

money in the circulation. The intervention into exchange rate is considered to be a rather independent tool of the monetary policy (foreign currency policy), which is carried out in different forms:

- Direct intervention: buying (selling) domestic or foreign currencies under form of converse or swap.
- Indirect intervention: buying (selling) gold, regulating interest rate and discount rate (as given above)...

The Central Bank may not have to intervene by itself but to authorize an agent to do the job. This act could be considered of an invisible intervention. This intervention, by its nature, may or may not evaluate exactly the exchange rate in short-term, or it may even create pressure to cause a rise or fall of the exchange rate.

The change of the volume of money in the circulation caused by the intervention into exchange rate depends mostly on the type of intervention. If the Central Bank sells gold for domestic currency, then it will reduce the volume of money in the circulation and vice-versa. If the volume of money in the circulation is reduced by selling gold for domestic currency, then it will drive up the price of domestic currency (or anti-devaluation), or even cause pressure to deflate (cheaper imports). Cheaper imports may recover the economic growth but again it may reduce the volume of money in the circulation. If the domestic currency is used to buy gold, it will be dramatically devaluated (import is more expensive), and also, it may restrict the economic growth (due to expensive imports); there are chances that it may lead to a growth of the economy by adding money into the circulation.

Raising the value of the domestic currency may impact the payment balance in the direction of losing foreign currency capital—export is more expensive and import is cheaper, devaluation leading to the rise of foreign capital flow. The real situation contains several other factors (interventions), for instance, increasing import price does not necessarily make domestic manufacturers to restrict their production, they can rather replace import by making domestic products. This possibility of production depends on decisions of each group or individual of how to use the money, which is collected by selling gold to the Central Bank—that means that the volume of money in the circulation can increase without helps of the commercial banks. From this scenario, one idea was retrieved that the intervention into exchange rate is an indirect method, it is not relating to procedure or techniques of execution. Its usefulness is raising along with the application of floating rate system.

Change of interest rate

Changing the interest rate will affect the motivation of using money and other valuable papers. For example, the rise of interest rate on foreign currency will reduce saving of domestic currency, but it will

increase saving of foreign currency, making the foreign currency become more expensive, and consequently affect the exchange rate. Furthermore, a change of exchange rate in international market also creates pressure on the situation of foreign currency inside the country, impacting to the interest rate applied on foreign currency.

(2) Vietnam's realities

In the process of economic renovation, especially after the introduction of Banking Legislation (1990), the Central Bank has tried to direct the operation of commercial banks by regulating the liquidity in order to balance the volume of money in the circulation. The State Bank has employed many tactics to realize this goal, including direct impacts on interest rate that being used by commercial banks when they provide credit to their clients, and interest floor for money deposit—this is an administrative method being used in cases that need quick solutions for the unbalance of the economy. The next is to provide capital to increase the liquidity for commercial banks under form of rediscounting and mortgaging, or through open market operation, etc..

Since the early of 1999, the economy has faced many difficulties, especially the issue of deflation and the decline of investment. The Central Bank has initiated several solutions to bring money into the circulation. These solutions, however, have not met expectation due to the lack or no response from the commercial banks because they are still in excess of fund (except loans for buying food products to export and for programs to encourage the demand). This year, the situation has not changed. Most of fund is provided according to last year's credit plan. Because of the stagnation of capital and the conflict between different interest rate then most of commercial banks have not made loans through discounting gate. Thus, all attempts to change the volume of money in the circulation have not brought back any results and the interest rate remained untouched.

The true basic reason is lack of consulting and banks' weaknesses. However, there are other reasons even though they are less important but worth for taking a look. Most of enterprises have not paid attention to the productivity or economic feasibilities (loss, stagnancy of goods, or selling to customers who are not able to pay) and they still follow the old methods of subsidized economy—they have tried to reach the planned goal or planned target but not for sell. These problems have led to the situation that most of enterprises always ask the Government to balance the capital and to forfeit old debts, provided capital depending on consuming parties. In the market economies, the commercial banks can make decisions themselves on whether their clients have ability to pay or not, then they can continue to make loans or decide to collect the old debts. However, the commercial banks are not the main creditor because many enterprises may still operate with equipments and fund provided by the suppliers or the consumers. Therefore, the commercial banks should be responsible when deciding to provide credit.

Also, since 1999, the Central Bank has applied a new rate mechanism. According to this mechanism, the

Central Bank only publishes the average trading rate in the interbank foreign currency market. This rate has satisfied the demand and supply of foreign currency, and it also reflects accurately the real value of the VND comparing to foreign currency. Furthermore, due to the fluctuation of prices in other countries in the region (where Viet Nam has most of its economic relations), the enterprises have hesitated in using foreign currency. The commercial banks use foreign currency mostly in complying with market demand or because of instant profit.

In the last few years, the only relationship, which can be seen obviously, is the relationship between exchange rate and interest rate. Especially, right after the second quarter, when the commercial banks raise interest rate for the USD then the USD exchange rate also increase. This event has changed the purpose of the use of money (the VND is converted mostly to the USD). All of these events have somehow neutralized the money deposit structure, they help to eliminate some hardship and difficulties for the commercial banks while capital demand from State-owned enterprises have reduced.

In brief, the monetary policy can only demonstrate its effectiveness when the economy being strongly and consistently reformed, especially the reform of state-owned enterprises and the reform of funding policy. Meanwhile, there should be a close cooperation between financial and monetary policies.

3. Data on the policy of money supply, interest and exchange rates in 1999

According to the monetary policy in 1999, the State Bank has supported the Government campaign of raising more demand by flexing its monetary regulations. Also, the State Bank has carried out a reform on monetary instruments in order to raise the effectiveness of its management.

Mandated reserve instrument

To realize the Banking Law, which has been in effect since 1/10/1998, the Governor of State Bank has promulgated Regulation on the mandated reserve in accordance with the Decision No 51/1999/QĐ-NHNN dated 10/02/1999, which has been in effect since the March, 1999. Basically, the objectives and calculation techniques are still complied with the released Regulation on the mandated reserve, which was promulgated in accordance with the Decision No 396/1998/QĐ-NHNN dated 1/12/1998 of the State Bank's Governor. However, there are other additional points to adapt with the State Bank Law, such as: objects applied will be extended to people credit fund, co-operative banks, credit cooperative; instead of the policy that 70% of the mandated reserve must be deposited in the State Bank and other 30% in cash, checks which are still validated, all of the mandated reserve must be deposited in the State Bank to support the national monetary policy; the level of mandated reserve for each type of financial institutions, and each type of money

deposit; the level of mandated reserve for cases of exemption or cases that previously had no mandated reserve is 0%; and the interest rate for mandated reserve is set by the Government.

In 1999, the State Bank, with its campaign of flexing monetary regulations to raise general demand, in order to support the economic growth, has twice adjusted the level of mandated reserve for credit institutions from 7% to 5% of the overall amount of deposit balance, whose term is under 12 months. This level also applied for state-owned commercial banks, municipal joint stock commercial banks, foreign-owned bank branches, joint venture banks and financial companies (the Bank of Agriculture enjoyed 3% especially), the level of 5% is lowered down to 1% for rural joint stock banks, cooperative banks, central people credit funds, regional people credit funds. The lowering of the level of mandated reserve for credit institutions will play an important role in expanding credit, cutting down the cost of operation and increasing profits of the credit institutions. However, the underlying difficulties within the economic structure and time limitation have affected the possibilities of this instrument, making its positive impacts become unclear.

Interest rate and refunding instrument

In 1999, the State Bank has four times initiated the program of refunding, lowering from 1.1% at the beginning of the year to 0.5% monthly. In the same time, the State Bank has also promulgated Regulation on discounting and rediscounting transactions for banks, which may help realizing the monetary policy, creating opportunities for the State Bank to balance their operating capital for the banks. Short-term notes discounted at the State Bank are Treasury bills, which are auctioned at the State Bank, and other short-term notes which are regulated by the Governor of the State Bank in each period of time. The decided discount rate is 0.45% monthly.

The State Bank still based their 1999 interest rate on the interest ceiling mechanism; the State Bank would determine the maximum interest rate for the loans, and accordingly, the financial institutions would set specific interest rates based on that ceiling interest rate. To adapt with the inflation rate, the relationship between capital supply and demand in the monetary market, and Government's resolution of attracting more investment, the State Bank has five times readjusted interest rate on loans denominated in VND of those credit institutions from 1.2% per month (for short-term loans) to 1.25% per month (for mid and long-term loans) down to an identical interest rate of 0.85% per month within the urban areas; ceiling interest rate on loans providing to the countryside is 1% per month; the ceiling interest rate set by rural joint stock banks is 1.15% per month; 1.5% per month set by local people credit fund if the loans are made to its members; interest rate set on loans of the bank for the poor is 0.7% per month. The ceiling interest rate on loans denominated in USD which were made by credit institutions to the economy is 7.5% annually. The highest interest rates given on money deposit denominated in USD for legal institutional entities at the credit institutions are: maximum of 0.5% annually for callable deposit; max of 2.5% annually for 6 month

deposit; max of 3% for deposits with over 6 months. In 1999, beside setting ceiling interest rate more flexible, the State Bank also rectified violations of the ceiling interest rate on loans and charged credit operational fees by setting rules on fees relating to loans, which is based on the agreement between credit institutions and their clients. The fees depend on the loans and should be converted to percentage then adding it with the interest rate on loans stated in the credit contract. The total rate must not exceed the relative ceiling interest rate that was regulated by the State Bank at the time signing the contract.

Exchange rate instrument

In 1999, the State Bank has made a basis renovation step on exchange rate management, which was transformed from a type of administrative management to market driven management with Government's control. According to the Government Decision No 64/1999/QĐ-NHNN7 and Decision No 65/QĐ-NHNN7 dated 25/2/1999, instead of setting official exchange rate, the State Bank would from 26/2/1999 just announce the average trading rate in the interbank foreign currency market. This rate is applied as a base for credit institutions, which are allowed to do business on foreign currencies, to determine the exchange rates. Also, this rate may be used to calculate the import - export tariff. Based on the actual average trading rate of last trading day in the interbank foreign currency market announced by the State Bank, the credit institutions are required to set the exchange rate not to exceed 0.1% comparing to the rate announced by the State Bank. The change in exchange rate management may give the commercial banks active rights to set the exchange rate between the VND and other foreign currencies. With the new rate management mechanism, the exchange rate of VND is set in complying with its trading in the market, and it relatively reflects the purchase power of the VND against other foreign currencies. Also, the new mechanism has facilitated the business self-control of enterprises without losing the Government's control. The new exchange rate management in 1999 has brought positive results, the exchange rates have been stable in official and free markets, the gap of exchange rates between these two market is narrowing more and more, the trading volume of the interbank foreign exchange market was fairly high, it has satisfied the demand of foreign currencies of the economy; also, it has encouraged export, controlled import and improved the international payment balance.

Figure 1 Exchange rate of USD and VND in 1999 (monthly)

Month	Vietcombank		Free market	
	Buy	Sell	Buy	Sell
1	13,883	13,888	13,861	13,885
2	13,880	13,884	13,864	13,899
3	13,889	13,902	13,911	13,937
4	13,901	13,905	13,919	13,942
5	13,907	13,912	13,922	13,942
6	13,915	13,920	13,935	13,956
7	13,941	13,947	13,964	13,984
8	13,955	13,962	13,978	13,998
9	13,975	13,981	14,012	14,039
10	13,990	14,004	14,000	14,025
11	14,007	14,017	14,024	14,045
12	14,015	14,021	14,123	14,155

Figure 2 Ceiling interest rate on loans (% monthly)

Areas	1/1/99	1/2/99	1/6/99	1/8/99	4/9/99	22/10/99
Urban area	1.25	1.15	1.15	1.05	0.95	0.85
Rural area	1.25	1.25	1.15	1.05	1.05	1.00
Rural joint-stock commercial bank	1.25	1.25	1.15	1.15	1.15	1.15
People credit fund	1.50	1.50	1.50	1.50	1.50	1.50

Figure 3 The level of mandated reserve for credit institutions in 1999

Credit institutions	The level of mandated reserve (%)				
1. State-owned commercial banks; municipal joint-stock commercial banks; foreign-owned banks, branches; joint-venture banks; and financial companies.	10	7	6	5	5
- Rural Bank of Agriculture and Development.	10	7	6	5	3
2. Rural joint-stock commercial banks; cooperative banks; central people credit fund, and regional people credit funds.	0	5	4	1	1
3. Credit institutions which has deposit balance of below VND 500 million; local people credit fund; credit cooperative; bank for the poor.	0	0	0	0	0

Appendix: Path of the changes in the ER arrangement and foreign exchange control

Before 1989:

- Three-tier ER system: official ER for foreign trading, non-trading ER and internal ER used in business relations between banks and other domestic business entities, it was also used in state budgeting in regard to foreign aid mainly coming from the former Council for Mutual Economic Assistance (CMEA) and former Soviet Union using Transferring Ruble.
- ERs were set by the government at fixed levels based on economic and granting agreements between government of Viet Nam and other relating countries.
- Parallel foreign exchange market with much higher level of ER than those set by the government.

March 1989 (after the Sixth Communist Party Congress):

- Multi-tier ER system was unified into official ER (OER) set by the State Bank of Viet Nam (SBVN).
- OER was adjustable in principle based on inflation rates, interest rates, balance of payment (BOP) stance and those in (parallel/free) foreign exchange market; Based on the OER announced by SBV, commercial banks were allowed to set ERs for their own transactions within a band of 5% lower or higher than the OER.

October 1989:

- Issuing Regulation on foreign exchange management, reinforced later by a series of implementation documents such as Circular 33-NH/TT (15 March 1990) giving guidance to Regulation implementation, Direction 330-CT (13 September 1990) expediting control over the use of foreign exchange and Decision 96-NH/QD to regulate NOSTRO ACCOUNT (5 November 1990).

1991:

- Tighter control over using foreign exchange (Decision 337/HDBT dated 25 October 1991) following the establishment of an official fund for streamlining foreign exchange flows to enable SBV to stabilize ER (Apr.)
- Establishment of two foreign exchange transaction floors, in Hochiminh City (Aug.) and Hanoi (Nov.) along with regulations on foreign exchange deposit (Jan.), foreign exchange deposit and lending interest rate ranges (June) and foreign exchange dealing (Dec.).
- OERs were set based on auction-based rates at the foreign exchange floors where SBV played a dominant role, by buying or selling large amount of foreign exchange, over other participants: a few commercial banks and several big exporters and importers. At the end of 1991, commercial banks were allowed to set their own ERs withing a range which is 0.5% higher or lower than the OERs announced.

From 1991 to 1993:

- Restricting foreign exchange transfer through entrance into and exit out of the country (Decision 175-QD-NH7 dated 9 Sept. 1992) and borrowing from abroad and lending to domestic businesses (Decision 192-NH/QD dated 7 Sept. 1992, Direction 08/CT-NH1 dated 9 Oct. 1992).

From 1994 to 1996:

- Replacing the two foreign exchange transaction floors, the inter-bank foreign exchange market where SBV still remained influent as the "last seller and buyer" of foreign was established (Decision 203/QD-NH3 dated 20 Sept. 1994).
- Narrowing foreign exchange transaction in internal sectors (Decision 396/QD-TTg, Oct. 1994).
- OERs were still determined to be stable and set by SBV based on the inter-bank rates. The ER band within which Commercial banks set their own ERs was still narrow, 0.5% about the OER.
- Interest rates on VND were gradually kept lowering to reduce conversion of USD into VND to have higher interest rates by placing VND in saving account.
- ER band was somewhat widened, from 0.5% to 1% (Nov.)

Since 1997 (up to 1999)

- ER band was widened continuously, from 1% to 5% (Feb. 1997), from 5% to 10% (13 Oct. 1997).
- Devaluating VND under pressure of the falling in foreign exchange reserve and increase in BOP deficit, from OER of VND 11,175/USD to VND 11,800/USD (16 Feb. 1998) and to VND 12,998/USD (7 Aug. 1998) together with narrowing the band, to 7%.
- Instead of OER, since 26 Feb. 1999, SBV has announced the (previous working day) average inter-bank ERs, but the band has been shortened remarkably to 0.1% (Decision 65/1999/QD-NHNN7).
- Foreign exchange surrender requirement up to 80% of available balances was introduced (Decree 173/QD-TTg, Sept. 1998), and was reduced to 50% (Aug. 1999). In Aug. 1999, the government issued Decision 170/1999/QD-TTg in order to (officially) encourage the private foreign exchange transfers from abroad.

C. Developing Security Markets



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 imperfection 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/QĐ-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/QĐ-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

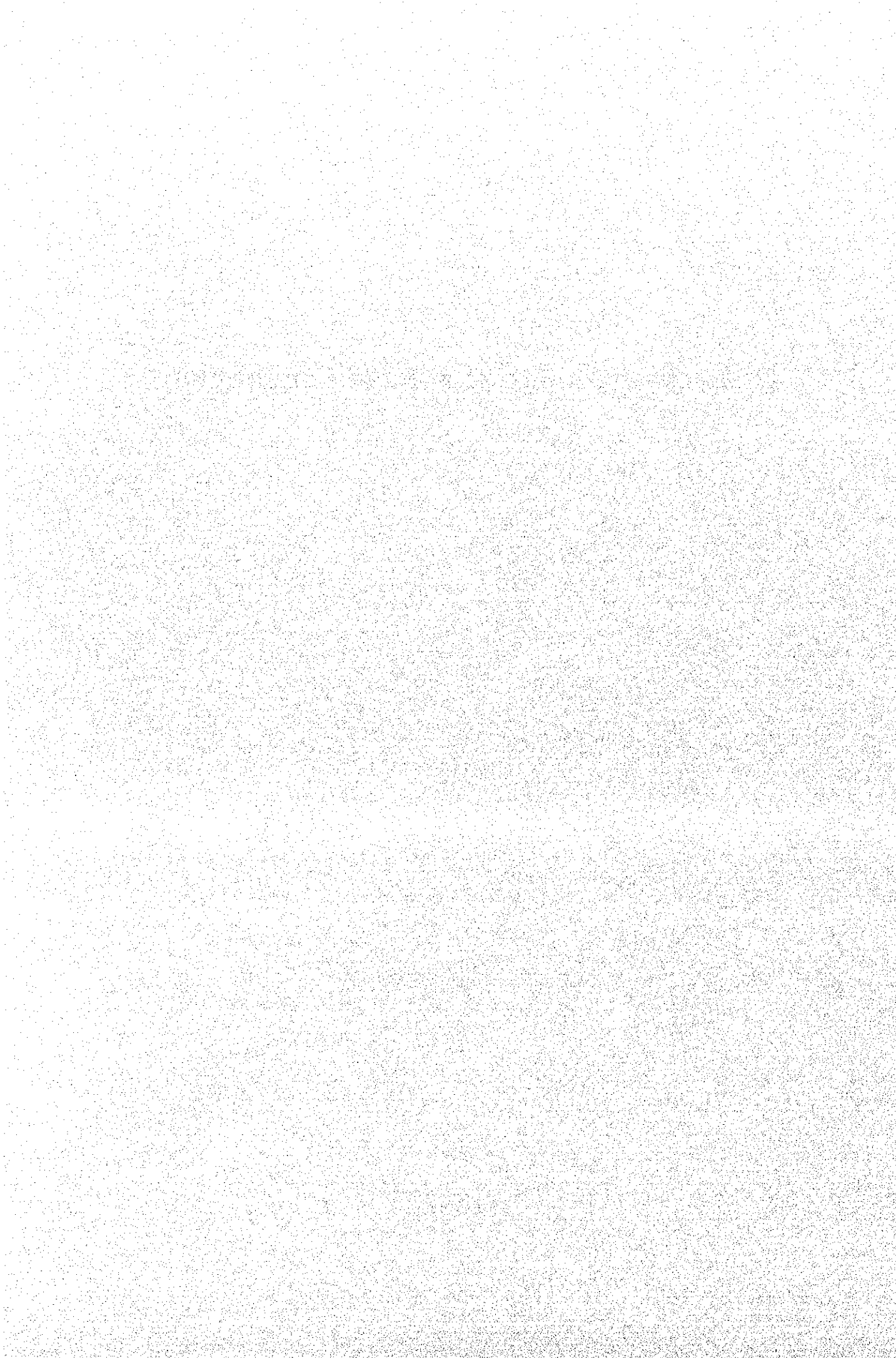
establishment of the Securities Trading Centers.

- 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. Issues of Managing Foreign Capital Flows



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 forth 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 1998 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)	
	<i>Realized investment capital</i>	%	<i>Realized investment capital</i>	%	<i>Realized investment capital</i>	%
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 stock 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.

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>	<i>23,099.312</i>	<i>70.91</i>
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>	<i>728.186</i>	<i>21.05</i>
• UK	172.729	2.24
• Germany	1,746.141	0.53
• France	2,574.883	5.36
<i>III. America</i>	<i>1,175.095</i>	<i>7.90</i>
• US	1,399.788	3.61
• Latin America	47.010	4.30
<i>IV. Others</i>		<i>1.04</i>
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: sort-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 Baden 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,