

Legal and Regulatory Framework of Securities Trading in Viet Nam

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Viet Nam, like any other countries with a market-driven economy, has paid great concerns to the task of building and developing the first ever capital market, particularly the securities market, in order to raise investment fund for the process of industrialization and modernization. Viet Nam also recognizes the securities market as a principle method to safely guarding the efficient activities of the economy, as well as of the entire social development. As a new comer, Viet Nam has inherited tremendous sources of experience gaining from those developed securities markets in the world. However, Viet Nam has also foreseen a complicated task of building a securities market that appropriately fit its conditions, and it is even more complicate to keep this market stable, healthy and operating efficiently. Those developed markets have proved that economic and social factors led to the creation of the securities market, while a healthy legal environment is an essential condition that must have for the market to be kept stable, enable it to prove its positive impacts. The volume of securities trading as well as its efficiency will dramatically decrease unless there is a legal system or a regulatory framework that creates enough faith and protection for investor.

On the 28/11/1996 in Viet Nam, the Government had released Decree No. 75/CP, signifying the newly establishment of The State Securities Commission. Its task is to build and develop Viet Nam first ever securities market, it is also the Government 's representative organ that has total authority to oversee the stock market. In the same time, all the required legal documents for the stock market have also been released; they are the necessary legal foundation required by the introduction of the securities market. Due to the limit of time and information, this paper can only be an attempt to mention the regulations (although it is not completely completed) concerning the securities trading starting in the early 1990s to present. The paper even proposes a few solutions and methods, which may be ideally needed in order to support the development of securities market in Viet Nam.

The paper can be divided into three parts:

- Part 1: Reasons behind the regulations
- Part 2: Regulations on securities and securities trading
- Part 3: Necessary solutions required for the development of securities market in Viet Nam

1. Reasons behind the regulations

It seems likely that the securities market has both advantages and disadvantages. It can speed up the economic development. On the other hand, it can produce some unpredictable negative consequences. In fact, all legal entities from Government to enterprises cannot issue securities whenever they need to raise fund; it is also impossible that all issued securities can be traded in the securities market. The non-stop development of the securities market has attracted the participation from various entities, making the relationship between those participated parties becoming more complicated. The intervention of law is considered to be a vital factor that contributes to the creation of legal environment for securities offering and trading, assuring the market to operate in a fair, safe and organized manner. This intervention can also be an important factor that makes the market to operate efficiently and provides investors protection as well.

The operation of securities market is known to happen in two different markets, the primary market and the secondary market. The primary market is where securities being first issued. Due to the existence of this market, the fund for entire society development can be raised. The secondary market is the market for issued securities to be traded. Therefore, there should be regulations on securities issuing, as well as regulations on listing, trading, and securities transferring. Basically, the regulations is to provide better conditions for the market participants taking market's advantages, and is to find out appropriate solutions to minimize the negative consequences, negative impacts of the securities market.

Based on the 1992 Constitution, Vietnam's economic policy has been confirmed and used as a foundation for other essential laws of the new economic mechanism to be enacted, modified or supplemented. Beside those basic laws like Enterprise Law, Corporate Law and Banking Law, ..., specific legal documents regulating securities trading were also enacted. Though the legal environment was not yet in complete, basically, those regulations somehow described fairly legal framework of securities trading in Viet Nam.

2. Regulations on securities and securities trading

Typically, all market activities are regulated by a legal system that can be divided into two groups.

(1) The group of basic legislations

This group includes regulations on the issues of establishment, management and operations of those specialized businesses, regulations on the securities allowed to be issued, the ownership and securities transfer...

1) The 1990 Corporate Law (modified in 1994)

This law could be considered as the first legal framework for the establishment of securities market in Viet Nam. It was for the first time, the legal system of Viet Nam has stated regulations on corporate

establishment (of those limited liability company and joint stock company), activities related to the issuance of securities such as regulations on stocks, stock transfer and issuance license Accordingly, the corporations are allowed to issue two types of shares: registered shares for the founders and members of the management board, and the transfer of these types of shares can only be done with the approval of the management board. The other is the share to bearer, which can be available to all other shareholders; they are allowed to be transferred freely. ...

Generally, the 1990 Corporate Law has satisfied the need of a legal framework for economic development at that time. However, the Law has increasingly shown its impropriety in many fields, such as regulations on share-ownership, stock-ownership, concerned issues about parent company and its subsidiaries, regulations on information disclosure. These regulations have been moderately defined and not in conformity.

2) The 1996 State Enterprise Law

The State Enterprise Law has been enacted in the situation that the Government insistently attempted to build a multi-sectors economy, with the state sectors considered to hold the leading role. If the policies of state enterprise ownership diversification and policies of pushing up the equitization of those enterprises being examined closely then we can see the State Enterprise Law has great influence on the securities issuance in order to raise fund for state enterprises and to equitize those state enterprises. Let's take the issue of ownership as an example, the separated line between state enterprises and responsibility of their related parties has not been drawn clearly. The policies of accounting and auditing are very vague and unspecific, that "state enterprises are responsible to execute correctly the policies of accounting and auditing", but the legal guideline documents still have unclear instructions, making the process of carrying out the stated task become very difficult. For the policy of information disclosure, the Law has only mentioned that those state enterprises have the duty to report publicly their annual financial status and to disclosure information in order to accurately evaluate the enterprises operations. However, according to the guideline document (Circular No 73TC/TCDN dated 12/11/1996), this type of information was not enough to satisfy the external demand; there is still lack of regulations on which agency or institution to undertake the administration and to provide services of information disclosure ...

3) The 1990 Banking Law and the 1997 Credit Institution Law

These two laws are considered the most clear and complete, especially in the policies of accounting, auditing and information disclosure applied to credit institutions. The law has stated that State Bank is the only authority that can grant approval to the establishment of credit companies and their operation.

In term of the policies of accounting and auditing, the Law required the credit institutions to establish their own internal checking and auditing system, as well as being audited by an independent auditing firm that was accepted by the State Bank.

About information disclosure, the law required the credit companies to report their financial status

according to regulations on accounting, statistic and to report their business activities periodically in complying with the requirements set by the Governor of the State Bank. Also, they are required to report in case of any unusual events, which may severely affect the business's performance, or when a potential restructuring happens to the organization.

The process of splitting, merging, taking over or winding up of the credit companies have to be authorized by the State bank. The Law has also stated specific cases that require to be dissolved and procedures to follow during the process of dissolving those credit companies.

Though the law has made clear about its regulations, it still really hard to find out a specific guideline document. In contrast, there are many legal documents which were promulgated prior to the introduction of the current law, and they are still effectively in use, especially those legal documents relating to securities. And these facts have presented major obstacles for the listing of securities.

4) The 1999 Enterprise Law

One of the important legal factors participating in the success of the securities market is the Enterprise Law, which meet the market demands. The 1990 Corporate Law has shown too many shortcomings in its contents as analyzed above. And this led to the substitution of the newer Enterprise Law that was made by the Tenth National Assembly Meeting on 12/6/1999, which was in effect on 1/1/2000. The Enterprise Law has more advantages than the Corporate Law as it has satisfied the urgent demands of the economy basically. In relation to the securities market, the Enterprise Law has created a clear and firm legal foundation, giving the enterprises more active role to raise fund for their businesses.

In term of the issuers, the Enterprise Law has set more rights for limited liability enterprises to issue bonds, giving them more opportunities to obtain funds directly from the investors.

The types of securities allowed to be issued include:

- Stocks that include common stock and preferred stock.
- Bonds that include straight bond and convertible bond.
- Other securities as specified by the laws and enterprises regulations.

Therefore, with a clear set of definitions for stocks and corresponding rights and responsibilities, the enterprises will be able to make a right decision on what type of stock to issue, in the same time, the investors could be lured in by its attractiveness.

On the issue of stock transfer, the Enterprise Law placed conditions only on those stocks of founding members and voting shares. All other types of stock are allowed to be traded without any restrictions. In addition, the Enterprise Law even set the rules on cases when the companies are required to buy back shares upon shareholders demand or when the companies are allowed to buy back shares based on company's decision. Now the stocks can be transferred freely and the investors have the right to ask the companies to buy back their shares in some cases, then it is clear that the Enterprise Law did create more liquidity for the stocks, it is one of the factors encouraging investors buying stocks.

The Enterprise Law has added some more new forms of enterprises, in which there could be one member limited liability company. With the given rights, large corporations, banks, financial corporations can establish their own securities companies, so that they can make their own important decision themselves, there are no requirements to form joint-venture securities companies.

Since Viet Nam have attempted to complete their economic legal framework, the Enterprise Law has additionally given a decisive factor to speeding up Viet Nam economic development in general and stock market in particular. However, the new law did not set any limit on the volume of registered shares (or shares to bearer) of the companies. Obviously, the offering of shares to bearers can surely attract more investors because it meets their expectation. However, this results in a disadvantage that it is difficult to control the ownership of the company. Consequently, it may lead to the problem of tax evading and question of who is running the companies. If shares to bearer are freely traded, then there may be a hidden stock market being formed. This hidden stock market may operate in a disorganized manner, giving chances for frauds to happen because it is lack of information or even worse that the given information is being misleading. The next consequences are the investors can be confusing, getting cheated; the market will be wrongfully manipulated...

In brief, with the confirmation of market economic mechanism, many economic laws have been amended such as Civil Law, Commercial Law, Domestic Investment Law, Foreign Investment Law, Enterprise Bankruptcy Law... However, the stock market may require Viet Nam to have more regulations to support its development. Old and out-of-date provisions should be updated or modified to fit with the new situation.

(2) The group of specific regulations on securities and securities trading

The stock market was known of operating in two different markets including primary and secondary markets, therefore the laws set containing not only regulations on securities issuance but also regulations on securities trading and transferring. For the regulations on securities issuance, this is place where market goods are created, the regulations, therefore, should explain clearly about the economical means, legal characteristics of each type of share, bond, about procedures of the issuance process and its offering methods. For the activities happening in the secondary market, regulations should define the trading methods and procedures, securities transfer, requirements and procedures for stock listing. The regulations should also make clear about the responsibilities for any acts that breaching the law, acts that are named as cheating, fraud, speculation, hostile takeover and unlawful manipulation.

1) Regulations on Government bond issuance

In the early of the 90s, the Government has started to sell bonds to the public. And until 1999, the issuance of internal bonds still being made in accordance with the Government Decree No 72/CP on 26/7/1994. It also must be in conformity with other Decisions and Circulars relating to the issuance and

payment of Government bonds, like Circular No. 75-TC-KBNN on 14/9/1994 and Decision No. 1179-TC-KBNN on 5/12/1994 of the Ministry of Finance.

The Decree 72/CP created a legal foundation to access more methods for fund raising for the Government. The Decree 72/CP specified three types of Government bonds: Treasury bill, Treasury bond and municipal bond. The Decree has also allowed Government bonds to be purchased with unlimited volume and it can be chosen by the buyers. Government bonds can be traded in the securities market, it can be transferred, inherited, and can be used as collateral and are backed by the Government in term of timely interest and principal payment.

Government bond would be sold in several ways: (1) Directly placed by the Treasury; (2) placed through the intermediate agencies like commercial bank, financial institutions and insurance companies; (3) placed through an auction. Therefore, this Decree has made more ways to sell bonds, helping to circulate the sources of fund, increasing money circulation, and raising the effectiveness of using of unused money in the economy.

The regulations are there, but the Government bond has not yet been standardized, it is difficult to list them when their maturity dates are not in conformity. Moreover, the bonds are not well defined, making the bonds unable to represent its true value and offering target.

Currently, to facilitate the trading of Government bond—the securities will be mostly traded in the stock market at least for the beginning, Decree 72/CP has been amended and replaced by the Decree 01/2000/ND-CP dated 13/01/2000 of the Government promulgating Regulation on the issuance of Government bonds. The Ministry of Finance has been assigned to be the only issuer of government bonds. Bonds are defined more specific including Treasury bill, Treasury bond and investment bond. The last type of bond is further divided into municipal investment bond and investment bond used to raise fund for the Development fund. The face value of bonds are decided with the minimum of 100,000 VND or in multiple of 100,000VND. With the last three methods are in use, the Decree added the fourth method, it is underwriting. The processes of Treasury bond transferring, gifting, rollover, giveaway or inheriting are regulated more flexible, with bond to bearer is freely transferred without asking for permission from any state organs. Government bond with maturity from one year and above can be listed or traded in the centralized securities market in accordance with Decree No. 48/1998/ND-CP on 11/7/1998 about securities and securities market.

2) Regulations on enterprise bond issuance

In Viet Nam, enterprise bonds include bonds issued by state enterprises, joint stock companies, banks and recently, bonds issued by limited liability companies. Legal framework for bond issuance is basic laws as analyzed above, and others are:

- The Government Decree 120/CP dated 17/9/94, a temporary regulation on bond and share issuance of state enterprises (the Ministry of Finance has released Circular No.91 on 5/11/94 for

guideline), and the Government Decree 23/CP dated 22/3/94 about issuing bonds in the international market.

- Decision No. 212/QD-NH1 dated 22/9/94 made by the Governor of the State Bank regulating the procedure of issuing bills by commercial banks and Bank of Investment and Development.

Pursuant to the Decree 120/CP, face value of a bond shall be VND 100,000 or multiple of VND 100,000. Bond is sorted into two types, registered bond or bond to bearer, certificates or book entries ... Bond issued by state enterprises can be freely traded, transferred, inherited, and used as collateral. State enterprise's bond is distributed through three different ways: direct distribution, distribution dealers or auctions. But before state enterprises to sell their bonds, they have to meet the requirements, such as having a business license, having an investment project that has been approved by the responsible authority, having total amount of fixed assets and current assets with the least value of 20 billions of VND, having the total value of the distributing bonds that cannot exceed 50% of total asset value, and having been profit making in the last 3 consecutive years.... However, there is a fact that just a few of enterprises used these designated methods to raise fund because of difficulties encountered during the process of approval and other causes.

3) Regulations on stock issuance

Currently, Viet Nam allows only those state enterprises and joint-stock companies to issue their shares in complying with the 1999 Enterprise Law, State Enterprise Law and other legal documents, such as:

- Decree No. 28/CP dated 22/3/1994 and Decree No. 44/CP dated 29/6/1998 of the Government on the state enterprise equitization, instructing the procedure of stock offering of the state enterprises.
- Decision No. 275/QD-NH5 dated 7/11/1994 of the Governor of the State Bank on the promulgation of Regulation on shares, shareholders of joint-stock credit companies.

With these regulations, shares can be publicly sold by the enterprises. However, though there has many encouraging policies, the documents have still contained many shortcoming, one of the most important issue is that there is no regulation on public information disclosure. Moreover, there is a lack of regulations on accounting, auditing and financing standards..., these limitations have lowered the effectiveness of the mentioned documents dramatically.

4) Regulations on securities issued to be traded in the securities market

It can be seen from the legal framework that Decree No. 75/CP dated 28/11/1996 of the Government on the establishment the State Securities Commission and Decree No. 48/1998/ND-CP dated 11/7/1998 of the Government on Securities and Securities Market are the most important legal documents concerning about securities. They both have created the basic legal framework for the public offering, the establishment of securities companies and investment fund management companies, especially for the organizing and operating the centrally organized market (Securities Trading Center). Accordingly, the State Securities

Commission was officially established as a "Government agency to perform state administration and organization functions on securities and securities markets".

(a) Regulations on public offering

According to Decree No. 48/CP, issued securities include registered and bearer. The par value of a share and investment unit shall be VND 10,000. The par value of bonds shall be VND 100,000 or multiple of VND 100,000. The Decree allowed stocks to be sold in two ways: by the authorized distribution dealers (agents) or by underwriters. The Decree has given the responsible agencies the requirements that they have to satisfy in order to ensure that the issued securities have high quality.

These requirements are:

- Having a minimum registered capital at VND 10 billion;
- Having been profit making in the last two consecutive years;
- Having members of the Board of Directors and the Chief Executive Officer with experience in business management;
- Having prepared a feasible plan to utilize the proceeds obtained from the issuance of shares;
- Having at least 20 percent of its equity offered to more than 100 investors (in case where the equity of the issuer is VND 100 billion or more, the minimum percentage requirement as above shall be 15 percent);
- Founding shareholder(s) must hold at least 20 percent of the shareholders equity of the issuer and maintain this holding for at least 3 years from the completion of the issuance;
- Having a contract with an underwriter if the total value of shares to be issued (in par value) exceeds VND 10 billion.

The Decree has also shown a clear guidance for procedure of applying for permission as well as application documents for license of issuance and offering announcement; methods to use to handle misled information in the prospectus or in case of requirements dissatisfaction.

To make the offering plan complying with Decree No. 48/CP, the State Securities Commission additionally promulgated Circular No. 01/1998/TT-UBCK dated 13/10/1998 to instruct the procedures of public offering. Decree No. 48/CP by the first time has introduced an important intermediate financial institution of the securities market; that is the underwriter. Circular No. 01/1998/TT-UBCK has also explained about this type of organization with more details. To be qualified as a securities underwriter, the institution itself must have underwriting license granted by the State Securities Commission, and it must not have any relationship with the issuer. The underwriter cannot participate in underwriting of a volume of securities that exceeds 4 times against the total amount of current assets minus short-term debt. This requirement aims to prevent risks associated with the underwriter. Circular No. 01/1998/TT-UBCK even specified the cases when the underwriter cannot participate into the underwriting. For instance, cases in which the underwriter hold more than 5% of the total shares of the issuer and

vice-versa; or in the situation that both the underwriter and the issuer have a same shareholder who holds 5% of total shares or above...

Also, it is for the first time, Decree No. 48/CP imposed regulation on the bondholders trustee. It stated that the trustee must obtain or possess depository licenses that were granted by the State Securities Commission, having effective business with healthy financial status...; cases of entities that cannot act as bondholders trustee are: the debt underwriter of the issuer; or legal entities that control more than 5% of voting shares of the issuer, or vice-versa...

(b) Regulations on securities companies, securities investment fund and investment fund management companies

According to Decree No.48/CP, limited liability and joint stock companies, which have securities business license approved by the State Securities Commission can operate as securities companies. The Decree has specified five types of businesses that the securities companies are entitled to conduct including brokerage; dealing on own accounts; investment portfolio management; underwriting; and securities investment advisory. For each type of businesses, the Decree has set specific regulations on the minimum registered capital, application procedures and documents for license of business, as well as regulations on rights and responsibilities that the securities companies must uphold.

For the participated parties of securities investment fund, Decree No. 48/CP has specified that they could be fund management companies, custodian banks and investors. To be able to obtain licenses from State Securities Commission, the fund management companies must be a limited liability company or a joint-stock company with the minimum legal capital of 5 billions of VND. Also, they have enough staff well trained in securities business and adequate facilities to maintain the fund management activities as specified by the State Securities Commission, the executive officers and fund managers must be licensed by the State Securities Commission ...

(c) Regulations on securities registration, clearing and settlement, and depository

To support Decree No.48/CP, the State Securities Commission promulgated the Regulation on Securities Depository, Clearing and Settlement and Registration (Promulgated in conjunction with Decision No.05/1999/TT-UBCK3 of the Chairman of the State Securities Commission, dated March 27th, 1999). Accordingly, the regulations have required that the depository institutions must be a bank or securities firms satisfying the requirements on capital, materials, technical resources and knowledges about securities, and they must obtain depository license from the State Securities Commission. Once they received license, they are eligible to apply for membership and start their conduct of business at the Securities Trading Center.

Pursuant to these regulations, foreign banks are also allowed to participate into the business of securities depository in Viet Nam. However, foreign banks must satisfy other requirements, among those requirements set for their domestic counterparts, set by the State Securities Commission.

Clearing of securities transactions shall be conducted on a multilateral basis. The bilateral method shall only be applied in certain cases and certain transactions as specified by the Securities Trading Centers. Settlement of securities transactions shall be pursuant to the payment on delivery principle.

The law has proposed the establishment of a joint-compensation fund, which formed by contributions from depository members. The purpose of the fund is to make payments for any member who is temporarily unable to honour its settlement. According to the current provisions, the initial fixed contribution for the securities firm or a commercial bank, as a depository member, is 120 million VND, or 80 million VND, respectively; the annual contribution is 0.008 percent of the total trading volume of each depository member.

(d) Regulation on membership, listing, securities trading and information disclosure

Pursuant to the Government Decree No.48/CP and other legal documents, the State Securities Commission had promulgated Decision No.04/1999/QD-UBCK1 dated 27/3/1999 of the Chairman of the State Securities Commission on the promulgation of Regulation on membership, listing, information disclosure, and securities trading. It can be argued that this document is very important, it controls most of activities relating to securities transactions.

According to this Regulation, the members of the Securities Trading Center are securities companies with licence to conduct the business of brokerage, dealing in own accounts, and have registered with the Securities Trading Center. Only members could conduct business in the Securities Trading Center. And to be a member, they must complete the membership application. In general, the Regulation has also explained carefully about member's rights and responsibilities toward the Support Fund, Investor Protection Fund, professional ethics of representatives, and issues concerning to member's business conducts....

For securities listing, the Regulation indicated that securities can be listed at the Securities Trading Centers including Government bonds and shares, bonds of enterprises, and investment certificates which was registered for listing. The companies must submit their application to State Securities Commission for approval before they list their stocks. If their stocks are not compliant with Decree No.48/CP then they have to resubmit the application of stock registration again to State Securities Commission. The Decree No.48/CP has also set the requirements for the stock before they can be listed (the conditions are similar to the conditions set for public offering).

Beside, the Government Decree No.48/CP has set the standards for information disclosure, the issuer therefore must disclose whichever information that is necessary before and right after they list their stock, doing this to protect the investors and guaranteeing the stock's reputation. Information must be disclosed including information of the listing body, and of the fund management company (corporate disclosure) and information of Securities Trading Centers (market disclosure). The information must be disclosed precisely and on time, thus the information can be announced periodically

or in an unusual event. For the corporate disclosure, the issuer must prepare a prospectus for each time they issue securities to the public. The prospectus must contain accurate and necessary data with the verification of an auditing firm accepted by the State Securities Commission. And for the Securities Trading Center, it is required to maintain the tight regulations for what type of information to disclose and what information to be kept in secret.... It can be argued that the given regulations are considered fairly complete to assure the transactions being consecutive, stock trading business being conducted in fairness, honest, and orderly. Beside, the investors are guaranteed an equal opportunity to obtain information.

Currently, for securities trading, the stock market can open only on Monday, Wednesday and Friday with three sessions for each service. The opening price is the execution price at the first session and the closing price is the execution price of the last session of the trading day. The range of price fluctuations for listed stocks and bonds within a trading day shall be $\pm 5\%$ of the reference price for stocks and investment fund certificates, and $\pm 1.5\%$ of the reference yield for bonds. The execution must be in conformity with the principle of market order priority, price priority, and time priority

(e) Regulations on foreign participation

The Decree No.48/CP allowed foreign institutions and individuals to buy and sell securities in Viet Nam. The foreign institutions must form joint-venture companies with domestic partners if they want to conduct securities businesses. Based on the Decree No.48/CP, the Prime Minister has promulgated Decision No.139/1999/QD-TTg dated 10/6/1999 on foreign participation in the Vietnamese securities market, accordingly,

- Foreign organizations and individuals shall be entitled to a maximum of 20% holding of an issuer total outstanding shares, or a maximum of 20% holding of a securities investment fund investment units, of which a foreign organization shall only hold a maximum of 7% and a foreign individual shall only hold a maximum of 3% of the issuer total outstanding shares or investment units.
- Foreign organizations and individuals shall be entitled to a maximum of 40% holding of an issuer total outstanding bonds, of which a foreign organization shall only hold a maximum of 10% and a foreign individual shall only hold a maximum of 5% of the issuer total outstanding bonds.
- The total capital contribution by foreign parties in a joint venture securities firm shall be capped at 30%.

(f) Regulation on supervision and inspection of the operations of the securities and securities markets

To be able to keep the stock market in stable, fairness and profitable; protecting the national interest, legal rights and benefits of investors, the Decree No.48/1998/ND-CP dated 11/7/1998 has stated that all organizations or individuals that involved in the securities business must be placed under State

Securities Commission surveillance according to the laws. These provisions are specified in the Regulation on supervision and inspection of the operations of the securities and securities markets (promulgated in accordance with the Decision No.31/1999/QD-UBCK6 dated 12/10/1999 of the Chairman of the State Securities Commission). The documents clearly pointed out the scope of supervision and inspection including securities issuance; securities transactions; securities business, registration, clearing and settlement and depository; and information disclosure. Most of the legal suits will be solved through negotiations initially, if the negotiation did not succeed then the case will be presented before the economic court of law. If there is foreigner involvement, the international laws will be used, which laws that Viet Nam has signed or rectified. If the case is still not solved, then it will be handled with Vietnamese laws.

In addition, the Decree No.48/CP has set rules on prohibited and restricted practices, such as: the prohibition of short sales, insider trading, the restriction on misleading and false information, prohibition of market manipulation....

In brief, the Decree No.48/CP and other legal documents have completely solved many issues from definitions of different type of stocks, the issue of par value, ... to the regulations on membership, listing, trading and information disclosure with the final goal is to protect the investors. Even the documents are still in its basic form but it established a fairly complete legal framework for the securities market, at least in its initial phases.

(3) State administration over securities and securities markets

It can be argued that the concept of securities is very new in Viet Nam then most of legal documents produced to support it are still not enough, the documents have shown gaps in the compatibility. This gap is even seen more obvious in State administration over securities and securities markets. Let's take a close look at the administration of securities issuance, pursuant to the Government Decree 01/2000/ND-CP dated 13/01/2000, 120/CP, 28/CP, 44/CP, 23/CP, the authority is Ministry of Finance, but in accordance with the 1990 Company Law or the 1999 Enterprise Law, the authority is Province People Committee or City People Committee, which are under Central Government's supervision or corresponding State organs. The State Bank has administrated the issuance of the credit organizations in complying with the Credit Organization Law, which replaced the 1990 Banking Law. In the same time, the State Securities Commission undertake the state administration of public offering, which is listed on in the centrally organized markets.

3. Necessary measures for the development of securities markets in Viet Nam

Viet Nam stock market is developing in an uneasy situation; infrastructures are not fully developed, lack of experiences and the investors still have doubts about its future success. It is really necessary to make a well

planned policy for the economy because this is a very important condition for the development of the securities markets. The first steps are to encourage a multi-faces economy, restructuring the enterprises, especially the State enterprise network, rearrange the distribution of fund more logically. Viet Nam needs to adopt a new suitable policy for the macro-economy to produce a more healthy financial system, creating equal opportunities for all type of businesses to participate, that means of more competitions but it is the vital factor intriguing the economic development.

The financial business depends a great deal on the legal system and the stability of the market, thus the legal framework of the stock market must contain the standards for all type of activities occurring within the market. Generally, a complete legal framework for the stock market should be considered from the initial offering to the transactions in the secondary market, from a single investor to the intermediate organizations, which participate into the market. The legal documents should not have to be the actual laws; rather they can be regulations, which are good enough to apply on the first phase of the stock market's operation (for instance, the Decree No.48/CP and other legal documents). Gradually, these legal documents and laws will be further developed and perfected to fit the real situation once the stock market goes into its full operation and development.

There should be a plan to encourage more demand for stocks; this is a factor fueling the stock market development. Other factor should be considered is the tax policy, this is one of the important steps to attract more participation into the stock market. The legal system need to pay more attention to these areas development: middle financing organization, management system, market observation in order to keep the market operating within a safe, fair environment, to protect the investors benefits.

On the 27/3/2000, the Prime Minister has promulgated Decision No. 39/2000/QD-TTg to temporarily provide tax incentives to those businesses, which are currently practicing securities business. According to this Decision, tax incentives will be temporarily applied for these legal entities: (1) Securities companies, (2) Fund Management companies, (3) Issuers of listed securities, and (4) individual securities investors.

On the Value Added Tax or VAT, the Decision has decided to subject VAT exemption for securities companies in three years (starting from 2000 till the end of 2001); list of the stock businesses, which enjoy VAT exemption can be found in the Decree No.48/CP on 11/7/1998, article 29(2). Beside the current business income tax incentives, then:

- securities firms, fund management companies will be exempted from business income tax for one more year additionally, and till the next two years, they will enjoy up to 50% discount of business income tax.
- issuers which have their stocks listed will be considered for business income tax discount of 50% for the next two years after their first stock listing in the Stock Trading Center.

Individual securities investor will be considered for income tax exempt if they earn high profits from stock dividend, bond interest or securities spread.

Viet Nam also need to prepare the establishment of securities investor association, the association will protect the investors benefits. Be ready to learn experiences and attending seminar, training provided by international investors in order to retain the ability to conduct stock business and minimize risks when do businesses in securities market.

Viet Nam should create more independent audit group and rating companies due to the requirement of independent audit approval before securities can be publicly offered. The requirement has demanded for a large number of creditable auditing companies to audit the enterprises. There is also a need to evaluate the enterprise operations exactly, and to determine the real value of securities, and this requires the establishment of rating companies. The presence of auditing and rating companies will make the investors have faith in their investment as well as minimize risk of securities markets. The presence of these companies also help the foreign investors having a better look at the Viet Nam enterprises as well as the whole economy before they can consider investments.

After all, while spending effort to develop the securities markets, Viet Nam should have a well defined plan and policy for each type of market as follows:

(1) Measures to facilitate the development of corporate stock and bond markets

Corporate stocks and bonds are the popular securities in the market; they are also considered as the principle goods for the market. In fact, the current process of equitization is still very slow and poor in quality, so most of the enterprises are lack of conditions to issue securities to public. Among the given matters, the legal system has not yet make ideal conditions to support the enterprises in their plans. The matters have required the real solutions to push up the process of equitization, improve the quality of those equitized companies. The prior things to do is to change the legal system in a way that it will facilitate the public offering of enterprises, rather than limiting them.

- Simplify the requirements of securities offering and listing to fit Viet Nam real situation. The Decree No.48/CP, the Circular 01/1998/TT-UBCK and the Regulation on listing requirements have somehow satisfy those requirements. Viet Nam's requirements are still lower than the international requirements on the same issues; for instance, Viet Nam allows the companies to list their stocks once they are permitted to publicly issue their stocks, that is different to the rules set in the international stock market, there are separated rules from application for stock listing, procedure of listing to the rule for issuing stocks to the public. However, Viet Nam will maintain the current rules in the next few years in order to encourage enterprises to issue and listing their stocks.
- Speed up the enterprise's equitization process as well as raising the quality of those equitized enterprises. According to the statistical survey, there are up to 400 State enterprises have been equitized currently, but it is still considered as slow and inefficient. The causes can be seen from both micro and macro economic factors. But to be able to speed up the process in order to achieve

the goal of providing more goods for the market, Viet Nam should need a better suitable plan.

- + The Government Decrees and Decisions must be enforced; the participants must participate completely and seriously into the program. The number of State enterprises expecting to be equitized must be planned for each industry and local area within a certain time schedule.
- + There must be a policy to support employees of these equitized enterprises, shares should be offered to the employees who have long years of service, creating plan of payment when selling shares to officials, employees who are unable to payoff their shares.
- + Allow foreigners to buy shares. Currently, we are having a clear policy for foreigner's participation in Viet Nam securities markets (as in part II). Because Viet Nam is facing the problem of fund shortage as well as lack of the market experiences, then the foreigner's participation may bring in additional needed money for such a cash-strapped economy like Viet Nam. Their participation may also contribute more necessary knowledge of stocks and financial business for the domestic investors; and this is an important factor for Vietnam's plan of reforming the enterprises.
- + The profits earned from selling shares should be re-invested into production, for instance, the amount of money rather be recorded than submitted into State's coffer.
- State funding to state enterprises should be reexamined and allow the enterprises to manage their own budget. State funding should aim to projects of infrastructure development, public services, and high-tech industry. Moreover, the enterprises should be encouraged to raise their own fund by issuing bond, participating in a joint-venture or a cooperative program. Inefficient enterprises should be restructured and restructuring enterprise's financial system. Enterprises should be advised for managing their own budget. Eliminating policy of state funding, concession loans offering from banks rather be cancelled in order to encourage the enterprises raising their own capital through the processes of issuing stocks and bonds.
- There should be a policy to encourage the establishment of more joint-stock companies because they are the main stock suppliers for the market. However, the sponsor of the Government and authorities as well as tax policy have not offered enough attractiveness to persuade the investors. Most of the joint-stock companies is newly established due to the demand of business. Thus, the Government should create a steering committee to instruct and support this particular type of company, especially those joint stock enterprises which have state's investment of above 50%. Once the problems removed, those joint stock enterprises will operate more efficient and they surely generate a large amount of shares for the stock market.
- Another important issue needed to be solved is the current unbalance between market supply and demand. Through the first trading sessions, there were more buyers than sellers because most of the participated enterprises actually issued their shares before the introduction of Decree No.48/CP;

they just need to re-submit their registration for stock listing. It is understandable why there are not enough shares to sell when the existing shareholders do not sell out their shares. Therefore, the major shareholders of those enterprises should be asked to sell more of their shares as well as the State should consider of selling part or all of their shares in the listed enterprises. And this is also a Government policy of gradually withdrawing state's capital from equitized enterprises, which may not require state's participation (The Government Resolution No.08 dated 9/7/1999, part IV, item 4).

(2) Necessary solutions for the development of the Government bond market

Government bond is one of two main products of the securities market. In Viet Nam current situation, the issuance of corporate bond is still limited hence the development of State bond market will play an important and vital role toward the whole securities market development. However, the current state bond is not qualified for trading in Stock Trading Center. Thus, the Government should address the issue more resolutely as following:

- The Government Decree 72/CP on the issuance of Government bond should be reexamined, standardizing all of the contained technical items of a bond, for instance, the Ministry Of Finance should be selected as the steering State organ that has responsible for the bond issuance; underwriting syndicate should be used to keep maturity dates in conformity; avoid the practice of direct selling as of currently, thus make the bond to be listed in the Securities Trading Center easier.

In order to solve the problem, the Decree 72 has been replaced by the Decree 01/2000/ND-CP dated 13/01/2000, which contained the Regulation on the issuance of Government bond, and accordingly, the Ministry of Finance has been selected as the only issuer. Based on the new decision, Government bond will be sold in the Stock Trading Center in two ways: by underwriters or through an auction. Currently, there are only intermediate financing organizations to participate in an auction; and it is somehow suited to the securities market in Viet Nam at the beginning, helping the State to attract fund easier. Using the underwriters will have great influence on the market, making the secondary market, particularly the Government bond market, more active. The new method also help to recover the investors' belief in Government bond—a financial instrument that was difficult to attract direct investment from the investors. Basically, with such regulations, then issued Government bonds will be more liquidable, and the Government will raise fund easier.

- Public offering should be encouraged for Government bond with different maturities such as 1, 3, 5, 15 and 20 years. The State should consider some policy with encouragement for the long-term bonds (10-20 years).
- Issued bonds should be identical in term of its par value, and this value should not be too high. Infrastructure and high-tech bonds should be encouraged to sell to the international markets.
- Interest rate should be standardized. State and enterprise bonds can use this standard as a base

for interest adjustment in collateral time. Income tax imposed on state bond should be considered for discount toward institutional investors (currently, individual investor income tax was considered for exempt.)

Conclusion

The development of a securities market was a major concern for the country in the renovation process, but its success depends on a trusted and well-defined legal system. Even legal documents and regulations on securities and securities market at the beginning are not too many, but they have basically met the minimum demands. The question of whether the securities market will develop or not largely depends on the appropriate solutions. Based on that solutions, the regulations could be carefully considered and amended in appropriate direction of the social economic development of the country. Hopefully the given explanations and solutions may help creating a suitable legal environment, which may help to develop the securities markets in Viet Nam.

Appendix

List of legislations and legal documents on securities and securities trading

I. Basic legislations

1. Company Law 1990 (modified in 1994)
2. State Enterprise Law 1996
3. Banking Law 1990 and Credit Institution Law 1997
4. Enterprise Law 1999
5. Bankruptcy Law 1993
6. Foreign Investment Law 1996

II. Legal documents on securities and securities markets

1. *Legal documents on the issuance of Government bond*

The Government Decree No. 01/2000/ND-CP dated 13/01/2000 on the promulgation of Regulation on the issuance of Government bond (in order to replace the Decree No. 72/CP dated 26/7/1994 of the Government)

2. *Legal documents on the issuance of enterprise bond*

- The Government Decree No. 120/CP dated 17/9/1994 on the promulgation of temporary Regulation on the issuance of stock and bond of state-owned enterprises (The Ministry of Finance has released Circular No. 91 dated 5/11/94 for guideline) and the Government Decree No. 23/CP dated 22/3/1994 on the issuance of international bond.

- Decision No. 212/QD-NH1 dated 22/9/1994 of the Governor of the State Bank on the promulgation of Procedure for the issuance of bill of commercial banks and the bank of investment and development.

3. *Legal documents on the issuance of stock of equitized enterprises*

- The Government Decree No. 28/CP dated 22/3/1994 and Decree No. 44/CP dated 29/6/1998 on the equitization of state-owned enterprises (SOEs), instructing the procedure for public offering of SOEs.

- Decision No. 275/QD-NH5 dated 7/11/1994 of the Governor of the State Bank on the promulgation of Regulation on the share and shareholders of joint-stock credit institutions.

4. *Legal documents on securities issued to trade in the securities markets*

- The Government Decree No. 75/CP dated 28/11/1996 on the establishment of the State Securities Commission

- Decree No. 48/CP dated 11/7/1998 of the Government on securities and securities markets.

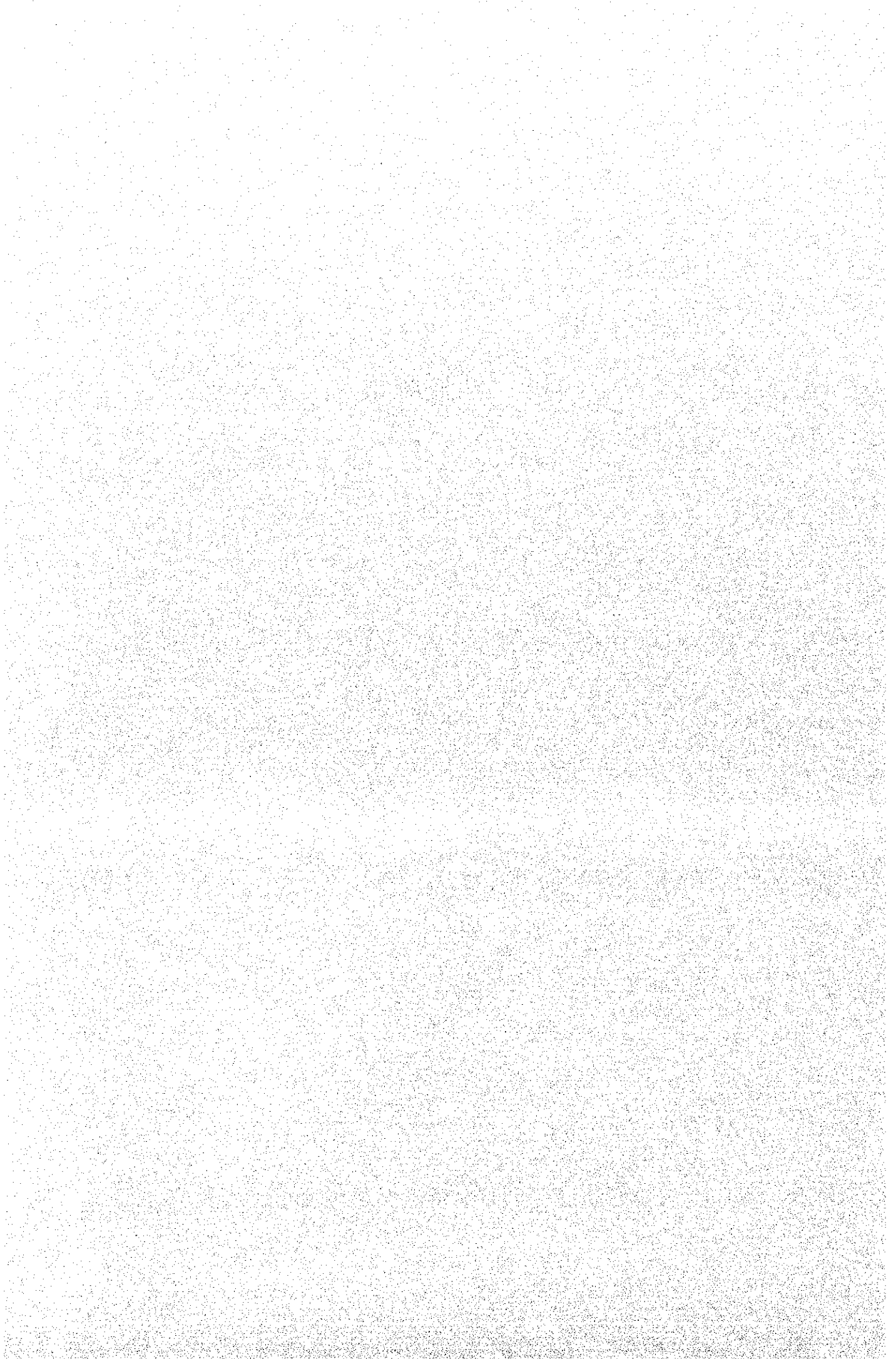
- Decision No. 127/1998/QD-TTg dated 11/7/1998 of the Prime Minister of the Government on the

- establishment of the Securities Trading Centers.
- Decision No. 128/1998/QD-UBCK5 dated 01/8/1998 of the Chairman of the State Securities Commission on the promulgation of Regulation on structure and operation of the Securities Trading Centers.
 - Regulation on structure and operation of Securities Trading Centers.
 - Circular No. 01/1998/TT-UBCK dated 13/10/1998 of the State Securities Commission on the public offering of securities.
 - Decision No. 04/1998/QD-UBCK3 dated 13/10/1998 of the Chairman of the State Securities Commission on the promulgation of Regulation on Structure and Operation of Securities Companies.
 - Regulation on Structure and Operation of Securities Companies.
 - Regulation on Structure and Operation of Securities Investment Fund and Fund Management Companies.
 - Decision No. 04/1999/QD-UBCK1 dated 27/3/1999 of the Chairman of the State Securities Commission on the promulgation of Regulation on Membership, Listing Requirements, Information Disclosure, and Securities Trading.
 - Regulation on Membership, Listing, Information Disclosure and Securities Trading (Promulgated in accordance with Decisions No. 04/QD-UBCK1 dated 27/03/1999 by the Chairman of the State Securities Commission).
 - Decision No. 05/1999/QD-UBCK3 dated 27/3/1999 of the State Securities Commission on the promulgation of the Regulation on securities depository, clearing/settlement and registration.
 - Regulation on Securities Depository, Clearing/Settlement and Registration (Promulgated in Conjunction with Decision No. 05/1999/QD-UBCK3 of the Chairman of the State Securities Commission dated 27/3/1999).
 - Document No. 109/1999/UBCK2 dated 12/8/1999 of the State Securities Commission guidelines for listing on the Securities Trading Centers.
 - Decision No. 31/1999/QD-UBCK6 dated 12/10/1999 of the Chairman of the State Securities Commission on the promulgation of the Regulation on Supervision and Inspection of the operations of the securities and securities markets.
 - Regulation on Supervision and Inspection of the operations of the securities and securities markets. (Promulgated in accordance with the Decision of the Chairman of the State Securities Commission No. 31/1999/QD-UBCK6 dated 12/10/1999)
 - Decision No. 139/1999/QD-TTg dated 10/6/1999 of the Prime Minister of the Government on foreign participation in the Vietnamese securities market.
 - Circular No. 01/1999/TT-UBCK1 dated 30/12/1999 of the State Securities Commission providing guidelines for the Government Prime Minister's decision No. 139/1999/QD-TTg dated 10/6/1999 on

Foreign Participation in the Vietnamese Securities Market.

- Decision No. 39/2000/QĐ-TTg dated 27/3/2000 of the Prime Minister of the Government on the temporary regulation on tax incentives applied for securities businesses.

D. 外資政策



Foreign Capital in Viet Nam: Current Situation and Policy Recommendations

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1. Introduction

Capital is the prime factor for growth in any country. Viet Nam also needs a big amount of investment capital to sustain a stable and high growth rate. In a context of low economic development level and low saving rate, it is therefore critically important for Viet Nam to intensify its efforts to mobilize foreign capital to supplement the investment capital for the development of country.

According to estimations by some economists, the country needs around USD 65 - 70 billion as investment capital to sustain an annual GDP growth rate of 5 to 6% in the next few years (2001 - 2005). Though domestic funds continue to take the key role, it is evident that mobilization of domestic capital will have myriad obstacles because of the constraints of state budget and the limitation of the banking system. Therefore, foreign capital sources will play an important role on the growth rate of Viet Nam in coming years.

In an effort to find solutions to the above problem, this study aims at reviewing the current situation and the reciprocal interactions between foreign capital sources in Viet Nam in the last 10 years. Policy implications will be presented in the final part of this study.

2. The current situation of foreign capital in Viet Nam

In the past 10 years, foreign capital sources in Viet Nam are often in the following forms: foreign direct investment (FDI), official development assistant (ODA), commercial credits and foreign loans. Among these, FDI is taking the lead since it brings into the country not only capital but also technology, managerial expertise, marketing experiences and a global distribution networks. More than that, this stable source of funds does not leave a debt burden to the host country while other sources of funds (excluding non-refundable components) are often accompanied with an aggravating debt burden, ineffective use of funds and with unfavorable conditions imposed by donors.¹ For this reason, FDI has played a prominent role among foreign capital sources in Viet Nam and there have been many policies, laws... governing it.

¹ Binding conditions include those which oblige funds recipients to buy materials, goods, services provided by the country providing ODA.

(1) Overview on policy, laws governing foreign capital

1) *Foreign Direct Investment (FDI)*

It can be said that the legal framework on foreign direct investment has taken shape since 1977 with the charter on foreign investment released under the Decree No. 115/CP on 19 April 1977. This is the first ever document by the Socialist Republic of Viet Nam on foreign investment. According to the 1977 Charter, foreign investment is construed as bringing in for use in Viet Nam the assets and capital in order to build new facilities, renovate, expand or improve existing facilities. Capital must be in foreign currency and assets must have equivalent value in foreign currency. In accordance with this charter, foreign investors can choose among three investment forms: product sharing cooperation, mixed company or factory and private factory producing exported goods. However, such factors like foreign investors' assets not being guaranteed (which can be confiscated for nationalized), exorbitant taxes (30 - 50%), management power mainly in the hands of Vietnamese sides and the absence of a consistent policy framework have explained for the lukewarm reactions of foreign investors to the charter.

In line with its broader program of economic reform, the National Assembly of the Socialist Republic of Viet Nam has passed the Foreign Investment Law in Viet Nam (December 29, 1987). The law basically addressed the weaknesses of the 1977 Charter and provided more favorable conditions for foreign investors in Viet Nam. At the time of issuance, the law was evaluated to be attractive when compared with similar laws of other regional countries.

Unlike the 1977 charter, the 1987 law guaranteed not to confiscate and nationalize legally owned assets of foreign investors. It also commit to providing equal and fair treatment to foreign investors. There is no maximum limit on the capital share contributed by the foreign investor in the form of joint-venture enterprises but the minimum must not be below 30% of the invested capital. The law also allowed foreign investors to choose among investment forms which are then prevalent regionally and internationally (business cooperation the basis of business cooperation contract, joint-venture enterprise and 100% foreign capital enterprise). Profit tax rates are much lower which vary around 15 - 25% of the profit. Moreover, foreign invested enterprises shall be liable to maximum profit tax exemption period of 2 years from that beginning with profitable business, and a 50% profit tax reduction during 2 subsequent years. In some cases, profit taxes are even lower (10%) and the periods of profit tax exemption and reduction longer (4 years). Moreover, the law permits foreign investors to remit profit home with the tax rate of 5 to 10%.

It is evident that the Foreign Investment Law (1987) is a breakthrough when compared with the 1977 charter. It reflects the fact that Viet Nam has taken a more transparent, more pragmatic conception about the role of FDI on the development process of national economy. Nevertheless, after an implementation period, the law has revealed a number of constraints, causing troubles to foreign investors. For example, the law does not allow private sector to directly enter a business cooperation with foreign investors.

Domestic investors therefore have to group to become a Joint-venture Side while foreign investors have to do the same thing to become a Foreign Side. The law does not permit to account interests paid on loans as costs. Contribution to equity by Vietnamese Side is chiefly land use right.² In addition, other documents supporting the implementation of the law were not issued adequately in a timely manner. For example, the Decree No. 139 by the Minister Council which provides detailed instruction on the law was only issued 10 months after the law has been announced. Issues related to salary, natural resource taxes... are only tackled with at the end of 1990 and the beginning of 1991. Moreover, at the time when the law was passed, no other economic laws had been issued, making the foreign investment legal framework in Viet Nam inconsistent and risky.

In 1990, the Foreign Investment Law was revised with important changes made. Most notable of all are: liabilities limited companies or shareholder companies are allowed to cooperate with foreign investors (excluding some special cases); no maximum limit on the capital share contributed by the foreign investor in the form of joint-venture enterprises, but the minimum must not be below 30% of the legal capital; profit tax privileges accompanies with some specific conditions (technology transfer, proportion of goods produced for export, volume of labor...); interests are accounted as investment costs... Despite these changes, the revised law failed to get rid of such limitations as: investment forms not being diversified, the absence of the stipulation on the compensation of the Vietnamese Government in case it causes damages to the capital and assets of foreign investors, too strict control on bank account of foreign invested companies, unsuitable project duration.... Hence, the law has undergone 2nd revision in 1992 to make it more attractive.

After another 4 years, the Foreign Investment Law was revised for the third time in 1996. Key amendments made under this revision include the followings: investment privileges are linked with development orientations of the economy, foreign investors are allowed to contribute capital in VND which has foreign currency origin, BOT form is diversified with BTO and BT; more autonomy given to enterprises; investment encouragement areas are enlarged (hospital, training...); licensing process are shortened and simplified; state management on foreign investment is more decentralized and other administrative procedures are minimized. Together with these changes, a raft of decrees, and regulations has been announced to provide specific guidance on the implementation of the law (see Appendix 1).

Recently, under the pressure of a sharp drop in FDI in Viet Nam and of an increasing competition from improvements of investment environments in regional countries, the Foreign Investment Law has been revised for the fourth time on last June, 2000. The latest revision has included two new articles and revised 20 articles in the light of developing and expanding the stipulation of the prevailing Investment Law. The revision mainly deals with three issue areas. Firstly, it includes the regulations which help to

² As of August 1999, capital contributed by Vietnamese parties in FDI enterprises is USD 2.324 billion. Capital contributed is mainly in the form of land use right.

minimize difficulties, troubles and operation risks of foreign invested companies. The revisions are on such issues as foreign currency balance, opening of bank account in foreign countries, use of land as collateral for bank loans, land clearance, without recourse principle, guarantee by the Government and application of foreign laws. Secondly, the law has been revised in a way that enlarges the autonomy of foreign invested capital. Direct intervention of the Government on day-to-day operations of enterprises are removed, setting up a legal framework for both domestic and foreign enterprises to be suitable with international practices. Changes are also made on consensus principle, conversion between investment forms, suspending operation, and closing foreign invested enterprises and expiration of business cooperation contract, allocation of various funds and reserves, minimization of investment procedures. Thirdly, the revision also deals with three issues regarding import tax exemption, remittance of profit abroad and loss transfer.

In brief, the legal framework for foreign investment in Viet Nam is characterized with the following distinguishing features: temporary favors, inconsistency, fast variable regulations, discrimination, non-transparency, low enforcement, inconsistency with international laws and practices. These constraints have eclipsed investment incentives and discouraged foreign investment capital flowing into Viet Nam.

2) *Official Development Assistance (ODA)*

Viet Nam got access to ODA much earlier than to FDI. However, after many ups and downs, this source of funds really rose only during the 1990s, after Japan and other donors resumed its aids to Viet Nam in 1993. This source of funds which ranks second only to FDI is critically important for the development of Viet Nam in this transition period.

Key prevailing decrees of the Government regarding the management and use of ODA include: Decree No. 87/CP dated 5 August 1997 on ODA management and use, Decree No. 22/1998/ND-CP dated 24 April 1998 on land clearance, Decree No. 52/1999/ND-CP dated 8 July 1999 on construction and investment management, Decree No. 88/1999/ND-CP dated 1 September 1999 on bidding. Accompanied with these decrees are circulars by ministries, governmental agencies which provide detailed guidance on the implementation of such decrees.³

According to prevailing regulations, ODA includes non-refundable assistance and soft loans which include a non-refundable assistance component equivalent to at least 25% of the loan (Article 2, Decree 87/CP) for such purposes as: supporting the balance of payment, program loans, technical assistance and project support.

Like the process of perfecting the legal framework on FDI, after many revisions, these decrees have had many positive strengths: clear stipulations on role, responsibilities of ministries and agencies involving in ODA management and use (Ministry of Planning and Investment, Ministry of Finance, Ministry of

³ After the promulgation of Laws, Government Decrees, related ministries and agencies are liable to release circulars providing detailed guidance on the implementation of these legal documents in its ministries or sectors.

Foreign Affairs, State Bank of Viet Nam and the Government Office); a bold and clear decentralization in appraising and approving ODA projects; simpler procedures; more consistency between various legal documents; damages compensation are detailed and applied consistently all over the country...

Nonetheless, besides these positive aspects, there remain many constraints. Since management agencies are many in number, procedures therefore is complicated (particularly in loan disbursement procedures). This delays the process of receiving ODA. Stipulations on monitoring and evaluating ODA projects are inadequate. Technical assistance to project design and building is limited (technical assistance is mainly provided by foreign partners, leaving project owners in a passive situation). Supporting policies are inadequate, some even cause troubles to project stakeholders.⁴ Many stipulations are impractical, infeasible or difficult for project stakeholders to execute.

3) *Commercial credits and foreign loans*

In addition to these policies and regulations, many legal documents related to foreign loans borrowing and repayment have been recently issued. Most notable of all are: Regulation on Foreign Loans Borrowing and Repayment (issued under the Decree No. 90/1998/ND/CP); Decision No. 72/1999/QD-BTC by the Minister of Finance dated 7 July 1999 regarding the provision, use and management of reserve for foreign loan repayment; Decision No. 233/1999/QD-TTg by the Prime Minister on 20 December 1999 attached with the Regulation on government's guarantees for foreign loans by enterprises and credit institutions; Circular No. 03/1999/TT-NHNN dated 12 August 1999 introducing the borrowing and repayment of foreign loans borrowed by enterprises.

In accordance with these regulations, foreign borrowings include short-term loans (under 1 year) and medium and long term loans (either interest bearing or interest free) borrowed by the Government of Viet Nam or by enterprises having Vietnamese legal status (including foreign invested enterprises) from international financial institutions or from other foreign governments, banks, organizations or individuals. Foreign loans by the Government include those borrowed by agencies authorized by the Government of Viet Nam to sign the loan agreement under the name of the State or of the Socialist Republic of Viet Nam. Often, loans of this type include ODA, commercial credits, bonds issued by the Government. Foreign borrowing by enterprises are those in which enterprises (include the foreign invested enterprises) borrowed loans from foreign lenders or issued corporate bonds in foreign capital markets under the principle of self-borrowing and self-repaying.

These documents have many positive effects. They have created a legal framework necessary for borrowing from and repaying loans to foreign capital markets. They provide detailed and clear guidance to all ministries and agencies on borrowing and repaying Government's loans. However, the

⁴ Conditions to be eligible or ineligible for compensation for land and clearance and stipulations related to the matter at Article 6, 7, 10, 100 of the Decree No. 22/CP are not concrete and inconsistent with legal documents on land use charges. This lead to confusion in construing and implementing the Decree in different provinces.

implementation of these documents has revealed a number of limitations, for example a too strict control on foreign loans by enterprises (particularly of by private ones), a lack of necessary documents to enhance the responsibilities of creditors (especially those which are state-owned organizations and enterprises); an inconsistency between regulations of different documents.

4) *General comments*

In the last 10 years, when compared with other socio-economic sectors, it is evident that the Government of Viet Nam has laid a strong emphasis on mobilization and use of foreign capital sources. This is demonstrated by the continuous improvement of policies and regulations on foreign capital in a progress-oriented manner. A relatively adequate legal framework has so far been in place. However, due to limitations in experience, uneven development of other socio-economic sectors and the fast variable of competitor's environment..., policies and regulations on mobilization and use of foreign capital sources in Viet Nam therefore contain many constraints, unattractiveness and risk factors. These important factors have had strong impact on the influx of foreign funds into Viet Nam.

(2) **A review on foreign capital influxes into Viet Nam**

In the last decade, foreign capital has been flowing into Viet Nam at an increasing annual rate, from USD 1.2 billion in 1988 to roughly USD 2 billion in 1990 and USD 3.5 billion in 1998. As of August 1999, foreign capital flowing into Viet Nam has accumulated to around USD 23 billion, of which USD 12.844 billion of FDI,⁵ and the remaining are foreign debts and non-refundable assistance. So, foreign capital accounted for around 45% of total investment capital in 1990-1999. This is a pretty high proportion when compared with many other countries in the region.⁶

1) *FDI Influx*

As of August 1999, Viet Nam has received well over USD 35 billion in FDI commitments from some sixty different countries since the new FDI regime began operation, of which USD 15.165 billion or 42.19% of the total has been disbursed (see appendix 2a). Proportion of FDI over gross investment capital of Viet Nam grew up over the years and averaged 30%/ year in the last 10 years (see Table 1). However, this source of funds is plunging in recent years from USD 3.25 billion in 1997 to USD 1.956 billion in 1998 and then to merely USD 0.933 billion in 1999. The sources of FDI in Viet Nam come from Asia Pacific Region (70.91%), Europe (21.05%), America (7.9%) and others (4.3%).

⁵ Total FDI disbursement is USD 15.168, of which foreign capital is USD 12.844 billion.

⁶ Inward FDI flows as a percentage of gross fixed capital formation in selected countries in the South-East Asia:

Countries	1986-1991	1992	1993	1994	1995	1996
1. Indonesia	2.3	3.9	4.3	3.8	6.7	8.5
2. Malaysia	14.7	26.0	20.3	14.9	11.0	11.1
3. Philippines	6.6	2.1	9.6	10.5	8.9	7.8
4. Singapore	37.6	12.4	23.0	35.0	28.9	27.5

Source: *World Investment Report 1998*, p.394

Table 1 Proportion of FDI in aggregate investment capital in Viet Nam

In billion VND

Capital Sources	1986 - 1990		1991 - 1995		1996 - 1997 (estimated)	
	Realized investment capital	%	Realized investment capital	%	Realized investment capital	%
Aggregate investment capital	13,407.9	100	193,537.6	100	158,000	100
Domestic sources	11,733.9	87.5	137,305.6	70.9	100,800	63.8
FDI	1,647.0	12.5	56,232.0	29.1	57,000	36.2

Source: Financial and Economic Information Review, Issue No. 1 + 2, 1998, p. 26

2) ODA Influx

Before 1990, ODA received by Viet Nam had been very limited in value, totaling merely 12.6 billion of convertible Rouble and USD 1.6 billion (1976-1990). At the beginning of the 1990s, big countries and major international organizations began to normalize relations with Viet Nam, paving the way for ODA to flow into the country at a rapid speed. After 6 donor's meetings with the first one started in 1994, ODA is flowing in at an increasingly faster rate over the years. As of 1998, international donors have committed to providing more than USD 13 billion as ODA to Viet Nam,⁷ of which more than USD 5 billion or 40% of the committed amount have been disbursed. Non-refundable assistance account for approximately 15% of total ODA committed. This proportion is relatively lower than those of other ODA recipient countries in the region. The remaining of 85% are soft loans.

At the Consultative Meeting of Donors held in 1999, donors are ranked according to the volume of ODA provided. 11 big donors are sorted out of 45 bilateral donors and 350 NGOs as biggest donors and are ranked in the following descending order: Japan, WB, ADB, UN bodies, France, Spain, Germany, Sweden, Australia, Denmark and EC. ODA provided by Japan, WB and ADB account for 76% of ODA committed value and Japan commits to provide a value equivalent to the combined sum of both ADB and WB.

It is predicted that in the next 5 years (2001-2005), ODA will continue to increase, and possibly reaches around USD 11 billion (see table 2). Of this amount, loans will be of USD 9 billion and the remaining being non-refundable assistance.

⁷ ODA has been flowing into Viet Nam at an accelerating rate since Japan and other donors resumed aids to Viet Nam in the end of 1992.

Table 2 Estimates on ODA inflow into Viet Nam (2001-2005)

Donors	2001-2005 (in million USD)	
1. ADB	1640	1590
2. WB	2250	2200
3. Japan	4400	4000
4. IMF	250	250
5. UN	210	-
6. Other Donors	2000	1200
7. NGOs	250	-
Total	11,000	9,240

Source: ODA Plan in 2001-2005, Ministry of Planning and Investment

3) *Commercial Credits and other Foreign Debts*

As of 31 December 1998, Vietnam's foreign debts reached USD 8 billion (both principal and interest) and 10 billion of convertible Rouble (equivalent to around USD 2 billion). Of this amount, debts by corporate sector are more than USD 4 billion (3 billion by foreign invested enterprises and 1 billion by state-owned enterprises and other economic sectors) and the remaining are state's debts.

4) *General comments*

In the last 10 years, foreign capital has been flowing into Viet Nam at an accelerating rate and has held an important share in aggregate investment capital in Viet Nam. Among these foreign capital sources, FDI holds the larger bulk and has shown a declining trend in the last few years while other sources are picking up. This indicates that the investment environment in Viet Nam has become less attractive but the relations between Viet Nam and other countries are continuously ameliorated. In the next few years, there will not be a rise in foreign capital into Viet Nam due to such factors as the highly risky investment environment in Viet Nam, a more fierce competition for ODA, unchanged total source of ODA (around USD 50 billion) while the demand of developing countries is relatively big.

(3) **Interrelations between investment capital sources in Viet Nam**

Though each source of fund is relatively independent from one another, they are all integral parts of the aggregate investment capital and therefore have reciprocal interactions. This section will review two basic interrelations including the one between foreign capitals themselves and the one between foreign capital and domestic capital. These interrelations are considered under the angle of policies, regulations and flow of funds during the last 10 years in Viet Nam.

1) *The interrelations between foreign capital sources in Viet Nam*

In reality, investors cannot do business with their own capital only without getting access to social activities and investment services. On the contrary, they have to mobilize funds in all ways and contract with all parties relating to their investment in the host country. Therefore, policies and regulations on

foreign investment need to take these factors into full account.

An overview of FDI policies and regulations in Viet Nam reveals that these relations have not been adequately dealt with. Policies and regulations on FDI are not consistent and are more vertically based (from the central to local level in each economic sector or industry) but less horizontally coordinated (between different ministries, agencies or provinces). Accordingly, the conflicts, inconsistency and random applications of FDI policies and regulations by different organizations and provinces are widespread. This phenomenon is causing troubles to foreign investors, making them truly frustrated.

Unlike many other regional countries, Viet Nam is receiving FDI but not yet foreign portfolio investment (FPI). This is a high barrier for capital mobilization by investors. It also fails to provide "signals" which reflect the investment environment quality, preventing investors from adjusting their investment strategy and taking appropriate actions to counter the changes taken place in the market. On the other hand, through foreign portfolio investment, Viet Nam will be able to mobilize more funds from international financial markets.⁸ Fully aware of the importance of this matter, the Government of Viet Nam has recently launched a stock market. Though the market is still in its infancy and facing many obstacles, this will be a good channel to lure investment funds flowing into Viet Nam.

When compared with similar regional countries, foreign capital sources in Viet Nam has a relatively strong interrelations. The large bulk of foreign loans are linked with investment projects, and soft loans (ODA) with investment projects of donors. On the other hand, many non-refundable assistance projects are integrated in the investment and trade promotion programs of donors.

2) *The interrelations between domestic capital and foreign capital*

Though having a foreign origin but being used in Viet Nam, foreign capital is an integral part of the aggregate investment capital of Viet Nam. Not only has foreign capital helped to meet the demand of investment capital for growth, it has enabled the Government to focus budget funds on public facilities, social welfare projects, thus improving the living conditions and the spiritual life of the public. Recognizing this importance, Viet Nam has repeatedly confirmed that foreign capital is an integral part of the country's aggregate investment capital.

However, there are many concerns that if the foreign investment funds hold a large proportion in the total investment capital of Viet Nam, the nation's sovereignty may be threaten because of foreign investor's control. The reality shows that these concerns are only correct when the economy is a closed one or in an underdeveloped situation. In a context of regional integration and globalization, the interdependence

⁸ Foreign portfolio investment is a huge source of capital for developing countries. According to IMF and UNCTAD, on average in 1992 - 1997, USD 63.3 billion in foreign portfolio investment has been flowing developing countries, an impressive number when compared with USD 100.2 billion in FDI. Some countries are attracting much foreign portfolio investment like Argentina (USD 10 billion against 4.3 billion in FDI), Brazil (USD 11.9 billion against 6.3 billion in FDI), China (USD 2.4 billion against 29.8 billion in FDI), South Korea (USD 11.9 billion against 1.4 billion in FDI), Mexico (USD 10.7 billion against 8.2 billion in FDI), and Thailand (USD 3.3 billion against 1.9 billion in FDI).

between different economies is evident and inevitable. Developing countries like Singapore, Malaysia..., in many stages of their development histories, have witnessed high proportion of foreign capital over aggregate investment but they have been developing fast while successfully defending their national independence. The question is not how much the proportion between foreign capital over the aggregate investment is appropriate but the crux of the matter is how effectively the funds are being used.

From a micro point of view, foreign capitals, particularly FDI, will be the engine for the growth of domestic development funds. This is demonstrated in many aspects. By providing services to foreign invested enterprises and through technology transfer, the productivity and revenue of domestic companies are therefore increased, reinvestment capacity and contributions to the state budget improved. Moreover, production capacity of domestic companies will also be strengthened. Production efficiency and conditions are ameliorated due to the competition with foreign companies.

In addition to these, soft loans are particularly necessary for the expansion of enterprises, particularly private ones in a context where the supply of funds is really strained as it is now. However, in case of soft loans, the efficiency of the loans and repayment capacity should be taken into full account.

Though Government debts borrowed to improve the infrastructure (both hard and soft infrastructures) are necessary, a strong focus on using loans for this purpose with little care about the performance of the project may lead to inefficiency or to situations where no revenue is earned to repay the loans. An aggravation of the debt burden is then inevitable.

3) *General comments*

Though a legal frame work with necessary laws and regulations has been in place, there remain many shortcomings, inconsistency in receiving and using foreign capitals. Most notable weaknesses include the loose linkage and a discrimination between foreign capital sources and domestic ones. This is proven by the existence of two different investment laws, one for domestic investors and the other for foreign ones. These characteristics enable us to conclude that a legal frame work for the reception and use of foreign capitals have been set up but there remain many hurdles which dishearten investors.

3. Some policy recommendations

To reverse the declining trend and to lure more foreign capitals into Viet Nam, it is necessary to take bold steps to modify and adjust the existing policies and regulations. However, in this section we just suggest some policy recommendations as follows:

Firstly, bold steps should be taken to uniform policies and regulations governing all types of capitals without discriminating domestic and foreign capital by different laws as they are currently. This may be difficult at the beginning but it will, in the long run, remedy the overlaps, conflicts and inconsistency between investment capital sources. Experience shows that since each type of capital is governed by a different set of

laws, these problems are not basically resolved despite continuous changes and addendum to laws and regulations. In some cases, even the change and addendum makes the situation worse. This situation is eroding the confidence of investors.

On the other hand, the adjustment and modification to existing regulations and policies on capital flows by MPI, MOF, SBV,... should be aimed at the long-term perspective, at the consistency with the regional and international laws. Viet Nam has joined ASEAN, APEC and sought for a membership of WTO, this feature therefore becomes critically important. As such, in many cases, fundamental changes but not minor ones should be made to the laws and regulations governing capital sources. Though it may be against the will, it is inevitable when Viet Nam has made commitment with international and regional bodies and with other countries that it accepts the general rules of games.

Secondly, an answer should be found to the question of why the continuous changes of laws and regulations on FDI, but they did not create attractiveness to foreign investors?. In fact, Investors need not only the removal of some hurdles or the addition of some privileges in some regulations and laws on foreign capitals, but also a complete, effective, highly enforceable legal framework in all political, economic and social areas. Therefore, the modification and adjustment of policies and regulations on foreign capitals should be meaningful when they are accompanied with the improvement of laws and regulations on other related areas.

Thirdly, should we promptly resolved the paradox of “being to centralized but in fact too decentralized” in state management over foreign capital sources?. The Ministry of Planning and Investment is the “contact agency” and therefore is overloaded with a huge amount of work. It has to both function as the “central consulting agency” for the Government on socio-economic development and deal with day-to-day affairs such as allocation of plans of all sorts, granting licenses to domestics and foreign investors, evaluation of bids in key construction projects, being responsible for ODA and long-term loans... In the poor working conditions and the limited competence of staffs, an overload of work is inevitable. Therefore, many issues related to foreign investment, to ODA and other foreign debts are not dealt with in a timely manner. Meanwhile, the final decision is only reached at the consensus, or collective decision, of all other related ministries and agencies—a mechanism smacked of “begging and giving”. This is one of the important reasons which explains for the complicated and troublesome procedures which investors have to counter with.

Fourthly, the capital market should be further liberalized by fostering competition and development of the stork market. Strong control on the foreign exchange market (foreign exchange rate fixing, slow adjustment of interest rate, strict control on foreign loans borrowing...) should be loosened and then removed. Laws on competition, antitrust should be promulgated. Discrimination between domestic and foreign investors should be abolished. Capital mobilization methods should be diversified and a stronger emphasis should be laid on foreign portfolio investment.

Fifthly, the modification and adjustment of laws and regulations should be based on the legitimate interests of investors⁹ and on the feasibility and enforceability of the modifications. “Unwritten laws”, or “implicit

regulations" which are against the laws should be limited.¹⁰

Finally, the success of these works is very much dependent on the quality of the policy makers and the adequacy of their working means. This is the factor decisive to the success of the efforts in improving the policies and regulations in general and in attracting and using foreign capital sources in particular. Without a focus on improving the quality and working conditions of the policy makers, the targets of country's policies and regulations will remain to be an aspiration forever.

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- ⁹ For example, the policy of closing down the forest to prevent the depletion of forest resources are truly necessary. However, the stipulations on banning exportation of woods, stipulated measurement of woods eligible for export are not close to the practice. In the elaboration process, these documents are not consulted with enterprises. This leads to a situation where thousands of square meters of cut down woods and a huge volume of craft goods cannot be exported, wasting billions of Dong and pushing dozens enterprises to the brink of bankruptcy.
- ¹⁰ The Investment Law is silent about the ceiling on the share of capital contributed by foreign investors. However, there is "unwritten stipulation" about the maximum proportion of capital contributed by foreign investors in joint-ventures producing cement, beer..., enabling the Vietnamese parties to contribute to 40 - 50% of the capital.

Appendix 1

Documents guiding the implementation of Foreign Investment Law in Viet Nam

1. Decree No. 12/CP dated 18 February 1997 by the Government providing detailed stipulations on the implementation of the Foreign Investment Law in Viet Nam.
2. Decision No. 386/TTg dated 7 June 1997 by the Prime Minister on the decentralization in the licensing of foreign direct investment projects.
3. Decision No. 41/1998 QD-TTg dated 20 January 1998 by the Prime Minister on the decentralization in the licensing of foreign direct investment projects.
4. Circular No. 2028/VPCP-KGVX dated 28 May 1998 by the Government Office on the salaries in foreign invested enterprises.
5. Decree No. 62/1998/ND-CP dated 15 August 1998 by the Government issuing the investment regulation under BOT, BTO and BT mechanism applicable to foreign direct investment in Viet Nam.
6. Decision 173/1998 QD-TTg dated 12 September 1998 by the Prime Minister on the obligation of selling off and the right of buying foreign current of resident organizations.
7. Inter-ministerial Circular No. 01/LD dated 31 March 1997 by the General Department of Statistics and the Ministry of Planning and Investment which provides guidance on statistics works of FDI enterprises and of foreign parties in business cooperation contracts.
8. Circular No.11/TT-LB dated 21 July 1997 by the Ministry of Planning and Investment, Ministry of Finance, Tourism Administration regarding the duty-free importation of equipment by FDI enterprises.
9. Circular No.03/BKH-QLDA by the Ministry of Planning and Investment providing instructions on the implementation procedures of FDI projects in Viet Nam.
10. Circular No. 07/BKH-VPXT dated 29 April 1997 by the Ministry of Planning and Investment regarding additional instructions on the bidding process of FDI enterprises in Viet Nam.
11. Circular No. 70-TC/QLCS dated 7 October 1997 by the Ministry of Finance on the payment of land tax, contribution of capital in the form of land use right by domestic enterprises in accordance with the Decree No.85/CP dated 17 December 1996 by the Government.
12. Circular No.74-TC/TCT dated 20 October 1997 by the Ministry of Finance providing stipulations on tax applicable to FDI projects in Viet Nam.
13. Circular No.63/1998/TT-BTC dated 13 May 1998 by the Ministry of Finance which provide guidance on tax in order to encourage and guarantee FDI in Viet Nam in accordance with the Decree No. 10/1998/ND-CP.
14. Circular No.01/BXD-CSXD dated 15 April 1997 by the Ministry of Construction regarding the

- management of FDI construction projects or projects constructed by foreign contractors in Viet Nam.
15. Circular No. 09/LDTBXH-TT dated 18 March 1997 by the Ministry of Labor, War Invalids and Social Affairs regarding the granting of labor license for foreigners working in organizations and enterprises based in Viet Nam.
 16. Circular No. 02/TT-NH7 by the State Bank of Viet Nam regarding the management of foreign currency in FDI enterprises and in foreign parties in business cooperation contracts.
 17. Decision No.0321/1998/QD-BTM dated 14 March 1998 by the Minister of Trade providing detailed instructions on the implementation of the Decree No.12/CP dated 18 February, 1997, Decree No.10/1998/ND-CP dated 23 January 1998 by the Government relating to the importation, exportation and consumption of goods in Viet Nam and the to the processing of products by FDI enterprises and parties in business cooperation contracts.
 18. Circular No. 490/1998/TT-BKHCMNT dated 29 April 1998 by the Ministry of Environment, Science and Technology providing instructions on the preparations and appraisal of environment impacts in investment projects.
 19. Circular No.679/TT-DC dated 12 May 1997 by the Land Management Department relating land renting for FDI projects in Viet Nam.
 20. Circular No.111/GSQL-TT dated 28 May 1997 by the General Department of Customs instructing the implementation of the Decree No.12/CP dated 18 February 1997 which provide detailed stipulations on the implementation of Foreign Direct Investment Law in Viet Nam.

Appendix 2. a

The trends of FDI in Viet Nam (1988-8/1999)

Million: USD

Years	Registered capital (RC) and reinvested capital (rc)					Disbursed capital*	
	RC	Rc	Disbanded (**)	Comp (***)	Remain	Foreign capital	Vietnamese capital
1988-90	1,582	0.3	24	0.3	1,558	-	-
1991	1,274	8	240	1	2,598	161	52
1992	2,027	47	402	14	4,257	313	81
1993	2,588	230	79	16	6,979	829	270
1994	3,746	515	217	0	11,023	1,509	437
1995	6,607	1,308	477	1	18,460	2,182	489
1996	8,640	756	1,023	75	26,759	2,283	363
1997	4,654	1,142	352	1	32,202	2,816	434
1998	3,925	876	2,426	19	32,202	1,813	143
8/1999	907	457	356	1	33,210	938	55
Sub-total	35,950	5,338	5,597	127	35,565	12,844	2,324
Total	35,565 (remain capital)					15,168	

Note: (*) Excluding the disbursed capital of the disbanded and completed projects.

(**) The disbanded projects.

(***) The completed projects.

Source: MPI, 10/1999

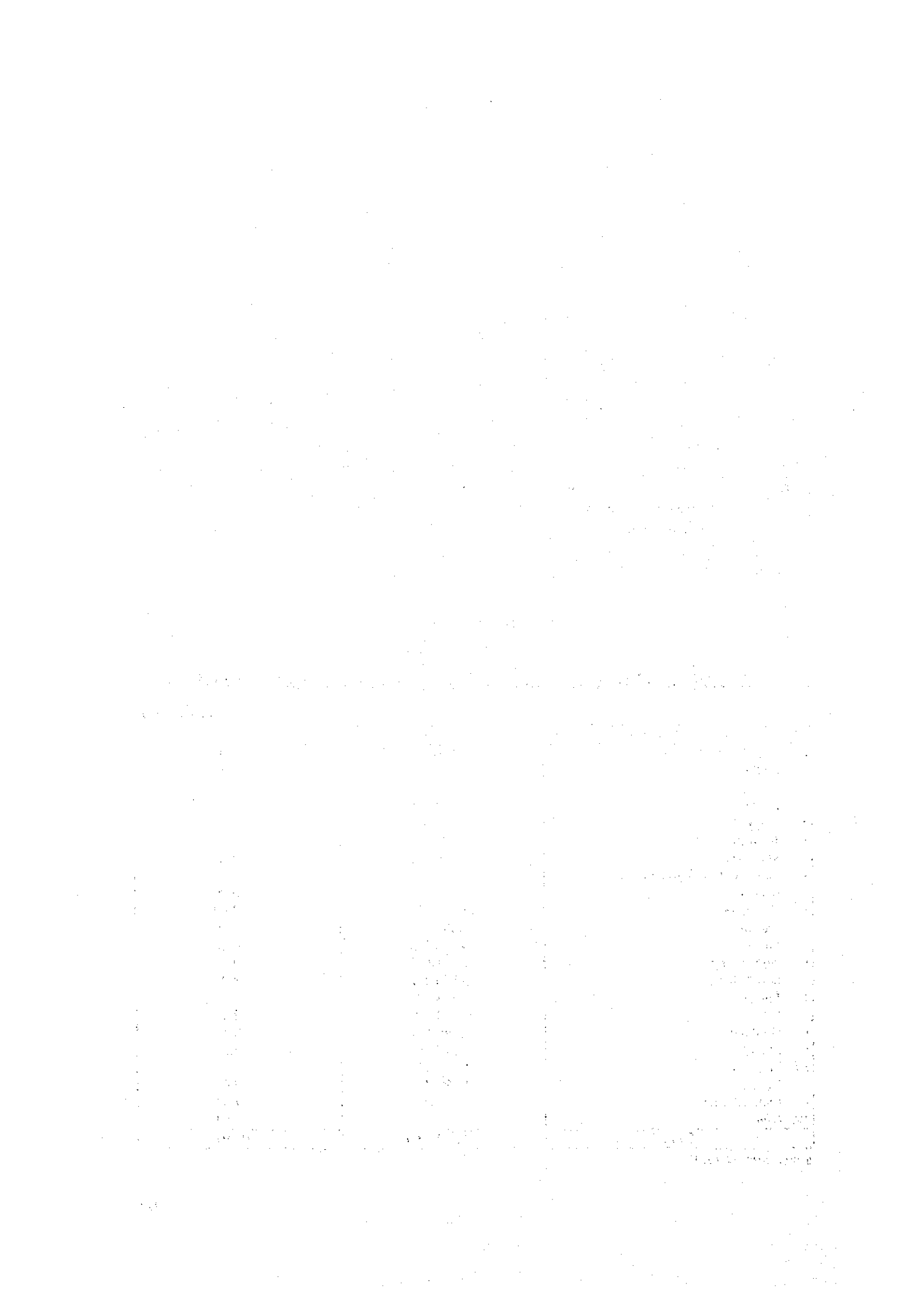
Appendix 2. b

Sources of FDI in Viet Nam by regions/countries (1988-9/1998)

Million: USD

Regions/Countries	Registered capital	%
<i>I. Asia Pacific Region</i>	23,099.312	70.91
1. ASEAN	7,999.493	24.56
• Singapore	5,528.794	16.97
• Indonesia	314.096	0.96
• Philippines	228.435	0.70
• Thailand	989.914	3.04
• Malaysia	926.759	2.84
• Lao People's Democratic Rep.	11.495	0.04
• Brunei	0	0.00
• East Asia	13,975.211	42.90
• Taiwan	4,494.095	13.80
• Japan	3,278.693	10.06
• Hong Kong	2,911.632	9.78
• South Korea	6,856.261	8.94
<i>II. Europe</i>	728.186	21.05
• UK	172.729	2.24
• Germany	1,746.141	0.53
• France	2,574.883	5.36
<i>III. America</i>	1,175.095	7.90
• US	1,399.788	3.61
• Latin America	47.010	4.30
<i>IV. Others</i>		1.04
Total	32,577.466	100.00

Source: MPI, 12/1998



The Management of Foreign Debt of Viet Nam in the Period of 1999-2000

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Part 1 The policy and implementation of borrowing and managing of foreign loans

1. The implementation and management on foreign debt of Viet Nam in 1999-2000

At this stage, the policy of foreign debt management is focused on the following basic points: i) Dealing with outstanding debts and ii) mobilizing new capital from foreign loans, in detail:

1.1 *The outstanding debts before 1993*

Up to the end of 1990, Viet Nam total foreign debt was about USD2.704 billion and 10.43 billion RCN. Most of the loans came from the Soviet Union, Eastern European Countries, China and some international financial Organizations. In these total outstanding debts, some carried out directly by banks in commission of the government or by domestic business guaranteed by banks, besides, the Government direct debts.

Up to the end of 1999, the outstanding debt mainly rose from loans for expenditure in the previous period when the economy was in difficulty. So that, we didn't have capability of renewing necessary resources to pay debt. In addition, some loans utilized for projects that had many difficulties to withdrawal of fund, such as: transportation, post and telecommunication, socio-culture, medicine...projects for security and defense. The inefficiency of utilizing and controlling borrow capital and the changes in the rate exchange at different time caused the loans be unpaid as time in the borrowing contracts. As the result, the overdue debt rose, especially loans in free foreign currency exchange. Out of USD2.704 billion debt in free foreign currency exchange, there is USD2.238 billion of overdue debt. Due to the incapability of payment and the collapse of the Soviet Union and Eastern block, Viet Nam was nearly isolated from the international financial community.

With the desire of integrating the world economy, Viet Nam has actively participated in settling overdue debt rounds since 1993. In 1993, Viet Nam had the way of settling overdue debt with the member countries of Paris Club. As the result, the commercial outstanding debt was reduced 50% and paid in the following 23 years, ODA debt was postponed 30 years with preferential or lower interest rate. In 1998, Viet Nam reached an agreement on dealing with overdue debt in London Club. After the Government's efforts to settle Viet Nam overdue debt in Paris Club (1993) and London Club (1997), the foreign debt

situation of Viet Nam was improved. The overdue debt in free foreign currency exchange remained only about USD0.267 billion at the end of 1998.

Moreover, during the 1990s, Viet Nam took the initiative of negotiation to settle overdue debt with the Eastern Block and The Soviet Union. Viet Nam came to agreement with some countries on paying debt by goods such as: Russia, Bulgaria, Hungary. Up to now, most of debt with Eastern Block has paid. However, there still many difficulties in solving the problem of debt over 10 billion RCN with the Soviet Union. Now, both Russia and Viet Nam have not come to a complete agreement on dealing with outstanding debt especially the matter of exchange rate between RCN and USD.

1.2 Foreign capital mobilization of the Government from international financial organization and some countries since 1993

After the success in outstanding debt settlement in London Club and Paris Club, the international financial community started undertaking new supports for Viet Nam. The international cooperation between Viet Nam and international financial organizations (WB, IMF and some other bilateral sponsors) open the new stage. From 1993-1999, international sponsors undertook to provide ODA fund for Viet Nam with total value of USD15.14 billion (including grants and preferential loans). Viet Nam has negotiated and signed the loan agreement with total value USD10 billion and disbursed about nearly USD 6.3 billion, account for 40% of undertaken capital. In the total of undertaken ODA fund, grants made up about 15%. The number of sponsors for Viet Nam has increased considerably at this time. There are 45 bilateral and multilateral sponsors operating in Viet Nam, in which the WB, ADB and Japan are big sponsors.

The ODA fund is focused on key programs, projects of economic infrastructure development such as: energy (28%); transportation (27%), science and technology (13%); agriculture-forestry-fishery (13%), water supply (9%) and other fields (10%). Besides, the Government spared a part of this source of capital in order to support provinces and poor economic areas, key economic zones, ensured the balance in the development process (source: Viet Nam economic report, 1999).

There are increasingly sponsors coming back Viet Nam in the 1990s considered high appreciation of international financial community for the successes of Viet Nam economic innovation and development. On the other side, this capital has become an important force to motivate the economic reform, especially when Viet Nam is changing its economic mechanism and domestic accumulation is still low.

Table 1 The ODA commitment and disbursement

Year	ODA commitment (billion USD)	ODA disbursement (billion USD)
1993	1.81	0.413
1994	1.94	0.725
1995	2.26	0.737
1996	2.43	0.900
1997	2.40	1.000
1998	2.20	1.242
1999	2.10	1.452
Total (1993-1999)	15.14	6.467

Source: Ministry of Planning and Investment

Foreign loan in business area: Up to the end 1998, the total foreign outstanding debt businesses was about over USD4.4billion, in which foreign direct investment was USD3.45 billion. Foreign loans of business have 3 forms: short-term, medium and long-term loans. Viet Nam Businesses utilize commercial loans to invest in production, import necessary material and means to innovate technology and improve the competitiveness in export. Foreign loans have shown many positive effects. Foreign borrowing abided by the regulations of Decree No. 90/1998/ND-CP of the Government. So that, the foreign borrowing was utilized efficiently. This has basically put an end to the situation of utilizing short-term loans for long-term investment.

2. The sustainability of Viet Nam debt

According to the World Bank report, Viet Nam total outstanding debt was about USD 11.14 billion up to the end of 1999, in which Government debt was USD7.76 billion (70%). Viet Nam total outstanding debt (excluding debt in RCN) was under 50% GDP. The liability in 1999 was about 7.7% GDP (1998:7.1% GDP) and about 15.3% of total export turnover (the same amount as 1998). So, Viet Nam debt indices are appreciated to be safe. These indices are under the safe index on debt. According to WB and some international financial organizations, the rate between debt and GDP under 50% is acceptable otherwise it is worrisome.

However, the above outstanding debt and indices excluded outstanding debt with Russia (10.6 billion RCN). If these debts included, the Viet Nam debt will be harder and depend on the exchange rate between RCN and USD. It is anticipated that Viet Nam and Russia will soon reach an agreement on settling outstanding debt.

Table 2 The outstanding debt of Viet Nam 1992-1999

	1992	1993	1994	1995	1996	1997	1998	1999
RCN (billion)			10.399	10.597	10.227	10.654	10.701	11.037
Foreign currency transferring (billion USD)	3.957	4.788	5.473	6.741	8.357		10.760	11.140

Source: State bank of Viet Nam

The Viet Nam annual liability in comparison with total export turnover has been rising in recent years, from 14% in 1994 to 15.3% in 1999. According to many analysts, Viet Nam liability will increase considerably since 2003, as we will have to pay debt of the last decade.

Moreover, the efficiency of utilizing capital needs more concern. There have been doubts on projects using borrowed capital. Some projects put into operation met such many difficulties as: market, material... This fact has showed that capital mobilization and development strategy are not synchronous. If we only focus on capital mobilization without necessary analysis on the feasibility of project, we'll meet many difficulties in payment in the future.

3. Foreign debt management policy (FDMP)

After reparticipating the international finance market, together with the innovations and the open-door policy of the economy, the policy on foreign debt management have been gradually completed according the economic growth requirement. In the period of 1993- 1997, the managing debt policy was implemented under the Decree 59/CP, dated August 30th 1997 of the Government stimulating the regulation of managing the borrowing and paying foreign debt; the Decree 20/CP, dated on April 20 th 1994 of the Government issuing the regulation of managing ODA source and some other documents guiding the implementation. In general, Viet Nam has just completed a system of controlling foreign debt policy in comparison with the previous years. Thus, the Government has united management in the field of borrowing foreign capital, combining capital mobilization with the effect and responsibility of utilizing capital for the right purpose.

But in fact, the management of foreign debt in the period of 1993-1998 pointed out many problems. Besides, the executing co-ordination among the Government offices in negotiating and paying foreign debt is still losing. The unity of managing foreign debt is not in synchronous progress, especially the commercial loans of enterprises. Not only combine the responsibility of state-owned enterprises with the duty of paying debts, many enterprises have sense of depending on Government in dealing with overdue debt. Besides that, statistic report on debt situation and the result of utilizing the borrowed capital are insufficient. The information and data on mobilization, usage of the business sector is not enough. The lack of co-ordination of Government offices leads to many difficulties to evaluate the ability of national repayment.

To secure the firmness in the management of debt and be sure that the loans borrowed form foreign

countries are used for efficient projects. The system and mechanism of managing foreign debt policy have been gradually completed and amended since 1997. Along with it, the borrowing and foreign payment are operated under the national strategy, connecting the external debt with the capability to repayment, using the borrowing capital effectively with the capability to accumulate sources in the future. The Government stimulated Decree No.87/ND-CP dated August 5th 1997 issuing the regulation of managing ODA replacing Decree No.20/ND-CP. After that, the Government stimulated Decree No.90/ND-CP dated on November 7th 1998 issuing the regulation of managing foreign debt, replacing Decree No. 58/ND-CP of the Government.

These two decrees basically overcome obstacles and difficulties in the management of debt and gradually establish a basis legal framework for the usage and management of foreign debt. To surmount the problem in providing guarantee, the Prime Minister had Decision 233/1999/QD-TTg issuing regulation of national guarantee for foreign loans of business and credit organizations.

Moreover, Ministries and departments timely issued some documents giving the direction to expand the fulfillment these Decree and Decision such as: Circular No.81/LB/TC-NH (inter-ministerial Circular Finance and State bank of Viet Nam) directs the process of withdrawal of ODA fund; Decision No.72/1999/QD-BTC date on September 9th 1999 of Minister of Finance issuing the regulation of establishing, utilizing and managing the accumulative fund for paying foreign debt; Decision No. 02/ 2000/ QD-BTC dated on January 6th 2000 of Minister of Finance issuing the regulation of lending the Government's foreign loans and grants; Decision No.96/2000/QD-BTC dated on July 12th 2000 of Minister of Finance issuing detail guide of the regulation and procedure of withdrawing ODA fund.

Generally, Viet Nam has established a relatively complete legal framework for managing, utilizing the foreign loans, for withdrawing fund and arranging Government's source for paying debt, which is shown on the following points:

- Negotiating and concluding a borrowing capital agreement focus mainly on Government offices, giving favorable condition for managing content and volume of the loans.
- Executing the Government's account withdrawal is focused on one source and shown on national budget. Projects utilizing foreign borrowed capital can be implemented by the state budget or re-lend which is shown in annual invested plan. For the project, which is provided by national budget, the disbursement is executed according to present budget providing regulations, for the re-lend project, it is fulfilled according to certain principles:
 - + The time for re-lend fit the time for refund capital which is brought in feasible approved project.
 - + For the Government's commercial borrowed capital source, loan interest rate is calculated by the interest rate and foreign charge plus re-lend charge, and for ODA loans, interest rate is calculated by VND according to the state credit interest rate. Although these regulations help the

state budget to repayment, but in fact it faces many difficulties since the difference of credit conditions of the loan agreement.

- Decree No.90/1998/ND-CP of the Government asserts clearly the attitude about foreign loans which are borrowed by enterprises will be executed under self borrowing and self paying mechanism. The Government provides guarantee for only big-sized account exceeding financial capability of banks. The Government's guarantee provides is limited in the field of important economic infrastructure projects, or projects belonging to especial encouraged investment. The Government clearly defines the Government's annual guarantee rate not exceeding 10% of budget revenue in that year. For each Government-guaranteed enterprise, the rate is restricted not exceeding 12 times of owner's capital in case of business operating in fields: mine ores, energy and telecommunication and not exceeding 6 times for enterprise in the rest fields, including baking operation. With these regulations, Viet Nam has gradually limited to provide unnecessary and unplanned Government's guarantee and given it to commercial banks.
- In order to have a timely payment source and restrict hazard for the state budget, Minister of Finance has made a decision issuing regulation of State Accumulated Fund Management for repayment. The fund is established from lending interest, grants, Governments guarantee fees and other sources. The foundation of this fund will help the state budget have necessary capital source to pay foreign debts.
- The mechanism of managing foreign debt in the business area is specified in Decree 90/1998/ND-CP of the Government, so that, the medium and long term foreign debt including bonds issue must be counted in the annual limit approved by the Government and satisfy the condition of borrowing. The withdrawal of fund is only fulfilled by bank activities on Vietnamese territory, meanwhile, the commercial banks can only withdraw capital and pay foreign loans when they have already been registered and confirmed by the State bank of Viet Nam. The Government has also introduced measures to dominate the annual short-term outstanding debt, including installment credit ceiling. This regulation helps Viet Nam to maintain the stability and to dominate the total outstanding debt of the economy in the safe confines.

4. General estimation of borrowing, utilizing and managing foreign debt

4.1 Achievements

Capital mobilization meets a crucial demand of capital in order to accomplish the target for development, building socio-economic infrastructure, especially focusing invested capital on some key areas at stimulating the economic development.

Foreign capital has also satisfied the need of capital, giving favorable conditions to enterprises to develop and invest insensitively in order to improve quality service, creating social producing capacity,

solving unemployment. Business has gradually been used to mechanism of repayment based on interest rate and a more favorable borrowing conditions than that in the market, not depending much on the State as before, taking responsibility for utilizing capital efficiently, being able to liquidate.

We have established a necessary control mechanism for the foreign debt activities of the whole economy, maintaining the borrowing limit and duty of annual liquidation. The debt management is gradually organized, combining the borrowing with utilizing debenture capital and the efficiency of using funds of the economy.

4.2 *The remaining matter of foreign debt management.*

Although the legal framework for foreign debt management has been completed step by step, it has shown some matters recently, as follows:

Viet Nam has not created borrowing strategy and policy efficiently. In fact, Viet Nam has yet to create the long-run profit maximizing debt strategy. Viet Nam has not defined its suitable mechanism all-sized and systematic borrowing (ODA loans and commercial loans) and guaranteed to pay debenture capital, avoiding putting burden on state budget. At present, the policy is focussing on mobilizing and making full use of capital sources from foreign countries but it hasn't put the amount of absorbing capital together with the capability of payment in the future. The present strategy of managing foreign debt hasn't considered the firmness of foreign debt in the active relationship of occurrence of macroeconomy and balance of payment. Although the Vietnamese burden is in safe confines, foreign debt of Viet Nam since 1993 are in grace period and liability will increase in the following years.

The ODA disbursement has recently made progress but it is still estimated to be slower than that of regional countries by sponsors. The low disbursement causing delay in ODA projects, affecting the result of investment. In addition, it diminishes the favorableness of ODA and the influence on receiving prestige and movement of capital in Viet Nam. For some projects, the project considering and deciding is done without care and economic borrowing condition and tie-condition, we haven't taken the initiative in choosing list of projects according to planned target before calling investment, there is still unplanned situation of utilizing capital, we haven't defined clearly which projects have to be re-lend and which projects are supplied by the state budget.

Ability of project manager is limited. The staff is equipped with insufficient professional skill and knowledge leading to inactivates in management and preventing hazard of interest rate. Generally, debt management is still passive.

Mobilized foreign capital is used for too many targets not for an especially prior investment objective.

Inspection and supervision of implementing projects are paid little attention and they are not organized constantly. This element together with insufficient report and information has caused difficulties for evaluation debt situation and result of utilizing borrowed capital. It hasn't set up a co-ordination mechanism of information between state officers in managing foreign debt.

Part 2 Securities market development program

The establishment and development of the securities market are the majority of mobilizing capital strategy as well as accomplishment of the market economy in Viet Nam. In order to carry out the policy of Government that is: "developing the capital market, attracting the medium and long-term capital sources through banks and financial companies to meet the demand of borrowing for investment, preparing the necessary condition to set up the securities market suitably Vietnamese condition and orientation of national socio-economic development..." the Government have done a lot both theoretically and practically to put the securities market into operation in the year 2000. When researching the progress of the securities market development in Viet Nam, it is necessary to consider 2 main fields: the policy on organization apparatus, legal framework for execution of the securities market and the reality of preparing goods for securities market.

A. Organization apparatus and legal framework for securities market operation

It has been a major policy of our Party and State to create the required conditions for the step-by-step establishment of the securities markets in Viet Nam, some legal Documents on Securities and Securities markets have been issued.

Decree No.75/CP dated 28 November, 1996 of the Government on establishment of the State Securities Commission, as an agency under the Government to perform State administration and organization functions on securities and securities markets.

Decision No. 127/1998/QĐ-TTg dated 11 July, 1998 of the prime Minister of the Government on establishment of the Securities Trading Centers in Hanoi and Ho Chi Minh City.

With the two legal documents, the structure and working apparatus of SSC and Securities trading centers step-by-step establishment. From the beginning, SSC tried its best to train, recruit, arrange working apparatus by sending its staffs to abroad (Korea, Thailand, US, China...) and opening many training courses on securities in Viet Nam for commercial banks, insurance companies, enterprises in order to select securities traders for future operation.

Besides, SSC are responsible, in co-ordination with agencies concerned, for building initially legal framework on securities issuing and trading in trading centers. As a result, Decree No.48/1998/ND-CP dated 11 July 1998 of the Government on securities and securities markets Circular No guide 01/1998 guide Decree No.48/CP on public offering. These new legal documents stimulated fully on public offering, securities trading, financial intermediary, secondary markets...

Securities issued to the public (Decree No.48/CP) shall be in forms of either certificates or book-entries, and either register or bearer. Par value of a share and investment unit shall be 10,000. The minimum par value of bonds shall be VND 100,000.

In order to ensure the efficient operation for securities market, the Decree stimulated securities issuing,

trading in Securities trading centers.

An issuer undertaking an initial public offering of its shares shall have to meet the following criteria: Having an minimum registered capital at VND 10 billion; having been profit making in the last two consecutive years; having members of the Board of Directors and the Chief Executive Officer with experience in business management; having prepared a feasible plan to utilize the proceeds obtained from the issuance of shares; having at least 20 percent of its equity offered to more than 100 investors; having a contract with an underwriter if the total value of shares to be issued (in par value) exceeds VND 10 billion.

Decree No. 48/CP issued criteria for information, issuers must comply with the reporting regime as prescribed by SSC.

Decree No. 48/CP initially stimulated a very important financial intermediary, underwriter. An underwriter of a public offering shall be a securities firm that meets the following criteria: possessing a license on securities underwriting activities; not being an affiliated person of the issuer. The underwriter shall be entitled to underwrite an issue where the total value of the securities thereby does not exceed 4 times of the difference between its current assets and current liabilities.

General, Decree No. 48/1998/ND-CP shall govern securities public offering, securities trading and information and securities market-related businesses in order to protect the lawful interests of investors. Although the stimulation on public offering in this decree applied only for those who trade in securities centers, it also create the required conditions for the starting establishment and development of the securities markets in Viet Nam.

B. Preparation goods for securities market

In the last stage, Viet Nam has made great effort to create goods and favorable conditions to put the securities market into operation in the initial period. This is especially shown by the progress of the bond market—an important component element of the securities market, a standard stock for others. Besides, capitalization is also focused on and pushed up. It not only has influence on improving business but also promotes and creates long-term goods for the capital market.

1. The bonds market

1.1 The legal framework of the bonds market

After the 6th National meeting of communist party, especially during 1990s, the state budget management has had a profound and wholly reforms on both policy and organization apparatus. In that situation, Treasure System was founded according to the Decision No.07/HDBT dated on January 4th 1990 in order to hand over the duty of managing the state budget fund to Ministry of Finance. As soon as the Treasure System was established, the capital mobilization for the State and for investment has shown clear changes in quality.

Stemming from the capital demand for investment, the Government has gradually institutionalized the capital mobilization by Decree No.72/ND-CP of the Government dated on July 26th 1994 on regulation of issuing bonds, marking a basis change in the quality of view, acknowledging the mean and importance of the creating capital strategy. The Decree pointed out 3 kinds of bonds: treasure bonds, treasure securities, National construction bonds. Bonds are traded in the stock market, used in transferring relationship, inheritance, collateral and mortgage and guaranteed to liquidate on time by the Government. Bonds holders are guaranteed to enjoy the real interest plus inflation index.

Investors who are permitted to purchase bonds are: Vietnamese who are living in or out of Viet Nam; foreigners who live and work legally in Viet Nam; Vietnamese enterprises of all fields and economic sectors (including banks, insurance companies, financial firms, insurance and investment funds); foreign invested capital companies operating under Foreign investment law in Viet Nam and state bank law was approved by the Ministry of Finance to purchase bonds.

The issue of bonds is carried at under three ways: (1) Direct issue through the state treasure; (2) issue through financial intermediary: commercial banks, finance and insurance companies; (3) issue by auction.

The Decree No.72/CP of the Government created a primary legal framework for the issue of bonds with abundant ways of issuing. However, Decree No.72/CP still has much inadequacy, for example the definition of various kinds of bonds are poor, it can't reflect the essence and target of issuing. The regulation of issuing and transferring mechanism haven't created favorable bonds trading, the decree hasn't dealt with the way of issuing through brokerage agents in securities market, which is applied widely by many Governments. The regulation stimulated the state bank of Viet Nam has right to auction on State bonds isn't adequate with state bank law and international routine. Transferring possession of treasure bonds and National construction bonds carried out through the state treasure cause difficulties to securities trading in the secondary market. Bonds are traded with limited volume and short time. That's why although the issuing turnover is high but the actual budget deficit is still low. Bonds haven't actually taken the role as a "standard debt" toll in capital market and currency market.

In order to complete the capital mobilization through bonds, the Government issued Decree No.01/2000/ND-CP dated on January 13th 2000 on regulation of bonds issuing replacing Decree No.72/ND-CP. This new decree stimulates relatively conceptions on bond essence, the responsibility of relevant authorities in managing bonds market. Especially, the decree creates new ways of issuing which are suitable with international routine such as: issuing guarantee and auctioning bonds through securities trading center. This is a breakthrough for the development of state bonds market in particular and for capital markets in general. Moreover, the Decree also stimulates some ways of transference, securities custody and security payment, and making favorable conditions for trading bonds in securities

market. Together with the state budget law and state bank law, Decree No.01/2000/ND-CP has set up a primary legal framework for the capital mobilization, marking a new base and very important step of view, acknowledging the mean and importance of creating capital strategy.

But in addition, Decree 01/2000/ ND-CP still has inadequacy with the economic development, for example, restriction of the outstanding debt rate in response with local National construction bonds is still low (as it has to be adjusted to the state budget law). It is also conflicts with the Decree No.63/1998/ND-CP of the Government on managing foreign currency...In order to stimulate actually the development of the bonds market, it is necessary to improve the legal essence, including publishing, trading and liquidating; if necessary we can adjust legal document concerned to the bonds market in order to make it suitable with the new situation.

In addition, for mobilizing the financial source from the social economy and concentrating on building constructions for human beings, the National assembly standing committee passed the ordinance on Government bonds replacing that improved by National Committee on November 25th 1993 in these basic following points:

- In order to mobilize the financial source from society for investment in national key projects and other essential projects serving for human beings, the Government issued Government bonds. The bondholders are both Vietnamese individuals and organization who are working in or outside; foreigner and foreign organizations living and working legally in Viet Nam.
- The Government guarantee the money value purchasing Government bonds with the real interest not less than 15% per year after inflation. The 5-year Government bonds is issued in unidentified certification and the state objectives (in the year 2000, Government bonds are issued to mobilize capital for agriculture and rural economic development, especially for these areas facing economic difficulties).
- Government bonds are permitted to transfer inheritance and mortgage.

The renewed ordinance on Government bonds overcame the restriction of that issued on November 25th 2000, reducing inflation hazard, organizing methodically and synchronously the professional skills of issuing; investors from mobilized capital are clearly defined. The amount received from Government bonds issuing are small but we can mobilize capital source in cash from citizens to invest in some key projects and realize the wise policy of the Government in mobilizing the long term capital for economic development.

1.2 The situation and result of capital mobilization by issuing state bonds

The state bonds market after issuing Decree No.72/CP

- *Treasure bonds*: Putting the decree No. 72 of the Government into action, national treasure has issued 1 year maturity treasure bonds including bonds pre-printed denomination without par value and bonds without pre-printed denomination with par value; since April 1995, issued

3 year-medium bonds since 1994 and 2 year bonds from September 10th 1996. This stage marked an important step in the process of reforming and completing the capital mobilization mechanism through the State treasure. The debt mechanism has gradually changed from short-term to medium term that lengthened and improves the efficiency of utilizing the state capital. Moreover, the issue of various bonds such as: registered bonds and unregistered bonds; bonds with and without par value; which are freely convertible throughout the country has drawn great attention of consumers and created a material premise to set up the capital market in Viet Nam. A fairly successful result of the issue proved the ability of mobilizing medium- term capital in the economic for the state budget and investment.

- *National construction bonds:* Ministry of Finance co-ordinate with Ministries and industries concerned for building projects and mobilizing capital under the cover of construction bonds such as Ho Chi Minh city bonds, Hoang Thach cement bonds, Anh Son and Phuc Son cement bonds. Thanks to this way of capital mobilizing , many projects were completed attributing to economic development for the past few years.

- *The treasure bonds auctioning market:* the Ministry of Finance has collaborated with the state bank of Viet Nam to auction treasure bonds to meet the paying demand of the state budget (with the maturity: 6 months, 9 months, 12 months). Investors participating in auctioning treasure bonds are commercial banks, financial firms, insurance companies and social insurance funds...

The result of auctioning treasure bonds

Year	Batches	Auctioned bonds volume (billion)	Auctioned bonds price (billion)
1995	04	243.6	222
1996	19	1,026.4	949.0
1997	37	2,917.5	2,637.3
1998	46	2,602.7	2,331.4
1999	46	3,001.6	2,772.1
Total	152		

The total issuing and liquidating turnover of all state bonds from 1991 to the end of 1999 was announced in appendix No.1

The state bonds market after issuing Decree No.01/CP of the Government

The implementation of Decree No.01/2000/ND-CP of the Government, in the year 2000, the Ministry of Finance organized the auctioning of treasure bonds through the state bank. Up to April 15th 2000, thirteen batches were auctioned, gained 2,136 billion Dong for the state budget. Since March 1st 2000, the Ministry of Finance has retained 2-year bonds through the Treasure System with the interest rate of 7% per year; the turnover was 1,369 billion VND reckoning to April 30th 2000. By now, we have held 2 auctioning batches in Ho Chi Minh securities trading center. The first one was held on

July 26th 2000 with the mobilized capital of 300 billion VND and 5 year maturity with the interest rate of 6.5% per year. The second one was held on August 15th 2000 with the same amount of mobilized capital and 5 year maturity with the interest rate of 6.6% per year. In the near future, the state treasure will collaborate with State Securities Commission to take a new way of issuing that is underwriting. This is the first success of mobilizing long term capital with the procedure suitable with international routine.

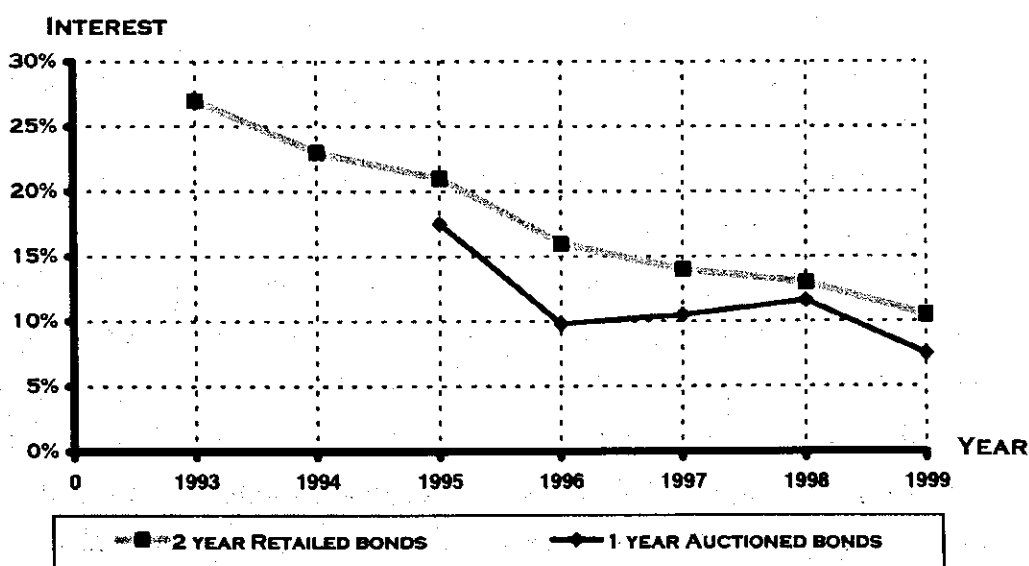
The ordinance on issuing Government bonds dated on April 4th 1999 regulated the interest rate of bonds is 10% per year. If the inflation comes over 42% after 5 years, the Government will adjust the interest rate to ensure the real interest is 1.5% per year. If the inflation after 5 years equal to or lower than 42.5%, the investors will enjoy the interest rate about 50%. After 2 months, capital mobilization reached 4,496 billion, equal to 112.4% as we planned.

1.3 Appreciation of the result

Achievements

Diverse form of bonds has created standard commodity and interest in order to establish and develop capital market and help the state bank conduct currency market. After ten years, implementation of bonds issue has shown considerable progress, at first, there is only treasury credit bill retailed via the State Treasury with very short maturity (3 months, 6 months in 1991), now Government bonds with longer maturity and diversified, modern forms of issue such as auctioning through the stock trading center. Bonds issuing is step by step close to the world's issue technology. Interest rate of Treasury bond and credit bill is listed in the interest rate of currency deposits and loans and has annually decreased.

The average interest rate of treasury bonds



Backwards

Government bonds have short maturity, mainly 1 or 2 years, no bonds with 5 years maturity. Thus, The usage of capital becomes passive due to balance of payment. Repurchasing and resaling bond on the secondary market is not encouraged with this present issue style. Government bonds have not yet been standardized so it can't be listed on the securities market.

There are not many kinds of bonds. Modern form of bonds such as discounted bonds and called bonds have not issued so we can't make the usage of capital potential in our society. The technology for issuing bonds has not fully done, mainly retail. The certain scheme for bonds issue has not built.

2. Capitalization of state-owned enterprises in the period of 1990-2000

First-time suggestion on capitalization of state-owned enterprises was in the Decision of the second meeting of the 4th Central Committee (11/1971): "capitalizing some state-owned enterprises into joint-stock companies and founding some new as experiment and have tight guideline, and draw experiment before expanding enterprise equitization". After 8-year implementation, the process of equitization can be divided into 2 main stages:

Experimental stage (1992-1995)

The Decision No.202/CT dated on June 8th 1992 of the Chairman of Ministry Council on equitazing some state-owned enterprises into joint-stock companies and the Instruction No.84/TTg on March 4th 1993 of the Prime Minister was aimed to encourage the process of equitization. At this period, the capitalization took place very slowly. Up to May 1996, there were only 5 joint-stock companies in the whole country: Transportation Agent Coporate (1993), REE company (1993); HiepAn footwear compay (1994); Export Processing Company (1995) and Animal food Processing Company (1995). Some reasons for the slow speed of capitalization: Ministries and relevant Agencies had no detail and timely guideline on capitalization, regulations of capitalization were not really attractive; equitization policies on economic management; equitization policy was not synchronous with other law documents on economic management. Thus, enterprises met difficulties in equitazing. In addition, managers, staffs and other classes had less confidence in equitaization policy of the state.

Expanding stage (after 1996)

On May 7th 1996, the Government promulgated Decree No.28/CP of the Government in order to encourage the process of restructuring the state-owned enterprises, step by step accomplish legal framework, and speed up the process of capitalization. The Decree. No 28/ND-CP of the Government on moving state-owned enterprises to joint-stock companies. This new Decree has surmounted some shortcomings of Decision No.202/CT and created favorable conditions for enterprises capitalization. Under the regulations of Decree No.28, joint-stock companies have still maintained positive side of management, reduced negative aspects and adopted with the market mechanism. Rights of labors

(shareholders) come together with rights of the company, the implementation of equitization has changed the ownership from state into shareholders. All these things make workers themselves really own companies. So, companies can exploit and mobilize every source of capital in the society to invest in production...The recent achievements of 17 equitized enterprises have clearly shown out positive aspects of equitization. In detail, capital: 45% rise at average; turnover: 57%, profit: 70%, income of labors increases 20%.

However, after a short time of implementation, Decree No.28/ND-CP of the Government shown many unsuitable regulations which needs improving, such as: rights of state-owned enterprises equitized to become joint-stock companies; rights of labors, especially low-income labors, the management of state joint-stock companies. In addition to, the jurisdiction over equitization of enterprises are not clear and specific, equitization procedure is so complex... with above difficulties, from May 1996 to the middle 1998 (3 years), there are only 25 equitized enterprises, much lower than the plan.

With new determination in the implementation of equitization, on April 21st 1998, the Prime Minister promulgated Instruction No 20/1998/CT-TTg on arranging and renovating state-owned enterprises. Accordingly, state-owned enterprises are divided into 3 groups: 100% state-owned enterprises equitized enterprises and enterprises that have prolonged losses. The instruction No.20/1998/CP-TTg of the Prime Minister required Ministries, provinces and general companies 91 to select at least 20% of business without 100% State capital to equitization. Besides, the Government promulgated Decree No.44/1998/ND-CP dated on May 7th 1998 of the Government replacing Decree No.28/ ND-CP. Decree No.44 includes many positive and expanding regulations with some drawbacks of Decree No.28 such as: the problem of evaluating business' ability, jurisdiction over business evaluation and rights of labors. Decree No.44 is appreciated to have many good points such as: process of simplifying equitization procedures, social welfare for labors. After Decree No.44 of the Government came into force, Ministries and relevant agencies have had guideline documents to create a relatively synchronous legal framework on equitization of state-owned enterprise. With this new policy, in 1998, 86 state-owned enterprises were equitized (out of 150 enterprises had registered), raising the total number of joint-stock companies up to 116 business from 1992 to 1998.

In order to implement actively the arrangement and equitization of state-owned enterprises, on August 3rd 1998, the Prime Minister promulgated Decision No.117/QD-TTg on the Assistant Fund. The main goal of the fund is to use financial methods to deal policies for labor and support state-owned enterprises to overcome financial problems before and after implementing equitization. In addition to, on June 25th 1999, the Prime Minister also promulgated Decision No 145/1999/QD-TTg on saling shares to foreign investors on an experimental basic. Up to the end of 1998, the total number of joint-stock companies has been 250, raising the number of enterprises, which has changed their ownership up to 370.

So, the establish of two new commodities Government bonds and state-owned enterprises'share has created favorable and important conditions for Viet Nam securities market coming into operation...

The establish of the securities market is indispensable, supports and encourages the economic development on the basic of clearing and expanding every capital source and meeting the need of capital for investment and development. With efforts and cooperation between Ministries and agencies concerned, on July 20th 2000, the HoChiMinh city securities market was officially opened and come into operation. In spite of its small size of transaction, the establishment of the HoChiMinh city securities trading center has marked imitatively successes in the implementation of our Government policy: "speed up social investment, increasing both accrument and domestic investment through the state budget, enterprises and citizens. Developing currency and capital market, establishing the securities market" (Document of the 8th National Congress).