Providing solutions to the establishment of institutional and legal frameworks for
the operation of specific economic models in Viet Nam

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1. Overview
Because of the distinguishing features of specific economic models, there should be different
institutions and legal frameworks to facilitate the development of those economic models.
In recent years, special economic zones have always been attached great importance and developed
together with an attempt to establish institutions and particular legal frameworks applicable to those
economic zones, especially the industrial zones. Institutional and legal frameworks applicable to the
operation of special economic zones aim at creating consistent and favorable mechanism for the
investment and business operation of the enterprises and investors.
Legal frameworks are being gradually improved by the issuance of legislative documents such as
Decree 29/2008; Decree 164/2013; Decree 114/2015. Those legislative documents are important legal
basis for the competent authorities to exercise their functions and powers, especially to empower the
management boards of the economic zones and create one-stop offices for enterprises and investors. In
case of procedures relating to the state, enterprises, investors and even laborers just need to contact to
the management boards instead of other authorities. It helps developing and consolidating the
conception that the state serves its people and creates environment for private business. Heretofore,
although management boards have yet to execute all aspects in need of enterprises, investors and
laborers, they play certain roles in licensing investment and other procedures relating to business
operation.

2. Present conditions of institutional and legal frameworks for operation of specific economic
models in Viet Nam
2.1 Institution
2.1.1 Political institution
2.1.1.1 Communist Party leadership through resolutions and directions
i. General policy
In Viet Nam, Communist Party owns its sole and comprehensive leadership over the apparatus of the
government agencies. The operation of Communist Party’s policies is consistent in cultural, economic,
political and social fields.
Each Party Congress emphasizes the importance of the development of modern market economy, in
which the public and private sectors are equal. Particularly, Party policies always prioritize the
eco\nomy development and facilitate the creativeness of society to make contribution to the
construction and development of the economy of the country.

ii. Policy on the development of coastal economic zones
Since the innovation of the policies, both Party and the Government have taken interest in the
development of marine economy with a desire to build our country into a strong and well off country
from the sea and prove the advantage of a coastline of 3.260km located along the most important
international maritime of the world. Some resolutions and directions on coastal economic development
include: Resolution No.03-NQ/TW dated 06/5/1993 of the Political Bureau on tasks to develop marine
economy and strive for a strong country enriched by the sea in 2020; Direction No.20-CT/TW of Political
Bureau dated 22/9/1997 on promoting the development of marine economy to become industrialization and modernization and Resolution No.09-NQ/TW dated 09/02/2007 on Vietnamese marine strategy until 2020, which concludes that “the 21st century is recognized by the world to be the
century of the sea”. Besides, Conclusion No.74-KL/TW dated 17/10/2013 of the 8th Plenum of the XI
Party Central Committee stated: “Formulate, approve and operate projects on the establishment of
special administrative-economic zone…”

*Government effectuates resolutions and directions of the Party*

The Government have had policies and guidelines to effectuate the resolutions and directions of the Party on marine economic development such as: (i) on 30/5/2007, the Government issued Resolution No.27/2007 promulgating the Government’s program on action for realization of Resolution No.09-NQ/TW; (ii) ratified the establishment of the coastal economic zones to take full advantages of provinces having the sea.

Although the idea of building coastal economic zones was proposed at the 4th Plenum of the VIII Party Central Committee (12/1997), in fact, it was not until 2002 that the policy on model construction of the Chu Lai open economic zone (Quang Nam) was approved at locals’ request. Until now, Viet Nam has 15 coastal economic zones established and developed with an area of 54,000 ha.

In 2010, the Prime Minister agreed to supplement 3 coastal economic zones in planning. Those ones are East South economic zone (Quang Tri), Thai Binh economic zone (Thai Binh) and Ninh Co economic zone (Nam Dinh).

Therefore, there are 18 coastal economic zones approved in the planning of coastal economic zone development until 2020 with a gross area of 730,553 earth surface and water surface (equivalent to 7305.53 square kilometers) equaling to 2.2% gross area of the country.¹

*Adjustment in the orientation of development*

With the desire to concentrate resources to make a considerable development for certain coastal economic zones, take full advantage of existing potentials and avoid over-diversification, the Prime Minister agreed to choose 8 major coastal economic zones to make investment from the state budget in term of 2016-2020

The 8 groups of major coastal economic zones include: Chu Lai economic zone (Quang Nam province) – Dung Quat economic zone (Quang Ngai province); Dinh Vu-Cat hai economic zone (Hai Phong province); Nghi Son economic zone (Thanh Hoa province); Phu Quoc economic zone (Kien Giang province); Vung Ang economic zone (Ha Tinh province); Nam Phu Yen economic zone (Phu Yen province); Van Don economic zone (Quang Ninh province); Dinh An economic zone (Tra Vinh province). Accordingly, invested capital is divided into those economic zones with the minimum of 70% of the invested capital provided for coastal economic zones by the annual plan and 5-year plan from 2016 to 2020 central government budget

*Flexibility in policy adjustment*

It is remarkable from the adjustment of the coastal economic zone development that policies relating to the development of the coastal economic zones are flexibly changed and adjusted in accordance with practice. Therefore, the Party and Government would not have difficulties in putting into practice the advanced models whose practical conformance brings good impacts.

### 2.1.1.2. State apparatus

*The delegation and control of the state power*

Vietnamese state apparatus organization does not follow the principle of delegation and control of power. However, based on the experiences of developed countries and the legacy of previous constitutions in accordance with global trend, the Constitution of 2013 provides for the delegation and control of state power. Accordingly, Article 2 stipulates that “The state power is unified and delegated to state agencies which coordinate with and control one another in the exercise of the legislative, executive and judicial powers.”

Thus, the recognition of the legislative, executive and judicial powers, together with the recognition of delegation and control of the power, reflects the will to limit the state power, avoid the abuse of power and ensure that people have their power, which is manifested in the functions, power of the state agencies including National Assembly, Government, People’s Courts and People’s Procuracies.

*i. National Assembly*

Legal basis for the functions and powers of National Assembly is regulated at Article 69 Constitution of 2013: “The National Assembly is the highest representative body of the People and the highest state power body of the Socialist Republic of Vietnam.
The National Assembly shall exercise constitutional and legislative powers, decide on important issues for the country, and conduct the supreme oversight over the activities of the State.”
Therefore, the National Assembly has the plenary power on the construction of legal frameworks in general and legal frameworks for specific economic models in particular. The National Assembly shall first execute the legislative power. Unlike other countries whose constitutional power belonged to people, Vietnamese National Assembly shall promulgate the supreme law as well as ratify regulations on business operations at the discretion of the members and other authorities such as the Government, People’s Courts and People’s Procuracies.
Besides, the heads of agencies such as the Government, People’s Courts and People’s Procuracies are elected and dismissed by the National Assembly; and those agencies are under the supervision of the National Assembly. Thus, the National Assembly use their own initiative to control the enforcement of the law issued by themselves. This brings unity in the promulgation and execution of law.
Owing to the flexibility and initiative in the construction of the supreme legal frameworks by means of constitutional and legislative powers, the National Assembly shall not be subject to barriers in their power execution as other countries such as America whose statute laws ratified by the Parliament shall be vetoed by the President. Therefore, in the future the National Assembly shall promulgate laws on special economic zones and construct advanced legal frameworks for the development of the special economic zones in replacement of Government’s resolutions.

ii. The Government
The foundation, apparatus, functions and powers of the Government and members are specified in Chapter VII of the Constitution. The Government is the highest state administrative body to exercise the executive power and is the executive body of the National Assembly.
1. To organize the implementation of the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly, and orders and decisions of the President;
2. To propose and formulate policies to be submitted to the National Assembly or the Standing Committee of the National Assembly for decision or decide on policies according to its competence, for the performance of its tasks and the exercise of its powers set out in this Article; to submit draft laws, draft state budget estimates and other projects to the National Assembly; and to submit draft ordinances to the Standing Committee of the National Assembly;
3. To perform the unified management of the economy, culture, social affairs, education, health, science, technology, environment, information, communications, external relations, national defense, national security, and social order and safety; to carry out orders on general mobilization or partial mobilization or orders to proclaim a state of emergency, and take other necessary measures to defend the Fatherland and to protect the People's lives and property;
4. To propose the National Assembly for decision the establishment or abolition of ministries or ministerial-level agencies; the establishment, dissolution, consolidation, separation, or adjustment of the administrative boundaries of, provinces, centrally run cities or special administrative-economic units; to propose the Standing Committee of the National Assembly for decision the establishment, dissolution, consolidation, separation or adjustment of the boundaries of, administrative units under the provinces and centrally run cities;
5. To perform the unified management of the national administration system; to manage cadres, civil servants, public employees, and the public service in state agencies; to organize inspection and control work, the settlement of complaints and denunciations, and the fight against bureaucracy and corruption in the state apparatus; to lead the work of the ministries, ministerial-level agencies, government-attached agencies, and People's Committees at all levels; to guide and examine the People's Councils in their implementation of the documents of state agencies at higher levels, to create the conditions for the People's Councils to perform their tasks and exercise their powers which are prescribed by a law;
6. To protect the rights and interests of the State and society, human rights and citizens' rights; and to ensure social order and safety;
7. To negotiate and conclude treaties in the name of the State, as authorized by the President; to decide on the conclusion, accession to, ratification of, or withdrawal from, treaties in the name of the Government, except for treaties to be submitted to the National Assembly for ratification as specified in Clause 14, Article 70; to protect the interests of the State and the legitimate interests of Vietnamese organizations or citizens in foreign countries;
8. To coordinate with the Central Committee of the Vietnam Fatherland Front and central bodies of the socio-political organizations in the performance of the tasks and the exercise of the powers of the Government.”

Thus, with the extensive executive functions and powers, the Government shall adopt policies and promulgate legislative documents on the economic development as well as use its initiative to put into practice economic models and establish special economic zones.”

iii. People’s Courts

Chapter VIII of the Constitution of 2013 regulates on the People’s Court and the People’s Procuracy. Accordingly, Article 102 stipulates that: “The People's Courts are the judicial bodies and exercise judicial power. The People's Courts include the Supreme People's Court and other Courts prescribed by a law. The People's Courts have the duty to safeguard justice, human rights, citizens' rights, the socialist regime, the interests of the State, and the rights and legitimate interests of organizations and individuals.”

This article is specified in Law on Organization of People’s Courts 2014: “In the name of the Socialist Republic of Vietnam, courts shall adjudicate criminal, civil, marriage and family, business, commercial, labor and administrative cases and settle other matters as prescribed by law; examine documents and evidences collected in the legal process in an adequate, objective and comprehensive manner; and base themselves on results of the adversarial process to make judgments or decisions on guilt or innocence, to apply or not to apply penalties and judicial measures, or decisions regarding property rights and obligations and personal rights.” It also provides for the People’s Courts system including: (i) The Supreme People’s Court; (ii) Superior people's courts; (iii) Courts of provinces and centrally run cities; (iv) Courts of rural districts, urban districts, towns, provincial cities and the equivalent; (v) Military courts.

* The independence of People's Courts

The independence of People’s Courts is the vital importance in the protection of the rights and legitimate interests of organizations and individuals. The independence of People’s Courts helps investors have faith in the business environment. Once their interests infringed by any organizations and individuals, they must be protected by a system of judicial bodies, which is People’ Courts.

The special economic zones attract to both domestic and overseas investors. The independence of People’s Courts guarantees that all people are equal at courts and avoids other affections such as political influence and public opinion. This reflects not only at criminal courts but also in any economic, civil and commercial fields. Thenceforth, contract, commercial relations and investor relations are enforced. The independence of People’s Courts guarantees justice and helps people predict the legal consequences from the courts, which compromises the code of conduct in business.

The independence of People’s Courts is ensured by the supreme law – Constitution. Clause 2 Article 103 of Constitution of 2013 provides: “Judges and People's Assessors are independent and shall obey only the law. Agencies, organizations or individuals are prohibited from interfering in a trial by Judges and People's Assessors.”

In addition, international standard principles for justice guarantee are also recognized: “The People's Courts shall hold their hearings in public. In a special case which requires protection of state secrets, conformity with the fine customs and traditions of the nation, protection of minors or protection of private life and at the legitimate request of an involved party, the People's Court may hold a closed hearing; Except in the case of a trial by summary procedure, the People's Courts shall try cases on a collegial basis and make decisions by a vote of the majority; The adversarial principle shall be guaranteed in trials; The first-instance and appellate hearing system shall be guaranteed ; The right of
the accused or defendants to a defense, and the right of involved parties to protect their legitimate interests, shall be guaranteed.”

Obviously, People’s Courts play an important role in the guarantee of the investment, business environment to the protection of the infringed rights and legitimate interests of organizations and individuals. In other words, People’s Courts are the support for investors to feel secure about their invested properties.

Along with the innovation in structure, favorable investment policies and business environment decided by the National Assembly and the Government, the guarantee of Courts’ independence is also prioritized. Hence, the investors shall feel secure about the protection of their infringed interest or the protection their invested properties in case of nationalization.

iv. People’s Procuracy

In some nations, prosecution power is handed over to the prosecution, an agency under the supervision of the Government (executive branch). In Viet Nam, People’s Procuracy shall exercise the power to prosecute. Besides, People’s Procuracy also supervises judicial activities. Furthermore, it is an independent system of state agencies as the National Assembly, the Government and People’s Courts. The duties of People’s Procuracy are to safeguard the law, human rights, citizens' rights, the socialist regime, the interests of the State, and the rights and legitimate interests of organizations and individuals, thus contributing to ensuring the strict and unified observance of the law.

Functions and powers of People's Procuracy are specified in Article 3 and Article 4 of Law on Organization of People’s Procuracy 2014. Hence, exercising the power to prosecute means an activity of People’s Procuracy in criminal procedure to make the State’s accusation against offenders. The power to prosecute shall be exercised right upon the settlement of reports and information on crimes and recommendations for prosecution and throughout the course of institution, investigation, prosecution and adjudication of criminal cases.

Supervising judicial activities means an activity of People’s Procuracy to supervise the lawfulness of acts and decisions committed or made by agencies, organizations and individuals in judicial activities. The supervision of judicial activities shall be conducted right upon the receipt and settlement of reports and information on crimes and recommendations for prosecution and throughout the course of settlement of criminal cases; in the settlement of administrative cases, civil, marriage and family, business, commercial and labor cases and matters; in the execution of judgments and settlement of complaints and denunciations about judicial activities; and in other judicial activities in accordance with law.

Accordingly, apart from the judicial function of People’s Court, People’s Procuracy also exercises judicial activities, supervise judicial activities to safeguard the law. This is a distinguishing characteristic of People’s Procuracy in comparison with prosecutions of other nations. Another remarkable feature is that People’s Procuracy shall supervise the settlement of business, commercial cases and execution of judgments, which shows that People’s Procuracy plays an important role in the protection of investment and business environment.

2.1.2 Economic institution

The establishment of over 500,000 enterprises with millions of businessmen is one of the most noticeable success of the innovation of the policies. Businessmen and their enterprises have made contributions to the economic development with job creation and startup ideas. Spirit in business is the motive power for the development of the economy.

Owing to the vital importance of businessmen and enterprises, the State always appreciates the development of favorable commercial environment, in which the economic institutions are central, prioritized and improved by the government.

Economic institutions mention two elements: (i) agencies, organizations collecting and researching economic information or providing the national economy with essential goods and services; (ii) structures such as competitive environment, bank system, customs and property rights systems…²

Although economic institutions in Viet Nam need some improvements, it lays the foundation of the market economy as well as creates waves of innovation such as the promotion of international integration and participation in free trade agreements at international level (TPP) and regional level (APEC).

Scope of economic institutions is built in the state of law. Accordingly, the operation of the economy is governed by law and freedom of business is secured by Constitutions and law. Freedom of business is only restricted in exceptional circumstances that due to national defense and security, public interests and by law of the National Assembly. This prevents the intervention of executive agencies in freedom of business.

Acknowledgement of the market economic institutions is also noticeable. Viet Nam should reach the highest standard of the world and the market economy is the quintessence of human beings. Therefore, our country is developing this modern market economy.

This is an essential foundation for private businessmen to believe in a favorable and competitive business and investment environment which helps businesses predict the changes and avoids the interference of the government.

To special economic zones, the concern of the State on the improvement of market economic institutions would help those economic zones to form basis and foundation for the establishment of different economic zones (open economic zones, non-tariff zones, free-trade zones, charter city)… where the management boards are considered as one-stop offices that help enterprises and investors to address administrative procedures in replacement of their “control” function. Hence, enterprises and investors are free from the harassment of the competent agencies which is a violations of freedom of business.

2.2 Legal frameworks for special economic zones

2.2.1. Decentralization of powers between central and local bodies

2.2.1.1. Constitution

The Constitution of 2013 has open promulgation on the local bodies to facilitate its development. Accordingly, Article 112 Constitution of 2013 stipulates:

“i. Local administrations shall organize and ensure implementation of the Constitution and law in their localities; decide on local issues prescribed by a law; and submit to the examination and supervision by state agencies at higher levels.

ii. The tasks and powers of local administrations shall be determined on the basis of determining the powers between state agencies at the central and local levels and for each level of local administration.

iii. Local administrations may, as necessary, be assigned certain tasks of state agencies at higher levels, along with the necessary means to ensure the performance of those tasks."

The People's Council is the local state power body, representing the will, aspirations and right to mastery of the local People, shall be elected by the local People, and is responsible to the local People and state agencies at higher levels. The People’s Council shall decide on local issues as prescribed by a law; and supervise the observance of the Constitution and law in its locality and the implementation of its own resolutions.

The People's Committee at a local administration level, which shall be elected by the People's Council of the same level, is the executive body of the respective People's Council and is the local state administrative body, and is responsible to the People's Council and state administrative agencies at higher levels. The People's Committee shall organize implementation of the Constitution and law in its locality and implementation of the resolutions of the People's Council, and perform the tasks assigned to it by state agencies at higher levels.

2.2.1.2. Law on Organization of Local government 2015

Along with the Chapter on local government of the Constitution of 2013, the promulgation of Law on Organization of Local government 2015 in replacement of Law on Organization of People's Councils and People's Committees is an obvious advance in the acknowledgement of government organization. This is also the legal basis to establish the mechanism and apply modern models of local government,
which make contribution to the efficiency of State management and serve the people.

In devolution and decentralization of local government, Law on Organization of Local government is in accordance with the spirit of the Constitution, which is to create flexible legal frameworks to enhance the self-control and responsibility of the local government. Whereby:

To the segmentation of powers of local governments, Article 11 provides:

“1. Duties and powers of local governments at all levels shall be determined on the basis of distinction of powers between centrally-governed state organs and local ones, and between levels of local governments in the form of delegation and decentralization.

2. The segmentation of powers shall be carried out according to the following rules:
   a) Ensure that the state management is carried out consistently with institutions, policies, strategies and planning in different industries and sectors; ensure the consistency and transparency of the national administrative system;
   b) Enable local governments at administrative units to exercise their autonomy and responsible autonomy to perform state management duties within particular areas in accordance with legal regulations;
   c) Firmly combine state management by sectors with this by territories, and clearly distinguish duties to state management of socio-economic operations taking place throughout a geographical region which is taken on by local governments at different levels;
   d) Segmentation of powers must conform to rural, urban and island conditions and features as well as particular characteristics of industries and sectors;
   d) Issues involving more than two commune-level administrative units shall be tackled under the authority of district-level local governments; those involving more than two district-level administrative units shall be tackled under the authority of province-level local governments; those involving more than two province-level administrative units shall be tackled under the authority of centrally-governed state organs, unless otherwise stipulated by laws, resolutions of the National Assembly, ordinances, resolutions of the National Assembly Standing Committee and Government’s decrees;
   e) Local governments shall be given resources to carry out duties and powers which have been decentralized or delegated as well as take responsibility within these delegated and decentralized duties and powers.

3. The National Assembly and the all-level People’s Council within their duties and powers shall be responsible for supervising locally-controlled state organs in carrying out their delegated duties and powers.”

To the delegation of powers to local governments, article 12 stipulates:

“1. Delegation of powers to local governments at each level must be stipulated by laws.

2. Local governments shall exercise the autonomy and responsible autonomy to perform their delegated duties and powers.

3. The superior-level state organs within their duties and powers shall be responsible for examining and inspecting the constitutionality and legality in carrying out their duties and powers delegated to local governments at different levels.

4. Laws on specifying duties and powers of local governments, and their affiliates, must stick to the rules stipulated in Clause 2 Article 11 of this Law and must be relevant to duties and powers of local governments as prescribed by this Law.”

2.2.2. Establishment of special administrative-economic zones
2.2.2.1. Constitution

Constitution of 2013 states: “Special administrative-economic units may be established by the National Assembly.” The Constitution does not provide in particular the conditions, procedures of establishment as well as the structure of the Special administrative-economic units. It seems that those specific contents would be regulated in law to secure the consistence of the Constitution.

2.2.2.2. Law on Organization of local government

Special administrative-economic units are regulated in Chapter V of Law on Organization of local government
Establishment: The special administrative – economic unit shall be established by the National Assembly, and be entitled to enjoy special socio-economic mechanism and policies as well as organize the local government relevant to the socio-economic characteristics, requirements and objectives of that special administrative – economic unit.

Organization of local government: The local government at the special administrative – economic unit shall be composed of the People's Council and the People’s Committee. The principles of organization and method of operation of the People's Council and the People's Committee at the special administrative - economic unit shall conform to regulations enshrined in this Law. The number of delegates of the People’s Council, the People’s Committee, and the organizational structure of the People’s Council, the People’s Committee, and specific duties and powers of the People’s Council, the People’s Committee of the special administrative – economic unit shall be decided by the National Assembly upon the establishment of that special administrative – economic unit.

Procedure and process for grant of the decision on establishment: The Government shall prepare the proposal for establishment of the special administrative – economic unit for submission to the National Assembly. The people’s opinions on the proposal for establishment of the special administrative – economic unit must be obtained. The National Assembly’s committee on legislation shall be responsible for assessing the proposal for establishment of the special administrative – economic unit submitted by the Government. When necessary, the National Assembly shall establish the provisional committee to assess the proposal for establishment of the special administrative – economic unit. The National Assembly Standing Committee shall consider and give their opinions on the proposal for establishment of the special administrative – economic unit before submitting it to the National Assembly. The National Assembly shall consider and approve the proposal for establishment of the special administrative – economic unit according to the procedure stipulated in one or various session(s) of the National Assembly.

Dissolution: The Government shall submit the decision on dissolution of the special administrative – economic unit to the National Assembly. Process and procedure for consideration of dissolution of the special administrative - economic unit are in accordance with the regulations on establishment. When granting the decision to dissolve the special administrative – economic unit, the National Assembly shall decide to establish administrative units on the basis of geographical borders of administrative divisions and population of that dissolved special administrative – economic unit.

2.2.3. Specific laws on special economic zones

Most countries have enacted statutes issued by legislative bodies to establish the legal frameworks. Ordinarily, those statutes shall facilitate the initiative of local government and the development of different applicable models such as special administrative models, special economic models, special commercial models…

Viet Nam have not had any specific statutes on special economic zones and special administrative-economic zones until now.

As analysed above, special economic zones are only regulated in the Decrees of the Government such as Decree No.29/2008 on industrial parks, export processing zones and economic zones; Decree No.164/2013 amending and supplementing a number of Articles of Decree No.29/2008/ND-CP; Decree No.114/2015 amending and supplementing Article 21 of Decree No.29/2008/ND-CP

The Government exercises executive power. Therefore, legislative documents should only be promulgated by the Government in exceptional circumstances under specific and limited authorization as the legislative powers (making laws, promulgation of laws in general) belongs to the National Assembly. This also reflects the principle of delegation and control of powers regulated in the Constitution of 2013.

Although Decrees of the Government established the legal frameworks for the development and efficient operation of special economic zones, there are some disadvantages: (i) about the legality, Decrees are not legislative documents with legality as laws of the National Assembly and Decrees also lack of consistency (often amended and supplemented); (ii) because members of the National Assembly are unprofessional in legislation, promulgated documents are low in quality with overlapped provisions and vague delegation of functions and authorities of local government and managing boards.
of the economic zones; (iii) as the agencies who submit for promulgation are subordinates with self-interest, sometimes the promulgation is not objective; (iv) the simultaneous promulgation and execution of legislative documents of the Government shall not safeguard the control of powers as regulated in the Constitution.

3. Solutions on the establishment of institutions and legal frameworks for the operations of specific economic models.

In recent years, Viet Nam has carried out certain reform in institutions and legal frameworks since the promulgation of the Constitution of 2013. However, current regulations of legislative documents and policies are in need of improvement as the practical application is inefficient due to the scientists and policy-makers’ reservation and lack of awareness of the specific administrative-economic models.

* Practice of the establishment and operation of special economic zones (including the special administrative zones), specific economic zones:

- Special economic zones: The 8th Plenum of the XI Party Central Committee of 2013 put forth policies on the establishment of 03 special economic zones in Van Don (Quang Ninh), Bac Van Phong (Khanh Hoa) and Phu Quoc (Kien Giang)
- Coastal economic zones: Since the establishment of the first economic zone (Chu Lai, Quang Nam) in 2003, Viet Nam has promoted establishment of coastal economic zones. On 23/9/2008, the Prime Minister issued Decision No.1353/QD-TTg on approving the Project “Master plan on development of Coastal economic zones of Vietnam up to year 2020”. Until now, there are 18 coastal economic zones approved in master plan on development of coastal economic zones throughout the country, of which 8 zones are provided by State budget funding. Those economic zones are in favor with policies of taxation, land use, investment etc. However, in terms of administration, an explicit mechanism of decentralization to build a modern model of autonomous agencies in authorities and responsibilities is not available yet. In general, while local governments have a thorough understanding of their advantages and disadvantages, they still depend on the policies of the central committee and lack of a initiative mechanism. Thus, the autonomy of local governments must be prioritized as regulated in the Constitution and Law on Organization of local government.

As a consequence, the research on simultaneous resolution is fundamental to apply those special economic zones learned from the experiences of countries all over the world, which makes contributions to the improvement of the institutions and legislation of the country as well as the development of economy-society.

3.1 Institution

3.1.1 Local governments need the autonomy in authority as well as explicit responsibilities.

Currently, Viet Nam has the legal basis for the development of autonomy and responsibilities of the local governments. Owing to the open provisions of the Constitution as well as Law on Organization of Local government, the promulgation of a specific act or a legislative document providing guidance such as Decrees of the Government is essential to the application of local governments’ autonomy in practice. Accordingly, local governments should have their autonomy in applying models of special administrative-economic zones. Besides, as the people should have favorable conditions to exercise their autonomy and express their spirit of homeland’s construction, they need to have the right to make choice of models. For example, if a plea is signed by 5% of voters and submitted to a district court, the court should form a provisional committee to enact regulations on the establishment of local government. Regulations approved by the majority of voters shall be enacted and applied. The autonomous authority should be limited to administrative management and economic development. As national defense and security powers are still vertical and uniformly managed by the central government and the system of judicial bodies (People’s Courts, People’s Procuracies) is independent, the local governments’ autonomy and independence are not matters of concern.

* Concretization of functions of People’s Council as local state power body
Following the previous Constitutions, the Constitution of 2013 affirms that People’s Council is the local state body, representing the will, aspirations and right to mastery of the local People, shall be elected by the local People, and is responsible to local People and state agencies at higher levels. Therefore, People’ Council as a state power body has legislative powers which means promulgation of legislative documents. However, according to Article 19 of Law on Organization of local government, apart from general regulations\(^3\), functions of People’ Council do not exercise its legislative powers but merely “assisting” the executive branch and implementing execute function. On the other hand, regulations on working by conferences and meetings without any committees or departments lead to the inefficient operation of People’ Council. People’ Council is not virtually a local National Assembly. To legislative powers, legislative powers should be decentralized to the National Assembly in central government and the People’ Councils in local government. The National Assembly considers general matters applicable in the throughout country. Other particular matters relating to characteristic of the local should be considered by People’s Councils. For example, People’s Council of a highland province shall prioritize the promulgation legislative documents and policies in accordance with the local characteristics instead of waiting for the consideration of the National Assembly. Meanwhile, People’s Councils of centrally run cities (Ha Noi, Ho Chi Minh City) shall prioritize problems such as littering, anti-flooding, urban civilization, tree planting, train power generation etc. Such decentralization shall safeguard the punctuality and flexibility of policies and laws in practice. This remedies the current non-sufficiency that People’s Councils “borrow” the policies from central agencies. As a result, People’s Councils do not control the policy operation.

* Regulations on responsibilities of People’s Committee

The autonomy of local government is handed over to People’s Committee. Regulations and policies proposed by People’s Committee and submitted to People’s Council or the Government. As People’s Council holds periodic meetings without full-time delegate Committees and the standing People’ Councils are “lack of members”, it is difficult to supervise proposes and the operation of People’s Committee. Furthermore, People’s Council may find it difficult to exercise its powers in supervising People’s Committee. The Government shall not embrace the situations of local government. Meanwhile, People’s Committee with its full-time delegate bodies and authorities may “dodge” the supervision of People’ Council and deny their responsibilities by submitting to the Government. Hence, there are dark side of the implement of policies laws on investment projects such as land allocation of coastal projects, bidding in public procurement, etc. Thus, apart from the execution of state powers of People’ Council with its limited legislative powers to specific local matters, People’ Council needs more powers to exercise its function of supervision such as “Voting for distrust” the leaders of People’s Committee and departments. Voting for distrust shall be exercised in 4 cases: (i) annually periodic; (ii) at the Government’s request; (iii) at request of 10% members of People’s Council; (iv) at request of 5% voters (People’s Council should register a website for pleas of the people following other countries’ experiences.)

The execution of voting for distrust shall eliminate leaders who are lack of competence and enhance the prestige of the Party.

3.1.2 Pilot model of direct voting for leaders of local government who take responsibilities before the people, enterprises and enhance the prestige of the Party.

Currently, Ho Chi Minh City has made plans on direct voting by people to vote for some titles at communes, wards or commune-level towns and district-level. However, those plans are still reversed\(^4\). Direct voting, especially for local government, is considered as standard of democracy. In Viet Nam, the people’s direct voting shall brings much value such as (i) people exercise their democratic rights; (ii) criteria for a leader are competence, having mind in the people without “coming through the back door” or parties; (iii) as decisions are based on the votes, irresponsible or corrupt people could not

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\(^3\) Promulgation of resolution on duties and powers of the provincial-level People’s Council (Clause 1 Article 19)

“come through the back door” to run away from their responsibilities.; (iv) purifying the Party as competent members shall become leaders.

To safeguard the principle of the Party leadership, it is essential to require the candidates to be members of the Party for the titles of provincial and district-level secretary and provincial and district-level chairperson. The people’s direct voting of the local leaders not only safeguards the principle of the Party leadership but it also enhances the prestige of the Party and prevents members from “coming through the back door”.

3.1.3 Application of pilot administrative-economic models

Although the Constitution and Law on Organization of local government established the open legal frameworks for the application of special administrative-economic models, the regulations are reserved in comparison with other countries. In Viet Nam, only the National Assembly could establish the special administrative-economic units whereas local government of other countries could autonomously establish those units. The flexible and autonomous application of local government, instead of the limited national disciplines, shall resolve many problems and create a favorable investment and business environment with great value from the competitive environment. Besides, the National Assembly also concerns the general national interests which means it could not embrace specific problems of each local government.

At present, there is concern that local government’s delegation and the application of special administrative models shall have negative effects on the powers of central agencies, autonomy, national defense, national security, etc. Nevertheless, as analysed above, the national defense and security powers (Public Security, National Defense) are still vertical and the system of judicial bodies (People’s Courts, People’s Procuracies) is independent, the local governments’ autonomy and independence are not matters of concern.

The application of models shall help local governments reform the administrative procedures, abolish unnecessary procedures to create favorable investment and business environment. The delegation of powers to special economic zones from the central or local agencies makes better exercise of powers. This is the win-win relationship which means all parities are benefited: (i) release the burden of responsibilities for the Central agencies as they could not embrace and resolve problems of the local governments as efficiently as the local governments and special economic zones; (ii) the autonomy of managing boards of special administrative-economic zones in practice provides a link between the state and the enterprises; (iii) create a investment and business environment with international standards which attract investment.

Applicable administrative-economic models:

According to the national targets, each country shall find suitable administrative-economic models such as:

i. Objective for investment attraction, economic-social development, job creation (multiple targets) shall apply the general special economic zones.

ii. To emphasize a particular objective such as job creation, model of non-tariff zones (free taxes, no procedures (visa, investment, etc.)) is applicable. Those zones are considered as oversea zones.

iii. To develop competitive environment where the governing system is defined by the city's own charter document rather than by state, provincial, regional or national laws: Charter City. Accordingly, the local people or local government shall make choice of the governing system.

iv. To build a modern countries among developing countries. Charter city proposed by Paul Romer and applied in Honduras. It is establish in a large area (about 1000 square kilometers); laws of developed countries are applied and citizens could move in and out as they please (often limited to the host countries).

3.2. Legal frameworks

3.2.1. Promulgation of specific laws on special economic zones

At present, Viet Nam has certain legislative documents regulating special economic zones, which are Decrees of the Government. However, in order to ensure a consistence and effective legal framework,
promulgation of particular laws on special economic zones and the independence of managing boards of special economic zones are essential.
This laws need to empower and claim responsibility for the managing boards. Thus, the managing board plays an important role as a one-stop shop providing a link between the state and the enterprises, investors, laborers in the economic zones. In case of state procedures (investment licensing, taxation procedures, Customs, visa for foreign employees, power, water, etc.), enterprises, investors and laborers shall contract to the managing board.
The regulation of authority and responsibilities shall resolve the current overlapped authorities and responsibilities between managing boards and state departments.