

LAW ON ENTERPRISE AND LAW ON INVESTMENT 2020 EXPECTATION FROM FACTS



Mr. DAU ANH TUAN

Director General of Legal Department of
Vietnam Chamber of Commerce and
Industry

CONTENTS

- I. Law on Investment 2020
- II. Law on Enterprises 2020
- III. Expectation

I. LAW ON INVESTMENT 2020

New and noticeable points

Resolve overlap points


Innovate some procedures

Eliminate conditional business lines

Prohibit debt collection business


Pay attention to security and defense issues

- Clarifying principles and conditions for each form of investor selection to implement projects using land, including: (i) auction of land use rights under the Land Law; (ii) bid for investor selection under the Bidding Law; (iii) investor approval, investment policy under the Investment Law.
- Apply uniformly the procedures for approval of investment policies in accordance with the Law on Investment for housing and urban construction projects to avoid overlap in the authority and procedures for project investment decision / approval houses and urban centers in accordance with the law on investment and the law on housing and urban areas (Point g, Clause 1, Article 31 and Point b, Clause 1, Article 32). Content of pre-feasibility study report according to Construction Law.



1. Resolve overlap points

- Clarifying the identification and selection of investor / investor, relationship between investor and investor to ensure consistency between laws on construction, housing, investment, public investment, and planning. urban...
- Defining and clarifying who must carry out procedures for transferring real estate business projects in accordance with the Law on Investment and the Law on Real Estate Business to ensure the consistency and consistency of the legal system, avoiding duplication of procedure.
- Abolishing the regulations related to the Build - Transfer contract form of the Housing Law 2014, the Law on Real Estate Business 2014 in the Law on Public-Private Partnership to ensure consistency, synchronous with the new provisions in the Law on Investment under the public-private partnership mode.
-



1. Resolve overlap points

2. Innovate procedures

- Abolishing a part of administrative procedures (such as investment policy approval procedures for a number of investment projects of individuals and households, and abolishing regulations that the Prime Minister approves investment policies for with the project project has the capital model from 5,000 billion VND).
- Assign Province Committee on investment acceptance (such as golf course project).
- Reform and simplify procedures for implementing investment projects, expand investor autonomy in the project implementation process (such as the right to divide, split, merge, merge, and transfer projects. ..).

3. Eliminate conditional business lines

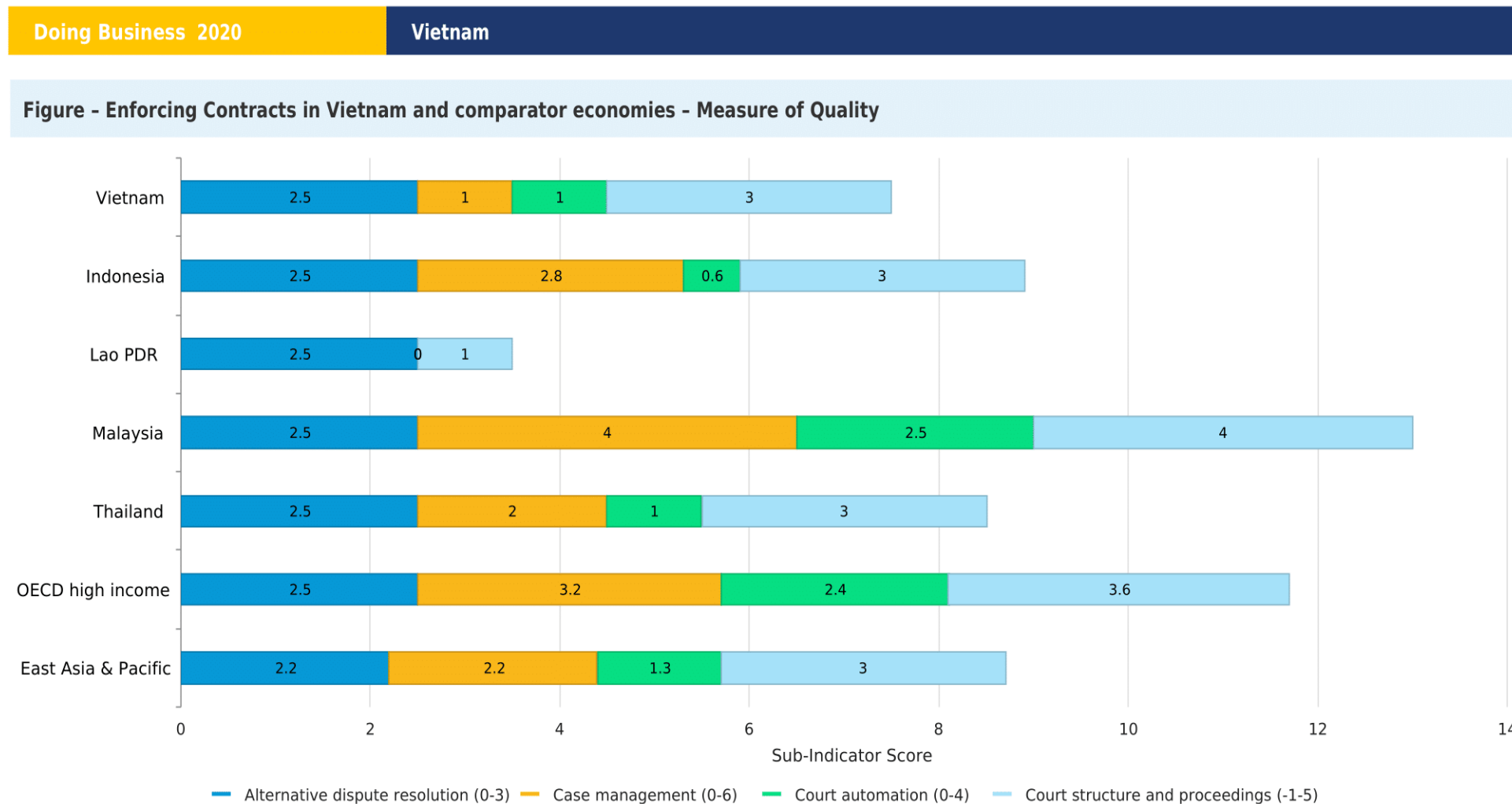
- Reducing 22 sectors and trades subject to conditional business investment in Appendix IV
- Amending and supplementing provisions in Appendices I, II, III on the ban on investment and trading in narcotics; toxic chemicals, minerals and wild animals and plants to suit the actual situation and state management requirements for this product in accordance with the relevant laws and international treaties.
- Prescribing the list of industries and occupations with conditional market access for foreign investors following the opt-out approach, improving transparency in the application of Vietnam's market access commitments under the Agreements New generation free trade.
- Supplementing "debt collection service business" to the list of industries and trades banned from business investment.

- Enterprises being licensed to provide debt collection services will continue operating until the revised Investment Law takes effect on January 1, 2021.
- Debt collection businesses have many types of business, debt collection is a part of them. Other business forms of enterprises continue to be operated in accordance with the law.
- Prohibiting the business to collect debt limits the arising variables, helping the authorities to manage the business environment more effectively.
- Promote businesses towards a more civilized debt recovery method through: Courts, Arbitration, Mediation ...



4. Prohibit Debt Collection Services

4. Prohibit Debt Collection Services



Details - Enforcing Contracts in Vietnam

Resource: Doing Business 2020 - World Bank

Effective dispute resolution method

The dispute settlement index is measured on the basis of:

- Time and cost to resolve disputes
- Quality of juridical proceedings

According to the assessment from the World Bank's Report, alternative dispute resolution (ADR) methods such as **Arbitration**, **Mediation** are chosen by businesses.

5. National defense security

- Consider security and defense conditions in case foreign investors invest in the form of enterprise establishment, capital contribution, share purchase, capital contribution purchase in enterprises in islands, communes, border towns, coastal towns or areas sensitive to security and defense (Clause 3 Article 5, Point c Clause 2 Article 26, Point d Clause 1 Article 32).
- Supplement provisions on investment capital assessment in case of necessity to determine tax bases, contribute to limiting the situation of transfer pricing and tax evasion (Article 45).

5. National defense security (cont)

- Supplementing regulation of no extension of investment projects for projects using outdated technology, potentially causing environmental pollution, resource intensive and projects subject to transfer without compensation (Clause 4, Article 44).
- Supplementing regulations of the termination of investment projects in case investors conduct investment activities on the basis of fake capital transactions to create a legal basis for handling under-investment cases investment in shading (Point e, Clause 2, Article 48).

II. LAW ON ENTERPRISE 2020

1. New and noticeable points

Keep innovating on market retry

Evaluate enterprise management, protect minority shareholders

Keep changing regulations related to state enterprises

(Business households are not regulated)

2. Continue innovating market-retry

- Promoting online and interconnection in market entry (business registration can be done entirely in a digital environment)

3. Evaluating enterprises management

- Expand the level and scope of shareholders' rights to create favorable conditions for shareholders to protect their legitimate interests.
- Restrict managers or major shareholders from abusing their positions and powers, causing damage to the company and small shareholders.
- Supplement regulations on corporate governance of joint stock companies according to international good corporate governance practices.

4. Changes in SOEs

- Amend the definition of state-owned enterprises to clearly define the types of enterprises where the State owns 100% of the charter capital and the enterprises where the State owns more than 50% (to less than 100%) of the charter capital to have a way and appropriate management and supervision methods.
- Supplement regulations on centralized control, combating conflicts of interest, and ensuring transparency and publicity of information of state-owned enterprises.

III. --- EXPECTATION

1. Quality of guidance documents

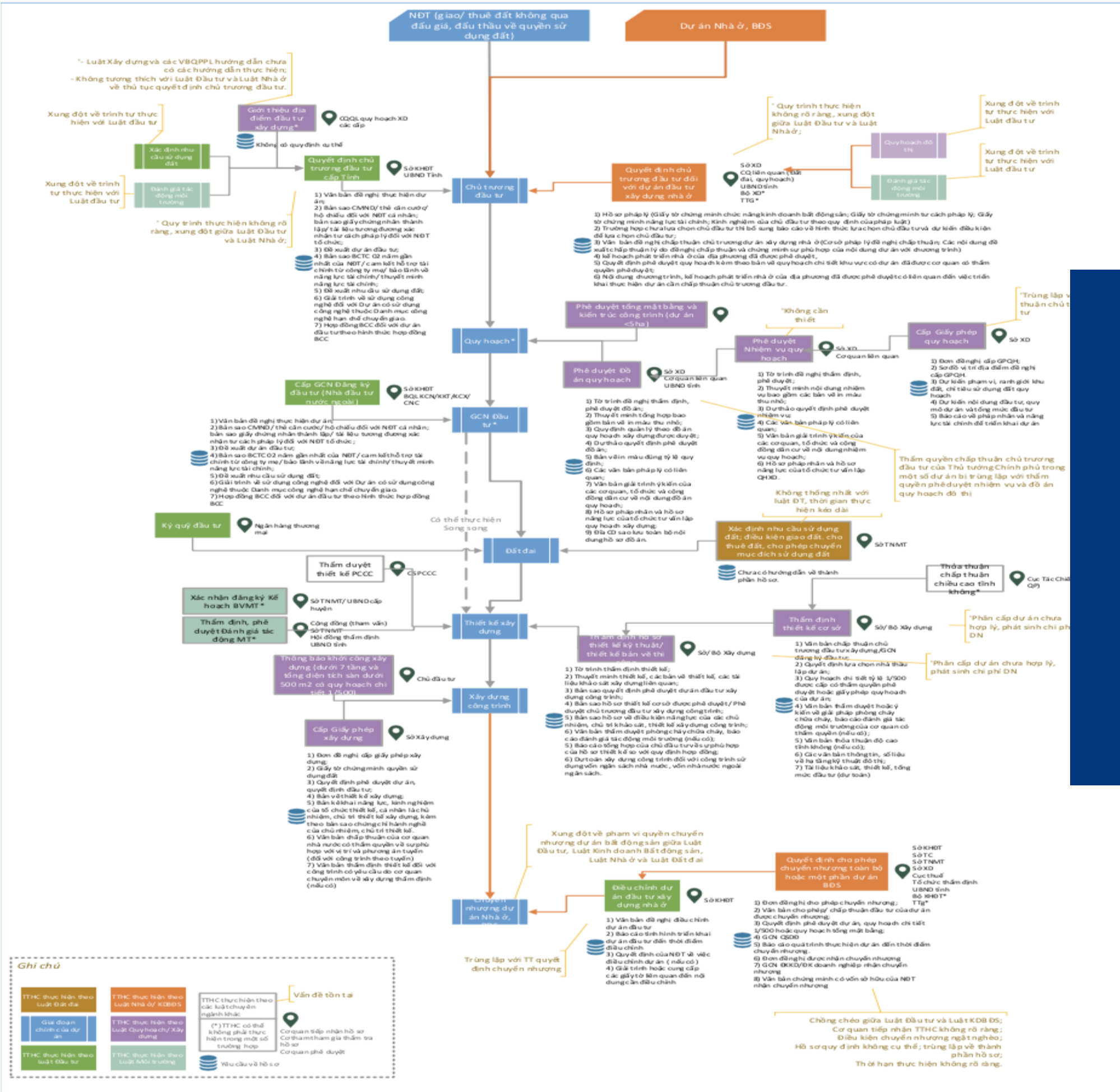
To detail and guide the implementation of the Law on Investment, the Government must draft 7 Decrees, including:

- The Decree details and guides the implementation of a number of articles of the Investment Law.
- Decree on outward investment;
- Decree replacing Decree 84/2015 / ND-CP dated September 30, 2015 on supervision and evaluation of investment;
- Decree replacing Decree 131/2015 / ND-CP dated December 25, 2015 guiding national important projects;
- Decree on investment promotion;
- Decree detailing Clause 3, Article 75 of the Law (guiding subjects, contents of preliminary environmental impact assessment);
- Decree amending and supplementing a number of articles of the Government's Decree No.99 / 2015 / ND-CP dated October 20, 2015, detailing and guiding the implementation of a number of articles of Law on Housing.

2. Household businesses are not regulated in the Law

- Difficulties of business households
- Model "typical Vietnam" and legal confusion
- How to create a professional and level playing field?
- Will there be a separate Law on business households?

SƠ ĐỒ TRÌNH TỰ THỰC HIỆN QUAN ĐẾN HOẠT ĐỘNG ĐẦU TƯ GẮN VỚI NHU CẦU SỬ DỤNG ĐẤT CỦA DOANH NGHIỆP
(trường hợp dự án được giao đất, cho thuê đất KHÔNG thông qua đấu thầu, đấu giá đối với quyền sử dụng đất)



3. Can overlap problems be resolved?

[illegible]

4. How will investors perform?



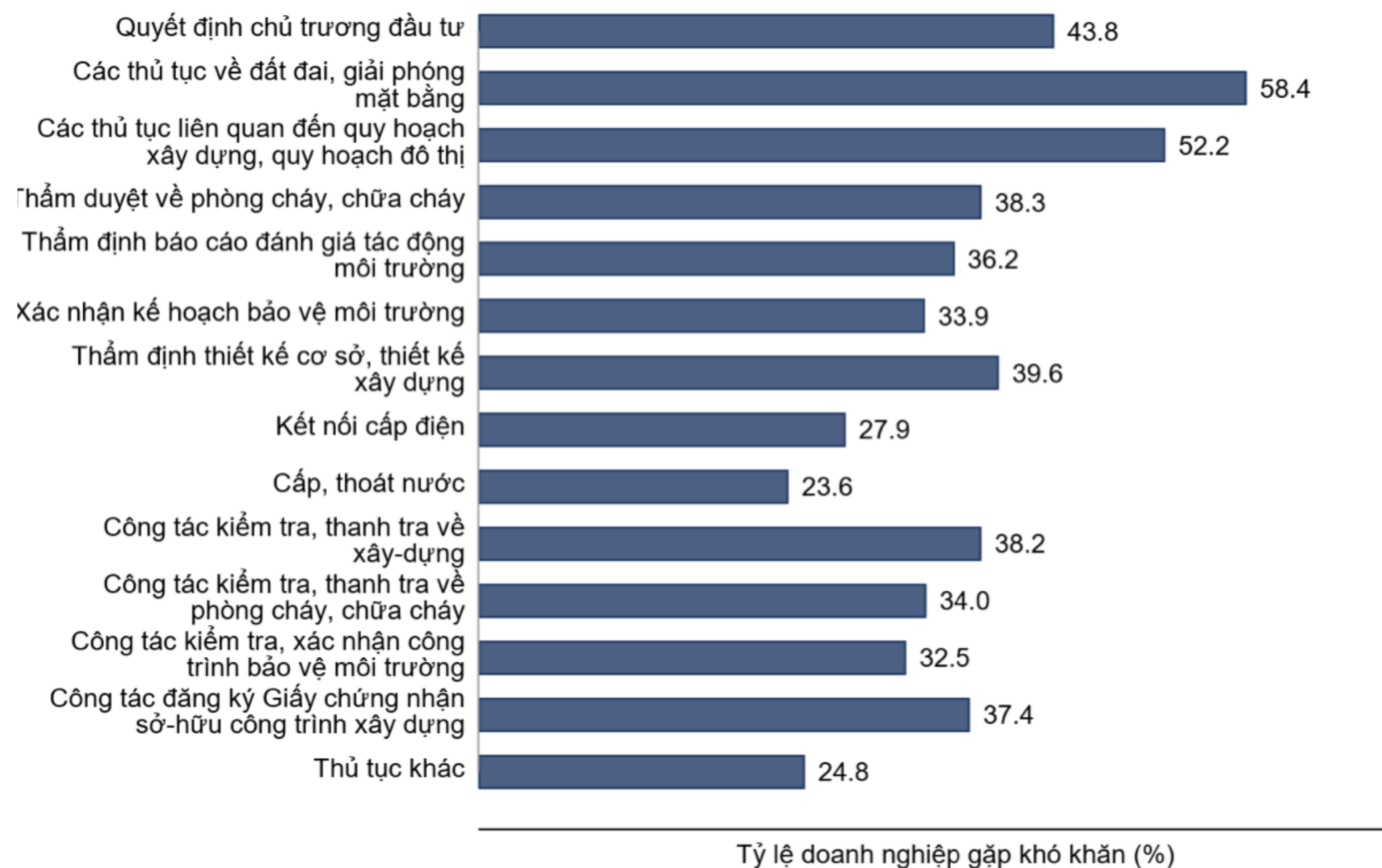
5. The distance between law and administrative reality

Những lĩnh vực thủ tục hành chính còn nhiều phiền hà

Lĩnh vực	2015	2016	2017	2018	2019
Bảo hiểm xã hội	25	24	25	25	23
Bảo vệ môi trường	10	12	12	11	12
Đất đai	26	27	26	30	35
Đăng ký DN/Đầu tư	10	13	10	9	8
Xuất nhập khẩu	7	10	7	8	8
Phòng cháy	9	15	13	12	13
Thuế, phí	30	29	28	28	25
Xây dựng	12	16	13	14	14
Lao động	7	8	8	8	10
Quản lý thị trường		16	17	16	14
Thanh toán qua kho bạc	15	14	13	13	12
Giao thông	12	13	16	15	14
An toàn thực phẩm			6	6	7
Khác	2	2	2	4	3

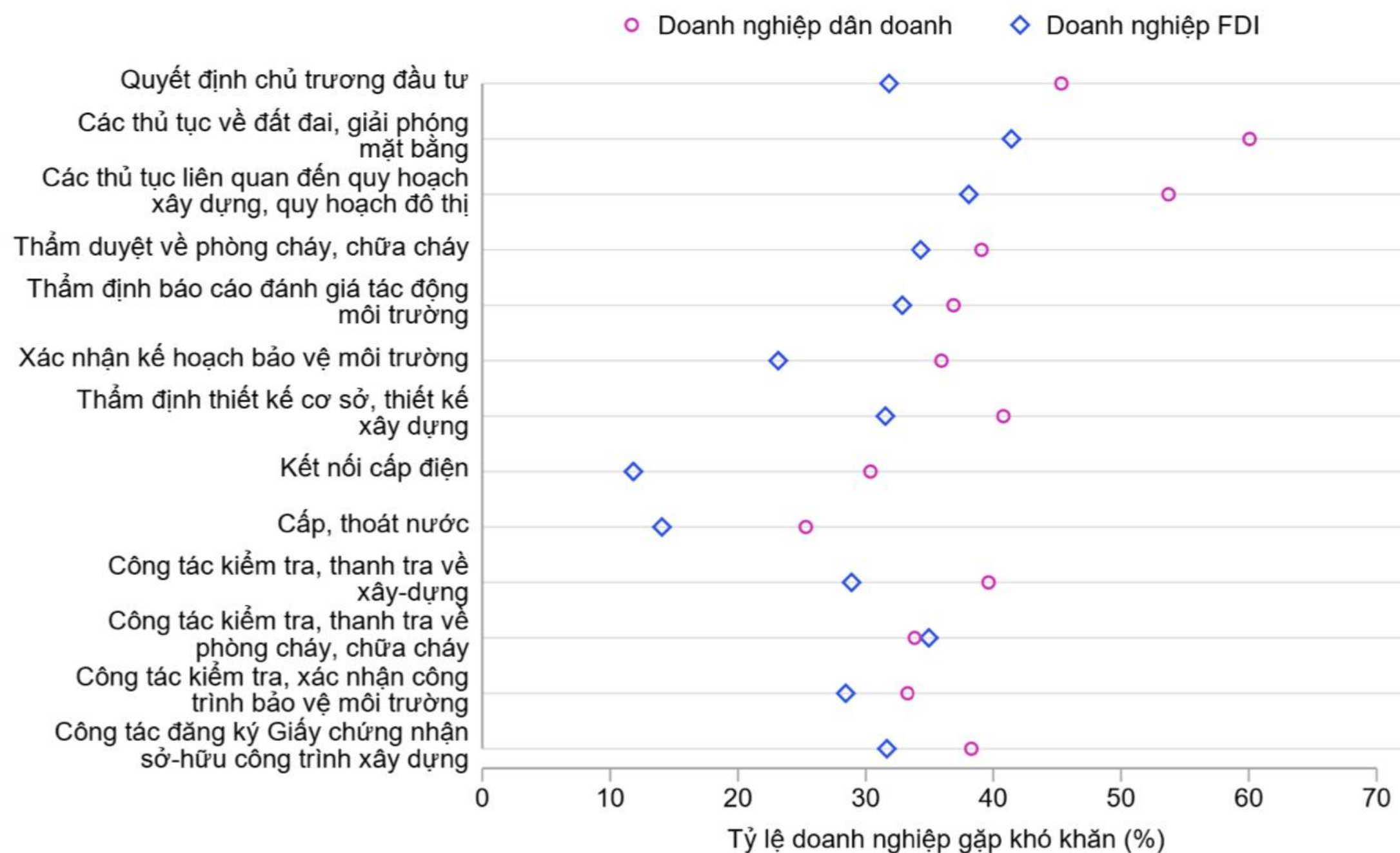
Nguồn: Điều tra PCI các năm, Câu hỏi D2. “Từ kinh nghiệm thực tiễn tại tỉnh của bạn, vui lòng cho biết thủ tục hành chính ở những lĩnh vực nào dưới đây còn nhiều phiền hà nhất [có thể chọn nhiều hơn một lĩnh vực].” Tỷ lệ doanh nghiệp cho biết thủ tục hành chính còn nhiều phiền hà.

6. Number of businesses having difficulty implementing construction-related administrative procedures



Nguồn: Điều tra PCI 2019

6. Number of businesses having difficulty implementing construction-related administrative procedures



Nguồn: Điều tra PCI 2019

7.Regulatory change contributes to improve the business environment

Besides the ranking indexes such as Taxpayment, Credit Access and Business Insolvency Resolution, there are 6 indexes of decline, including:

- Starting a business (decrease 11 steps);
 - Property registration (decrease 4 grades);
 - Investor protection (decrease 8 grades);
 - Cross-border commercial transactions (decrease 4 grades);
 - Dispute settlement (decrease 6 grades)
- => Vietnam has improved in the quality of the business environment but little and slowly; while other economies reformed faster and more aggressively

LOE and LOI 2020 are expected to improve the business environment and upgrade the business index of Vietnam



Source: Doing Business 2020 - World Bank

7.Regulatory change contributes to improve the business environment

Improved contract dispute resolution index

The contract dispute resolution index is measured on the basis of:

- Time and cost to resolve disputes
- Quality of juridical proceedings

According to the assessment from the World Bank's Report, alternative dispute resolution (ADR) methods such as **Arbitration, Mediation** are chosen by businesses.



Details - Enforcing Contracts in Vietnam

Source: Doing Business 2020 - World Bank

THANK YOU

Mr. DAU ANH TUAN

Director General of Legal Department
of Vietnam Chamber of Commerce
and Industry

E: dauanhtuan@gmail.com