Netherlands Commission for Environmental Assessment

# Viet Nam

## EIA profile

**Updated to:** 15 September 2022

### Overview ESIA procedure

The EIA process in Vietnam consists of the following stages: Screening, Assessment, Review, Approval and Monitoring.

Regarding the timing of the EIA process, the EIA report shall be made concurrently with the formulation of the feasibility study report of the investment project. The feasibility study is then also part of the dossier of request for the appraisal and approval of the EIA report.

## Screening

### Screening process

Screening decision is made by Appraisal Council or Appraisal Services Organisation formulated at National or Provincial level depending on the project.

Screening is done based on the provisions outlined in LEP (2020) and the list included as an Appendix in the EIA Decree 08/2022. The list contains details on project features such as size and capacities against which EIA requirement is determined.

*Sensitive areas*

Provisions for protection and conservation of sensitive areas exist. A full EIA is required for any project with likely effects on such areas.

### Contents of the starting document

The starting document is a package consisting of

- a letter of request from the proponent for appraisal and approval of EIA report (a sample letter is given as annex 5 of the EIA circular No. 08 of 2006);
- seven copies of a preliminary EIA report in a stipulated format; and
- feasibility or investment report.

### Timeline Screening

Not specified.

## Scoping

### Scoping process

Not specified

## Assessment

### Assessment process

There are two processes for environmental impact assessments. First is the Preliminary Enviornmental Impact Assessment (PEIA) and the second is the Environmental Impact Assessment (EIA).

PEIA has been introduced into the environmental law in order to bring it in line with the Law on Investment (2020). PEIA is meant to identify the major environmental issues related to high risk projects (or: Group I projects as outlined in Article 28 of LEP 2020) and is carried out along with the the pre-feasibility study or project investment proposal. The PEIA is submitted to the competent authority and is considered together with the application for investment for approval.

An EIA is required for projects in both Group I (after the PEIA) and Group II projects outlined in article 28 of LEP and Annex IV of Decree 08/2022. The project owner, or a qualified consultancy on their behalf, is responsible to conduct the EIA. The EIA needs to be carried out along with the feasibility or an equivalent study. The EIA results need to be presented in a report.

### Contents of the EIA report

Article 32 of the LEP (2020) outlines that an EIA report should contain the following details:

- Information on the project owner such as its origin, legal and technical bases.
- EIA methods applied
- Conformity of the project with national, regional, provincial plans, laws and regulations
- Assessment of selected technologies
- Natural, socio-economic and biodiversity conditions, the state of the environment and sensitive environmental factors at the project location. Demonstrating the suitability of the location
- Quantity and nature of the waste generated, and works and methods for treating waste
- Identifying, assessing and predicting major environmental impacts including on biodiversity, natural, historical and cultural heritage sites and other sensitive factors. It should also indicate the impacts caused by land clearance, migration and relocation, if any
- Environmental emergencies that are likely to occur
- Methods for reducing adverse environmental impacts and plans for environmental improvement and remediation, biodiversity offset and environmental emergency prevention and response
- Consultation results
- Conclusions, propositions and commitments made by the project owner

In addition to what is outlined in the LEP (2020), Circular 02/2022 (and its Annex II) provides forms for EIA reports.

### Accreditation of consultants

Decree 29/2011/ND-CP provides specific criteria on how to select the experts that write the EIA report for example with respect to experience and education.

## Review

### Review process

Depending on the type of project, either MoNRE or the Provincial People's Committee can be responsible for EIA appraisal. The Ministry of National Defence and Public Security takes responsibility to appraise EIA reports for projects classified as state secrets, or that are in the field of national defence.

The project owner submits the EIA report to the responsible appraisal authority, along with a request form for EIA report appraisal. For projects that legally require appraisal of the feasibility study by the specialised construction authority, the EIA report needs to be submitted together with feasibility study report or an equivalent document.

For reviewing an EIA report, the relevant authority establishes an appraisal council of 7 members. This council evaluates the EIA report in conjuction with the feasibility study for the project. In their evaluation, the appraisal council looks into aspects like the conformity with national, provincial plans, laws and regulations on environmental protection, the EIA method, state of the environment and sensitive environmental factors, the predicted environmental impacts and waste generated and the feasibility and adequacy of environmental protection measures and program.

The appraisal council then sends its comments and the EIA appraisal result to the appraisal authority. If the appraisal authority deems it necessary, they can also carry out a survey to collect comments of organizations and experts. The appraisal authority then consolidates the comments from the appraisal council and other organisations, and decides whether or not to approve the EIA report appraisal result.

If the project is appraised by MonRE, they will send the decision of approval of the EIA report appraising result to the relevant People’s Committee and other relevant agencies. When the Provincial People’s Committee is responsible for appraisal, it shall send its decision to MonRE and other relevant institutions.

The appraisal authority also informs the project owner and other relevant agencies on the decision for approval, or it may ask the project owner to make revisions first.

### Review expertise

At least one third of the appraisal council must be experts with expertise in environment or another field related to the project. Experts with a bachelor degree must have at least seven years of working experience, whilst experts with a master’s or doctorate degree need to have 3 and respectively 2 years of working experience. If the project invovles the discharge of wastewater into a hydraulic structure, the appraisal council must include a representative of the regulatory body managing that hydraulic structure.

Experts participating in conducting the EIA of the investment project are not allowed to join the council appraising the EIA report of the project.

### Timeline Review

The appraisal authority notifies the project owner of the appraisal result in writing. The timelines to

review the EIA report differ per type of investment. Project owners with respect to Group I investment projects (as outlined in LEP 2020, Article 28 clause 3) need to be informed within 45 days. And Group II investment projects (as outlined in LEP 2020, Article 28 clause 4) within 30 days.

When the project owner was requested to revise the EIA report, the appraisal authority needs to decide within 20 days after receiving the revised version whether to approve or to refuse it. In case of refusal, an explanation in writing needs to be provided.

## Decision making

### Integration of ESIA into decision-making

The project owner is responsible to fully comply with the requirements that are set out in the decision on the appraisal. When requested, the project owner must revise the contents of the investment project and the EIA report as required by the appraisal authority.

For projects that require an environmental license, the EIA report appraisal forms the basis for acquiring a license from MoNRE or the Provincial People's Committee.

When a project does not need to obtain an environmental license, the project owner must, before putting the project into operation, inform the appraisal authority about completion of environmental protection works.

### Decision justification

Decisions including the reasons thereof are communicated to the proponent in writing. The decision is made public. A report on the decision as well as the certified EIA report are sent to various institutions, depending on which leve the approval decision has been taken.

### Timeline decision-making

See timeline review.

### Possibilities for appeal

- Appeals are made to MoNRE either at the central or to the People committee at the local level depending on the project (to be confirmed).
- Appeals can be made against decisions approving EIA report.
- The proponent, public/ NGOs and private parties may appeal.

## Follow-up

### Compliance monitoring

Projects that require an EIA , must also obtain an environmental licence, based on the EIA report appraisal. This licence contains the environmental protection requirements such as an environmental management and supervision plan, and other measures to deal with waste, noise, vibration. The licensing authority has the responsibility to inspect the projects on their compliance with the

environmental protection requirements.

### Non-compliance penalties

Suspension of permit of operation or other penalizing measures are issued if the proponent does not comply with measures in the already approved environmental protection plan.

## Stakeholder engagement

### Public participation requirements for ESIA process stages

The project owner is responsible to hold consultations during an EIA process and to announce these consultations on their website. The consultation with communities and individuals directly affected by a project is expected to be through meetings. Whilst agencies and organisations directly related to the project need to be enabled to give their written response.

These consultations need to collect inputs on the following aspects of a project:

- its location
- environmental impacts
- measures to reduce adverse impacts
- environmental management and supervision program, environmental emergency prevention and response scheme
- other contents related to the project

The project owner is expected to use the consultation inputs in working out solutions for minimizing environmental impacts. The consultation results also need to be processed and presented in the EIA report and if comments and propositions made by consultees are rejected, the project owner must provide a clear explanation.

During the review of the EIA report, the appraisal authority may choose to carry out a survey to collect comments of organizations.

### Access to information

Auhtorities responsible for EIA review need to publish decisions on approval of EIA appraisal results on their web portals.

Authorities that issue environmental licences are required to make the reports underlying to issuing a licence publicly available, which includes:

- An application form.
- A report on proposal for issuance of the environmental license.
- Legal and technical documentation of the investment project, business, dedicated area for production, business operation and service provision or industrial cluster.

Both licencing authorities and project owners are required to make the environmental license publicly available.

## ESIA practice

### Annual no. of ESIAs

For investment projects: From 1994 till 2004:

About 27 000 EIA reports were reviewed and appraised, of which:

- at central level: more than 800 reports, and
- at provincial level: more than 26 000 reports.

### Professional bodies

- Vietnam Environmental and Sustainable Development Institute (VESDI)
- Vietnam Environment Impact Assessment Association (VAFEIA)

### Relevant links

Asian Environmental Compliance and Enforcement Network (AECEN): EIA Compendium Vietnam

## Background information

### History of ESIA

EIA was first introduced in Vietnam with the National Law on Environmental Protection (LEP) which went into force in January 1994. Following this law, a Decree and a Circular were adopted to guide the implementation of EIA aspects contained in the Law of Environmental Protection (LEP).

In order to keep pace with the rapidly transforming economy and the changing socio-economic context, the environmental law in general and the EIA aspects therein, have been subject to numerous changes. LEP has been revised in 2005, 2014 and most recently in 2020, and along with it also the Decrees and Circulars guiding EIA implementation. With the most recent LEP (2020) adopted in January 2022, several important changes have been introduced in relation to how projects are evaluated for environmental approval and permitting.

### Legal framework

#### Enabling law

The enabling law for EIA in Vietnam is currently the Law on Environmental Protection (Law No.72/2020/QH14) adopted in January 2022. This law has replaced the earlier one from 2014.

#### National detailed regulation

Short after the adoption of the latest LEP, a new Decree (No. 08/2022) and a Circular (No. 02/2022) were adopted on 10 January 2022. These documents are available at MONRE's website (only in Vietnamese):

Decree 08/2022/ND-CP. Details a number of articles of LEP (2020) related to EIA, environmental licencing and environmental registration.

Circular 02/2022/TT-BTNMT. Outlines implementation rules for a number of articles of LEP (2020) and provides details on application and reporting forms for EIA report, licencing and environmental registration.

In addition, there is the Decree No.54/2021/ND-CP which provides details for the scope and contents of the Preliminary Environmental Impact Assessment.

*Below is a list of Decrees and Circulars that are no longer valid due to adoption of newer legislation:*

Decree No.175/CP of 18-10-1994

Decree No. 80/2006/ND-CP of 9-8-2006

Decree No. 21/2008/ND-CP of February 2008

Decree No. 29/2011/ND-CP of 29-4-2011

Decree No.18/2015/ND-CP of 14-2-2015

Decree No. 40/2019/ND-CP of 13-5-2019

Circular No.490/1998/TT-BKHCNMT of 29-4-1998

Circular No.8/2006/TT-BTNMT of 8-8-2006

Circular No.5/2008/TT-BTNMT of 8-12-2008

Circular No.26/2011/TT-BTNMT of 8-4-2011

#### Scope of application

In de latest version of the environmental law (LEP 2020) projects are classified into four groups. Group I are investments projects that pose a high risk of adverse environmental impacts, and Group II investments that pose a risk of adverse environmental impacts. Group III concern projects that pose a low risk and Group IV do not pose a risk at all. Decree 08/2022 provides Annexes to help classifying projects into Group I, II, III or IV.

Projects classified under Group I require a preliminary EIA and and EIA, and under Group II require an EIA. These include amongst others large and medium scale projects and with environmentally sensitive factors, projects involving hazardous waste treatment and large scale migration and relocation.

#### Exemptions from application

The law on environmental protection provides that projects that are of urgent public investment shall not be subject to EIA.

## Institutional setting

#### Central ESIA authority

In co-operation with MoNRE, the Ministry of Finance leads in making reports, appraising and monitoring and implementation of EIA reports for national projects. The Department of Environment Impact Assessment and Appraisal (EIA&A) – Vietnam Environment Administration (VEA) of Ministry of Natural Resources and Environment (MoNRE) is the central EIA authority for inter-sectoral and interprovincial projects.

**Other key (governmental) parties**

- The Vietnamese Environment Protection Agency (VEPA): This functional unit of MONRE monitors environmental measures and actions of the proponent concerning mitigation as contained in EIA reports.
- The Vietnamese Environmental Administration (VEA) was established through Decision No. 132/2008/QĐ-TTg by the Prime Minister. VEA is a subsidiary body under the Ministry of Natural Resources and Environment (MONRE) that advises and assists the Minister of MONRE in the field of environment management and that provides public services in compliance with the laws. Once of its functions is to assess and appraise EIA and SEA reports.
- Provincial Department of Natural Resources and Environment (DONRE): Have delegated powers to make decisions on numerous issues (including EIA) related to the use and management of local resources and environment.
- People committee or Fatherland Front Committees act as responsible authority at community level. They act as a go between for the local community and the proponents and may initiate public involvement.
- Appraisal Councils can be set up for the process of EIA appraisal.
- The Law on Environmental Protection also provides for the National Assembly to consider and make decisions on projects with major environmental impacts. A schedule of such types of projects is determined by the Standing Committee of the National Assembly.

**(De)centralisation of mandates**

There is vertical decentralisation. Provincial Departments of Natural Resources and Environment (DONRE) have delegated powers to make decisions on EIA.

## Contact

Ministry of Natural Resources and Environment (MONRE)

83 Nguyen Chi Thanh - Dong Da - Ha Noi

Tel: (84-4) 8 343 911

FAX: (84-4) 8 359 211

Website: http://www.monre.gov.vn/