

**UPDATE**  
**BDS Legal Environment Study**  
**Advocacy for a Better Enabling Environment for BDS in Vietnam**  
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**I. BACKGROUND**

The GTZ SME Promotion Project has the overall goal of promoting the competitiveness and sustainable growth of SMEs. A conducive policy framework and a functioning market for BDS are essential and these guide the key objectives of the Project.

To better understand the functioning of the market, and with a view to adequately designing its strategy for BDS market development, the Project – in cooperation with Swisscontact Vietnam – undertook a BDS Market Assessment Study in 2001, covering the following services: accounting & auditing; business management training; business management advisory, legal consultancy, advertising/ promotion, market research, product design, trade fair participation arrangement and advisory services, quality management and environment management training and advisory, management information system software, internet, and computer related services. The study was considered as success. The services included in the study were frequently quoted by the Government and its line agencies, e.g. in the Comprehensive Poverty Reduction and Growth Strategy (CPRGS) which was adopted in 2002 and various government papers. Further more, the results were widely disseminated to domestic stakeholders through workshops, press and direct delivery. The results of the study were also widely used by other donors in their program design, interventions. This study specifically highlighted the importance of improving the regulatory framework for BDS, with a view to creating an enabling environment for BDS market development. In this context, the Project suggested in particular:

- the importance of leveling the playing field between public sector service providers and private companies in order to stimulate private sector investment in BDS markets;
- the need to address the lack of competition in controlled markets (the Internet, media) which has resulted in low quality services;
- the importance of looking at the effects of subsidized provision on the demand and private supply of services. Subsidies from both the government and donors/social organizations should be shifted from transactions to improving the commercial supply of services and increasing the availability of information about services and providers.

The Project then decided to move ahead with a study on the policy and legal environment for BDS in Vietnam, considering it an important tool to advocate for a better enabling environment for BDS markets in Vietnam.

The overall objective of this study is to (i) provide an overview on the policy and regulatory environment for the business development service market in Vietnam; (ii) to identify and better understand the policy and regulatory constraints to the development of BDS; (iii) to provide inputs and recommendations which facilitate different BDS market players to advocate for a more consistent and enabling policy and regulatory environment conducive for the development of the BDS market in Vietnam; and to identify factors which favour or could potentially favour an increasing availability and usage of services.

The specific objectives of the study include: (i) to provide a detailed analysis of the policy and regulatory environment for a limited number of services subject to study; (ii) to specifically identify the policy and regulatory constraints for each of these selected service markets; (iii) to provide recommendations to address constraints at various levels, developing and implementing a comprehensive and integrated approach for strengthening and supporting the creation of a level playing field for private sector providers.

Through workshops, forums, and other follow-up activities, etc., findings and recommendations obtained from the study would be shared and discussed with and disseminated to different players, particularly those who play important roles in improving the regulatory environment to be more enabling for certain BDS.

In its operation objectives, the GTZ SME Promotion Project aims at: (i) **at least 3 specific and implementable proposals** to be made by local stakeholders for legal changes in favour of BDS market development in Vietnam; (ii) tangible improvements in at least 2 areas achieved (impacts). The changes could be in any forms, either an easier entry into the market by BDS providers in a selected BDS markets, or less problem to the transaction of business development services between the providers and users...

## **II. THE PROCESS**

The study commenced in June, 2002 and finished in December 2003. This is a long process but has proven to be very effective in terms of impact and outcomes. Unlike many other studies, the results/ findings from the study were used by policy makers right away even when the study was still in progress. Policy advice/ advocacy institutions did not wait for the study to be finalized before they could use the results as basis and inputs for the policy making and policy advocacy works. This has been a parallel process.

The study has been done in the partnership of a private law company (Vision and Associates), a public agency/ government think tank (Central Institute of Economic Management - CIEM) and the national Chamber (Vietnam Chamber of Commerce and Industry - VCCI). International experience/ perspectives were provided through an international law firm (Deacons, Prof. Andrew Terry) and an international BDS research and training centre (Springfield Centre, UK – Rob Hitchins). The international experts provided advice in terms of report structure, report focus, international norms, and best practices to the team throughout the implementation process.

GTZ (SME Promotion Project) provided additional advices, inputs and coordinated the whole study.

## 1. The Services Captured in the Study

The study was executed in two steps: preliminary study and full-fledged study. The preliminary study was needed as an exploration since there had not been any similar study from elsewhere before (as far as it is known to the Project). The preliminary study turned out to be of very good quality in terms of content and it helped the Project to outline the structure and focus, methodology for the full-fledged study. CIEM even started to use the content and analysis of the preliminary study for its works. In the preliminary study, the following services were included: (1) *Consulting (market research, technology transfer, product design...) services as a whole*; (2) *Training*; (3) *Accounting & auditing Consulting*; (4) *Legal services*; (5) *Quality and environment management*; (7) *Management information system and computer related services*; (8) *Business information and Internet based information service*; and (9) *Advertisement*.

The full-fledged study was limited to only three services, including: **(1) Intellectual Property Services; (2) Accounting & Auditing Services; and (3) Training Services.** This narrowing-down in number of services aims at a more in-depth analysis of the service market in question because there is a clear trade-off between the number of the services included and the depth of the analysis. The selection of these three services for in-depth study has based on the following criteria: (i) *The interest of the local BDS facilitators (from the enabling environment perspective) in promoting for changes in the service markets*; (ii) *The severity of the legal constraints to the development of the service market*; (iii) *The importance of the service market to SMEs*; and (iv) *The feasibility for the legal proposals/ recommendations for changes to be implemented.*

## 2. Methodology

To conduct the study, a combination of desk study and field survey was used.

Desk study has involved (i) reviewing legal instruments, (ii) gathering information from mass media, the Internet, various legal databases and reference papers; (iii) analyzing and validating the findings, (iv) drafting and reviewing the Report of the Study and (v) other related works. Reference papers, international research papers, publications, related studies... were used as valuable inputs to assist the analysis of the current situation of BDS market and impacts of legal constraints to the markets.

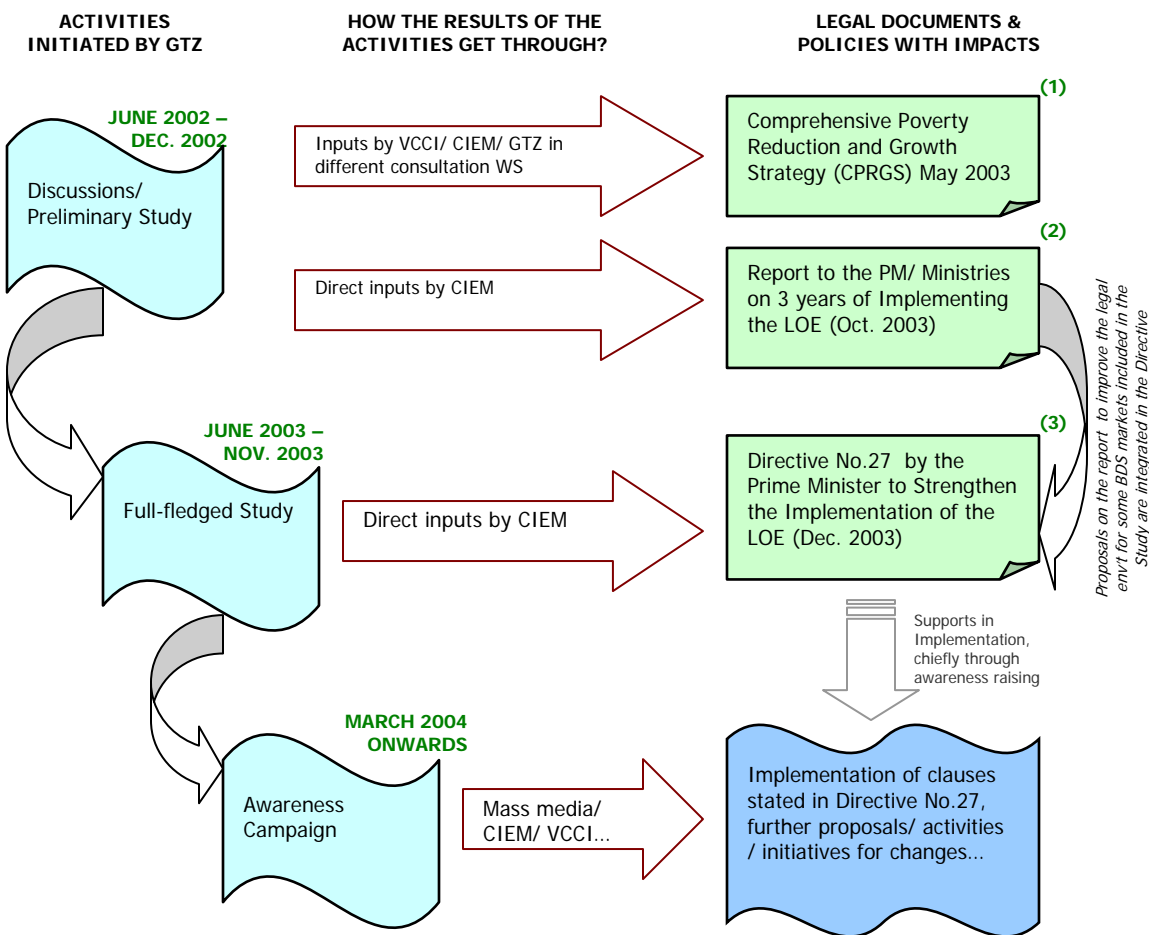
In-depth interviews and discussions were held with (i) BDS providers, (ii) customers, (iii) facilitators, and (iv) regulators. In total, 59 interviews were conducted: 21 with BDS providers (government, semi-public, private, NGOs), 12 with users, 6 with facilitators, and 20 with regulators. Among the interviews, 6 were conducted at the provincial level

(out of Hanoi and Ho Chi Minh City) in order to obtain a provincial perspective on the issues in study.

In order to help interviewers to be focused on the objectives of the Study, and to maximize the level of generating information from interviewees, a Question Guidelines was prepared. It was used as a survey manual and interviewers did read them carefully before conducting the interviews.

### III. IMPACT/ RESULTS ACHIEVED

The Central Institute of Economic Management (CIEM), the Chamber of Commerce and Industry - the two key owners of the study - have been playing a very important role in feeding the findings/ results from the study into various national policy papers and legal documents. VCCI and CIEM together with Vision and Associates actually carried out the study themselves. They have a strong ownership on the study. The services included in the full-fledged study were decided by the team with little influence from the Project.



CIEM is a think-tank of the Government on economic issues. Through the Law on Enterprise (LOE) Implementation Taskforce in which many of its staffs act as members, the Institute possesses a clear advantage in using the study as an input for its regulation making and advisory works. And in practice, this advantage has been well used by the institute.

VCCI, the biggest representative of the business community, is the dialogue partner of the Government on business issue<sup>1</sup>. They have succeeded in using the concepts, ideas and results of the study in general awareness raising and in advocating for a more enabling environment for BDS (please see the section that follows).

Vision and Associates, the private law firm which played an important role in implementing the study, has written articles on some local leading newspaper (e.g. the Vietnam Investment Review, the Dau Tu) on the legal environment of the BDS markets in study.

Overall, the study and the involvement of different stakeholders in the study has resulted in a **much higher awareness** on the need of a more enabling environment for BDS market development among policy making and policy advocacy institutions like CIEM, VCCI, various departments of the MPI... In many cases, the officials in these institutions, at their own initiatives, have strongly advocated for a better environment for the development of BDS market in general and the markets for developments of some specific BDS markets in particular. The overall improvement in awareness have resulted in explicit and implicit commitments, instructions, requests, recommendations, planned actions... which can be found in various documents and action plans of the Government. Below are summary of the most explicit ones:

- (1) The Comprehensive Poverty Reduction and Growth Strategy (CPRGS): Through different consultations workshops [e.g. those organized in Quang Binh (partly funded by GTZ), Ho Chi Minh City, Hai Phong..., VCCI, CIEM and the Project strongly called for actions to develop commercially viable BDS markets as a tool to support the governments efforts in enterprise development. And in the final CPRGS which was approved by the Prime Minister and announced in May 2003, the following actions have been included in the Policy Matrix of the paper:

“...[The Government] aims at developing the legal framework for the establishment and operation of business associations; at development of **an enabling policy environment for the operation of Business Development**

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<sup>1</sup> The Government has instructed that any business regulations/ laws must be consulted with VCCI before they are passed or issued.

**Services (BDS) providers, regardless of their ownership structure.** [BDS refers to training, consultancy, technical advisory services, accounting and auditing services, market information services, computer services, internet and telephone, advertising ...] (*CPRGS, Policy Matrix, p. 131, English version*)

“..[The Government) strongly promotes and encourages the performance of job promotion centres and **vocational training schools...**” (*CPRGS, Policy Matrix, p. 132, English version*)

- (2) Report on 3 Year of Implementing the Law on Enterprise (LOE): The Report was prepared by CIEM and members of the LOE Implementation Taskforce (some are also members of the BDS Legal Environment Study Team). Findings and analysis from the Preliminary BDS Legal Environment Study were used as inputs in the report. In addition to specific proposed legal changes as described in the table below, the Report recommended a “paradigm shift” in the way which BDS market should be developed in Vietnam and in the modality which the Government should take to intervene in different BDS markets.

“...State agencies should gradually stay away from directly providing the business services to enterprises and focus more on the role of the facilitator, promoters and quality controller...”

“...Further supports to business associations; strengthen the capacity of BDS providers so that they can provide better services to enterprises; support and encourage consulting institutions, research institutes, universities to provide BDS under national programs...”

“...Government-run programs to support SMEs should be transparently carried out [...]. The programs should be time-bound, and should be run on a cost-sharing basis. Enterprises benefiting from the programs should gradually bear the full costs...”<sup>2</sup>

*(Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 13).*

- (3) More importantly, concrete proposals for improvement in the legal environment have been made and the Government has listened, and then instructed its line ministries to take actions with a clear deadline. The proposals are made by CIEM/ LOE Implementation Taskforce on the basis of the analysis which **they did** and problems which **they identified** in the process of implementing the GTZ BDS Legal Environment Study. **4 concrete and specific proposals were made and included by CIEM/ LOE Implementation Taskforce in its report to review the 3 years of implementing the LOE in October 2003. The proposals were**

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<sup>2</sup> These changes, though they might not be considered as marked changes in mindset elsewhere, are actually a paradigm shift in Vietnam on the way in which the Government tries to support enterprises. It is positive to notice that this is an increasing trend in the country and the idea is gradually permeating into policy makers' mind.

addressed by the Government in the Directive No.27 released in December 2003.

### **PROPOSAL NO.1**

The BDS Legal Environment Study analyzes that:

“...The most important concern shared by interviewers in the implementation of the Study was that the Decree [Decree No. 87 on Consulting Services] does not recognize individual and freelance consultants, requiring that individual consultants must work in a certain organization... The Decree is obviously an example of a legal document which contains stipulations against the principle of the Law on Enterprises... The Decree has made the entry into the market harder for consulting service providers and therefore should be revised...”

<b>Problems Identified in the BDS Legal Environment Study and Included in the LOE Implementation Report</b>	<b>Proposals made for Changes in the Legal Environment in Favour of the Development of BDS Market</b>	<b>Actions Taken by the Government</b>
<p>‘...The Decree No.87/2002/CP dated 11 May 2002 on Consulting Services is a legal document with stipulations which are against the guiding principle of the Law on Enterprise (LOE). It, together with some similar legal documents, was however still issued...’ (<i>Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 13</i>).</p>	<p>“...The Government Office, in cooperation with LOE Implementation Taskforce, should review legal documents which are against the LOE and report to the Prime Minister for removal decision...” <i>Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 37</i>).</p>	<p>In the Directive No.27/2003/CT-TTg issued on 11 December 2004, the Prime Minister requests that:  “...The ministers, heads of ministerial and governmental bodies, and chairmen of provincial people’s committees shall:    Review and examine legal documents issued by ministries and local authorities that govern business activities in order to abolish, supplement or amend inappropriate provisions; draft new legislations in light of the reform policies of the Party and the State and in conformity with the road map for international</p>

<b>Problems Identified in the BDS Legal Environment Study and Included in the LOE Implementation Report</b>	<b>Proposals made for Changes in the Legal Environment in Favour of the Development of BDS Market</b>	<b>Actions Taken by the Government</b>
		<p>economic integration. Those State bodies that have issued regulations inconsistent with laws, ordinances and decrees must issue new legal documents to revise or remove inconsistent part of the issued regulations; at the same time, those officials who have signed these legal documents or advised on the issue of these legal documents should be dealt with in accordance with the applicable laws...”</p>

## **PROPOSAL NO. 2**

The BDS Legal Environment Study analyzes that:

“... The Ordinance on Lawyers governs the operations of partnership law firms. Article 19 of the Ordinance provides that “*partnership law firms may provide legal services in the fields of legal consultancy and other legal services but must not provide legal services in the domain of legal proceedings*”. This prevents partnership law firms from providing comprehensive legal services to clients. [...]. Although the Ordinance prohibits partnership law firms from acting in legal proceedings, the Ordinance does not give detailed provisions on what is a *legal proceeding*. As a result, it is unclear on whether a partnership law firms is entitled to provide legal advices, in close conjunction with a legal proceeding in the cases of their clients, for instance advice on court procedures, and what processes of the legal proceeding which partnership law firms could not participate. [...]. **There is now a great confusion and ambiguity on the conditions and criteria for the provision of legal services...**”

<b>Problems Identified in the BDS Legal Environment Study and Included in the LOE Implementation Report</b>	<b>Proposals made for Changes in the Legal Environment in Favour of the Development of BDS Market</b>	<b>Actions Taken by the Government</b>
<p>“...There is a lack of legal instructions on business with conditions or conditionality for a number of businesses... There is a great confusion and ambiguity on the eligibility conditions and required criteria to be <b>met to be able to provide legal services and lawyer services...</b>” (<i>Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 13</i>).</p>	<p>“...The Ministry of Justice should issue guidelines on the granting of legal advice business certificates under the spirit: lawyers and anyone having sufficient knowledge and experience on legal matters have the full rights of providing legal services...” (<i>Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 37</i>).</p> <p>“...MPI, in cooperation with the LOE Implementation Taskforce, should review the procedures of business licensing, conditionality for a number of businesses and identify constraints related to the issue and then report to the Prime Minister for actions...” (<i>Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 36</i>).</p>	<p>In the Directive No.27/2003/CT-TTg issued on 11 December 2004, the Prime Minister requests that:</p> <p>“The Ministry of Justice shall:</p> <p>issue in the first quarter of 2004 a Circular providing <b>guidance on the issuance of legal service provision certificates</b> to allow lawyers and persons with sufficient professional qualifications and experience to provide <b>legal consultancy services...</b>”</p> <p>“...The Ministry of Planning and Investment shall: Cooperate with the LOE Implementation Taskforce and relevant authorities in reviewing, assessing and classifying business licences, and then propose to the Prime Minister the measures to deal with these licenses...”</p>

### **PROPOSAL NO.3**

The BDS Legal Environment Study analyzes that:

**“...To be eligible to** engage in IP agent services, an enterprise must meet all of the following conditions: (i) being a Vietnamese entity; (ii) having no foreign invested capital; (iii) having its Business Registration Certificate recording its business as the provision of industrial property services, legal services or science and technology services; (iii) *having at least two professional members having IP agents certificates* (which is extremely difficult to get) *(it is worthwhile to note here that a foreign invested enterprise is not allowed to act as an organizational IP agent in Vietnam).* **The above business conditions for IP service providers are unnecessarily too high and they therefore limit the number of IP service providers and contribute to the monopoly in the supply of the service...”.**

<b>Problems Identified in the BDS Legal Environment Study and Included in the LOE Implementation Report</b>	<b>Proposals made for Changes in the Legal Environment in Favour of the Development of BDS Market</b>	<b>Actions Taken by the Government</b>
<p>“...The requirements for an enterprise entering the intellectual property service market are excessively too high. Most difficult of all is the requirement that the enterprise must have at least 2 professional staff members who have the IP Representative Certificate while the certificate is extremely difficult to get according to the prevailing procedures [... ] These outrageous regulations have limited the number of IP service providers and contributed to the monopoly in the supply of the service...”.</p>	<p>“...The Ministry of Science, Technology and Environment should cooperate with the LOE Implementation Taskforce to replace the mechanism of “Intellectual Property Representative Certificates” with business conditions...” <i>(Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 37).</i></p>	<p>In the Directive No.27/2003/CT-TTg issued on 11 December 2004, the Prime Minister requests that:</p> <p>“...The Ministry of Science and Technology [shall]:</p> <p>Co-ordinate and co-operate with the task force for the implementation of the Law on Enterprise (LOE) in submitting to the Government in the first quarter of 2004 proposed amendments of Decree No.63/ND-CP of the Government dated 24 October 1996 making detailed provisions on <b>industrial property</b> in order to replace the</p>

		<p>issuance of <b>Industrial Property Representative Certificates with business conditions</b> without a licence and bolster the registration and protection of industrial property in Vietnam...”</p>
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**PROPOSAL NO. 4**

The BDS Legal Environment Study analyzes that:

“... As it is analyzed, it could be concluded that the conditions for a vocational training school establishment are too difficult, the procedures for the establishment are not clear and criteria for the establishment are too high. Regulations and legal documents governing vocational traing schools and centres are vague and contradictory... Those, together with other problems, are limiting the entry into market of training service providers, especially those of private sector....”

<p><b>Problems Identified in the BDS Legal Environment Study and Included in the LOE Implementation Report</b></p>	<p><b>Proposals made for Changes in the Legal Environment in Favour of the Development of BDS Market</b></p>	<p><b>Actions Taken by the Government</b></p>
<p>“...The establishment procedures for vocational training are neither transparent nor specific. Establishment requirements are excessively high. This discourages the entrance into the market of private training service providers, and hence hinders the development of such service market in terms of quality and quantity...”</p>	<p>“...The Ministry of Labour, War Invalids and Social Affairs should cooperate with MPI to review legal requirements for the establishment of vocational training schools, centres in a way that simplifies establishment procedures, diversifies training modalities and gives more autonomy to vocational training centres, and encourages the participation of the private sector (individual,</p>	<p>In the Directive No.27/2003/CT-TTg issued on 11 December 2004, the Prime Minister requests that:</p> <p>“...The Ministry of Labour, War Invalids and Social Affairs [shall]:</p> <p>review and assess current regulations and policies relating to the establishment, management and promotion of vocational training schools; submit</p>

	<p>enterprises) in providing vocational training services based on market needs...” (<i>Report on 3 Year of Implementing the LOE, CIEM/ LOE Implementation Taskforce/ MPI, Oct. 2003, page 37</i>).</p>	<p>to the Prime Minister in the second quarter of 2004 [a revised] regulation with emphasis <b>on simplifying procedures for establishment, diversifying sizes and modes of training, raising the autonomy of vocational training schools</b> in respect of their curricular and training quality; encouraging organisations, individuals and enterprises to engage in vocational training of employees in response to market needs...”</p>
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The Directive is to be implemented by different ministries and government agencies.

Beside all these, the process has tested successfully the cooperation mechanism between GTZ and local policy advice/ advocacy/ making institutions, paving the way for future GTZ supports in the field of advices on SME policy, business enabling environment and investment climate.

#### IV. NEXT STEPS BY THE GTZ SME PROMOTION PROJECT

1. Follow-up the implementation of the action requested by the Prime Minister in his Directive. Provide supports to key players (CIEM/ LOE Implementation Taskforce, VCCI, professional business associations, related ministries) in the implementation of the actions requested by the PM.
2. Further disseminate the results/ findings of the study through workshops, domestic business fora, press campaign... for the purpose of awareness-raising.
3. Support other initiatives by local stakeholders for similar proposal for changes.
4. Document the lessons learnt.

#### V. KEY LESSONS LEARNT

- Involvement of the agency which can provide direct inputs into the policy making process is critically important.

- Strong ownership (through the participation in the implementation and in selection of the study subjects) of local stakeholders and “change agents” is the key to success.
- There is no need to wait for the study to be finalized until policy advocacy activities can be carried out. Inputs, results found while the study is ongoing can be used straight away by the law/ regulation making bodies as long as they results prove good and reliable.
- Direct awareness raising to individuals who really draft the laws/ regulations (through participation in the study even through paid consultancy contracts, supports to their participation in workshops....) really makes senses and can bring about good results.
- A public/ private/ chamber partnership in the study can be a model.