

may monopolize foreign trade in specified industries. However, the government has not named specific industries and some SOEs have virtual monopolies in some industries.

Both SOEs and private enterprises enjoy tax reduction when they meet financial difficulties. However, SOEs alone are exempted from or allowed to defer payment of the interest on debts, or are exempted from debts in some cases. Therefore, SOEs virtually never become bankrupt.

For example, the government spent eight trillion VND from the exchequer on SOEs during the three-year period 1997-99, of which 82 billion VND were to input additional capital and 1.464 trillion VND were to compensate for deficits of the enterprises.

SOEs have advantages in the use of land. Private enterprises need much perseverance to negotiate with governmental organizations for the use of land. Even if they are successful, usual contract term is 5-10 years.

Among the 11 enterprises, which replied to our question about whether they were enjoying benefits from the government, six replied positively. Most of the respondents cited the reduction or exemption of the corporate income tax for one to five years. Some replied that they were treated favorably with regard to profit and investment. When equitized, some enterprises received a grant from the government.

To our question about whether subsidies from the government changed after equitization, all of the six respondents who gave a valid answer replied negatively.

In any case, such ample and varied protection measures maintain an air of easy-going reliance on the government, retard the acquisition of autonomy and impede the establishment of competitive power. The government of Viet Nam must curtail and abolish such protection for SOEs irreversibly and without exceptions. It is necessary for the government of Viet Nam to realize equal conditions for competition and establish similar policies for ECs, NECs and all other enterprises in Viet Nam.

Second, there is another issue, related to the above, as to the extent to which the government must drastically excise insider control exercised between SOEs and commercial banks through line ministries. This is the 'soft control' mechanism for budgets, in a sense regenerated or replaced with a different version. The financial system in Viet Nam will obviously face a serious crisis, if Vietnamese SOEs become unable to refund their enormous amounts of accumulated debt. Preferential credit provided to SOEs tends to mitigate against credit for private enterprises and create unequal conditions for competition.

The ratio of debts at SOEs derived from state-owned banks is 85 percent at 840 enterprises, mostly small-scale enterprises, which have been continuously in deficit for two years or more, 64 percent at 2,393 enterprises, mostly large-scale enterprises, which are in temporary deficit, and 54 percent at 2,196 enterprises, mostly medium-scale enterprises, which have been continuously profitable for three years or more⁹.

Third, as long as the government promotes equitization as one of its plans for reforming SOEs, it is

⁹ IMF, *Ibid*.

necessary to eliminate limits to the present incomplete and inconclusive method of equitization. If the government really wants to abolish protectionist measures and establish a management structure for independent and autonomous enterprises, it must lift the overt and covert limits imposed on stock acquisition, and eliminate pseudo worker-controlled enterprises. Unless the government has the political will to gradually and steadily eliminate restrictions on stock acquisition by executives, outsiders and foreigners, it will be impossible for stock companies to raise 'risk capital' or establish open corporate autonomy by shareholders (including employee shareholders). If this happens the competitive power of ECs will be established with evaluation of management based on the corporate autonomy. As an interim measure to attract foreign shareholders, it may be necessary to issue separate stock for Vietnamese and foreigners as seen in China.

Fourth, there is the problem of how to vitalize the stock market, relative to the third point above. Although a stock market has been opened, few enterprises have been listed, presumably because the conditions are too severe for existing Vietnamese enterprises. This is especially true for SOEs whose executives are not familiar with an information disclosure system. Stock companies, even if they deserve the form in the legal term, are not stock companies widely open for risk capital in essence, unless they have a field for evaluation or corporate governance by shareholders, where the judgment by investors on the business performance leads to selling and buying stocks. In this regard, more positive political guidance may be necessary in the transitional period, together with the open stock system mentioned above and educating the stock company management about information disclosure.

Fifth, the government must implement a plan to systematically withdraw the virtual protection (mentioned earlier) as soon as possible, so that executives who have worked under strong governmental protection will understand their responsibility for independent and autonomous enterprises. In order to do this it will inevitably be necessary to apply the Bankruptcy Law, dissolving enterprises when necessary, albeit with a safety net to guarantee employment.

In relation to the above, management re-education may be essential for the executives of SOEs, especially those of manufacturing enterprises, because most of the executives have been educated as engineers, and in the past trained as plant engineers in the context of SOEs. For this reason, there are many executives who do not have adequate understanding of corporate financial statements and are not able to grasp autonomous corporate management or work out managerial strategies.

Sixth, following on from the points above, it may be possible in the present circumstances surrounding Vietnamese enterprises, to convert most of the loans provided to SOEs by state-owned banks (as mentioned above) into stock, thereby turning state-owned banks into shareholders and spreading the control of SOEs. This measure must be promoted, however, under the condition that the relationship between banks and enterprises be systematically transformed into a simpler and more straightforward one of lender and borrower that broadly eliminates insider control and its alternate version that of 'soft budget

control' as mentioned above. And to convert debt to stock, stringent evaluation will be required, if possible by a third party.

This will lead to what is called the 'main bank system' in Japanese industry. As lenders banks have access to information that enables them to become acquainted with management comparing with shareholders in general. This will partly serve to overcome the limits of management capability and to encourage the diversification of share holding.

Given the fact that the 'main bank system' in Japan, formerly regarded as a symbol of the postwar development of the economy and industry, is now in difficulties, the ratio of stock owned by banks should be limited by law.

Seventh, attention must be paid to the fact that the existence of SOEs in itself leads to the above-mentioned national protectionist measures and broad-based insider control, which subsequently prevent the participation of other types of enterprises in the market. In this sense, it is important that entrepreneurial private enterprises actively compete with SOEs. In Viet Nam, many private enterprises have grown remarkably in various fields. In response to our question, an overwhelming number of respondents replied that their strongest competitors were SOEs followed by importers, indicating that private enterprises were little recognized as competitors, presumably because of the remaining protectionist measures for SOEs, preferential treatment by banks in providing loans and the cumbersome and time-consuming administrative procedures involved in setting up a private enterprise as mentioned above.

For this reason, a policy to ensure equal conditions for competition is essential. The participation and development of private enterprises are significantly retarded in the manufacturing industry. The reasons for this are unknown. However it is thought that the skills required for manufacturing are specific and difficult to learn, in comparison with commerce, and therefore it is difficult for new enterprises to join in manufacturing; that skills have been restricted to SOEs for many years; that private enterprises have been handicapped in raising funds by the restrictions (mentioned above) on the provision of loans despite the fact that entry into the manufacturing industry requires more funds than participating in commerce. So urgent political action is essential in establishing financing routes for medium and small-scale manufacturing enterprises. It is also necessary to establish training organizations for skills acquisition which widely accessible and have political backing.

Eighth, it must be remembered that what actually contributed to reform in Chinese enterprises was not the reform of SOEs, but was largely dependent on the evolution and creation of autonomous and competitive corporate entities at the level of village and town-owned enterprises which had previously been on the periphery of the Chinese economy system. Since the village and town-owned enterprises developed rapidly and intensified their influence on the Chinese economy as a whole, all the SOEs quickly lost their pre-eminence in quantitative and qualitative terms.

In Viet Nam, village and town-owned enterprises don't exist like in China. In this sense, therefore, it

is difficult to find an appropriate sector to be entrusted with the political task of using the surplus, low-wage labor force in labor-intensive industries in agricultural villages, establishing (international) competitive power by taking advantage of its superior cost effectiveness.

On the other hand, it is true that there are small-scale and diversified enterprises owned by local governments, which are generally under the administrative influence of local governments and party committees. It would not be impossible to design and realize "a circuit" centering on labor-intensive fields, that will start the beginnings of autonomous action with momentum provided by equitization; to spread stock ownership beyond employees to ordinary citizens within communities at the prefecture and city levels, thereby enhancing the diversity of corporate management, and the autonomy and flexibility of the enterprises themselves; inspire the commitment and purposeful participation of the community in enterprises, create successive positive incentives for participation; and raise income levels in the community.

We will conclude this report by referring to the case of New Zealand for reference. It is now attracting attention for the remarkable improvement of its economy through the systematic reform of SOEs.

This reform was diversified, but the reform of the SOEs was one of its most important points. We will review the reform in New Zealand noting the views of Dalziel and Lattimore (1996)¹⁰.

In New Zealand as of 1984, SOEs showed a strong presence in such industries as banks, insurance, legal services, railways, air transport, buses, marine shipping, industrial technologies, architecture, port, harbor, and airport services, electrical power, gas, telecommunications, primary product marketing, coal and mining, petroleum refining, production of iron and steel, printing, broadcasting, hotels, computer services, postal services and weather broadcasting. SOEs were monopolistic in some industries.

At that time, the executives of SOEs were officially required to attain two targets, the improvement of business efficiency and contribution to the society. The Ministry of Forestry for example was required to protect the resources of national forestry and provide them for recreation activities, while maintaining profitability. At the same time, the Ministry was assigned with the task of absorbing workers to solve unemployment problems in certain areas. The executives of SOEs were also forced to make efforts to maintain good relationships with parliament while neglecting marketing. There were no systems for evaluating the capability of executives or appropriately control accounting.

In the power supply industry, prices were kept low by political pressures, apparently to the advantage of consumers, but which mitigated against the SOEs having the will to make long-term investments thus subsequently compromising the efficiency of their power supply equipment.

Some industries were provided with subsidies. This made the entry of private enterprises difficult and free competition was compromised, signaling that SOEs were not required to try to improve efficiency.

¹⁰ Dalziel, Paul & Latimore, Ralph (1996) *The New Zealand Macro-economy; A Briefing on the Reforms*, Oxford University Press. Translated under the supervision of Norio Aoyama and Yoshinori Okada, Azusa Shuppansha, 1998

Consequently, the issues relating to SOEs in this capitalist country were no different from those of enterprises in socialist countries.

In December 1985, the government of New Zealand declared a new framework for SOEs based on the following five principles.

- (a) Those who are responsible for the management of inefficient enterprises should be dismissed.
- (b) One of the major responsibilities of management is to run SOEs like profit-oriented businesses.
- (c) Executives should be assigned the responsibility and authority to attain agreed goals.
- (d) Barriers to competition should be removed.
- (e) SOEs should be reorganized in principle under the guidance of a board of directors nominated from private enterprises.

These guidelines were prescribed in the 1986 State-Owned Enterprise Law. Article 4 of the Law states that one of the major purposes of SOEs is to attain commercial targets. Since then reform was rapidly implemented. A number of business divisions owned by the government were equitized or sold to private enterprises. As of June 1995, there were only 16 SOEs left which were in the power supply, forestry, coal and air transport industries.

The reform yielded dramatic results and labor productivity improved. Some enterprises still owned by the government started to pay dividends and tax. In the rapid reforming process, however, several important problems surfaced. Labor productivity was improved initially by laying off and dismissing thousands of surplus workers. This temporarily pushed up the unemployment rate. However, these workers were soon absorbed into newly emerging service sectors.

The 1986 Competition Expedition Law is also a noteworthy industrial policy. Although the 1975 version of the Law stated in its lengthy preamble that the government would control the prices of goods and services, that of the 1986 Law only specifies that it is to expedite domestic market competition.

The principle of competition stipulated in the 1986 Law provided two important guidelines for reform in other fields of industrial policies. One was that prices should be determined by competition in the market, and not by the government control. As of 1984, 39 groups of products including automobiles, fertilizers, butter and detergents were under price control, but all were lifted by the end of 1992,.

The other guideline was that barriers against new enterprises were inappropriate. As a result, Ansett New Zealand was allowed to start operations on major routes that had previously been monopolized by New Zealand Airlines. New enterprises also entered banking business one after another.

Chapter 2 Specific Issues of State-Owned Enterprises



Renewal of the Management of SOE under Full State Ownership and Reorganization of Corporations

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It has come to a time that the renewal of SOE does not only mean the enhancement of the restructuring of SOE but also include the enhancement of the effectiveness of SOE under full State ownership and of Corporations. The process of restructuring SOE include merger, incorporation, equitization, assignment, sales, contract, lease, dissolution, bankruptcy as part of the effort to restructure SOE and reduce the number of ineffective SOE not necessarily subject to full state ownership for the readjustment of the state economic role. However, there is still a large part of SOE that continue to be fully owned by the State for many reasons (either decided by the State or pre-maturity for equitization or ownership transformation). These SOE are now existing under the form of independent SOE or as Corporations. Since the beginning of the process in 1992 to August 2000, the total number of equitized SOE has been 460 including SOE and divisions separated from SOE for equitization, accounting for 7.4% of the total current number of SOE and 1.6% of the total state capital in SOE. The number of SOE under full State ownership is still very big including 5,571 SOE with 77 being Corporations 90 and 17 Corporations 91 and other independent SOE from Corporations. Therefore, great efforts are needed to enhance the effectiveness and competitiveness of these SOE and Corporations while Viet Nam is on the course toward the fulfillment of the commitments to economic integration.

For the SOE and Corporations to integrate into the regional and world economy in the time to come, it is necessary to step up the restructuring of these entities and carry out in-depth renewal in the direction renewal of technology, personnel, management, labor, settlement of labor redundancy in SOE under full state ownership, policies on labor in streamlined SOE and SOE with partial or full ownership transformation to non-state economic sector. These will serve not only as the factors to enhance the effectiveness and competitiveness of SOE and Corporations but also as the premise for the equitized and ownership-diversified SOE and Corporations to operate better after the ownership transformation.

1. The role of renewed management and technology and the settlement of labor issues in the course of renewing SOE under full State ownership

The competitiveness of SOE is decided by higher autonomy and responsibility for the business result, in line with the State's role as an investor in creating necessary conditions for SOE operations. The State should

only have limited liabilities within its investment capital in the SOE. Therefore, from the angle of managing the SOE under full state ownership, the transformation of eligible SOE into one-member limited liabilities companies is one of the appropriate measures and solutions to achieve this target.

The one-member limited liabilities company being transformed from SOE is a special type of limited liabilities company. It is still under state ownership and owned by an authorized organization. However, its organization, registration and operation are in accordance with the Enterprise Law. SOE restructured under this form will create profound changes in the relationship between the State with companies such as: reducing interference, limiting state's responsibilities, reducing state subsidy, eliminating non-profit welfare obligations for the enterprise or having such obligations compensated for the enterprise by the governing body based on market price, enhancing the State's role in the enterprise as an investor. In terms of management, SOE once transformed into one-member limited liabilities companies will have to form their management structure following the model of Board of Directors or Corporate President.

Things to do to perform this transformation:

- To allow the transformed enterprise to own their assets, have the autonomy and independent legal person status in economic relations and to decide their business in terms of investment, joint venture, capital contribution, stock purchase, sales, liquidation, pledge and transfer of important assets.
- To allocate enough chartered capital for the enterprise. For businesses subject to legal capital, the chartered capital must not be lower than the legal capital.
- To eliminate all forms of interference by state bodies in the enterprise such as movement of the enterprise capital and assets, decision on leasing, mortgaging and pledging important assets of the enterprise, etc.
- SOE being transformed into companies must take corporate responsibilities; to rule out the policy on debt write-off or circling by state bodies and other forms of State subsidy.
- To re-assign, decentralize and clearly define the relationship of bodies, divisions holding the ownership of SOE in order to determine the sole authorized organization to represent the ownership.

The above changes will facilitate the enterprise in taking autonomy, responsibility in business operation and to be equal with other enterprises to enhance the effectiveness and competitiveness.

However, the transformation is a process. Not all of the SOE can transform into one-member limited liabilities companies. Some of them must remain their operation under the Law on State-Owned Enterprise. For SOE standing outside the equitization, ownership diversification and transformation into one-member limited liabilities companies, they will continue to operate in accordance with the Law on State-Owned Enterprise. There is also an urgent need to perfect the managerial and legal issues for these enterprises. It is necessary to re-adjust the external relationship of the enterprise with the State as well as the internal management relationship of the enterprise.

In terms of the relationship with the State, in general, SOE do not receive enough State initial investment

capital upon establishment, only investment in fixed assets. Many enterprises cannot meet the requirement for minimum working capital. The reason is the State is short of capital, investment is scattered, unclear provision by laws for the capital amount the State must invest in enterprises, lack of distinction between chartered capital and investment capital. The current regulation only provides for newly-established enterprises to receive a part of the whole of state investment for initial chartered capital. Due to this regulation, the responsibility for state investment in owner's equity is not clear and sufficient. A survey on 180 SOE in 7 provinces and cities have shown that up to 63.69% of the enterprises argue that the State is not capable of providing enough chartered capital for enterprises and only 22.78% of the enterprises receiving regular state additional capital¹

Therefore, together with supplementing the regulations on state responsibility in providing enough chartered capital for newly-established SOE, it is necessary to make available more incentive policies for operating SOE short of state initial capital who are operating on loans and their own capital and making profit.

Currently, enterprises still have to bear the burden from the old mechanism of state subsidy period one of which is the large redundant labor force from the centralized planning period now being employed under permanent contract. Enterprises also have to take welfare responsibilities originally taken care of by state bodies. It is necessary to clear define assets, debt, labor and to separate non-economic and social activities from the enterprise's operation.

In terms of internal management issue of SOE, the weak points are marketing activities, personnel management and labor issues.

The survey on enterprises have shown that most of the enterprises go for the business mission of quality and customer-oriented priority. It means that those enterprises have seen the way out in the open-door context for international integration and competitiveness. However, it is those enterprises who are far from the competitive edge in terms of information technology, marketing, finance and other factors with impact on the output such as business promotion, marketing channels, skills and information. There remains a big portion of enterprises being evaluated as weak and very weak in terms of electronic commerce (e-commerce) compared with other competitors². It can be seen that most of SOE have not been able to approach modern marketing techniques and this has affected product output and the competitiveness of SOE.

Therefore, it is necessary to enhance the marketing capability for enterprises. This is the responsibility of enterprises at first. However, the State should share a part of the responsibility. The State need to support enterprises on two aspects. The first one is the organization of information system, information collection and information distribution, organization of business promotion activities. The second one is to make financial

¹ The survey was conducted by the Central Institute for Economic Management in coordination with the Japan International Cooperation Agency in the provinces and cities of Hanoi, Hai Phong, Thanh Hoa, Da Nang, Ho Chi Minh City, Can Tho.

² The survey on enterprises' opinions show that ratio of self-evaluation by enterprises on their weakness in e-commerce is 50%, trade promotion 31%, marketing channels 27%, marketing skills 20%, marketing information 18%.

policies more flexible for enterprises with different marketing needs so as to remove the common ceiling of 7% of total net cost applied for all types of enterprises³.

Currently, no uniform and accurate data is available for the technology situation of SOE. However, based on the common evaluation of enterprises, technology is their weak point in competition. Most of the enterprises under the survey argue that the lack of finance is the biggest difficulty for enterprises to renew their technology. The direct cause could be low effectiveness leading to the shortage of capital for technology renewal. But the deeply-rooted cause is that many enterprises fall short of information for their product output and are not aware of what products and services to be delivered for higher competitiveness, thus fail to obtain sufficient information for selection of technology. Enterprises also argue that the lack of information on product output and the knowledge of technology is the difficulty in renewing the production technology of enterprises⁴. Marketing and intermediary management apparatus of enterprises are the 2 weakest points in enterprises' technology skill and know-how. This issue is better viewed by enterprises at central management level and enterprises in big cities as well as ones belonging to corporations. This was reflected by the fact that there was a larger portion of enterprises of this type agree with the above opinion.

The reason to this situation is that the marketing activities of enterprises are still weak as mentioned above, hence, enterprises do not take product design into consideration. Not many enterprises realize that technology know-how like product design, production techniques are their weak points. It is also partly because the renewal of intermediary management apparatus in enterprises fail to keep pace with the transition to market economy. Most of the staff of the intermediary management apparatus were trained in the transitional period and before the renewal process.

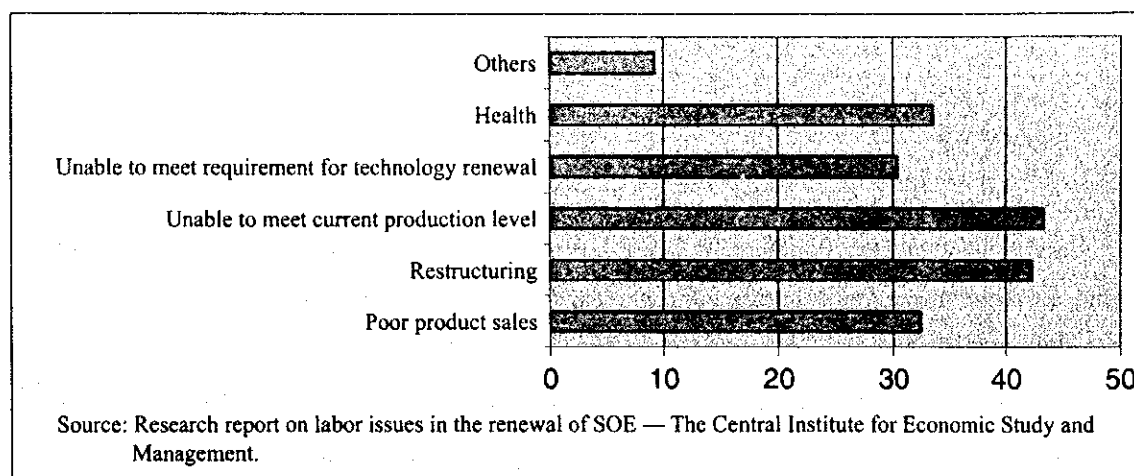
In terms of labor and personnel development, in accordance with the Law on State-Owned Enterprise, the Labor Code and other guiding legal documents, enterprises are allowed to hire, assign, use, train and dismiss their employees. This is an important innovative step in eliminating the involvement and imposition from the senior level on enterprises' labor planning, selection criteria, number of employees, selection location. It will also enhance enterprises' autonomy in the labor issues. One the one hand, such a reform has facilitated SOE to create the employment relationship with laborers based on market mechanism and business needs. One the other hand, as provided for by laws, enterprises cannot dismiss employees without voluntary agreement of the employees being recruited before 1 May 1995 who are with low qualifications and poor observance of working regulations or with poor health currently under permanent labor contracts so as to hire other younger, stronger and more qualified staff.

³ In accordance with Decree No. 27/1999/ND-CP of the Government dated 20 April 1999 on Amending and Supplementing the Regulations on Financial Management and Business Accounting for SOE (issued in connection to Decree 59/CP of the Government dated 3 October 1996).

⁴ According to the survey conducted by the Central Institute for Economic Manger in coordination with JICA, enterprises argue that the weakest point at the moment for enterprises is marketing and 42.78% of enterprises being questioned agree with this opinion.

Chart Main causes to labor redundancy

Unit: %



One of the factor that hinder the competitiveness of SOE is labor redundancy. There are many causes to this but the most important one is the imbalance between labor input and output. The recruitment of labor is easy and is decided by enterprises whereas the settlement of redundant labor force is very difficult due to legal involvement in the labor issue and a high ratio of laborers under permanent contract⁵ difficult to be refreshed or replaced by younger and more qualified employees. Meanwhile, enterprises run short of financial sources to support and compensate for dismissed employees. Therefore, this is the obstacle to the enhancement of competitiveness of SOE.

Besides, employee's failure in meeting the requirement for technology renewal is also another important cause to the failure in renewing technology. Another case is when the technology is renewed, labor redundancy arises.

The survey⁶ has revealed that the actual ratio of redundant labor force in SOE is 7.12%, plus the ratio of potential redundant labor force of 9.44%, the final ratio is around 17%⁷. Due to the above causes, the number of laborers in SOE does not show a remarkable decrease even though the number of SOE has been cut by over 50% for the past 10 years. The average number of employees of each enterprise under the survey for the look to have increased within the 3-year period from 1997 to 1999 (Table).

⁵ According to the survey of the Central Institute for Economic Management in coordination with the World Bank on 195 SOE in the provinces of Phu Tho, Ninh Binh, Dong Nai, Hai Phong, Ho Chi Minh City, Hanoi regarding the labor issues in SOE renewal, the ratio of labor force under permanent contract in these enterprises is 49%, long-term contract (1 - 3 years) 33% and short-term contract (below 1 year and temporary) 18%.

⁶ Survey on 195 SOE conducted by the Central Institute for Economic Management in coordination with the World Bank in the provinces of Phu Tho, Ninh Binh, Dong Nai, Hai Phong, Ho Chi Minh City, Hanoi.

⁷ The actual redundant labor force is the number of laborers whom enterprises' management cannot assign to any posts in the enterprises.

Potential redundant labor force is the number of labors with jobs but subject to being dismissed without affecting the enterprises' business operation.

Table The average number of employees for one enterprise under the survey within the 1997 - 1999 period

	1997	1998	1999
The average number of employees of one enterprise under the survey	538	552	582

Source: The Central Institute for Economic Management

To solve this situation: (1) - To define the right and responsibility of the enterprise management apparatus regarding the recruitment of labors and settlement redundant labor force in the enterprise so as to release the State from the obligation to solve the consequence of labor redundancy and failure in job assignment due to poor recruitment; (2) - To review the regulations on the solution for labor output, to facilitate the renewal of labor for SOE; (3) - To provide supplementary policies on solving redundant labor force.

These issues can be solved based on the following principles: (a) - Enterprises and the State are all responsible for the settlement of redundant labor force and to create new jobs; (b) - To settle redundant labor force by suitable policies with each measure for renewal of SOE and each type of labor; (c) - To ensure legal observance, hamper social unrest and encourage redundant employees to voluntarily terminate their contracts.

To apply either support policies or the policies in accordance with the laws based on each type of labor: (a) - For redundant and jobless employees due to enterprise dissolution and bankruptcy, the application of support policies will help them to find new jobs or support them in doing so. The State is responsible for settling all the benefits as provided for by laws as well as applying support policies for the laborers; (b) - for other types of laborers who can hardly join the job market and can be settled based on the Labor Code without support policies, current regulations regarding the labor issue should be applied (retirement, contract expiration, voluntary contract termination especially for ones with high technical expertise).

The problem in human resource development that SOE is now facing is salary and motivation for employees⁸. Currently, the State only sets the salary floor but not the ceiling. However, some limits are applied such as: the salary raise must be lower than the productivity growth, the maximum profit extraction into bonus and welfare fund must be equal to 3 months of salary. Besides, other regulations and conditions allow enterprises to mark up the minimum salary level by some adjustment ratio to determine the net salary value. Although these improvements have partly reduced state interference, the limits on fund for salary, bonus, welfare, etc. have discouraged healthy competition among industries. Such regulations should only be applied for industries and fields under state monopoly and subject to state control on price. For the competitive industries, it is advisable to remove the limit on salary and income and apply personal income tax instead.

Together with solving the problem of redundant labor force, to develop the human resource for SOE in the competitive environment, it is necessary to pay more attention to selecting, training and developing skills for management staff and professional skill for laborers. The survey result has shown that the need for training in

⁸ Out of 180 enterprises under the survey, up to 50.56% consider salary and 32.22% consider motivation for employees to be the problems faced by enterprises in the development of their human resource.

SOE is very big, including the training for heads of department in enterprises including managers. The types of training regarded by enterprises as suitable are of great diversity of which on-site training courses at enterprises and training in centers are considered by most of the enterprises to be the suitable ones. However, it is necessary to arrange training courses provided by schools, centers and other units in line with enterprises' needs because many enterprises have had to retrain their employees after recruiting them through such training bases.

For directors, deputy directors and chief accounts of enterprises, their responsibility and benefits should go in line with the business result and effectiveness. Income of these subjects should depend on the business result without the maximum limit. However, directors, deputy directors and chief accountants must be conditionally appointed and will have to resign if the enterprise books loss for 2 consecutive years due to their objectiveness. They are also subject to material liabilities and legal proceedings in case of false decision.

2. Re-organization of corporations

Corporations are the main pillars of the state economy as well as the entire economy. Currently, Corporations own 1,534 member enterprises with independent business accounting, a 27.5% of the total number of SOE, holding 94% of electricity output, 97% of coal output, 64% of steel output, 59% of cement output, etc. Although some member enterprises belonging to Corporations have been equitized, Corporations are still considered by the State to be in the development trend and playing an important role in the economy. Therefore, it is necessary to continue to seek the solutions to enhance the effectiveness of Corporations, mainly how to surmount major shortcomings in the economic relationship among enterprises belonging to Corporations and internal management of Corporations. These shortcomings show the most in 2 aspects: (1) - The establishment format of Corporation and the link among enterprises of the Corporation; and (2) - the model of Board of Directors, management relationship between the Board of Directors and General Director.

A survey on 212 enterprises being the members of 25 Corporations (including both Corporations 90 and 91) have shown that up to 75.61 of the member enterprises propose changes in the format to join Corporations, 81.01% of the member enterprises propose changes to the structure of organization and management of Corporations. These proposals seemed to be more urgent for Corporations 90 as no member enterprise consider the organization and management of these Corporations to be suitable⁹. The reason is most of Corporations follow only one model of organization in the sample Charter with monotonous links with simple connection which are not yet developed to the point where capital investment is made between the Corporation and its member enterprises as between economic entities.

For Board of Directors, most of Corporations 90 (81.82%) argue that with the current functions, the Board

⁹ The survey was conducted by the Central Institute for Economic Management in coordination with the Japanese International Cooperation Agency (JICA) on 212 member enterprises of 25 Corporations.

of Directors has little influence on the enterprise. The reason is the Board of Director does not have enough functions and rights, lack of defined responsibilities and motivations for the members of Board of Directors. Some member enterprises even argue that the Board of Directors is not necessary.

Regarding the re-organization of Corporations, it is necessary to focus on the 2 issues mentioned above in order to solve the lack of coordination among member enterprises and to create multi-sided links for the Corporation to become an uniform economic entity and to create the premise for Corporations to become economic groups.

Orientations and solutions to the re-organization of Corporations as follows:

- (1) To change to concept of members of Corporations. Members of Corporations are enterprises subject to Corporations' control in terms of absolute investment or controlling investment. Members of Corporations may include:
 - a) Enterprises being 100% state-owned, including:
 - + Member enterprises with independent accounting
 - + Member enterprises with dependent accounting
 - + Non-productive units
 - + One-member limited liabilities company
 - b) Multi-owned enterprises with controlling stake of Corporations (joint-stock companies, limited liabilities companies, joint-ventures)
- (2) The relations between Corporations with all member enterprises should not be categorized as similar. These relations depend on capital contribution or investment capital (in case of member enterprises being joint-stock companies, joint-ventures, limited liabilities companies), decentralization in accounting and decision making for member enterprises (in case of member enterprises being fully owned by the State).
- (3) To change from administrative and centralized alliance among member enterprises and the centralization of capital allocation from Corporations to member enterprises into firmer alliances in terms of capital through investment and joint-stock capital contribution to each other inside Corporations, which will originate from the needs of member enterprises. To diversify the types of Corporations to free them from one unique model. To allow the transformation and new establishment of Corporations under different types based on the specific characteristics of each Corporation.

First, the alliance model of parent company and subsidiary. This model is based on the natural development of SOE through the facilitation for SOE to independently accumulate capital, develop industry, expand business scope, establish branches for development into subsidiaries, to facilitate the parent company to control its subsidiaries. The State will not interfere in the decisions on management, investment, personnel issue, capital movement, etc. of the parent company toward its subsidiaries.

Second, the alliance model as above with the Corporation directly involved in business based on

the direct management of some large companies with close relationship and on the capability in controlling other member enterprises (or other member enterprises may depend largely on this enterprise). To gradually develop subsidiaries under the direct control of the Corporation into parent companies.

To implement the transformation for the existing Corporation under this model, it is necessary to scan through all member enterprises and pick up the ones to be under the direct control of the Corporation and gradually develop them into parent companies.

Third, to perpetuate the alliance model of the existing Corporation based on the bundling of member SOE in close relationship in terms of economic benefits, technology, supply, consumption, service, information, training, research, marketing in some economic and technical industries in order to enhance the capability of centralization, specialization and cooperation of production and to increase the effectiveness of member enterprises and Corporations.

However, this type of Corporation should be limited within some necessary fields that requirement fast establishment to solve the urgent needs for the economy. Corporations is the direct business units through other enterprises with independent accounting, dependent accounting, non-profit units, joint-ventures, joint-stock companies with the Corporation's or member enterprises' capital. To scan through all Corporations and allow only some of them with real needs to apply such a alliance model.

- (4) To amend the principles for establishment and alliance in the sample Charter for the existing Corporations issued in connection with Decree 39/CP of the Government dated 27 June 1995 into a new Decree of the Government. In that Decree, the Government should only indicate the orientation and guidance on basic principles for the alliance models in Corporations. Corporations are not forced to chose a specific alliance model, except for some special ones with centralized accounting.
- (5) To renew the macro mechanism and policies and implement administrative renewal, government organization, nomination regime, salary policy for the management of enterprises.
- (6) To create firm alliance inside Corporations and prepare for the establishment of groups, Corporations (including Corporations 90 and 91) should be allowed to have a control over the proceeds from stock sales, over the remaining stocks in equitized member enterprises and dividends paid out after tax, over capital contribution to joint-venture and in other enterprises.
- (7) To amend the functions, duties, rights, responsibilities, structure of Board of Directors in accordance with each alliance model as mentioned above in point (3).

Study on Management Issues in State-Owned Enterprises

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Introduction

- Findings in Phase 2

Findings from the JICA-CIEM SOE study project in Phase 2 pointed out that the gap between the existing legal and governance frameworks for SOEs and the needs for a modern-styled governance of companies and transformation of SOEs to a market economy should be soon narrowed. Current solutions to a continuing SOE reform are aimed at solving such legal loopholes and weaknesses.

- SOE reform process

The SOE reform process has been undertaken by the following key measures: step-by-step broadening the autonomy of SOE in conformity with a market economy; establishing general corporations in a number of industries; equitising SOEs; assigning, selling, contracting out and leasing out small sized SOEs; merging and dissolving a number of lingering loss-making SOEs which are not required to be retained.

These measures may be categorised into two groups, namely SOE restructuring measures which result to changes in the ownership structure of SOEs and SOE restructuring measures which are taken without changing the ownership structure of SOEs. SOEs which are subject to the first group of SOE restructuring measures include those which are to be equitised, assigned, sold, contracted out, leased out, dissolved, bankrupt with a view to renovating the structure of SOEs, reducing the number of poorly performed SOEs and SOEs where there is no need for dominant shareholding by the State.¹

- Objectives of Phase 3

According to the draft 5-year plan (2001-2005), the Government of Viet Nam is committed to further and complete the SOE reform in the five years to come with a view to enhancing their effectiveness, modernising the enterprises, accelerating the accumulation and concentration of capital, improving the competitiveness of the enterprises and preparing for implementation of AFTA commitments to economic integration by the 2006. The joint JICA-CIEM research project (Phase 3) is designed to focus efforts on the researching and finding policy solutions to meet the Government of Vietnam's requirements for SOE reform.

- Approach

In order to solve the complex management issues in SOEs, the "comprehensive solution" approach is proven suitable to resolving SOE problems. Any remedies to address SOE problems should not be include one or a number of measures but should be treated as a comprehensive solution for each individual SOE

¹ Between 1992 when this policy has been introduced and August 2000, only 460 SOEs have been entirely or partially equitised accounting for 7.4% of the total number of the existing SOEs and 1.6% of the state capital in SOEs.

and for the entire state sector, although one should remember that proper solutions to different SOEs may be varied. Among components of a comprehensive solution, I focused on two important issues: labor issue to resolve labor redundancies and technology issue to renovate technologies.

- **Methodology**

The JICA-CIEM project has conducted a survey of 180 SOEs by questionnaires, interviews, carried out direct interviews with managers of 20 SOEs, and held two workshops in Vung Tau and Ha Long cities.

- **Report composition**

This report consists of three chapter following: Management issues; Labor Issues; and Technology Issues.

I. Management issues

1. Purpose of survey

Cooperated with CIEM, JICA carried out “the Survey on legal matters and management issues in SOEs”.

- (1) To review the current situation of exercising legal regulations at SOEs, especially focus on identifying the gap between legal regulations and their implementation and the main causes of this gap.
- (2) To review, analyze the role, functions, rights and obligations of the owner State; mechanism of decentralization, and authorization of the ownership at central and local levels; particularly to find out the overlapping functions and responsibilities among representatives of the owner and the overlapping intervention of such organizations to operations of SOEs.
- (3) Furthermore, to examine the constraints for business operations and petitions of enterprises to the Government in order to raise out suggestions for reforming SOEs, and improving their performance in Viet Nam.

2. General introduction on the survey

The objects of research have to meet following requirements:

- (1) Most of them are business SOEs, only few are public-utility enterprises;
- (2) They have the organism in charge: ministry, provincial, district People’s Committee; or they are member units of State Corporation 90 or 91.

The Research Group has selected a list 189 SOEs for examining, 17% larger than required sample (160 SOEs) to provide for the given error occurred during the research. The scope of the research spread over 04 regions: (1) Midland- mountaineous areas in Northern include of Phu Tho; (2) Red river delta areas include of Ha Noi, Hai Phong; (3) Coastal areas in Middle include of Thanh Hoa, Da Nang; (4) areas in Cuu Long

river delta and South East delta include of Ho Chi Minh city, Dong Nai.

The research has been carried out on the content of questionnaire prepared by experts of JICA and experts of Central Institute of Economic Management.

Questionnaire composes of questions and data. The questions were prepared for examining and collecting information on organization, management, director of enterprise, relationship between enterprise and government agencies, related financial institutions. The data includes of data on asset, financial situation in recent years.

The Research Group selects enterprise on the basis of random sample, and interviews directly. The questionnaires are sent to enterprises. People who answer are usually the director or deputy director with the assistance of financial and accounting department, planning department, or related departments in preparing data on production and financial situation.

In return, 180 questionnaires has been collected, of which 166 are fulfilled, and 14 lack of data on financial situation. Distribution of investigated enterprises has met the requirements of sample on branch, region, organism in charge and legal form (Table I-1).

Table I-1 Distribution of investigated enterprises on branch, region, and business type

Unit: %

Criteria	Central			Local			Business type	
	Overall	General cooperation	Ministry	Overall	Provincial people's committee	District people's committee	Business	Public services
General	45.00	36.11	8.89	55.00	95.96	4.04	91.11	8.89
Area 1	20.0	20.0	0.0	80.0	85.0	15.0	77.78	14.81
Area 2	56.14	43.86	12.28	43.86	100.0	0.0	92.98	7.02
Area 3	37.5	32.5	5.00	62.5	96.0	4.0	92.50	7.50
Area 4	50.0	37.93	12.07	50.0	100.0	0.0	91.38	8.62

Note:

Area 1: Midland area in the North (Phu tho)

Area 2: Red River Delta (Ha noi, Hai phong)

Area 3: Central area (Thanh hoa, Da nang)

Area 4: The East areas and Mekong river delta (Ho Chi Minh, Can tho)

3. Analysis on management of SOEs

Here, management issues are focused. Legal matters are handled by another analyst.

(1) Philosophy

In business philosophy of most of SOEs priority is given to product quality (80.56% of investigated SOEs), the next is given to consumer orientation (53.33%). This shows that in the situation of the participation of many enterprises, opened-market, and international integration and competition, SOEs has attached much importance to quality and consumer-orientation for their existence. Just small number of investigated SOEs give priority to export-orientation (33.4%) or to market share (13.89%). There is

also a large proportion of investigated SOEs consider that it is necessary to combine business targets with labor-welfare targets and budget contribution targets.

Table I- 2 Corporate Philosophy

Philosophy	No.	%	Hanoi	Da nang	Phu tho	HCMC
Quality is No. 1	145	80.56	93.8	68.4	76.0	80.6
Export orientation	62	34.44	43.8	21.1	32.0	51.6
No.1 is market share	25	13.89	18.8	21.1	20.0	9.7
Customer orientation	96	53.33	59.4	31.6	64.0	51.6
Welfare of employee	92	51.11	62.5	26.3	60.0	45.2
Contribution to country	95	52.78	65.6	26.3	60.0	61.3
Others	11	6.11	3.1	0.0	4.0	3.2

(2) Awareness of competitiveness

When comparing with competitors, most of investigated SOEs express that they are stronger or equal to their competitors on every aspects. In which nearly half of investigated enterprises (48,34%) answer that they are strong or very strong on the aspects of quality supervision in comparison with their competitors and 46.12% of enterprises have the same valuation on the aspect of production. Besides thier advantages, a part of SOEs see that they are running disadvantages on the aspects of communication technology, marketing, finance. The percentage of SOEs running disadvantage in these aspects are 27.78%, 23.92%, and 22.78% in turn.

Investigated SOEs valueate their competitiveness on each aspect as follows:

Table I-3 Valuation of SOEs on their competitive advantages

Competitive advantage	Very strong	Strong	Equal	Weak	Very weak
Marketing skill	1.67	23.89	47.78	20.56	0.00
Marketing information	1.11	20.56	53.33	18.89	0.56
Product development	0.56	30.56	48.33	12.22	0.00
Price	1.11	20.56	66.67	5.00	0.56
Marketing channel	1.11	16.67	45.00	27.22	0.56
Sales promotion	0.00	15.00	40.56	31.67	1.67
E-commerce	0.56	3.33	23.89	50.00	10.56

Most of them consider that they are at the same level with their competitors on the aspects of price, marketing. On the aspects of sale promotion, marketing channel, and particularly e-commerce, many enterprises consider that they are at low and very low level in comparison with their competitors. This reveals that most of SOEs has not accessed to modern marketing technology.

However, they have not attached importance to such issues but they consider improving and developing new products in order to meet the demand of consumers, and establish an effective system of marketing information as the most important target in improving their marketing activities.

(3) Marketing

To improve ability to receive market information, SOEs have used many methods like via commercial exhibition, marketing groups, or commercial affair in abroad, or Internet and others. Those methods that most of enterprises use are commercial exhibition and marketing groups. The role of commercial affair in abroad in providing marketing information is still limited, just 20% of investigated SOEs use this method.

The demand for market information of enterprises is various, including information on market size, legal environment, hobbies of consumers, potential customers, strategy of competitors, ... The research outcomes have revealed that investigated SOEs pay attention to information on hobbies of consumers (48.33%), strategy of competitors (45%), and market size (42.22%), legal environment of the markets (32.78%).

(4) Decision making process

Reviewing process of making management decision, most of enterprises consider that it is at quick and acceptable level. No enterprise makes decision at low speed. This proves that there have many efforts of SOEs in improving management mechanism in order to speed up the process of making decision.

(5) Ownership

Most of investigated enterprises expect to maintain as SOEs (65.56%), equitizing the whole enterprise (21.67%), just 3.89% of enterprises expect to be converted to sole-owner limited liability company. In which the percentage of enterprise expecting to maintain as SOEs among local SOEs is higher than that one among central SOEs and member enterprises of state corporations. This reflects that most of SOEs, particular local and small-sized enterprises, due to their backward technology, do not expect to convert into other ownership or to sole owner limited liability company.

Table I-4 Plan to reorganize SOEs

Unit: %

Form of reorganization	Overall	State corporations	Central enterprises	Local enterprises
Converting sole owner limited liability company	3.89	4.62	3.70	4.04
Maintaining SOEs	65.56	64.62	64.20	66.67
Equitizing	21.67	21.54	23.46	20.20
Tranferring	0.56	0.00	0.00	1.01
Leasing	0.56	1.54	1.23	0.00
Contracting	1.67	1.54	1.23	2.02
Selling	0.00	0.00	0.00	0.00
Others	6.11	6.15	6.17	6.06

(6) Export

Most of enterprises (53.33%) expect to develop their exports. Proportion of enterprises that expect to increase their export in 3 years at the rate above 50% is 8.33%, and at the rate from 20-50% is 21.67%, and at negligible rate is 23.33%. Besides nearly 46.67% of enterprises do not pay attention to export but mainly to domestic market.

(7) Constraints

The constraints to production of SOEs is various and at medium level (Table I-5). In general, SOEs face no constrain on unskilled labor, but constrain on skilled labor, lack of technology, of investment capital, and backward machines as well as weak system of distribution.

Table I-5 Constrains to production of SOEs

Unit: enterprise, %

	Total		Little		So-so		Severe		Very Severe	
	No	%	No	%	No	%	No	%	No	%
Shortage of unskilled worker	155	86.1	15	8.3	10	5.6	0	0.0	0	0.0
Shortage of skilled worker	33	18.3	58	32.2	82	45.6	7	3.9	0	0.0
Shortage of local materials	97	53.9	49	27.2	24	13.3	8	4.4	2	1.1
Shortage of imported materials	88	50.6	62	35.6	22	12.6	2	1.1	0	0.0
Outdated machinery	32	18.2	41	23.3	84	47.7	19	10.8	0	0.0
Shortage of investment capital	14	7.8	33	18.4	88	49.2	40	22.3	4	2.2
Shortage of hard currency	75	45.2	46	27.7	32	19.3	11	6.6	2	1.2
Shortage of technology	32	18.0	68	38.2	68	38.2	9	5.1	1	0.6
Shortage of quality control	58	33.9	82	48.0	31	18.1	0	0.0	0	0.0
Bad delivery system	51	33.6	47	30.9	47	30.9	6	3.9	1	0.7

(8) Technology renovation

A large number of investigated enterprises (55.56%) have not invested adequate production equipments. Proportion of those enterprises considering that they are invested adequately is 37.78%. Only 09 enterprises of 180 investigated enterprises (5%) are invested very adequately. This means that inadequate investment has affected to the technological level as well as competitiveness of enterprises.

Most of enterprises consider the lack of financial source as the most difficulty of them in improving technology. This could be a direct factor of the situation of slowly technology improvement. The root cause is the lack of information on output markets, and insufficient technological information cannot ensure the competitiveness of enterprises. Member enterprises of state corporations, central enterprises have more favorable conditions in accessing to technological information than local enterprises, but the percentage of enterprises answering that they face insufficient information and lack of technological knowledge which the main constraints to technology improvement at SOEs among central enterprises, and member of state corporation is higher than that one among local enterprises.

(9) Cost reduction

Solutions for reducing cost of products and services that SOEs usually apply are improving equipment and training laborers. This shows that SOEs recognized the importance of technology improvement and labor solution. Furthermore, solutions for improving product categories, material attract a rather percentage of enterprises which consider them as solutions for reducing cost of products and services of enterprises. The central SOEs and member enterprises of state corporations attach the importance to solutions of improving equipment and retraining laborers rather than to solution of improving product categories, material as local enterprises do. This outcome shows that though the material expenses take a large part in product cost of enterprises, during process of reducing cost they (particularly central enterprises) pay much attention to equipment improvement but not to solution of improving and economizing material expenses.

(10) Lack of capital

According to Law on SOEs, Decree 59/CP (1996) and Decree 27/1999/ND-CP (1999) promulgating regulation on financial management and cost accounting at SOEs, out of state investment capital, enterprises have the rights and responsibility on mobilizing capital for development in the forms of issuing bonds, stocks, borrowing, receiving contributed capital and other forms. Despite such regulation, the research has revealed that 72.78% of investigated enterprises is in lack of capital for operations. Of which, the share of enterprises in shortage of capital among local enterprises, enterprises in Northern mountainous-middle land areas, Red river delta is higher than that one among central enterprises, member enterprises of state corporations and enterprises in other areas. Surprisingly, the proportion of enterprises in the shortage of operating capital is very high, whereas some local enterprises in Can Tho are in capital surplus.

To deal with capital shortage, enterprises follow many methods in mobilizing capital. The method that enterprises usually follow is borrowing from state-owned commercial banks. Nearly 86.67% of enterprises mobilize capital via state-owned commercial banks. In Red river delta, Ho Chi Minh City, Northern Mountainous-Middle areas there is 90% of investigated enterprises mobilize capital by borrowing state-owned commercial banks.

To overcome the difficulty of capital, besides borrowing banks, other enterprises, and laborers working at enterprises, investigate enterprises also borrow from non state-owned commercial banks, international credit institutions, even using capital of other enterprises, applying for subsidy from the Government (22 enterprises, 12.22% of investigated enterprises have been subsidized by the Government). Only few enterprises (8 enterprises, 4.44% of investigated enterprises) operate on their own capital.

(11) Financial difficulties

A large number of enterprises (60.56%) faces financial problems. In which, proportion of such enterprises in local enterprises is 66.67%, particularly proportion of such enterprises in Phu Tho is highest (84%).

When facing financial difficulties, most of enterprises propose to their superior organizations. In which, 92.31% of member enterprises of State corporation propose to the corporations, 87.5% of independent enterprises directly under ministries propose to their regulating ministries, 81.82% of local enterprises propose to the people's committees or the Services entrusted by the people committees in regulating those enterprises. Nearly of investigated enterprises (47.78%), regardless the directly regulating organizations usually come to the banks when facing financial difficulties. Only one enterprise comes to other organization for consultancy when facing financial problems.

As mentioned above, most of enterprises facing financial difficulties rely on the subsidy from their superior organizations and banks, only few enterprises rely on the support from other consultant organizations. This situation is due to the undeveloped or low quality of consultant organizations.

(12) Weakness

Investigated enterprises value their fundamental weakness related to skill and know-how as follows:

Table I-6 Valuation of enterprises on their most weaknesses in skill and technology:

Unit: %

Criteria	Overall	State corporations	Central enterprises	Local enterprises
Marketing	42.78	44.62	46.91	39.39
Production technique	11.11	10.77	11.11	11.11
Accounting	5.56	3.08	3.70	7.07
Product designing	13.89	15.38	14.81	13.13
Export Procedures	2.22	1.54	1.23	3.03
Intermediate Management Machine	32.22	32.31	29.63	34.34
Others	3.89	4.62	3.70	4.04

According to enterprises, marketing and management of the intermediate to the board of directors are two worst points in their technological skill and know-how. Central SOEs and those of big cities with higher proportion of agreed idea see this clearer from them. This is real situation of enterprises currently.

The reason is that enterprises have not yet done marketing adequately, thus they cannot find market, and therefore there is no direction for technological renovation. At the same time, it is blamed for the intermediate management to the board of directors of enterprises, which has not yet changed the requirements of market mechanism. Most officers working at this level were trained before and in transition time.

Not many enterprises consider technological skill and know-how, such as product design, production technique, accounting, and import-export procedures as their worst. Due to weak marketing, enterprises

do not pay much attention to product design. Within the currently covered market, enterprises can be sure of production technique and product design. In terms of accounting, at present enterprises are autonomously applied according to the law, so that enterprises do not find this as their weakness.

(13) Human resource development problem

Up to 50.56 percent of enterprises point salary as their problem in developing human resource while 32.22 percent of them blame for incentives. Members of large state corporations, central SOEs, SOEs in big cities like Hanoi, Hochiminh city, where costs of living are higher usually consider salary as a problem when developing human resource.

There are 38.89 percent of enterprises having problem with training in human resource development. Before 6/1999 (the time at which Decree 27/1999/ND-CP of Government and guiding papers on implementation of the Ministry of Finance given out), enterprises were not allowed to calculate expenses for training into operational costs. While operational costs are still high, enterprises have to compete severely both in terms of quality and price of products and services, thus many enterprises do not have money for training.

Promotion and occupational upgrade and future are also seen as problem facing SOEs, however only 16.11 percent of enterprises agreed with the idea. The Law on SOEs and regulations on division of human management show that promotion and occupational upgrade are done in accordance with level of state agencies and forms of enterprises. With large state corporations' members, appointment and discharge of any position in management board must be done by the mother. Directors of non-management board enterprises appoint managers and vice-managers of departments. Occupational upgrade from major officer level upgrade are done in accordance with level of state agencies and forms of enterprises. The future of laborers is guaranteed by the Labor Code even in case of equitization, diversification of ownership, which shifting SOEs to non-state sector. Therefore, enterprises do not pay much attention to this problem.

Table I-7 HRM Problems facing enterprises

Problems	No. of agreed enterprises	Proportion %
Salary	91	50.56
Incentives to labors	58	32.22
Training	70	38.89
Promotion, occupational upgrade	29	16.11
Employment	33	18.33
Other	3	1.67

(14) People subjected to training

72.22 percent of enterprises agree that their managerial staff at department level need training while 60.56 percent of which think laborers are deserved and 46.11 percent of enterprises would like to give training to the supervisors of their work-yards. 15 percent of enterprises show the need for have their directors trained, while 1.67 percent of enterprises think their General Director are subjected to be trained. More central SOEs than local SOEs reveal that their directors need to be trained.

Table I-8 People subjected to training

People subjected to training	Total		Corporation		Central enterprises		Local enterprises	
	No.	%	No.	%	No.	%	No.	%
Labors	109	60.56	38	58.46	47	58.02	62	62.63
Supervisors	83	46.11	32	49.23	36	44.44	47	47.47
Administrative staff	43	23.89	21	32.31	24	29.63	19	19.19
Department leveled managers	130	72.22	48	73.85	55	67.90	75	75.75
Managers	27	15	12	18.46	14	17.28	13	13.13
General Directors	3	1.67	1	1.54	1	1.23	2	2.02
Others	9	5	6	9.23	6	7.41	3	3.03

Above table shows the large demand of training in SOEs, especially the demand for training of staff at department level and directors. However, number of directors, specially directors of local SOEs have self-satisfied psychology.

(15) Forms of training

There are many forms of training that are appreciated by enterprises. Some enterprises like to employ two or three forms of training, among which arrangement short courses at enterprises and training center are thought to be suitable with most enterprises. Besides, sending people overseas to be trained are also reasonable. Large state corporations' members, powerful enterprises, which need highly skilled labor agree that sending people overseas to be trained are necessary and suitable to enterprises.

Table I-9 Forms of training appropriated by enterprises

Forms of training	No. of agreed enterprises	Proportion %
Short course at enterprises	119	66.11
In center of training	97	53.89
Consultant from outside	14	7.78
Overseas training	20	11.11
Other	9	5

II. Labor issue

1. Study hypothesis

In transition from central planning economy to market economy, labor issues such as labor redundancy, salary system, social insurance system, and etc. are the most important and most critical for SOE management.

State had directly conducted delivery of labor force to the enterprises, during central planning age. In employment, laborers actually contracted with not enterprise but State. Enterprises were given labor force by State but were not given light of dismissing employee. SOEs must employ them as permanent workers and take care them after retirement with pension. Employment were based on permanent relationship between state and laborers.

In market economy, enterprises has to make labor contract with laborers. Enterprises has limited responsibility for social insurance such as housing, health and pension. Employment should be based on labor market.

Reforming from old type employment to market base employment has to be achieved as soon as possible for competitiveness of economy. This is a key of SOE reform.

2. Human resource management problem in SOEs

In terms of human resource development, according to Law on SOEs, Labor Code and other guiding documents, enterprises are allowed to employ, arrange, train and dismiss laborers. This is an important step in alleviating the higher-level agencies' binding to enterprises in terms of plan, employment region, which improve the autonomy of enterprises.

On one hand, the renovation has enhanced SOEs create the relation with laborers under market mechanism according to their business requirement. On the other hand, as stipulated by Labor Code, enterprises can not discharge laborers, who employed before 1/5/1995 although they are un-skilled, undisciplined or too weak, to employ young, healthy and skilled ones.

Because of the easiness in employment but difficulty in solving abundant laborers, in addition, supportive financial resources are insufficient, the number of SOEs decreased but number of SOEs' laborers decreased insignificantly.

"Labor redundancy" is the most important problem for SOEs in transition to market economy. If labor redundancy is not solved, SOE would have big disadvantages in the competition of market:

- (1) Low profitability with holding non productivity workers
- (2) Constraint for improvement of management
- (3) Difficulties for investment of new technology
- (4) Motivation down

In the near future rearrangement of SOEs will be accelerated toward equitisation, merger, dissolution,

leasing and contracting out. A large number of unemployed labors will be appeared. Also international integration policy will enhance the efficiency of SOE resulted to a large number of redundant laborer.

3. Definition of labor redundancy

In the related reports and papers in Viet Nam, "Labor redundancy" is used for various meaning.

- (a) Overstaffing: No job in SOE but continue to be hired as employee
- (b) Surplus: Working with less productivity than expect
- (c) Jobless: Dismissed by enterprises on the SOE reform process

In this study, I use redundancy mainly as means of (a) and (b).

Also there are some confusion in using word of "lay off" and "dismiss". If I use "lay off" in this study, the meaning is "temporally dismiss, employ can keep registration in the SOE".

4. Estimation of number of redundant workers

According to CIEM-WB study on labor issue with 200 SOEs, actual labor redundancy in the SOEs surveyed is 7.12%, but potential redundancy (i.e. cutdown without affecting business performance of enterprise) is 9.44%.

If this 16.5% in total is adapted to 1.7million of present employee in SOEs, redundant laborers might be 280,000.

The number of labor redundancy was calculated based on reports from individual SOE. Each SOE determine the number of laborer properly in accordance to the rule "having job - having worker" and the legal regulation on work hours, work days and wages. It is problem that SOE can adapt some standard of productivity for estimation. Sometimes labor redundancy might be underestimated by lower productivity than market one.

In the interview with MOLISA I heard that a consultant hired by World Bank estimated labor redundancy in some SOEs at 30-40% of total employee.

The method of estimation labor redundancy should be discussed to make clear. At the same time statistics of labor should be improved.

In means of "jobless", Central State Enterprise Reform Committee estimated the number of workers in SOEs, which need to be arranged, is 429 thousand. Details of number of workers in arranged SOEs over the years 2000-2003 as below:

Table II-1 The Number of workers in state enterprises, which need to be arranged

(Unit: person)

Form of Arrangement	2000	2001	2002	3 years
Total	137,550	147,746	143,799	429,095
1. Merger, unifying	16,215	13,112	10,773	40,100
2. Equitization	87,245	90,122	93,183	270,550
3. Free transferring, selling, in contract, leasing	15,654	14,978	10,795	41,427
4. Dissolution, bankruptcy	17,988	28,658	28,710	75,356
5. Transforming into non-production entities	448	876	338	1,662

Source: Summary Report on Reform and Development of State Enterprises Since 1986 to the Present, Central State Enterprise Reform Committee, April 2000

5. Main causes of labor redundancies

According to CIEM-World Bank's "Study on labour Issues in SOE Reform", A relatively high proportion of surveyed SOEs were reported to rank the causes of their labor redundancies in the following order: (i) laborer's inability to meet the existing production requirements (43% of surveyed SOEs), (ii) adverse affects of the reorganization process(42.27%), (iii) stockpiling of products which triggered downsizing and hence labor redundancies(32.27%) and (iv) the employee's inability to meet technology transfer demands (30.41%). Furthermore, poor health conditions were also cited as a cause of much interest by many SOEs especially those which are operating in the mining industry (50%).

In addition to above study, I reviewed other existing reports related to labor issues and had interview survey and workshops with SOEs. The causes of labor redundancy were summarized in 8 items as follows:

- (1) Depression of selling products
- (2) Laborer's inability to meet new technology/ difficult to be retrained
- (3) Imbalance between recruitment and retirement/dismissing
- (4) Lack of modernized human resource management system
- (5) Insufficient training system
- (6) Inconsistent manager's responsibility and incentives
- (7) Salary Problem
- (8) Insufficient supporting system for labor redundancies

5-1. Depression of selling products

The labor redundancies in initial stage of reform were due to many reasons. The most important reasons were stagnant production, poor performance of business operations, glut of unsold products. The root of stagnant production might be in weakness of marketing.

According to "Management Issues in SOEs, JICA-CIEM, 2000", managers of SOEs recognize marketing is their most weaknesses in skill and technology. They evaluated their competitive advantages in marketing. Marketing channel and sales promotion are most weak points.

The demand for market information of enterprises is various, including information about market

size, legal environment, preference of consumers, potential customers and strategy of competitors.

5-2. Laborer's inability to meet new technology/ difficult to be retrained

Solutions for reducing cost of products and services that SOEs usually apply are improving equipment and training laborers. Some laborers cannot catch up new technology.

5-3. Over recruitment

A huge number of people were recruited by SOEs before and also after the enactment of the labor Code in 1994. The total number of SOE employees were 2.5-2.6 million in 1980's. Despite the number of SOEs decreased about half and at the same time SOEs dismissed about 0.7 million employee from SOEs, the number of employees at present is 1.7-1.8 million. Over recruitment in 1980's and SOEs' managers right to freely recruit but not easy to dismiss employees by Labor Code is one of the main causes of labor redundancy.

Table II-2 Number of employee in SOEs

(Unit: thousand person)

Year	91	92	93	94	95	96	97	98	99
Employee	2,007	1,876	1,854	1,794	1,514	n.a.	1,940	n.a.	1,900

Source: CIEM

5-4. Lack of modernized human resource management system

SOEs had human resource management based on permanent employment before 1990. Even after the big change of employment lead by Prime-Minister's decision on labor redundancy settlement in 1989 - 1992 and Labor Code in 1994, SOEs have not developed their new human resource management. We can find the problems as follows: (1) Inconsistency can be found between recruitment and dismissing. There is no discipline to hire employee. SOE should have long term vision for employment. (2) Skilled laborers tend to move to foreign companies or JV companies. SOEs have weak power to maintain their employee in the labor market.

5-5. Insufficient training system

"Study on Management Issues in SOEs JICA-CIEM" shows the large demand of training in SOEs, especially the demand for training of staff at department level (72%) and laborers (61%). While supervisors is 46%, director (15%) and general director (1.67%) are seemed low due to psychological reason to response.

Many SOEs having problem with training in human resource development. Before 6/1999 (the time at which Decree 27/1999/ND-CP of Government and guiding papers on implementation of the Ministry of

Finance given out), enterprises were not allowed to calculate expenses for training into operational costs. While operational costs are still high, enterprises have to compete severely both in terms of quality and price of products and services, thus many enterprises do not have money for training.

5-6. Inconsistent manager's responsibility and incentives

According to Law on SOEs, Labor Code and other guiding documents, enterprises are allowed to employ, arrange, train and dismiss laborers.

Actually, management (Directors and General Director) tend to recruit more than before, but hesitate to dismiss employee. There are some reasons of management's low intention to dismiss employee. Firstly as stipulated by Labor Code, enterprises can not discharge laborers who employed before 1/5/1995 when the Labor Code is in force² although they are unskilled, undisciplined or too weak. Secondly, management would like to maintain long-term human relationship. Thirdly incentives for management is insufficient mainly due to low level compensation to the management efforts.

Therefore, it is necessary to reconsider the right and responsibility of enterprises' management in employing laborers, solving redundant labor. At the same time, a incentive system including salary and bonus for management should be reconsidered.

5-7. Salary problem

For human resource development SOEs are facing the thorniest issue in payment and incentives to laborers. At present, only minimum salaries are stipulated by the State, speed of salary raising must be lower than that of laborer productivity. The State give stipulation on proportion that enterprises can take out from profit to set up rewarding and welfare fund, which is maximized at 3 months salary and also conditions in which enterprises can apply salary adjusted coefficient to calculate payment to laborers. Based on salary standard, which is registered by enterprises at authorized state agency or given by authorized state agency to enterprises (the State only approve salary policy for individuals in some important corporations), SOEs actively choose forms of payment and determine salary for the laborers.

5-8. Insufficient supporting system for labor redundancies

One of the most important causes of redundancy problems is insufficient supporting system:

- Re-training system inside and outside of SOEs
- Inadequate severance to encourage voluntary resignation
- Insufficient job promotion system
- Inadequate social security insurance covering only enterprises having 10 over employees

² The Labor Code was passed by the National Assembly of Viet Nam on July 23, 1994 and is in force since May 1, 1995

6. Analysis on characteristics of labor redundancies

Labor redundancy has fluctuation by some categories:

6-1. Locality

Local SOEs are meeting more severe labor redundancy than central SOEs. It might be due to difficult finding of retraining and new job opportunities.

SOEs in the North have higher percentage of redundancy than SOEs in the South.

6-2. Industry

According to reports in 1998, redundant labor amounted at 9.1% of the existing work force. It indicates that industrial and trade-services sectors are posed to a serious challenges of the overall renovation and SOE reform, while agriculture, forestry and fishery suffer a less severe impact.

6-3. Company size

Small and medium-sized enterprises (less than VND3Billion) have high redundancy than bigger size SOEs. (2.5 times higher than SOEs with a capital amount of over VND 5billion).

6-4. Employment contract type

Indefinite term employment has the highest percentage of redundancy (8.65%), the long-term contracted from 1 to 3 years (7.76%) and the lowest percentage is seen in seasonal employment under 1-year contracted (1.75%)

Northern provinces have a higher percentage of long-term and indefinite term contract employees than Southern provinces.

6-5. Characteristics of laborer

Female labour accounts for higher percentage of redundancy than male labour (7.62% and 6.65% respectively)

There is a positive correlation between redundancy ratio and age, highest is found in the age group of over 55 (10.22%)

Unskilled labor makes up the higher redundancy ratio than skilled labor. (19.35%)

Table II-3 Unnecessary employees who may be taken out of the SOEs work force without affecting their business performance of the total number of employees of each group

(Unit: %)

	Male	Male over 55	Female	Female over 50	Direct	Indirect	Skilled	Unskilled
Overall	9.20	20.96	9.70	25.64	9.76	7.63	12.94	23.89
Agriculture, forestry, fishing	0.47	0	2.38	0	0.60	4.71	0.76	9.09
Processing industry	7.65	18.58	7.88	17.35	7.98	6.64	5.92	25.17
Mining industry	16.61	63.41	44.60	33.33	24.03	18.69	26.13	45.75
Trade and services	9.35	17.96	9.81	36.39	9.90	7.26	45.94	16.69
Transportation, warehousing	10.07	17.39	9.42	77.78	10.59	7.95	13.42	30.64
Others	9.32	32.56	10.44	13.33	10.57	4.99	6.45	21.28

Source: Study report on Labour Issues in SOE Reform, CIEM-WB, 2000

Regarding professional qualification, employee in Central SOEs has higher educational career than Local SOEs and other business type.

Table II-4 Structure of industry labor in SOEs by professional qualification (As of 30-6-1998)

(Unit: %)

	Industry labor					
	Total	Of which				
		Post-graduated	College, university	Secondary school	Technical school	Others
Total	100.00	0.04	5.56	6.07	23.73	64.60
Central SOEs	100.00	0.06	7.91	7.70	42.49	41.84
Local SOEs	100.00	0.03	5.51	6.25	17.71	70.51
Co-operatives	100.00	0.01	0.97	2.21	3.72	93.10
Private enterprises	100.00	0.03	1.73	3.14	4.10	90.99
Ltd company	100.00	0.06	3.32	4.69	5.86	86.07
State share-holding company	100.00	0.05	7.89	7.91	14.74	69.42
Share-holding company	100.00	0.04	3.59	2.46	2.89	91.02

Source: Survey Results on Whole Industry in 1998, The General Statistics Office, Department of Industry

Table II-5 Percentage of labour redundancy by age and year of working

Unit: %

Quantity	By age			By year of working			
	Over 55	Between 40 and 55	Under 40	Over 30 years	20-30 years	10-20 years	Under 10 years
Total	10.22	9.85	5.98	6.26	7.57	10.90	4.85
By province							
TP HCM	12.15	4.39	2.87	13.40	2.75	3.37	3.46
Sag Nai	21.34	8.89	3.55	11.11	6.42	6.61	3.62
Hu Nei	3.49	9.17	8.15	2.42	6.77	12.98	6.55
HaiPong	6.67	16.87	9.61	6.25	16.29	18.77	5.81
Ninh Binh	17.86	15.40	8.89	6.84	8.44	18.01	7.07
PhoTha	4.26	11.30	8.43	4.93	8.25	12.32	7.66
By industry							
Agriculture, forestry, fishery	0	0.58	1.22	0	0	1.49	1.30
Processing	12.06	8.61	5.13	4.01	6.25	8.50	4.92
Mining	9.09	16.24	20.77	19.10	10.40	25.53	17.70
Trade-Services	6.84	11.08	4.82	6.00	9.65	12.19	2.64
Transport-Warehouse	20.83	13.43	7.40	15.87	14.97	8.78	6.88
Others	26.42	2.60	5.51	7.83	2.83	3.21	6.85

7. Review on current policy measures

In general, the current policies for labor redundancy were developed on the principle whereby the State, SOEs and the employee are jointly to solve the problems posed by labor redundancy. Main contents of the system of policies are as follows:

- (1) Policies to encourage redundant workers to resign voluntarily
 - Severance payment for job-stop, job-loss,
 - Severance pay for early retirement
 - Lowering retirement age for some industries with severance payment
- (2) Retraining employees when altering labor structure to help them find a new job
- (3) Maintaining employment after mergering, splitting, equitizing or diversifying form of ownership of enterprises
- (4) Providing loan with low interest to help jobless workers find jobs or self-employ

Some shortcomings are appeared in the mechanism, policy and legal framework:

- (1) Regulated allowance is low and mechanism fails to create conditions, opportunities for employees to get a new job
- (2) It is difficult for SME management to dismiss employees against their will
- (3) It is difficult for old age, poor health, limited qualified laborers to be retrained to catch up with requirements of new technology, new production
- (4) Redundant laborers tend to continue to pay social insurance in order to benefit social welfare in SOEs. Present social insurance system does not cover enterprises holding less than 10 employee.
- (5) Legal framework addressing labor redundancy is limited at direct compensation for laid-off workers, rather than helping them returning to the labor market

8. Policy recommendation

“Reforming from old type employment to market base employment has to be achieved as soon as possible for competitiveness of economy.” This is a key premises of this study. I recognized the inadequacy of labor market in and out of SOEs. Following policy measures are proposed for solution of the issues.

8-1. Principle

Both State and SOEs should aware the importance and complexity of labor redundancy issues. This issue is one of dilemma that simple measure can not solve but make confusion, such as training cost should be increased while financial source limited. Some measures well coordinated could be a breakthrough of this dilemma.

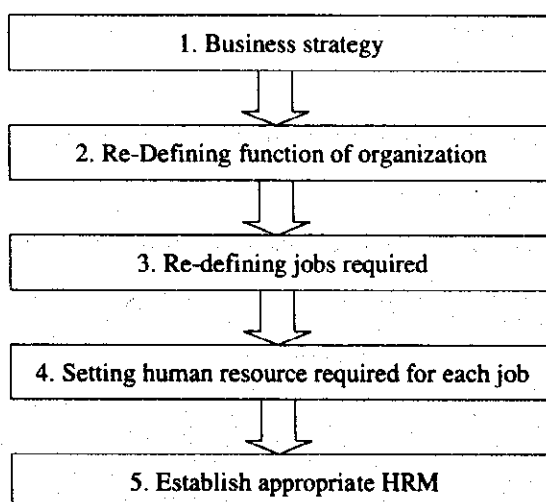
8-2. Measures to be taken by SOEs

(1) Modernize Human Resource Management (HRM)

A real solution of labor redundancy could be on good human resource management in SOE, SOE should renovate HRM system to fit to market economy. New HRM should include all employment sub-systems: recruitment, job allocation, training, evaluation, salary and bonus, and retirement.

ISO9002 is providing one of good scheme to look over the system. Also consulting services by experts are useful. Consulting for HRM renovation would be as follows:

Flow of HRM renovation



(2) Establish long-term human resource development plan

SOE should have clear vision and principle for HRM. Based on the principle a long-term human resource development plan should be prepared with long-term viewpoint in order to develop human resource and contribute to SME management. At the same time long-term business plan should be prepared.

8-3. Measures by State

State policies on employees in the context of rearrangement and restructure of SOEs must ensure reasonable benefits to the enterprises in term of social security, retraining, allowances to job losers based on a joint responsibility shared by both the enterprises and employees; facilitate the shift of labour, solve labour redundancy in SOEs and develop a labour market by the following measures:

- (A) Financial supporting system for labor redundancy
- (B) Improvement of training system
- (C) Improvement of job promotion
- (D) Creation of job opportunities

- (E) Clarifying manager's responsibility
- (F) Improvement of wage and salaries

(A) Financial supporting system for labor redundancy

State should prepare financial supporting system (setting fund) for following purposes:

- (1) Unemployment insurance
- (2) Help laid-off employees get loan with long maturity and low interest in order to generate new job
- (3) Help SOEs for retraining, improving skillfulness of redundant employees
- (4) Help SOEs for subsidy to redundant laborers

(B) Improvement of training system

State should improve infrastructure for human resource development of enterprises including all business type. The points of improvement are as follows:

- (1) Quality of training center including public and private
- (2) Accessibility to training center
- (3) Tax and financial policy for training
- (4) Skilled labor training
- (5) Overseas training for trainer
- (6) Promotion system for redundant laborer to be trained

(C) Improvement of job promotion

It is necessary for State to strengthen job promotion function not only through public job promotion center but also by private job promotion center. The points to be considered are as follows:

- (1) Quality of job promotion center
- (2) Accessibility to job promotion center
- (3) Information system

(D) Creation of job opportunities

For solution of redundancy problems in local areas, job creation should be considered with following points:

- (1) Feasibility of newly establishing household business
- (2) Incubation system for new business
- (3) Promotion of foreign direct investment (FDI)

(E) Clarifying manager's responsibility

Implementing proper policies to select excellent managers and clarifying responsibilities of the management. To this end, the State needs to provide on criteria and procedures whereby SOEs may take initiatives in selecting and appointing personnel through entry examinations; introducing term and conditional responsibility contracts with key personnel of the SOEs; renovating and rejuvenating managers of SOEs; organizing retraining of staffs with stress on international trade, market rules and marketing.

(F) Improvement of wage and salaries

The forms of wage payments to managers and employees of the SOEs will be selected by the enterprises themselves provided that remuneration must be closely associated with business results and the State will not fix a ceiling limit to the wages and salaries. Instead, personal income tax will be used as a mean of redistribution.

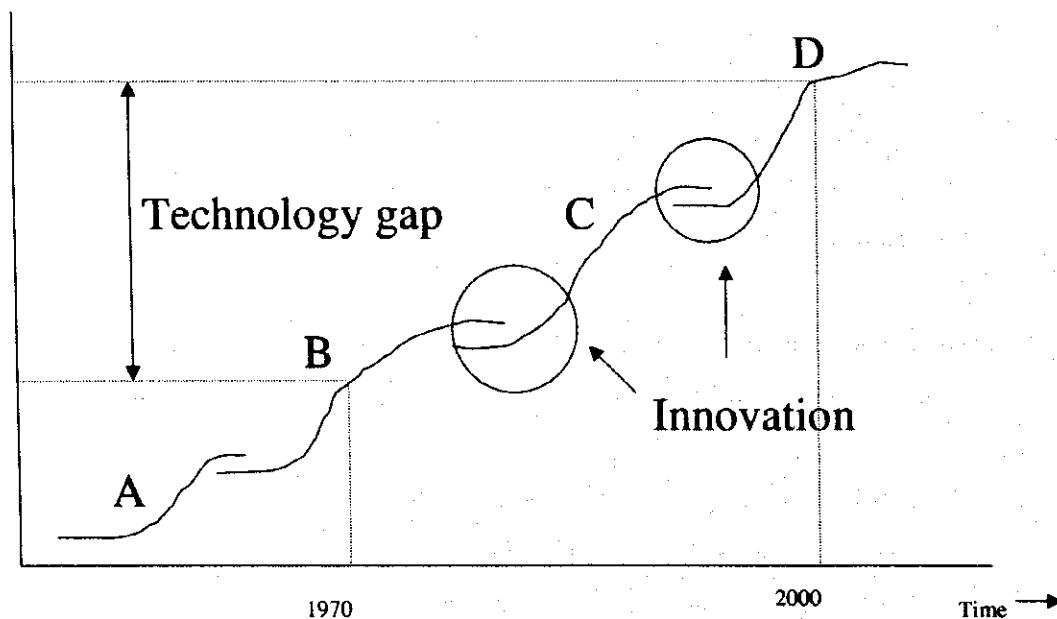
III. Technology issue

1. Study hypothesis

Technology SOEs using is too old to meet the requirements from market. Non-renovated technology is one of biggest reasons of low profit and slow SOE reform.

Innovation of technology is essential for surviving in the market.

↑



2. Problems caused by old technology

- (1) Low productivity
- (2) Spend material and energy, sometimes generate environment problems
- (3) Not fit to market needs in product development
- (4) Inconsistent technology in the factory

3. Assessment of technology in SOEs

In general SOEs are using technology 2 or 3 generation behind with other countries. There are fluctuations by industry: relatively advanced technologies are in telecom, textile, footwear, ... very old technologies are still used in mechanical machinery, railway, ...

A large number of investigated enterprises (55.56%) have not invested adequate production equipment. Proportion of those enterprises considering that they are invested adequately is 37.78%. Only 9 enterprises of 180 investigated enterprises (5%) are invested very adequately.

4. Utilization period of equipment in SOEs

Utilization period of equipment in SOEs is over the service life in some industries. Compared with other business type enterprises, SOEs has older equipments than Non-SOEs and foreign invested enterprises.

Table III-1 Percentage of industry enterprises by utilization period of equipment
(As of 30-6-1998)

(Unit: %)

	< 10 years	From 10 to under 20 years	From 20 to 30 years	> 30 years
Total	61.52	29.06	7.17	2.25
SOEs	49.48	34.44	11.71	4.37
Non-SOEs	72.82	22.36	4.04	0.78
Foreign invested enterprises	59.15	36.58	3.66	0.61

Source: Survey Results on Whole Industry in 1998, The General Statistics Office, Department of Industry

Depreciation co-efficient shows the oldness of equipment. SOEs hold older equipment than private company or foreign invested company.

Table III-2 Depreciation of fixed assets in industry enterprises (As of 30-6-1998)

(Unit: VND billion)

	Fixed assets by original price	Accumulative depreciation	Depreciation co-efficient (%)
Total	193,395	64,146	33.2
Classified by business type			
Central SOEs	67,142	31,462	46.9
Local SOEs	14,353	5,595	39.0
Cooperative	5,193	80	15.4
Private enterprises	1,990	366	18.4
Ltd company	5,080	866	17.0
State share holding company	287	118	41.1
Share holding company	678	96	14.2
100% foreign-invested company	30,098	5,205	17.3
SOEs/Foreign joint-venture	70,293	19,872	28.3
Non-SOEs/Foreign joint-venture	2,533	433	17.1
SOEs and non-SOEs/Foreign JV	327	55	16.8
Business cooperation contract	94	18	19.6

Source: Survey Results on Whole Industry in 1998, The General Statistics Office, Department of Industry

In terms of automatic level, SOEs are left behind by private company or foreign invested company.

Table III-3 Number of industry enterprises by automatic level of production line
(As of 30-6-1998)

	Total (Factory)	Percentage by automatic level (%)				
		Automatic	Semi- automatic	Mechanic	Semi- mechanic	Handi- craft
Total	9,314	1.88	19.63	26.57	35.73	16.19
Classified by business type						
Central SOEs	569	3.16	34.80	37.08	23.02	1.93
Local SOEs	1,252	2.80	29.87	26.52	33.15	7.67
Cooperative	949	0.11	9.17	12.22	36.04	42.47
Private enterprises	4,213	0.55	9.54	31.05	41.59	17.28
Ltd company	1,438	0.97	25.94	20.93	36.44	15.72
State share holding company	33	3.03	21.21	27.27	36.36	12.12
Share holding company	30	3.33	20.00	26.67	36.67	13.33
100% foreign-invested company	435	8.51	43.22	21.38	20.46	6.44
SOEs/Foreign joint-venture	294	12.93	50.00	24.83	10.88	1.36
Non-SOEs/Foreign joint-venture	76	6.58	44.74	23.68	22.37	2.63
SOEs and non-SOEs/Foreign JV	10	10.00	50.00	20.00	20.00	0.00
Business cooperation contract	15	6.67	46.67	26.67	6.67	13.33

Source: Survey Results on Whole Industry in 1998, The General Statistics Office, Department of Industry

5. Why renovation was not done?

SOEs' managers recognize renovation of technology necessary for achieving international competitiveness. SOEs are facing several difficulties for renovation:

- (1) Weak intention of management
- (2) Insufficient marketing ability

- (3) Insufficient technical ability
- (4) Insufficient technology information
- (5) Difficulties to get finance
- (6) Long decision making process

5-1. Weak intention of management

Although some SOEs interviewed have achieved renovation lead by strong leadership, most SOEs have recognized the importance of renovation of technology with some excuses. Lack of intention to renovate technology is one of the main reasons of this issue.

Managers tend to be conservative for taking risk because their interest is not in profit of SOEs. Incentive for managers might be low because their salary is limited as 2-3times of workers. Incentive system should be considered as well as responsibility for technology management.

5-2. Insufficient marketing ability

Many enterprises highly appreciate product research and development business which allow them optimally meet consumers' needs. However, for successful competition on market, SOE have difficulties in terms of marketing including marketing research, product development, pricing, marketing channels and trade promotion. SOEs' manager could not make investment plan due to lack of marketing activities.

5-3. Insufficient technical ability

Skilled labors are demanded by SOEs while SOEs have redundant labor. Insufficient technical ability in SOEs is a critical cause of renovation behind time. Training system for high-level technology should be developed. Manager who manage technology in SOEs should be upgraded.

5-4. Insufficient technology information

The root cause is insufficient technological information as well as the lack of information on output to ensure the competitiveness of enterprises.

5-5. Difficulties to get finance

Most of enterprises consider the lack of financial source as the most difficulty of them in improving technology. This could be a direct factor of the situation of slowly technology improvement.

According to Law on SOEs, Decree 59/CP (1996) and Decree 27/1999/ND-CP (1999) promulgating regulation on financial management and cost accounting at SOEs, out of State investment capital, enterprises have the rights and responsibility on mobilizing capital for development in the forms of issuing bonds, stocks, borrowing, receiving contributed capital and other forms. Despite such regulation,

the research has revealed that 72.78% of investigated enterprises are in lack of capital for operations.

To deal with capital shortage, SOEs follow many methods in mobilizing capital. The method that SOEs usually follow is borrowing from State owned commercial banks. Nearly 86.67% of enterprises mobilize capital via state-owned commercial banks.

5-6. Long decision-making process

When facing financial difficulties, most of enterprises propose to their superior organizations. Most of enterprises facing financial difficulties rely on the subsidy from their superior organizations and banks, only few enterprises rely on the support from other consultant organizations. It takes long time for the decision-making. This situation is due to the undevelopment and low quality of consultant organizations.

6. Policy recommendation

"Technology SOEs using is too old to meet the requirements from market. Non-renovated technology is one of biggest reasons of low profit and slow SOE reform." This is the study premise of this study. Study results show that old technology is one of the biggest reasons of slowing reform, although financial analysis were not enough.

In order to convince SOEs to renovate their technology, State should establish policy for technology. SOEs should take action for renovation of technology. The following policy measures are recommended:

6-1. Increase autonomy

SOE reform still needs to be proceeded. More incentive should be offered in shifting from central managed mechanism to autonomy. SOEs can renovate their technology by the incentives.

6-2. Long-term investment plan

In a long-term corporate plan, SOEs should establish long-term investment plan for renovation. The plan should cover following points:

- (1) Principle of technology management
- (2) Marketing research
- (3) Feasibility analysis
- (4) Financial plan

For implementation modernized investment plan, skill up seminar for manager and planning experts should be prepared.

6-3. Information of advanced technology

To have scientific background for making decisions concerning investment, market, price of products, etc., enterprises need information about market, information and knowledge of technology, which they are lacking of. So, in order to enhance the efficiency of enterprises, the State should give them assistance on information field. At the same time, a new bidding regime or criteria on quality and price of products are needed.

6-4. Financing scheme establishment

Medium and long-term loans with lower interest rate should be expanded to help SOEs invest to new technology and develop their market.

6-5. Consultant organization

Most enterprises have problem with finance, and they mainly receive assistance from higher level authorized state agencies and banks but not from consultant organizations. It can be explained by responsibility assigned to state agencies or less developed services of consultant organizations. Counter measures to strengthen consulting organization are to be prepared.

6-6. Industrial policy

With concept of "select and concentration", industries and areas will be selected with competition advantages. State should enforce industries and areas with special treatment.

6-7. Improvement of taxation and finance management

Currently, tax rates are still high, and non-synchronized among kinds of products. By reducing tax rates in some industries, SOEs can successfully compete on market. Alleviation of import tax for some machinery and equipment can convince SOEs to renovate their technology. Import-export tax policies should pay more attention to encouraging investment in long term.

(Method of study)

- (1) Interview survey with SOEs
- (2) Interview survey with Ministries and organizations
- (3) Questionnaire survey: Management Issues in SOEs, JICA-CIEM, 2000
- (4) Mini-workshops with SOEs by CIEM-JICA, November 2000
- (5) Review on existing reports:
 - Survey Results on Whole Industry in 1998, The General Statistics Office, Department of Industry;

- Study report on Labour Issues in SOE Reform, CIEM-WB, 2000;
- Summary Report on Reform and Development of State Enterprises Since 1986 to the Present, Central State Enterprises Reform Committee, 2000

Report on State-Owned Enterprise Reform (Legal Aspect)

Eri Habu

SRIC Corporation

1. Background

In Viet Nam, development of market economy system is clearly defined in articles 15 and 16 of the Constitution. It is, however, not clear enough to define the role of the State on market management and control but there is no doubt about the will of the state to carry major role at economic activities and control over the market. The Constitution guarantees the free enterprise activity but also limits it in the framework of socialistic approach to build up the “proper competition field”.

Socialistic development in Viet Nam means establishment of a market economy where the State takes the major initiative. Thus the socialistic market economy is where the state owns the means of economic activities and state-owned enterprises (SOEs) serve as the pillar of the market with other enterprise activities playing the complementary and marginal role.

The SOE reform in Viet Nam attained significant progress after the enactment of the State-Owned Enterprise Law (SOE Law). SOEs of which were created by separate decrees or ordinances were re-registered under Enterprise Department of the MPI and at the first time, their legal status was clearly defined with realistic figure.

Later on, Decree 28¹ on equitization of SOEs of which are not required to continue to be SOEs was enacted backed up by the World Bank. After the experimental pilot equitization, active effort on equitization of SOEs has started. Following the Decision 548² of the Prime Minister, the Equitization Committee was set up. However, equitization relying on the initiative of each SOEs proved to be very slow and ineffective.

The Asian financial crisis started from Thailand in 1997 followed by drastic decrease in the influx of foreign direct investment, rising import price due to foreign exchange fluctuation and stagnating export affected the SOEs performance dramatically. Such an influence of the Asian economic crisis also reflected to the government policy toward SOE reform specifically from the beginning of 1999. Pressures from World Bank, IMF and other international organizations became stricter and the Committee for SOE Reform (formerly NERC³ reshaped as CERD⁴) created under the Prime Minister was strengthened backed up by Asian

¹ Decree 28-1996-ND-CP on Transformation of a Number of State Enterprises into Joint-Stock Companies

² Decision 548-1996-CP on the Establishment of Steering Committees for Equitization

³ National Enterprise Reform Committee - NERC

⁴ Commission on Enterprise Reform and Development-CERD

Development Bank. Later on, specifically after the implementation of several technical assistances related to equitization, the decree on equitization, after numerous amendments came up as the Decree 44⁵ to speed up the equitization process.

In addition, privatization policy under Decree 103⁶ established that small SOEs which do not belong to the strategically important sector designated by the State will be subject to lease, sale, management contract and auction.

According to the government, the SOE reform for the future will focus on transformation of all SOEs to shareholding companies or limited liability companies (specifically to company limited having one member)⁷ regulated by provisions of 1999 Enterprise Law⁸ except those considered to be public service SOEs⁹.

To accelerate reform of existing SOEs, different approach to be adopted is required to in parallel with time consuming equitization process. The option adopted was transformation into single owner limited liability companies. The idea is, to transform SOEs into company limited having one member and register them under the 1999 Enterprise Law to prepare for further reform toward gradual transformation choosing either equitization, lease, management contract and other forms of transformation instrument. Re-registration of SOEs under the Enterprise Law means that a particular company defines the basic fundamentals and disclosure such information as a member of the market economy, thus establishing the first step for its transparent existence. Creation of the "Level Playing Field" recommended at the Second Phase of the project is still far from being established but no doubt about it, Viet Nam is gradually shifting its direction toward desirable competition environment in the market.

Concerning GCs¹⁰, the direction of the reform is showing possibility of transforming them into State owned holding company (of which there is no corresponding laws or regulations yet) or sectoral association (such as textile industry development association). However no concrete policy direction was issued until up to the middle of 2001.

⁵ Decree 44-1998-ND-CP on Conversion of State-Owned Enterprises into Shareholding Companies

⁶ Decree 103-1999-ND-CP on Assigning, Selling, Contracting Out, and Leasing State-Owned Enterprises

⁷ According to Enterprise Law, limited liability company is divided into two types. One is single owner limited liability company and another one is limited liability company having more than one owner. Company limited having one member expects that the owner is single organization with 100% ownership with limited liability up to the amount of its investment capital not allowing individuals. Still there is margin of speculation of what will be the definition of state ownership in such a form of enterprise.

⁸ Law on Enterprises (Luật Doanh Nghiệp). This is the first comprehensive company law in Viet Nam. The 1990 Law on Companies and Law on Private Enterprises along with their implementing legal documents have been merged and reshaped to come up as the Law on Enterprises. There are several provisions with strong socialist characteristics but its contents permit the creation of modern enterprise form with development perspective in Viet Nam.

⁹ Regulated by State Enterprise Law and Decree 56-1996-CP on the State Public Utility Enterprises

¹⁰ GC is group of SOEs established by Decision 90-1994-TTg on Reorganization of State-Owned Enterprises and Decision 91-1994-TTg on Experimental Establishment of the Business Corporation. GC is classified as GC under the central government, under the ministries and under the local People's Committee and called as GC90 or GC91 depending on the corresponding decree number. SOEs which do not belong to any of GCs are called Independent State-Owned Enterprise.

Therefore, in the near future, application of actual SOEs Law shall be limited only to public utility SOEs but still there is fierce discussion at the government level whether to maintain the SOE Law or not. No consensus had been reached from the discussion at the Standing Committee of the National Assembly on amendment of SOE Law.

In addition, draft decree on company limited having one owner was also repealed by the National Assembly by the end of 2000, thus revealing that even among Party and executive members consensus has not been reached.

The Party Congress expected to be held in March, 2001 was postponed to the middle of April (19) due to time consuming coordination on personnel appointment of the Party's and Government top officials. It is expected that in this Party Congress, amendment of SOE Law, Decree on company limited having one member, US-Viet Nam bilateral trade agreement, next 5 year development plan and other issues will be discussed as the top priority issues. It is indispensable to follow closely the results of this Party Congress to foresee the future policy toward SOE reform.

2. Content and methodology of CIEM survey in 2000

This study on SOE reform was conducted jointly with CIEM under the direction of Prof. Shigeru Ishikawa from Japanese academic team. The study on legal framework has been conducted following the methodology below:

- 1) Collection and analysis of legal documents related to SOEs
- 2) Collection and classification of legal documents publicly disclosed at Official Gazette
- 3) Questionnaire survey over 160 SOEs on actual compliance of related laws and interview survey depending on the needs in the course of study.
- 4) Analysis of SOE related laws and its implementation identifying the gap between regulation and actual implementation and compliance.
- 5) Analysis of concept of company limited having one member and its application to SOE reform.

3. Result of CIEM survey

At the beginning, the expected number of sample to be collected was 160 but the number of answers recovered were 186. Of them, samples considered not valid was 6. Therefore, the number of valid samples is 180. Some of the results from this survey is resumed as follows:

- Of those SOEs which returned the questionnaire, almost all of them were established before the enactment of SOE Law in 1995
- The SOEs established after 1995 are concentrated in determined industrial sector recommended by

the government.

- More than 60% of SOEs surveyed did not receive full payment of the registered capital determined at the time of establishment from the government.
- 22% of SOEs receive periodical financial support from the government.
- No SOEs suffer interference or inspection from Prime Minister Office level or state police (existed before)
- Almost all SOEs submit periodical report on business plan and financial status to their direct controlling government agencies and tax office.
- Annual business plans are endorsed by direct controlling governmental agencies in compliance with SOE Law and implementing regulations
- Labor Union participates in the board of management and issues opinion related to improvement of working environment, social security and fringe benefits.
- Government allocation of laborers at recruitment of workers is not compulsory and most of SOEs recruits directly from the labor market.
- The main governmental incentive is preferential tax treatment toward those SOEs exporting their products. In the case of monopolistic SOEs, monopoly itself means incentive and no other incentives are provided.
- One forth of the SOEs invest in another companies or establish joint ventures. Those SOEs having joint ventures with foreign companies are concentrated in urban areas.
- Almost all SOEs responded that they will remain as SOEs but 21% of all the sample SOEs are in the list of SOEs to be equitized. Concerning transformation into company limited having one member, very few SOEs showed preference for such a form mainly because this concept is still new and not known among SOE managers.

4. Relevant topics on interview survey of 6 state-owned companies

Detailed interview was conducted based on the result of the CIEM survey by selecting six SOEs from the respondent group. Those enterprises were selected by CIEM to cover SOEs with small and medium scale under local people's committee or those so called independent SOEs under the ministries which were not in the scope of previous surveys. The result of the interview survey revealed the followings:

- Incentive for reform is generally weak
- SOEs under local people's committee level can not find way to improve their competitive capacity, therefore the trends is to rely on state's protection. The reform effort is concentrated toward SOEs under the central government.
- At the local people's committee level, the concept of separation of ownership and the management

at enterprises is not yet well understood. There are SOEs guaranteeing the debt of local people's committee contracted before Doi Moi from former Soviet Union. Such debt is maintained frozen but this situation hinders the reform of those SOEs affected

- Accumulated debt are kept in the internal record but part of it is not reported to the financial department of the government (existence of shadow book of account) causing difficult to solve the hidden debt problems
- Difficult access to bank lending due to the non existence of ownership over assets (especially land use right)
- Reform fund provided by Decree nr.177 does not reach the local level SOEs
- Burden of redundant labor is significant. Difficult to rely on voluntary retirement. No idea on what to do to retrain the work force. After the training, young and successful workers do not remain at SOEs at the local level. Only aged workers and non skilled workers stay at local level SOEs causing further downturn of productivity.
- After equitization or reform, if there are remaining SOEs in the same industrial area, the terms of competition is unfair. Before the reform, there is a need for guaranteeing level playing field. Follow-up by the state for determined period after the reform is needed until they are adapted to the new competitive environment
- Local level management seminar is recommendable for skill up of managers. Seminars at central level only limited to managers from big and wealthy SOEs and small and medium SOEs under local government level are left ignored
- Policy direction of line ministries on pricing of products influences negatively the return of SOEs. Especially when this product is vulnerable to the international price fluctuation, timely reaction to the market trend is made impossible while waiting for instruction from line ministries
- Poor knowledge on legal rights related to commercial contract induce the SOEs to sign the contracts with unfair condition without idea to improve the situation, thus limiting the export market for their products. The position of which try to honor the contract terms even under the condition against business should be considered positively but the lack of basic knowledge on extent of rights related to contract is crucial managerial weakness to survive in the market. Chances to enhance external trade skills and knowledge related to commercial transaction contract should be provided.
- In the case of export oriented SOEs, complaints toward customs officers, unpredictable collection of customs duties, bribes, inefficient customs clearance system are the biggest problems. Preparation toward compliance with AFTA and WTO scheme is urgent issue.
- Disclosure of financial reporting required by law is not fully implemented. Lack of knowledge on how to prepare lawful financial report is problem for almost 100% of the SOE managers. No recognition of practical function and importance of financial report is the main cause of such an attitude. Before

asking for compliance, sufficient explanation on disclosure requirement is recommendable to convince about its importance. Few accounting officers understand fully about the basic book keeping operation to establish the financial reporting system. Further training in this area is recommended.

- Fear of liberalization toward ASEAN market in 2002 is considerable. There is general understanding on the possibility of being involved in disputes but they do not understand about the practical influence and how to cope with such a problems.
- Lack of incentive to the managers of SOEs. The remuneration of SOE managers is linked with that of public servant and successful SOE managers at their business results are not rewarded accordingly. However, depending on the line ministry, there are cases of reward at SOEs based on its business results (against SOE Law).
- Limitation of share acquisition¹¹ of management at the process of equitization is the problem. This regulation hinders the incentive for equitization of management level.
- Decree 59 on financial management regulation of SOE is not realistic compared to the real situation. More autonomy concerning distribution of profit should be permitted to match with the market orientation
- Difficulty in getting the bank loan for renovation of equipment. Bank lending system also needs to be improved.
- The classification of SOE by scale creates discrimination among SOEs. Such a classification limits the scope of business causing negative effects to the employees to expand to the competitive business.
- Ministry of Finance is not able to prevent the issuance of fake VAT invoice and create difficulty to get refund on VAT incurred. Measures to solve the problem should be taken.
- The tax regulation on collection of personal income tax of employees does not consider the living standard of those affected (especially those employees working in urban areas)
- Intellectual Property Law should be enhanced and enforced. New design or new products developed at SOEs as a result of managerial effort are soon copied and sold at the market. Registration of patent and intellectual property takes at least half a year until the documents are accepted. Unless there is measures to protect the intellectual property rights while applying to the registration, SOEs can not improve its competitive capacity. Incentive for the development of new products is also hindered in such an environment. Smuggling of similar products with competitive price also takes significant market share causing damage to business results. This problem is worrisome when considering future participation to WTO Trips Agreement. Policy measures not only for international relations but for development of domestic companies should be introduced as soon as possible. Might need further international assistance.

¹¹ Decree 44-1998-ND-CP

5. Current situation of state-owned enterprise reform

SOE form and ownership form is diversifying as a result of several policy on SOE reform implemented up to now as shown in Table 5-1.

Based on SOE Law, SOEs are classified into profit oriented and public service SOEs. Profit oriented SOEs are further classified into GC90, GC91, SOEs under GC90, SOEs under GC91 and independent SOEs. Independent SOEs are further classified as those under the ministries, local people's committee, political organizations, social organization., etc.

In addition, as a result of equitization regulated by Decree 44, when the state owns the majority share after the transformation as a shareholder¹², in practice, this is also a state owned shareholding company established under the Enterprise Law.

Company limited having one member defined in the Enterprise Law is the form of company created to be the recipient of SOEs which are not suitable for equitization. Therefore, when SOEs are reformed and registered as company limited having one member, they will be transformed into limited liability company 100% owned by one state organization.

In addition, although it is not in the scope of SOE reform, joint ventures created between foreign companies and SOEs are also subject to SOE Law¹³ concerning the portion of investment capital provided by the state. We can consider those companies with state capital participation as state-owned foreign joint ventures.

Table 5-1

Diversified SOE forms and applicable laws depending on the reform process		
Applicable law	Form of enterprise	Form of ownership
SOE Law	Public utility SOE (under the central government and local people's committee)	
	GC	GC90 (under ministries and local people's committees)
		GC91 (under the central government)
	SOEs under GCs	Under GC90
		Under GC91
	Independent SOEs	Under ministries
		Under local people's committees
		Under communist party and organizations under party orientation
		Under sociopolitical organizations
Enterprise Law	State-owned shareholding company	
	State-owned limited liability company having one member	
FDI Law	Joint venture with foreign capital	

Source: Compiled by the author from various legal documents

¹² Under the provision of current SOE Law, when the state holds more than 50% of the company share, such share is defined as State Predominant Share. However, there is no definition concerning the status of shareholding company based on owner shareholding criteria.

¹³ Articles 49 and 50, Section 7, SOE Law

At actual stage, emphasis is given by the government to reform profit oriented SOEs but not considering the public service SOEs. The reform policy is divided into the following three measures: 1) equitization under the Decree nr. 44; 2) privatization under the Decree nr. 103 and 3) corporatization (transformation into company limited having one member). Concerning corporatization, draft decree to determine its transformation procedure is under preparation started from 2000 to 2001 onward. The draft decree will be submitted to discussion at Party Congress expected in April 2001 and later on at the Standing Committee of the National Assembly and expected to be promulgated in the first half of 2001.

According to CIEM, of existing 5,900 SOEs, about 2,000 will be subject to equitization and of remaining 3,900 SOEs, excluding those which will be subject to merger or winding up, all are expected to be corporatized until 2005.

Table 5-2

Concept type of SOE reform			
	Equitization	Assigning, selling, contracting, leasing	Corporatization
Legal Fundament - 1999 Enterprise Law	Regulation on shareholding company	Regulation on shareholding company and limited liability company	Regulation on single owner limited liability company
Ownership	State, SOEs, banks, employees, individual	State, SOEs, private companies, employees, individuals	State organizations(government, ministries, party, labor union, military forces, SOEs, others)
Capital	Share	Share	Share
Disclosure	Compulsory	Based on Enterprise Law	Not necessary
Size	Medium to big	Small and medium	Small, medium and big (holding company)

Source: Compiled from several legal documents

As shown in the above Table 5-2, SOEs in Viet Nam are all in the course of transformation into several forms of SOEs. Therefore, we can not simply think like "this company is SOE because its establishment is based on SOE Law". The actual forms of SOEs are as follows:

- Company established under SOE Law (100% state-owned)
- SOE re-established and registered according to the Enterprise Law following the Decree on equitization.
- Restructured SOEs under management contract, sale, lease, etc.
- Restructured SOEs as limited company with one member (after 2001)
- Joint venture companies between foreign companies and SOEs

It is, therefore, time to redefine what is SOE from legal aspect considering the actual policy direction and diversified forms of the state ownership.

6. Legal environment surrounding SOE reform

When referring to SOE reform in Viet Nam, we can not forget about several existing laws such as Law on SOEs, Enterprise Law, Foreign Investment Law and related laws and regulations along with SOE itself. To establish the lawful governance of a company, two pillars e.g. suitable legal system and implementing mechanism should exist to fulfill the basic requirement. Without any of them, there is no possibility of guaranteeing lawful governance of the company. In this study, considering that the situation of companies having different forms of ownership has significant influence over SOE reform process, we will consider also about all forms of ownership existing in Vietnamese domestic market.

The issues related to governance of domestic enterprises in Viet Nam exist in both legal framework and its application system as mentioned before. The proper environment for SOE reform to solve the conflict over management, ownership and control will only be established when those two pillars gain the solid base.

Firstly the rapid pace of promulgation of laws and regulations do not necessarily follow the principles of legal writings and established drafting procedure, without proper classification and consistency check up.

Viet Nam needs to develop actively the international relationship including economic transactions. The preparation of legal framework related to companies should consider not only on its domestic impact but also the influence it will have over the people and countries involved in such an international transaction, in an environment where huge number of people, money, information and goods cross the board in a daily basis. To develop the industry and economy, it is indispensable to establish modern company law system acceptable by the international business community. Viet Nam is facing the same experience Japan passed through in the past where European power demanded to establish modern legal system in turn of revision of unfair treaty signed during Tokugawa Shogunnate. There is a need for establishment of substantive law and at the same time, procedural laws and implementing and enforcement mechanism accompanied by institutional capacity for application.

However, legislative thinking concerned enterprise related laws in Viet Nam differ significantly with those in modern market economy nations of which recognizes the fundamental role of law in the market economy. To the legislative in Viet Nam, instead of considering the function of the Enterprise Law as the fundamental regulation to “guarantee level playing field to all business entities”, it is mostly recognized as the “instrument of state control over the business activities”. This difference in the interpretation, when deeply discussed leads us to the fundamental discussion on the ideology hidden behind the governmental policy and will be difficult to impose change in it. However, what is needed now is to create first the modern legal framework recognized by international business community trying, at the same time, to introduce socialistic thinking avoiding conflict with its basic principle. The legal framework for enterprises in Viet Nam is being drafted without enough time for policy discussion and without enough consensus building process on the forms of existence of SOEs and private enterprises.

Therefore, in many cases, drafting teams of implementing regulations of the Enterprise Law and amendment of SOE Law are suffering not only from lack of technical skills but also from lack of fundamental policy direction of the legislature. Thus, there is significant conflict and discussion in the process of drafting work trying to incorporate inconsistencies in the legal documents.

One peculiar aspect of drafting of enterprise related law is that this task is under the MPI and most of the members of the drafting team are graduate of economics and rarely graduate of law. Observer from the Ministry of Justice (MoJ) is invited to participate in the drafting process but they are present only a few hours and do not fully accompany or participate actively in the process. This is due to busy schedule of those officials from MoJ where they are also in charge of works related to other laws such as Civil Procedure Law. Therefore, insufficient knowledge related to 1) technique of consistency matching with Constitution, Civil Code and other enacted laws and regulations, 2) accurate reflection of drafting intention over legal writings, 3) expression on legal wordings and orderly constitution of articles and 4) use of proper words and sentences constitute the major difficulties at the time of legal drafting

6-1 Analysis of State-Owned Enterprise Law

Based on the SOE Law enacted in 1995, all SOEs were registered in a unified manner thus permitting the state to understand clearly the actual situation of SOEs. Later on, several decrees and notifications related to implementation and interpretation were issued¹⁴ (refer to attachment 5). Therefore, to understand about management and control of SOE, there is a need to refer to several decrees, notifications, circulars and amendments along with SOE Law. Thus, the SOE regulation became quite complicated and complex resulting to conflict of interpretation even among the policy makers.

6-1-1 Legal status of state-owned enterprises

Article 1 of SOE Law defines that SOE has its own independent status as a legal person. According to the definition of legal person mentioned in article 94 of the Civil Code, SOE as a legal person enjoys legal independence. However, since the SOE Law permits large state intervention power over management rights and property rights of SOEs, there is eventual question on the independent status of SOE. In addition, application of the Bankruptcy Law is practically impossible in actual circumstances revealing deficiencies in the aspect of performance of duty as a legal person and civil obligation based on contract law.

SOE law classifies SOEs into profit oriented SOE and public utility SOE but this classification is not realistic in the practical sense. Several SOEs are pursuing profit oriented businesses and, at the same time, public services. Since for public utility enterprises still is provided subsidies and preference

¹⁴ It is roughly divided into laws related to classification of SOEs by category, financial management, labor management, reform and restructuring.

treatments, those SOEs pursuing both activities tend to prefer existence as public utility SOE thus not paying enough effort to rationalize its business resources.

Public utility enterprises and profit oriented enterprises under the name of SOE need to be redefined or those SOEs need to be restructured under clear definition of their business scope.

6-1-2 The Role of the state over state-owned enterprises

Theoretically, the state is the investor of SOE. However, the definition of state invested capital is very vague. SOE Law defines the SOE as a limited liability legal person¹⁵, but in practice, the state bears unlimited responsibility over its debts. Under the current SOE Law, the state is the owner of the capital but also owner of the SOE assets.

Since SOE Law does not distinguish clearly the rights and responsibilities of the state such as rights of managing the capital and appointment of managers, etc., the management control of SOEs became quite vague and conflicting. When observing only the SOE Law, actual legal framework largely limits the activities of SOEs enabling the state to exercise quite powerful control over SOEs.

6-1-3 Ownership rights of SOEs

The invested capital is the asset belonging to the state but the law is vague when referring to the ownership right of the assets acquired based on the state capital. According to the Civil Code, the assets of SOE belong to the people and the state represents the ownership right of the people¹⁶. Actually we can not find clear provisions defining SOE's ownership right but studying the provisions of SOE Law, we can conclude that the intention of the SOE Law is to put emphasis on the aspects of maintenance of assets as the right of SOE and intentionally avoid recognition of ownership of the assets attached to its production units. Provisions related to disposal of assets at SOE establishments are also vague but limiting the ownership right of the legal person and voluntary decision of managerial cadres. Therefore, we can consider that the ownership right and management power of SOE is quite incomplete in the context of market economy.

Civil Code regulates several forms of propriety ownership right. The provision related to ownership right described in the article 208 of the Civil code recognizes the state ownership over SOE assets, which creates different interpretations when compared to provisions of SOE Law.

The new concept actually in study following the amendment work of the SOE Law is to limit the rights of interference actually permitted to the state over SOE assets. The state is able to influence the SOE only through the value (capital amount) invested but not permitted to interfere in the rights of SOE

¹⁵ Article 1, Section 1, SOE Law ".....SOE has legal person status, bears civil rights and responsibilities and is responsible for its business activities up to the amount of the capital invested....."

¹⁶ Articles 205 and 206, Section 4, Civil Code

over its assets. In this case, not only the provisions of SOE Law but also the provisions of the Civil Code need to be revised to guarantee the general consistency

6-1-4 Financial management of state-owned companies

Enterprise management department of the Ministry of Finance is the entity in charge of management of state assets. However, the right of representing the state ownership right is not clear.

SOE pays corporate income tax, state capital utilization fee from the profit and the rest is accumulated as the internal fund. The fund is allocated to risk provision (allowance), investment fund, business development fund, employee provident fund, etc.. The state capital utilization fee is calculated based on the amount of legal capital and the Department of Taxation of the Ministry of Finance is in charge of collecting it as determined by Decree nr. 59¹⁷ issued by the Prime Minister's Office.

There is an opinion of which, instead of accumulating the employee provident fund internally from the profit, such an amount should be trusted to the government to establish national welfare system but in actual situation, enterprises are voluntarily maintaining the fund.

In addition, the state can provide to SOEs aside legal capital, up to 10 to 20 % of the working capital from state budget. This amount fluctuates based on annual budget and financial situation of the SOE concerned.

Other than state investment, SOE attracts bank loan. However, the credit condition is decided upon discriminatory directions and when banks decide to amortize bad debts derived from such a transaction, accounting criteria to record on the book is not yet well established. In addition, recording of subsidized amount received from state budget is not determined whether to record as increase of capital, subsidy or debt thus making difficult to distinguish the debt and assets of SOEs.

There is no provision related to capital borrowing of SOE from banks. According to the Banking Law, banks are allowed to set up mortgage on enterprise assets to secure transaction but this provision is not applied when lending to SOEs. Lending to SOEs does not follow the established procedure but rely on decisions of the top cadres of the government or personal connection. Therefore, the Ministry of Finance does not have any official interference channel to determine the lending condition toward SOEs.

6-1-5 Management of state-owned companies

The SOE Law establishes the right of appointment of SOE manager to the founding government agency.

There is several points which are not clearly defined by SOE Law and related regulations to address the issue of management of SOE.

Firstly, whether to consider the SOE managers as public servants or professional managers hired by

¹⁷ Decree 59-1996-CP on Regulation on Financial Management and Business Cost Accounting at State Enterprises

the state is not clear.

Under actual system, there are two types of appointment of managers. The first one is election from the veteran workers by employees and the other is appointment from the line ministry official. In either case, we can't ignore the influence of Communist Party and the Fatherland Front. In the previous case, the one elected by employees are experienced managers with relative accumulation of know how on operation to decide on enterprise management and relatively independent from personal influence of the line ministry. The latter one plays the role of extension of control exercised by the line ministry and therefore, manages the enterprise without clear perception of separation of owner role and management of the enterprise concerned.

Concerning the determination of manager remuneration¹⁸, under actual regulation, the amount of remuneration of SOE managers is linked with criteria of remuneration of public servants. Therefore, they are treated, in fact, as public servants. The actual system without reflecting the result of enterprise management to the remuneration, does not provide incentives to the managers to improve business results and better option should be introduced to change the situation.

In practical sense, top management of SOE should be selected from experienced enterprise managers such as the case of Singapore but if we see the existing SOEs, emphasis is given to trustfulness of employees, obedience to the Party direction and personal connection rather than management capability.

The right of the manager at SOEs is also limited since they are required to get endorsement of the line ministry over management of the production line under the determined conditions.

The SOE Law reflects the will of the state to establish "the legal framework for state oriented market economy" by establishing the system and practical procedure to the state to interfere directly in the affairs of SOEs by way of control and inspection over the management.

6-1-6 Bankruptcy of state-owned companies

According to SOE Law and Decree nr. 50¹⁹, SOEs are also subject to the Bankruptcy Law²⁰. Under current regulation only the economic court is entitled to declare bankruptcy of SOEs. Management and financial institutions are entitled to ask for declaration of bankruptcy when the performance of obligation is failed and workers are entitled to file petition to the court when the SOE fails to pay salary for two consecutive months, but the owner of the capital is not entitled to take such an action.

In practice, the state as the owner of SOE winds it up by applying the provisions on termination and

¹⁸ Article 27.f) Part 2, SOE Law

¹⁹ Decree 50-1996-CP on the Establishment, Reorganization, Dissolution and Bankruptcy of State Enterprises

²⁰ Article 24, Part 2, Section 3 of SOE Law determined the application of Bankruptcy Law to SOEs but a few number of SOEs so far went bankrupt. In almost all cases, SOEs concerned are merged to another SOE based on article 24 of the SOE Law or wind up based on the decision of winding up committee established under articles 22 and 23 of the same Law.

winding up of SOEs stated in SOE Law.

In fact, although the SOE is not able to repay due debts, financial institutions fear about the lender's responsibility and never file for bankruptcy to the court. The background of this attitude is that most of lending operation toward SOEs are not originated from SOE managers but by administrative interference from entities representing the state. Due to such a condition, the rights of implementing the established examination of financial situation for lending is not guaranteed even to the state owned banks and at the same time, the right of taking collateral to secure transaction is also limited when lending to SOE. Furthermore, since land use right is not owned by SOE there is an eventual limitation to take collateral corresponding to practical value provided.

Clear definition on management remuneration and responsibility does not exist in SOE Law. If there is no distinction between misappropriation of enterprise asset subject to criminal prosecution and negligence act subject to civil or administrative sanction, it is difficult to apply Bankruptcy Law in practical terms.

6-1-7 Disclosure of information of state-owned companies

SOEs are entitled to disclose financial information and annual business plan to the line ministry, Ministry of Finance and employees. However, there is no regulation for compulsory disclosure of financial information to general public. Since monitoring of business results by third party is not established, interdependence among owner, manager and employee create margin for inefficient management of entire enterprise.

6-1-8 Amendment of State-Owned Enterprise Law

At the middle of 1999, amendment work of SOE Law started to further develop SOE reform and to strengthen the management of SOEs. The government decided to introduce major amendment to SOE Law since the environment of SOEs differs significantly from that of years ago and integration of implementing provisions promulgated after 1995 was considered reasonable. At the same time, the intention of the government to amend the SOE Law is also to make the Law more comprehensive and to solve the issue of interpretation of unclear definition in the SOE Law.

Draft amendment of SOE Law examined by Standing Committee of General Assembly was repealed in December, thus revealing that the policy direction on SOE reform is not yet clearly defined. SOE Law is not in practice fully applied in an uniform manner since under such a vulnerable situation, enforcement aspect of implementing provisions of SOE Law is not enough considered by the government. Based on the result of the survey on 180 SOE by CIEM in 2000, several issues related to non compliance with SOE Law were revealed such as contribution to paid in capital, disclosure of information and financial reporting. Therefore, close observation of the amendment work of SOE Law is required to foresee the