that the parameters of the public participation activity are established in advance and communicated to participants;
- **Trust:** Justice Canada shall ensure that open lines of communication and working relationships are established and respected; **Inclusiveness:** Justice Canada shall ensure that the participation of the broadest possible range of groups or individuals who have an interest in or who may be affected by a government decision is encouraged;
- **Accessibility:** Justice Canada shall ensure that appropriate measures to ensure that all Canadians, regardless of their linguistic, regional, ethno-cultural or socio-economic background or physical capabilities, are able to participate;
- **Mutual respect:** Justice Canada shall ensure that departmental officials and stakeholders share joint responsibility and commitment to ensuring respect for the legitimacy and views of all participants;
- **Responsibility:** Justice Canada shall ensure that the Department and participants

(19) Cited from “Policy Statement and Guidelines for Public Participation” of the Canadian Department of Justice. See more on [www.justice.gc.ca](http://www.justice.gc.ca)



share in the responsibility for ensuring that public participation processes are held in good faith and that adequate resources and time are allocated to the process;

- **Accountability:** Justice Canada shall ensure that feedback on the outcomes of public participation processes is provided to participants and demonstrate how these outcomes have been considered in the policy-making process;
- **Co-operation:** Justice Canada shall ensure that provincial and territorial governments, as well as other federal departments and agencies, are involved where relevant and practicable, consistent with the principles set out in the Social Union Framework Agreement.



## REFERENCES

1. Tran Huu Huynh and Dau Anh Tuan, Business Associations as Policy Advocates, GTZ – VCCI, 2005.
2. Markus Taussig and Le Duy Binh, Consultation of the Domestic Business Community in the Development of Vietnam's Legal Framework for Enterprise, 2006.
3. Raymond Mallon and Le Duy Binh, Effective Implementation of a Regulatory Impact Assessment Process In Vietnam, GTZ, 2007.
4. Le Duy Binh and Doris Becker, Public Private Dialogue: An Effective Instrument to Foster Private Sector Development, GTZ, 2009
5. Doing Better Business Through Effective Public Consultation and Disclosure : A Good Practice Manual, World Bank 1998
6. How to Advocate Effectively: A Guidebook for Business Associations, The Center For International Private Enterprise, January 2003.
7. East Devon District Councils' Consultation Guide 2005
8. The Model of Compliance Costs of Administrative Procedures,
9. Economica Vietnam, Guidelines on Calculating Administrative Procedures' Compliance Cost, The Prime Minister's Special Task Force for Administrative Procedure Reform, prepared for IFC and the Advisory Council on the Reform of Administrative Procedure, 2009.

**EC DISCLAIMER**

*This book has been prepared with financial assistance from the Commission of the European Communities. The views expressed herein are those of the authors and therefore in no way reflect the official opinion of the European Commission nor the Ministry of Industry and Trade.*

