

DEVELOPING A FOREIGN INVESTMENT SCREENING INSTRUMENT

Towards selection of responsible investment projects

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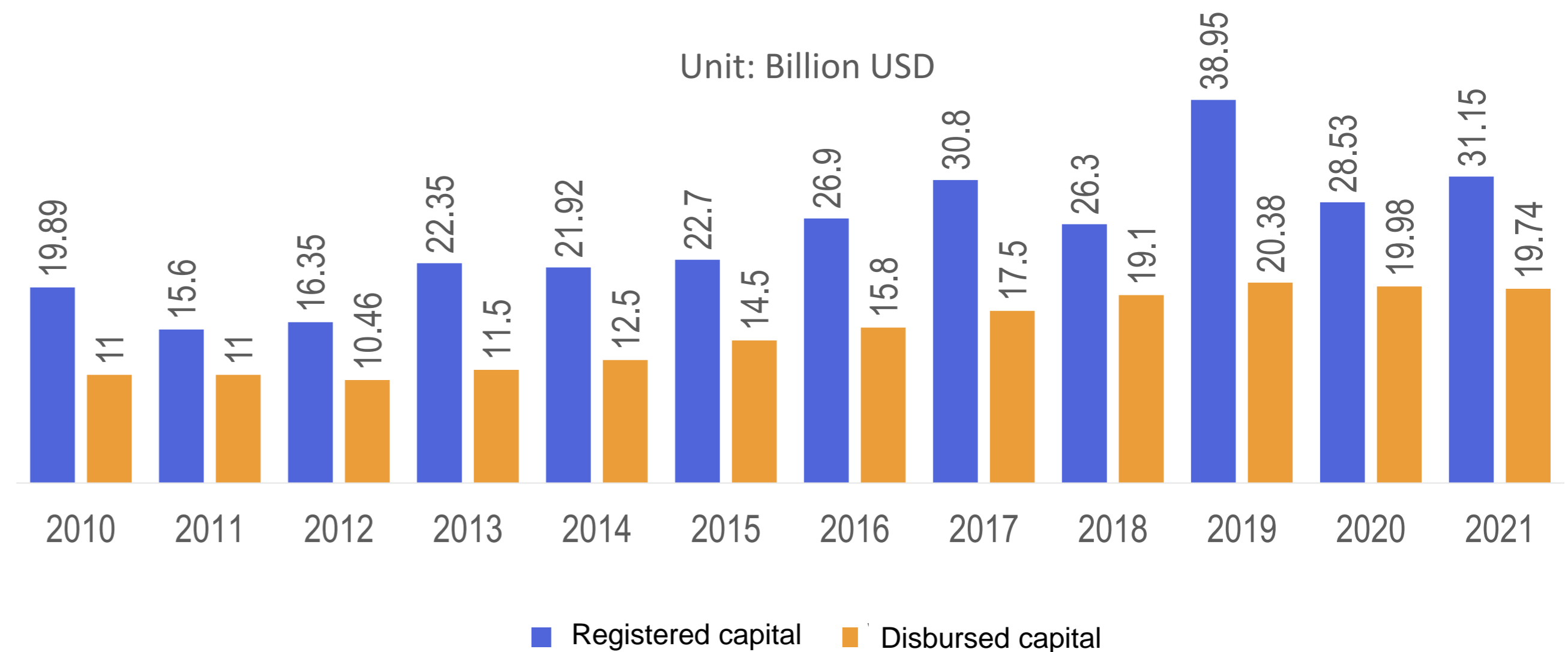
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FDI capital is crucial to Vietnam's economy

Foreign direct investment into Vietnam (2010-2021)



In the last 30 years, Viet Nam has attracted over \$7 billion per year on average. In 1988-2020, realized FDI capital accounted for about 47% of registered capital.

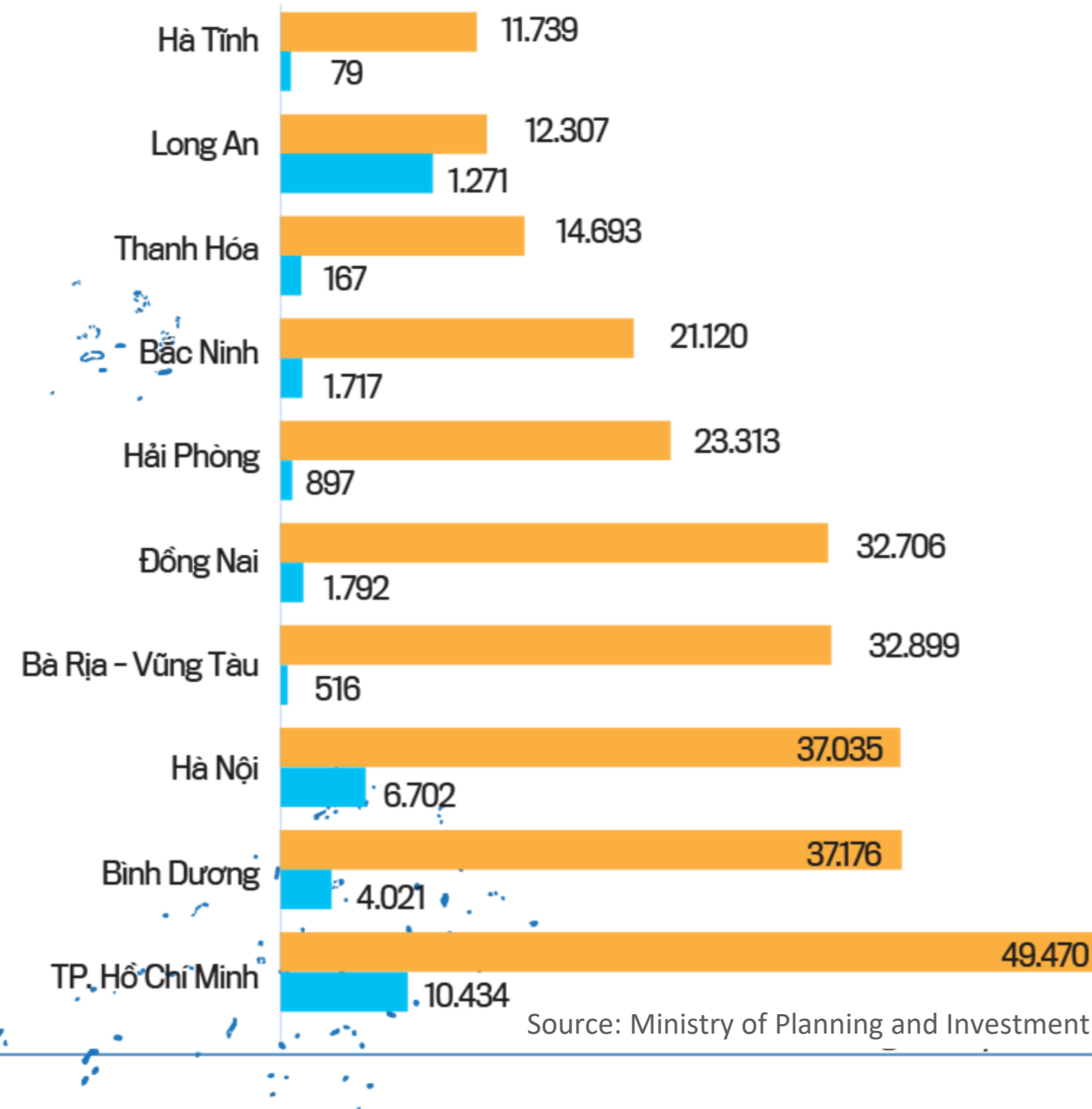
To date, FDI sector has contributed approx. $\frac{1}{4}$ total social investment, accounting for 20.13% of GDP. The share from manufacturing–construction sector reached up to 53%.

FDI capital is crucial to Vietnam's economy

Top 10 FDI destinations in Viet Nam

Accumulated until 20 Jan 2021

- Total registered capital (million USD)
- Number of projects



•**Job creation:** Workers employed in the FDI sector increased 12%/annum on average during 2008-2017, five times higher than the national average.

•**Promoting export:** In 2020, total exports of FDI sector accounted for 68% of total exports of Viet Nam. In export alone, FDI sector accounts for 71.8% of Vietnam's exports in 2020, a big increase from 54.2% in 2010.

•**Improving productivity:** Foreign invested firms contributed to increase in technology transfer, labour quality and productivity. In 2019, productivity in FDI sector was 2.5 times higher than national average.

FDI from a different perspective

“Viet Nam has become a rising star in the region in foreign investment attraction and its achievements in the last 30 years have been acknowledged. However, there are persisting problems such as [price transfer](#), [tax evasion](#), [environmental pollution](#); [spillover](#) and [linkages](#) effects between foreign and domestic sectors below expectation; limited implementation of [sector- and partner-specific investment attraction](#); and the fact that some projects use good technology but the [objective of technology attraction](#) (high technology and source technology) and [technology transfer](#) remain to be achieved”

Excerpt from the report “30 years of foreign investment attraction in Viet Nam – Vision and opportunities in the new era”, MPI (2018).



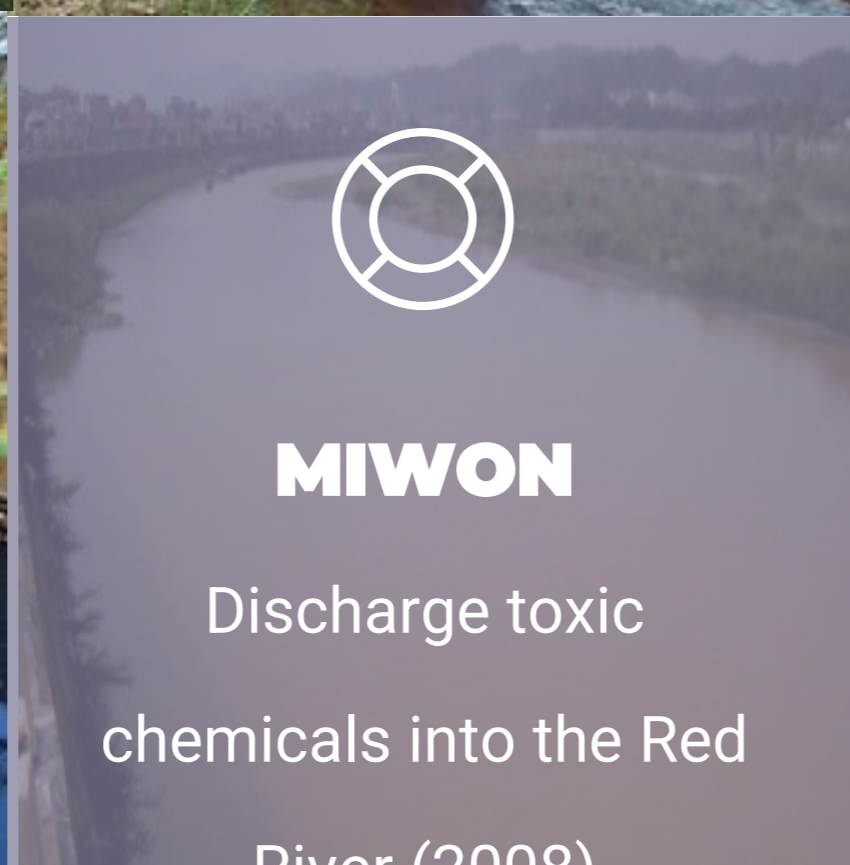


- **Average capital size** of a project tends to decrease (USAID-VCCI, 2021).
- Only about **5% are high tech projects**, 80% average tech, and remaining 14% use low technology (MPI, 2020).
- **Product domestication** only reaches 20-25%, lower than in other countries in the region.
- **Delays in project implementation** leads to withdrawal of investment licenses.
- **Profit loss and price transfer**: In 2020, approx. 56% of foreign firms (25.200) reported losses despite a 22% increase in total assets of these firms (MOF, 2022).
- Some projects **did not comply with environmental regulations**, even caused environmental damages.
- Some foreign firms **did not honor workers' rights**. Discrimination and mistreatment of workers exist. Strikes are more likely in FDI sectors than domestic sector.

The « dark sides » of FDI capital

Environmental incidents related to FDI projects

Vedan discharged waste into Thi Vai Reiver, causing damages over 14 years. Following Vedan case, the second Vedan-like case was discovered, Miwon discharge waste into the Red River. In 2016, Formosa Ha Tinh, a Taiwanese owned company, discharged toxins hundreds of times higher than allowed rate into the sea at a capacity of 12,000m³/day night, killing sea life along the coast from Ha Tinh to Quang Binh, Quang Tri and Thua Thien-Hue, damage livelihoods of the people that led to public outcry.



The « dark sides » of FDI capital

7

Employment in FDI sector

Cheating and overexploitation of workers are just two of the negative effects caused by some foreign firms in Vietnam. Numerous businesses have engaged in illegal dismissal of employees or unilateral termination of labor contracts without justification. According to some workers, the underlying motivation in this story is that they are "old" employees. Being fired due to age discrimination is a typical occurrence in FIEs. Another common issue is that working conditions are not guaranteed. Low wages, long hours, and high productivity pressure have created a generation of workers who earn barely enough to exist and are left with no assets once they become "old" by their employers' standards.



New context requires new strategies in FDI project selection

- **IR 4.0** is a global trend calling for attention to high technology, green industries.
- **Viet Nam integrates deeper into FTAs**, including new generation FTAs that require higher on investment: 1) transparency, predictability of legal system and legal changes; 2) labour and labour rights including wages and working conditions, forced labour, association of independent trade union, and 3) anticorruption.

Recent policy changes

Strategy to attract new generation FDI

- [Resolution 50-NQ/TW](#) of Politburo on “Orientations to refine the regulations and policies to improve the quality and effectiveness of foreign investment cooperation until 2030” (2019)
- [Government Resolution 58/NQ-CP](#) guiding implementation of Resolution 50 (2020)
- [Strategy and orientations for strategy to attract new generation FDI](#) in 2018 – 2030 developed by Government (2018)

Investment Law, technical laws and provincial regulations

- [Investment Law, revised 2020](#), ratified by National Assembly (2020)
- [Decree 31/2021/NĐ-CP](#) guiding implementation of Investment Law (2021)
- Other technical laws and regulations: Environmental Protection Law, Construction Law, Product and Goods Specification Law, Technical Standard Law, Food Safety Law, Credit Institutions Law, Oil and Gas Law, Publishing Law, etc.
- [Provincial regulations](#) (mostly on land and planning)
- Master Plan to promulgate [National Action Plan to refine policies and regulations on responsible business](#), expected to submit to Prime Minister in 2023

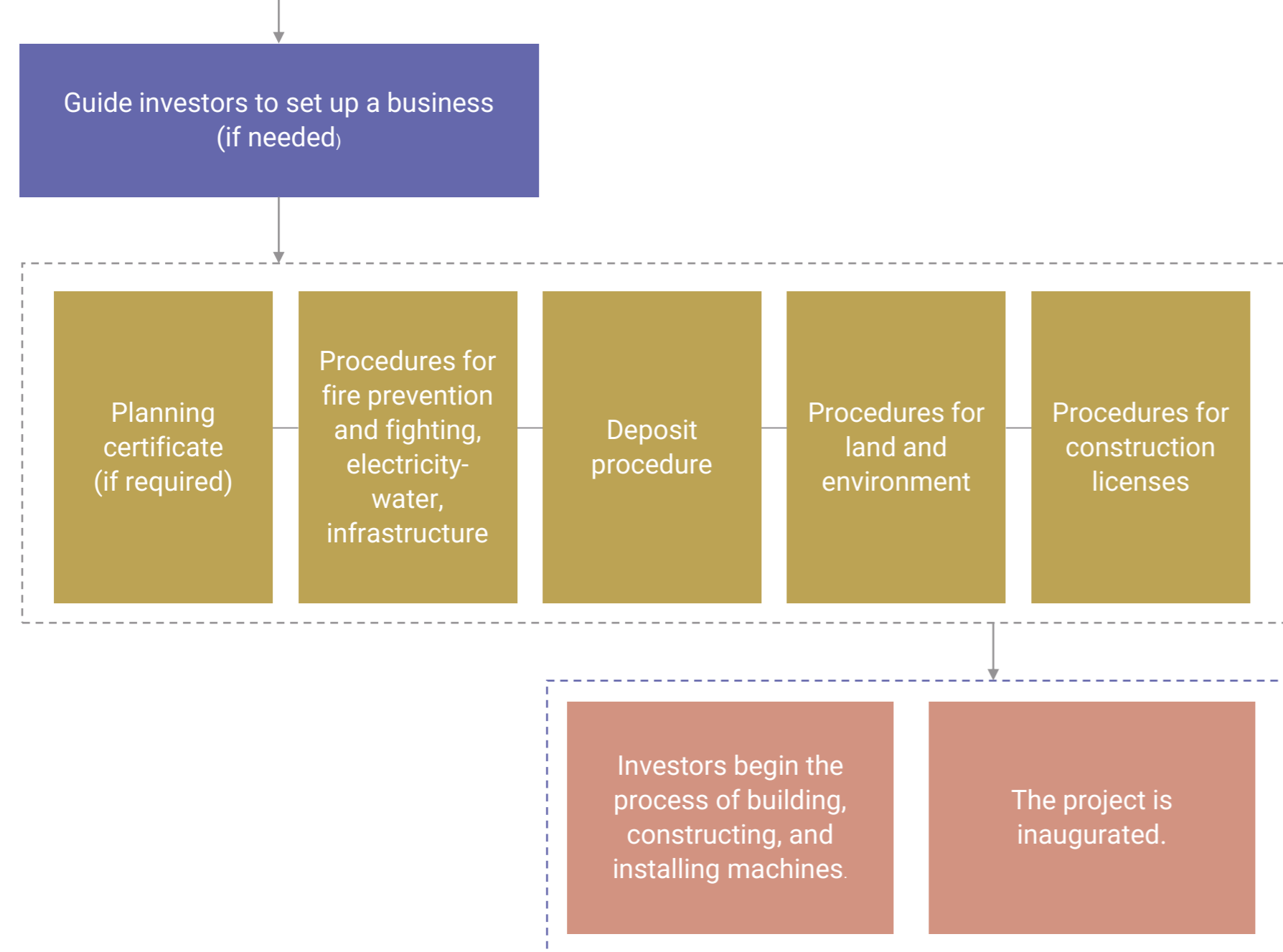
International agreements on investment

Viet Nam entered into or is implementing some [bilateral and multilateral agreements](#) with ASEAN, U.S., Japan, South Korea, India, and other CPTPP partners



Appraisal of FDI projects in provinces in practice





Appraisal of FDI projects in provinces in practice



Appraisal of FDI projects

- **Appraising FDI project** is to review with critical thinking fundamental contents of a project to evaluate the reasonableness, level of effectiveness, and feasibility before making a decision to approve or reject the investment application.
- **Contents of appraising investors and investment projects:** Legal status and financial capability of the investor, level of relevance of the project with overall planning, technological and technical relevance, expected economic and social effects

Appraisal of FDI projects in provinces in practice

Conditions for appraising an investment project registration dossier:

- The relevance with national [planning](#), regional planning, provincial planning, urban planning and special economic - administrative unit planning (if any);
- Assessment of the [demand for land use](#);
- [Preliminary](#) assessment of [socio-economic effects](#) of the project; preliminary assessment of [environmental impact](#) (if any) as regulated in environment protection law;
- Assessment of [investment incentives and conditions for eligibility to investment incentives](#) (if any);
- Assessment of the [technology to be used](#) in the investment project if the project requires appraisal and collection of opinions on the technology in accordance with the Law on Technology Transfer
- The relevance with objectives and [orientation for urban development, and residential housing development programs and plans](#); preliminary plan; preliminary structure of residential housing products and provision of land for social residential housing development; preliminary plan for investment in construction and management of urban infrastructure inside and outside the project in the case of a project on construction of residential houses and urban areas.

Some limitations

- Since 2006, broader decentralization of licensing and management of FDI projects for provincial authorities have promoted provincial proactivity and creativity in FDI attraction.
- However, the “one size fits all” decentralization, regardless of provinces’ management sophistication, personnel capacity, scale of economies, led to competition to attract FDI at any cost and issuing incentive mechanisms and policies to attract FDI beyond designated power or regulations.

- Some provinces use easy investor selection criteria, prone to easy short-term interest, neglecting long-term local interest instead of national overall interest.
- Decentralization is intensified but the implementing agencies have inadequate capability, leading to limitations in investment licensing and management of FDI projects.
- Many licensed projects disrupted sectoral planning and many large-scaled projects are licensed but implementation are not started or delayed.



Other limitations of FDI project appraisal

- A **detailed and consistent** guideline on how to appraise FDI project is not in place.
- **Capacity** of project appraisers are to be improved.
- Absence of **consistent, unified standards or criteria** for project appraisal.
- Issues in **data sharing** on FDI projects
- Absence of comprehensive **evaluation** on the aspect of **responsible business**.



**What can
provinces do?**



The foreign investment screening instrument & the orientation to select responsible investment projects

Why a FISl is necessary ?

- Gradually address limitations in the current FDI project appraisal activity
- Align with Viet Nam's FDI attraction orientations in the new stage to focus on « quality » rather than « quantity ».



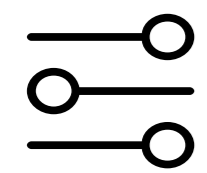
Why «responsible business» needs to be incorporated?

“Responsible business” entails making investments in accordance with human rights, health and safety standards, social and environmental protection, and fundamental labor rights.

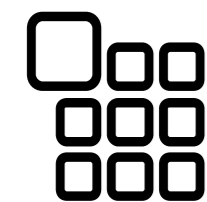
Incorporating responsible business practices into the FDI project appraisal protocol is necessary and could serve as a “filter” that helps local authorities select projects meeting Viet Nam’s sustainable development goals.

→ assist provincial governments in identifying, preventing, mitigating, and better managing actual and potential adverse impacts of potential projects.

Foreign Investment Screening Instrument (FISI)



VCCI and UNDP collaborated to develop a foreign investment screening instrument to assist provincial governments in evaluating potential contributions and impacts of FDI projects applying for investment licenses at their localities.



Objective: To support local governments in the stage of project appraisal to identify projects with “responsible business” characteristics or projects that meet the priorities of local governments in terms of potential economic, social, and environmental impacts.

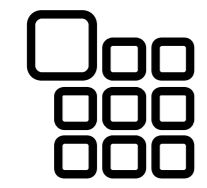
The instrument includes a list of factors that **local authorities** should take into account when they review and assess foreign investment projects.



Development of FISI

Referencing international standards and best practices
Reviewing Viet Nam's legal documents
Studying provincial practices

Foreign Investment Screening Instrument (FISI)



Types of foreign investment covered by the FISI: FISI will focus only on **greenfield investment** and is only applicable to projects that require local government permission.



Appraising agencies: The FISI should be used by an agency within local governments (e.g., the Investment Promotion Agency, departments of planning and investment, management boards of industrial zones and economic zones)



Development of FISI

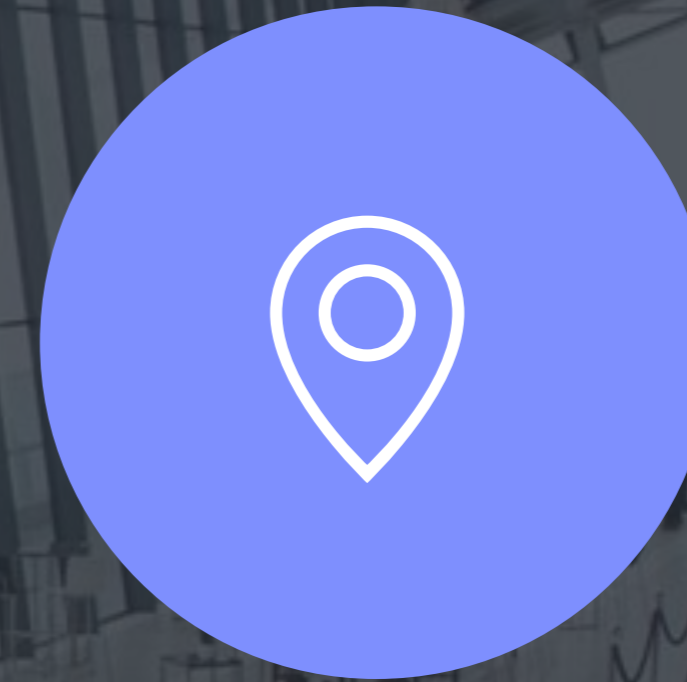
Referencing international standards and best practices
Reviewing Viet Nam's legal documents
Studying provincial practices

FISI approach



Negative screening

Initial screening to eliminate projects failing to meet mandatory legal requirements



Norm-based screening

Encourage compliance with international standards and best practices in doing business, particularly responsible investment projects

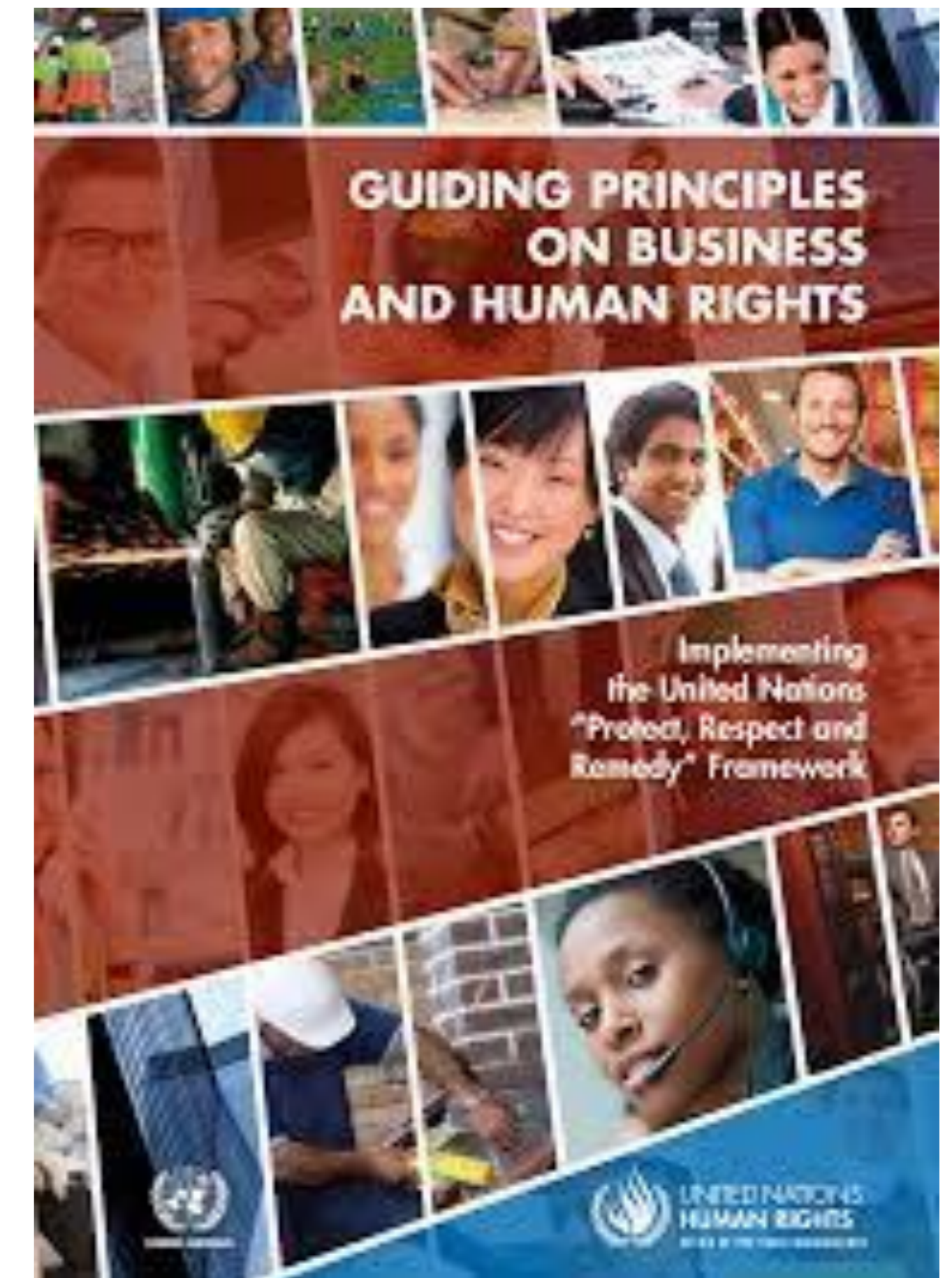
Referencing international standards and good practices

Many countries have developed FDI project screening criteria following « responsible business » principles, i.e. screening investment projects based on evaluation of sustainable development and responsible business factors.

Primary source of references:

- International investment agreements
- Criteria used by host countries to attract high-quality FDI and/or to reduce or prevent negative consequences of investments
- Criteria used by home countries to encourage national firms to invest abroad and conditions supporting these firms to qualify for these criteria.
- Standards adopted by intergovernmental agencies specifying criteria, including measures to mitigate or prevent negative consequences of investments to be satisfied before an organization can finance a project

The most common and essential among these are: [UN Guiding Principles on Business and Human Rights](#) (UN, 2011), [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#) (ILO, 2017), and [OECD Guidelines for Multinational Enterprises](#) (OECD, 2011).



Structure of FISl

FISI

Component 1: ELIGIBILITY ASSESSMENT

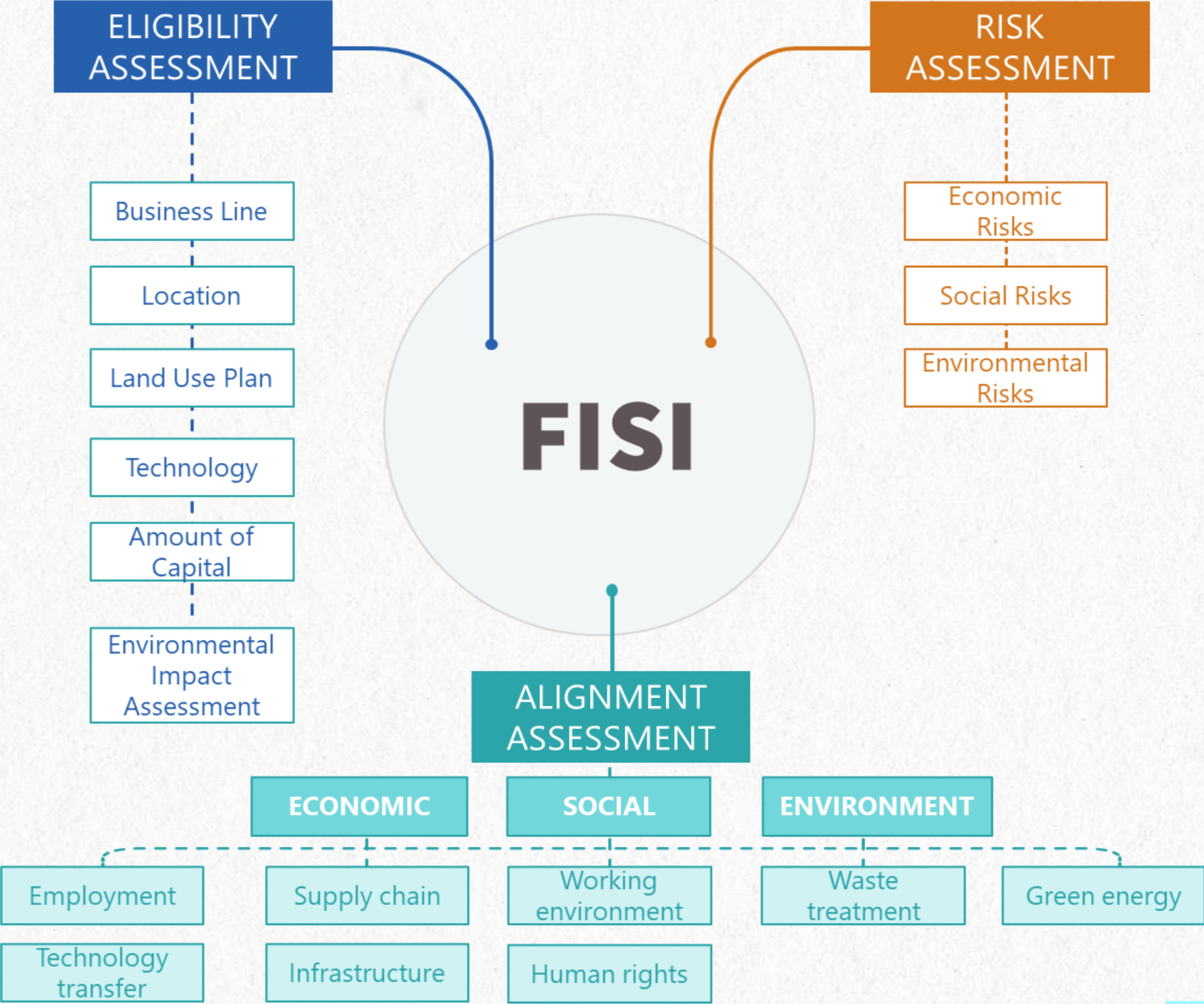
The first component of the FISl sets fundamental criteria that any investor considering doing business in Vietnam have to comply with and provide evidence at the project appraisal process. The criteria were designed in accordance with Vietnam's investment law. When employing the FISl, the eligibility assessment is a required step.

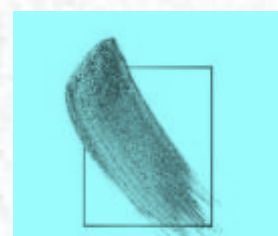
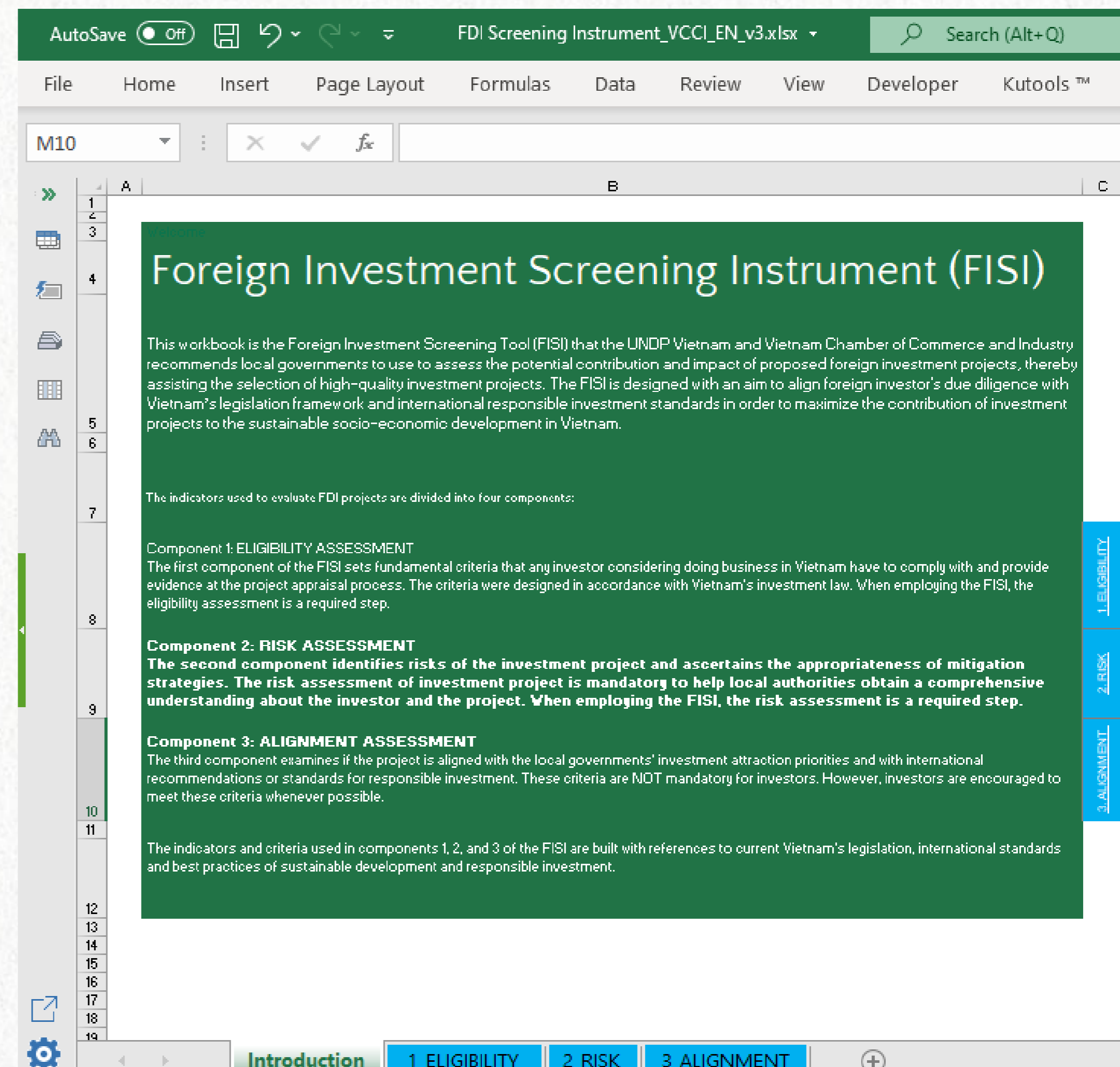
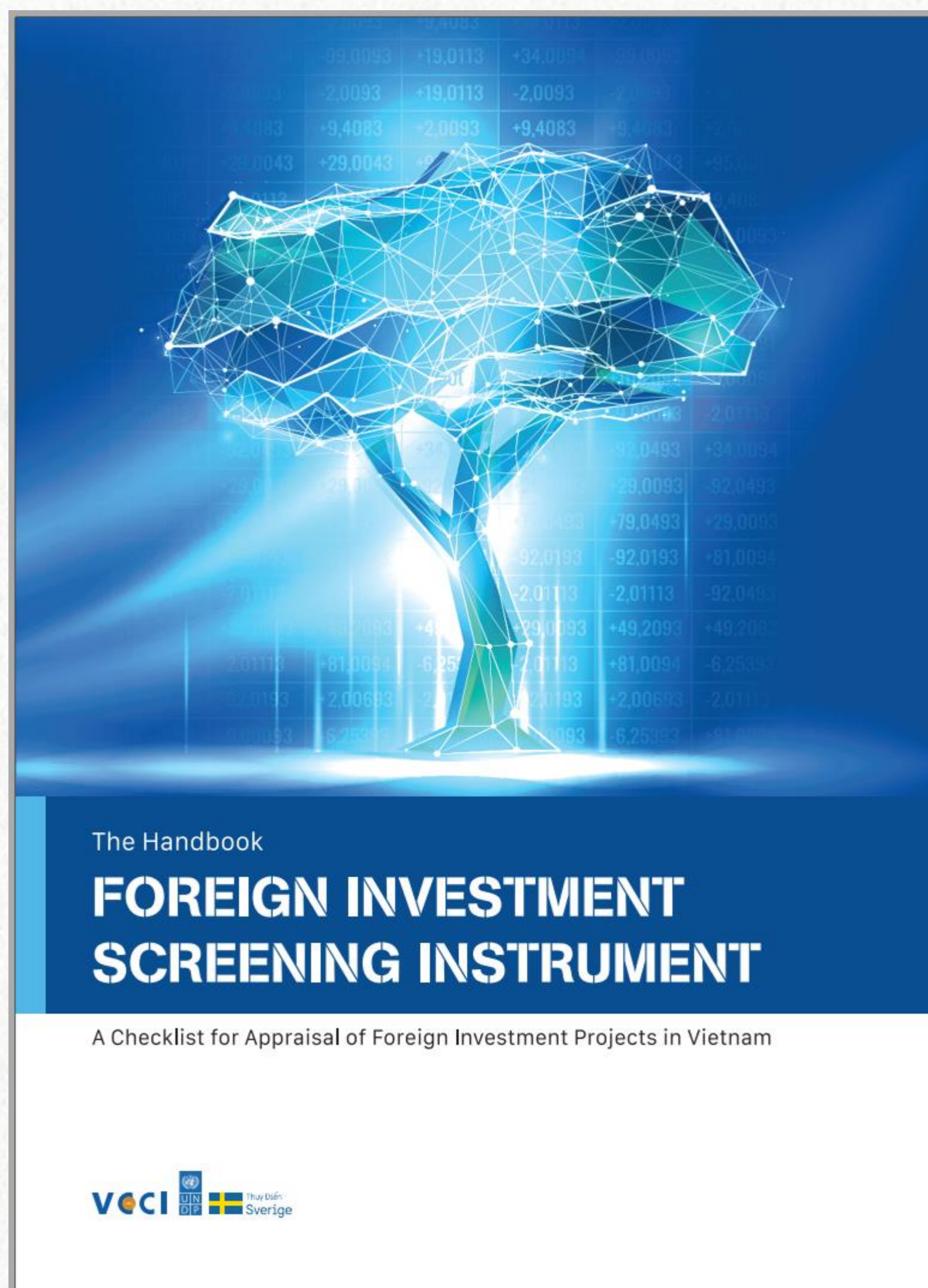
Component 2: RISK ASSESSMENT

The second component identifies risks of the investment project and ascertains the appropriateness of mitigation strategies. The risk assessment of investment project is mandatory to help local authorities obtain a comprehensive understanding about the investor and the project. When employing the FISl, the risk assessment is a required step.

Component 3: ALIGNMENT ASSESSMENT

The third component examines if the project is aligned with the local governments' investment attraction priorities and with international recommendations or standards for responsible investment. These criteria are NOT mandatory for investors. However, investors are encouraged to meet these criteria whenever possible.





Component 1: ELIGIBILITY ASSESSMENT

- Business line of the project is not prohibited;
- The project has a proposed location;
- The project aligns with local planning;
- Technology used in the project relevant as per Vietnamese laws;
- The project satisfies the market entry conditions applicable (e.g. minimum capital requirement (if any), share of charter capital owned by foreign investor)
- Not posing any threats to national security;
- Environmental impact assessment has been made for the project;



Component 1:
ELIGIBILITY ASSESSMENT

B1	Business Line Classification	[Select]
B2	If the business line of the investment project belongs to the <i>market entry list</i> ,	[Select]
B3	Industry Classification According to Vietnam Industry Codes	[Select]
B4	Central Product Classification (CPC) code	
B5	Capital Requirements for this business line <small>(in USD, if any)</small>	
B6	Does the value of the proposed investment meet the sector-specific	[Select]
	<i>Please cite the legal basis for the above assessment:</i>	
Other Mandatory Requirements		
B7	Is the investor independent from a foreign government (not a government- <i>Evidence for the above assessment (if any)</i>	[Select]
B8	Is the proposed investment project appropriate with land use plans already approved by the local government? <i>Please cite the legal basis and any relevant investor's documents to clarify the assessment</i>	[Select]
B9	Is the plan for site clearance and resettlement appropriate with the laws, <i>Please cite the legal basis and any relevant investor's documents to clarify the</i>	[Select]
B10	Is the technology used in the project (if any) not in the list of technologies <i>Please cite the legal basis and any relevant investor's documents to clarify the</i>	[Select]
B11	Has the environmental impact assessment been made? <i>Please cite any relevant investor's documents to clarify the assessment.</i>	[Select]

Component 2: RISK ASSESSMENT

Criteria (Content And Guiding Questions)	
C	Economic Risks
C1	Does the history or current portfolio of the investor demonstrate that this investor has experience in the proposed business activity or project?
C2	Does the investor have prior experience with investments of a similar nature and scope to that proposed?
C3	Does the investor have experience in business activities or projects in Vietnam?
C4	Does the investor have a long-term vision and a long-term plan for doing business in Vietnam (e.g. at least a [NUMBER]-year plan)?
C5	Is the investor able to show proof of healthy business financial capacity?
C6	Has the investor ever been reported for non-compliance with tax regulations (e.g. transfer pricing), either in Viet Nam or abroad? <i>(If the investor has been convicted of such conduct, the investor need to show a plan or specific solutions to convince the local authorities that this will not happen during its investment in Viet Nam)</i>
C7	Has the investor ever had any economic disputes regarding investment projects in other host countries in the past, either in Viet Nam or abroad? <i>(If the investor has been convicted of such conduct, the investor need to have a plan or specific solution to convince the local authorities that this will not happen during its investment in Viet Nam)</i>
C8	Has the investor ever been convicted of violating antitrust or anti-competition laws, either in Viet Nam or abroad? <i>(If the investor has been convicted of such conduct, the investor need to convince the local authorities that this will not happen during its investment in Viet Nam)</i>
C9	Has the investor ever been convicted of violating anti-corruption or anti-bribery laws, either in Viet Nam or abroad? <i>(If the investor has been convicted of such conduct, the investor need to convince the local authorities that this will not happen during its investment in Viet Nam).</i>
C10	Does the investor have measures in place to prevent its direct employees or business relationships from engaging in corruption or bribery?
D	Social Risks
D1	Has the investor ever been reported for non-compliance with labor regulations, health and safety regulations, land and property regulations, consumer regulations, privacy regulations, anti-corruption and anti-bribery regulations or any other laws that regulate social impacts in Vietnam or other countries?
D2	Is there history of the investor having caused or contributed to social conflicts that resulted in strikes or protests during previous FDI projects?
D3	Does the investor have a policy on how it deals with social issues (including labour rights and human rights issues)?
D4	Does the investor have a due diligence process in place to identify, prevent and mitigate actual and potential adverse social impacts on individuals and communities?
D5	Has the investor developed and submitted an overview of how it plans to engage with individuals
D6	Does the investor have a grievance mechanism to remediate social impacts?
E	Environmental Risks
E1	Is this project classified as a group I or II project under Article 28 of the Law on Environment
E2	Has the investor ever been reported for non-compliance with environmental regulations?
E3	Has the investor developed and submitted an overview of (potential) environmental impacts that the business activity or project (might) cause or contribute to (i.e. an environmental impact assessment)?
E4	Does the investor have an environmental management system or due diligence process in place to identify, prevent and mitigate actual and potential adverse environmental impacts?
E5	Does the investor have a grievance mechanism to remediate environmental impacts?

Component 3: ALIGNMENT ASSESSMENT

Component 3 is NOT mandatory.

However, investors are encouraged to meet these criteria as much as possible to ensure their investment activities in Viet Nam contribute to sustainable development and mitigate/prevent negative impacts on people's lives and environment.

Meeting these criteria demonstrates the investor is implementing responsible investment and the project can be considered for incentives and supports dedicated for FDI projects that can potentially make great contributions to local sustainable development.

Economic Dimension

- Employment creation
- Local linkage and value chain development
- Technology transfer
- Infrastructure

Social Dimension

- Labour rights and well-being
- Basic rights (non-discrimination, non-harassment, non-child labour, indigenous rights, gender equality, right to complain)

Environmental Dimension

- Waste disposal
- Recycled and renewable energy
- Environmental impact assessment and remedies
- Other environmental protecting responsibilities

Component 3: ALIGNMENT ASSESSMENT

F	Economic Dimension
F1	<i>Employment Creation</i>
F1.1	Is there a specific plan in place for the project to prioritize recruiting residents from the commune/ward in which it is located?
F1.2	Does the project plan to recruit at least [NUMBER] workers/employees in the first year of its operations?
F1.3	Will the median monthly salary of employees/workers be higher than current median income of employees/workers in the province/city?
F1.4	Is a detailed plan for training workers developed?
F1.5	Does the project plan to recruit at least [SHARE %] of its workforce as skilled workers/employees (having at least Bachelor Degree of equivalent degrees)?
F2	<i>Local Linkage and Value Chain Development</i>
F2.1	Does the project have any plan to integrate local private enterprises, especially SMEs, into its value chain?
F2.2	Does the project plan to export its products to more than 3 countries in global market?
F2.3	Does the project plan to build facilities in disadvantaged areas?
F3	<i>Technology Transfer</i>
F3.1	Are the products or services generated by the project's production activities aligned with the types of products and services prioritized by the province/city for FDI attraction?
F3.2	Will any technology in a form of sharing production specifications and quality control methodology be transferred to local suppliers?
F3.3	Will any technology in a form of licensing products or processes be transferred to local suppliers?
F3.4	Is technology used in the investment project the one that the local government encourage investors to deploy?
F3.5	Is the technology to be used in the project widely acknowledged in the G7 developed countries?
F3.6	Does the project establish a research and development (R&D) unit?
F3.7	Does the project have a plan to recruit at least [SHARE %] of its senior staff
F4	<i>Infrastructure and Land</i>
F4.1	Does the project plan to develop public infrastructure (such as roads, power, or water access)?
F4.2	Is at least [SHARE %] of the investment capital for the project allocated to the construction of basic infrastructure on the project site?

G	Social Dimension	G2	Impacts on communities
G1	Impacts on workers	G2.1	Does the investor build procedures to effectively prevent and manage industrial accidents, especially those with severe impacts on local communities
G1.1	Does the investor have a plan to pay workers a high wage in the labour market?	G2.2	Will the investor have procedures to effectively prevent and manage the adverse social impacts (e.g. health impacts) of environmental pollution on local communities?
G1.2	Does the investor have a plan to refrain from discriminating against workers on the basis of race, social or ethnic origin,	G2.3	Will the investor have procedures to respect all applicable land rights and the rights of indigenous peoples, including the right to Free, Prior and Informed Consent?
G1.3	Will the investor respect international labour standards on working hours, rest times, sick leave and paid leave?	G2.4	Will the investor respect other rights prescribed in the Constitution of the communities where the investor operates?
G1.4	Will the investor ensure operational health and safety in all business activities?	G2.5	Will the company refrain from threatening individuals and communities in any way, including when they bring attention to the impact of business activities on economic, social or environmental issues?
G1.5	Will the investor provide a free, annual health check for all its workers?	G3	Impacts on consumers and society
G1.6	Will the investor provide dormitory or any equivalent accommodation support to workers?	G3.1	Will the investor ensure that its products and/or services comply with the highest health and safety standards?
G1.7	Will the investor respect the rights of freedom of association and collective bargaining of workers?	G3.2	If the investor sells dangerous, life-threatening or deadly products (e.g. tobacco products, wines, or hazardous products), will it take measures to prevent harm in the use of these products to the greatest extent possible?
G1.8	Will the investor implement measures to prevent forced and bonded labour?	G3.3	Will the investor engage with public concerns regarding its economic, social and environmental impacts and refrain from threatening critics in any way, including when they bring attention to the impact of business activities on economic, social
G1.9	Will the investor implement measures to ensure responsible recruitment and respect the rights of migrant workers?	G3.4	Will the investor not promote or perpetuate any discriminatory stereotypes or stigmas, including on the basis of race, social or ethnic origin, nationality, gender and sexual orientation, health conditions, disability, age, marital and family status, maternity or paternity, cultural practices, opinions or political preferences, membership of an organization or association?
G1.10	Will the investor implement measures to address child labour and ensure young workers do not engage in work which is	G3.5	Will the investor respect the right to privacy of consumers and the general public?
G1.11	Will the investor ensure gender equality in the workplace, including through affirmative action?		
G1.12	Will the investor respect the civic rights of employees, including but not limited to their rights to freedom of speech and		
G1.13	Will the investor ensure that it does not retaliate against workers who raise concerns about their working conditions or		
G1.14	Will the investor require its business relationships (e.g. suppliers in the supply chain) to respect labour rights (including		
G1.15	Does the investor have a plan to annually train at least [SHARE %] of local workers?		

Component 3: ALIGNMENT ASSESSMENT

H	Environmental Dimension	
H1.1	Have the findings of the environmental impact assessment (which should be conducted as part of the “risk assessment”) been translated into an integrated environmental management plan?	[Select]
H1.2	Will the investor have processes to effectively monitor, prevent, mitigate and remediate air, water, land and soil pollution?	[Select]
H1.3	Will the investor take measures to effectively reduce waste from products, and facilitate reuse, recycling and recovery of the products it sells, taking into account the “extended producer responsibility” principle?	[Select]
H1.4	Has the investor established a science-based greenhouse gas reduction strategy for all its activities in Viet Nam?	[Select]
H1.5	Will the investor monitor and address all of its Scope I, II and III emissions?	[Select]
H1.6	Will the investor have processes in place to monitor and manage its energy consumption based on aggregated and disaggregated indicators (for example, by product or service line, by clusters of suppliers, by type of operation or asset, etc.)	[Select]
H1.7	Does the investor have a plan to increase its share of renewable energy in the investor’s total energy consumption?	[Select]
H1.8	Will the investor implement a water stewardship policy to ensure that the investor uses water in a way that is socially equitable, environmentally sustainable, and economically beneficial?	[Select]
H1.9	Will the investor consult local communities as part of its environmental impact assessment processes?	[Select]
H1.10	Does the project have a plan to allocate at least [SHARE %] of its total costs to environmental protection?	[Select]

Some notes on FISl (1)

- FISl encourages foreign investors to apply responsible business practices
- FISl is open for local authorities to tailor its criteria to suit local context and priorities. It also encourages foreign investors to align their business activities with responsible business practices



Some notes on FISl (2)

- **Recommendations on using FISl:**
 - Establishing a project evaluation team
 - Assign tasks to evaluation team members
 - Organize a group meeting to agree on assessment criteria
 - Check the validity and sufficiency of papers and documents submitted by the investor
 - Notify investors of additional information/documents to be submitted to complete the dossier, if needed
 - Gather information from different sources about investors
 - Interview investors to supplement the information needed for the assessment
 - Use FISl as a checklist of criteria that need to be considered on the project and investor
 - Organize a meeting to make a final decision on the project appraisal.



THANK YOU!