

## Chapter Six

# INSTITUTIONAL FRAMEWORK FOR INDUSTRIALIZATION OF VIETNAM

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### INTRODUCTORY REMARKS

In 1991 Vietnam adopted, the 'Long Term Socio-Economic Development Program up to year 2000', with the objective of doubling GDP in 10 years. The economic growth of the period of 3 years(1991-1993) was higher than what was expected. The average GDP growth rate in the period was 7.5% and the growth rate of initial target was 5-6% in 5 years. In 1994, the Vietnamese Government adjusted the Long Term Program up to 2000, in order to double GDP per capita in 10 years(1991-2000). The key point of the adjustment on Long Term Program is to push ahead the industrialization and modernization.

The objectives of the period 1994-2000 is to speed up the industrial development and to change economic structure along the line of increasing the proportion of industry and service sector in GDP.

### Structure of GDP (%)

	1993	2000
Agriculture, forestry, fishing	36	25-27
Industry	21	28-30
Service	43	45-47

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At present the Vietnamese Government is preparing the medium-term(1996-2000) and long-term (up to 2010) development plan for the next stage of development. Implementation of these plans needs appropriate policy-making and supporting institutional framework.

Since 1986, Vietnam has made its best efforts to develop its economic system and its legal system as institutional infrastructure of market economy. However, in Vietnam, the degree of legal development is slower than that of economic development. The Vietnamese Government is aware of it and makes every effort to establish appropriate legal and institutional framework for socio-economic development. To date, institutional renovation becomes more important for implementation of industrial policies.

The objective of this article is to analyze the institutional framework of Vietnamese industrialization and to clear the role of key actors in the industrialization process.

## I. WHO ARE THE KEY ACTORS IN THE ECONOMIC DEVELOPMENT?

In the late of 1980's, Vietnam adopted a multi-sectoral economic system. The private sector was allowed to do economic activities in almost all economic field, but the State decided that the state sector should play a leading role in economic development. The state sector renovation has been implemented to make them more efficient in developing their significant role in the economy. The Law on State Enterprise issued in April 1995, aims to consolidate the status of State Enterprises and enlarge their autonomy in their activities. For the private sector, the Law on Companies and the Law on Private Enterprises was established in 1990. Furthermore, the Law on foreign Investment exists. These three company laws are the legal framework of the multi-sector economy (except for the collective sector).

### **The Strategy of Industrialization**

Before Doi Moi, Vietnam pursued inward-looking industrialization that placed emphasis on heavy industry. In 1986 Vietnam abandoned this policy and adopted the multi-sector economic system and opened the door for foreign investments.

Vietnam have adopted a long-term development program up to the year 2000, where the development of agriculture and consumer goods industries were prioritized because of the shortage of these goods at that time. This strategy went well and Vietnam have achieved rapid growth of agriculture and industrial productions.

In July 1994, the seventh plenum of the Central Committee of the Communist Party of Vietnam adopted the Resolution "Industrialization and Modernization", which adjusted the long-term program and adopted a reorientation of the industrialization with emphasis on the development of market-oriented economy under the Socialism. In accordance with this resolution, the new orientation has two faces. They are an export-oriented industrialization strategy which is the main direction in order to develop the economy rapidly, and import-substitution, and policy industrialization concerning some goods and services which can be produced more efficiently in Vietnam. The Resolution states the key industrial sectors and policy measures as follows:

The key industrial sectors are as follows;

- Agriculture, forestry and aquaculture product processing industry
- Consumer good industries (including normal consumer goods and export consumer goods, particularly garment, textile, leather electronics and so on)
- Mechanical engineering and electronic-informatic industries;
- Raw material and fuel industries
- Tourism and services

- National defence industry
- Infrastructure

#### Policy for Economic Sectors;

- The state sector is to be consolidated, renovated and developed, to make them efficient in developing their dominating role in economy
- Encouragement of private capitalistic economic forms through *joint venture and collaboration with the state sector in various forms*

And to understand the issue of economic sector, we need to see the situation of each sector.

## II. THE ECONOMIC SECTORS

### 1. State Sector

As the first stage of the renovation of the state sector, the Government carried out a series of measures that included the elimination of subsidies, the expansion of enterprise autonomy and the exposure of state enterprises to market forces in a competitive environment. The aim of these measures was to achieve macro-economic stability and transform the economy into a market system.

The second stage of renovation in the state sector is restructuring the state enterprises. In 1991, the Vietnamese Government issued the Decree 388-HDBT, on Regulations on the Establishment and Liquidation of State Enterprises. This Regulation forced state enterprises to take procedures of re-establishment and at the same time, in the process of evaluation some enterprises lost *raison d'etre* as state enterprise were liquidated or merged in order to re-establish. The number of state-enterprises decreased from 12,000 in 1990 to 6,500 in June 1993.

The process of state enterprise reform in this period (1988-1991) were separately carried out. Therefore the precise policy mechanism of complete

reform was required in order to continue the reform process. The Decree 462 of February 1992 (Plan to Continue Management Renovation in Basic Economic Units) was a package of measures of state enterprise reform and showed the criteria of restructuring in the state sector.

The Decree 462 enumerates the five tasks of state enterprise reform, to be;

1) Continuing the reorganization of the state-run economy, which includes review and categorization of state enterprises according to decrees 315,330 and 338 and documents 393 and 34, which will result in re-registration of state enterprises with favorable conditions and lease, sale, merger or liquidation of those with continuous losses or unfavorable conditions;

2) reforming state enterprise sector management, which includes promulgation of regulations on workers' congresses, state enterprise committees, state enterprise management and the activities of trade unions and party units in the state enterprise sector;

3) continuing the experiment with boards of directors, and then promulgating regulations on boards of directors;

4) an experiment in state enterprises 'corporatization', which can take the form of organizing new joint ventures with foreign investors, selling share of state enterprises to foreigners, selling shares of state enterprises to domestic institutions or individuals or selling shares to workers and cadres;

5) strengthening and reorganizing joint enterprises and holding companies<sup>(1)</sup>.

The third stage of the state sector reform is composed of 'corporatization' and conglomeratization' corresponding to item (d) and (e) above.

### **Corporatization**

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<sup>(1)</sup> Natalie G. Lichtenstein, "A Survey of Viet Nam's Legal Framework in Transition" The World Bank, Legal Department, East Asia and Pacific Division, April 1994, p.24.

Concerning state enterprises, the direction of the New Policy is the same lines as that of Decree 462. The measures in the New Policy are as follows;

- (1) Promulgate laws for SOEs,
- (2) Reorganize, renovate and complete managerial mechanism for SOEs,
- (3) Step by step, privatize some of SOEs,
- (4) Establish an organization for management of government capital and properties,
- (5) Clearly define ownership mechanism to carry out the management of government capital at SOEs
- (6) Establish large economic units with large capital reserves, capable of competing in international market
- (7) Step by step revoke the mechanism of ministries controlling enterprises, changing to the mechanism of the government controlling SOES<sup>(2)</sup>

The state sector reform under the New Policy has been carried out above lines. In June 1992, the Government promulgated the Decree 202-CT of Chairman of the Council of Ministers (at present, decree of Prime Minister), in order to implement the corporatization of SOEs experimentally. The objectives of 'corporatization' are to encourage productivity growth of enterprise, mobilize development capital and create a condition of employee ownership. The decree 202 provides the requirements of state enterprise to be corporatized as follows;

- appropriate size of enterprise
- enterprise faced difficulties in spite of its good management performance and possibility of development
- enterprise not belonged to the area which must be 100% State capital. (\* Art.2)

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<sup>(2)</sup> New Orientation in the Industrialization Policy of Vietnam, "Asia-Pacific Economic Review", No.3, Vol.4, Sep. 1994, p.7.

The Decree stipulates 3 modalities of corporatization. The first is the sale of shares to employees of concerned enterprise, the second is the sale to domestic organizations, and the third is the sale to non-vietnamese. (\* Art.3)

The Article 8 of the Decree stipulates that after corporatization, the enterprise shall act according to the Law on Company of 1990 and Decree 222/HDBT (the Regulation of concretization of some articles in the Law on Company).

In March 1993, the Prime Minister issued directives in order to stimulate corporatization and state sector reform (Directives No.84/TTg, 4 March 1993). This Directives provided some incentives to encourage corporatization which include up to 5 years' credit of up to 5 million dong to employees to buy shares in corporatizing enterprise, tax reduction of up to 50% for up to 2 years, and sale of shares to non-Vietnamese. (But the Law on Company restricted shareholding by non-Vietnamese.)<sup>(3)</sup>

Despite the incentives, 'corporatization' has not progressed. As of October 1995, only three enterprises were corporatized.

Now, there are some difficulties for corporatization. One reason of the delay of 'corporatization' is the issue of evaluation and management of assets of the State enterprises. The Government decided to establish the General Department of Management of the State Capital and Property at Enterprises, under the Ministry of Finance, in October 1994.(Decree 178-CP, 28 October 1994)

According to the new decree providing the task and powers (the Decree No.34-CP of 27 May 1995), this General Department shall manage and control the modalities of granting capital to SOEs, examine the plan to mobilize capital to make investment and to contribute the capital of SOEs to joint ventures with other investors, stand guarantee for the borrowing of

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<sup>(3)</sup> Lichtenstein, p.24

foreign capital by SOEs and so on. When the activities of this Organization get under way, transforming of SOEs will progress.

Another reason is the reluctance of SOEs. Most SOEs are afraid that they will lose certain privileges provided by the Government such as low-interest credit and land. Workers fear that they may lose their jobs.

The present stage of 'corporatization' is still on a tentative stage, so that appropriate legal framework has not been established. Such environment has exerted bad influences on the implementation of the corporatization program.

### **Conglomeratization - Formation of State Business Group**

The Government started to form state business group early in 1994. Two decisions of the Prime Minister concerning SOEs reform were issued in March. The Decision No.90/TTg on the Reorganization of SOEs clears the criteria of SOEs reform and settle formalities and re-registration for SOEs. (Art.1) Furthermore this Decision stipulates requirements on new establishment of SOE. New SOE shall only be established in the key branches and fields bringing the large state budget revenue, or in the field demanded by the market but the non-state sectors have not sufficient conditions to invest and develop.(Art.4). This Decision showed the new direction concerning the organization of the Union of enterprises. In accordance with the Art.5 of the Decision, the conditions of the re-organization on the Union of enterprises are grouping more than 5 enterprises; legal capital over 500 billion VND in the specific field, (in case of lower legal capital, not less than 100 billion VND); and the adoption of a definite accounting system including accounting for the whole corporation.

At the same time, the Prime Minister issued the Decision 91/TTg on the trial establishment of enterprise groups (Business group). The aim of the policy of establishing the Business group is to encourage the grouping of small enterprises into appropriate scale corporation, in order to strengthen competitiveness of SOEs in the market and promote efficient management and production.



The Decision emphasized the establishment of business groups as an experimental reform. Trial business groups were to be established by some ministries in the area of economy and technology, and by the Ho Chi Minh City. The criteria of the establishment of the business groups are having a status of 'corporation'(General Company), large-scale enterprise with branches, non-discrimination between central managed enterprises and local managed enterprises, playing important roles in the national economy, necessity for domestic market and having prospect of export. In the business group there are 3 types (whole national group, regional group and area group).

The business group must be composed of more than 7 member units and has a legal capital of at least 1,000 billion VND dong.

In response to this policy, several business corporations were established in 1994, in the field of electric power, coal and cement. Now, the Government is preparing to establish 15 business groups in the most crucial industries of the economy.

To date, the speed of 'conglomeratization' is faster than 'corporatization'. Why dose the Government prefer conglomeratization' than 'corporatization'?

The answer can be sought in the policies of 'Industrialization and Modernization'. In the Policy, the leading role should be played by the State sector, not by the private sector. Vietnamese industries are backward as compared to those of the neighboring countries, especially in the key sector of the economy. The Policy seeks to develop key industries that belonged to the heavy industrial sector, through the import-substitution policy. On the other hand, Vietnam has adopted an open-policy to increase trade and introduce foreign investment. Due to the adoption of the open policy, particularly the official participation into ASEAN, Vietnam must strengthen the competitiveness of domestic industry in order to win the competition in the domestic market. 'Conglomeratization' is a way to develop the large scale and strong state enterprises rapidly in order to consolidate the base of state sector in multi-sector economy.

## **The Law on State Enterprises**

The process of the state sector reform means to separate management power from ownership. And at the same time, it aims to diversify the forms of ownership of SOEs, for example through corporatization. However this does not mean to loosen the state control over the management of the state sector. Under the new Industrial Policy, the Government needs to manage the state sector powerfully so as to make a solid base of the state sector in the national economy. Therefore this process should be distinguished from the 'privatization' that has been carried out in other countries.

In April 1994, the Law on State Enterprises was passed by the National Assembly of Vietnam. The objectives of the Law defined in the preamble are as follows,

- Promoting the leading role of the State-owned economy in the multi-sector commodity economy,
- Ensuring the lawful rights and interest of the State enterprises,
- Strengthen the State management with regard to the enterprises,
- Promoting the effective operation of the State enterprises in the strict implementation of the objectives assigned by the State.

By the establishment of this Law, the framework of the State sector reform was authorized legally.

### **Definition of the state enterprise**

The State enterprise is "an economic organization which capitalized, set up, organized and managed by the State", and carries out business or public utility operations "aimed at achieving the socio-economic objectives assigned by the State". ( Art.1)

### **The form of the State enterprises**

The State enterprises applied in this Law are 'independent enterprise', "corporation" and "member enterprises of a corporation". (Art.2)

The Independent State Enterprise is a State enterprise that is not part of the organizational structure of any other enterprise.(Art.3) But there is not the definition about 'corporation' in the articles of the Law. The term of the 'corporation' in Vietnamese in the Law is "Tong cong ty", meaning 'General Company'. The Chapter 6 stipulates the duty, organization and activities of 'the State corporation'. The 'State corporation' is established and operates on the basis of associations of many member units having related interests in the economy, technology, supply, consumption, information, training, research, marketing, operating in one or a number of main specialized technical-economic sectors. The aim of this organization of 'corporation' (or business group) is the strengthening of the business capacity of the member units to perform the tasks of the socio-economic development sectors in each period.(Art.43) This clause means that 'corporation' shall be established as a key actor of the national socio-economic development strategy.

The 'corporation' and large-scale 'independent corporation' are established by the decision of the Prime Minister or the Minister of the controlling Ministry or the President of the People's Committee delegated powers by the Prime Minister.( Art.15)

### **Management of the State enterprise**

The 'corporation' and large-scale 'independent enterprise' must have the Board of Management with the function of managing the activities of the enterprise. The Board of Management has the powers to decide the matters concerning draft plans for the utilization, preservation and development of capital and utilization of after-tax profits; the draft plan for mobilization of capital for business operation without changing the forms of ownership; proposing the plan for restructuring the organization of enterprise including splitting, merging and dissolution of component units.(Art.30) The decisions

of the appointment and dismissal of the members of the Board of Management are done by the Prime Minister or his delegate.(Art.31)

### **The State-owned predominant share and special share**

The Art.51 provided that the government exercises the ownership right over the predominant share and special share of the State in a number of important enterprises.

The State predominant share includes two cases.

- the State ownership of more than 50% of the total share of the enterprise, and
- the State ownership of at least twice as much as those held by the biggest shareholder in the enterprise

The State special shares are the State shares of the enterprise where the State has no predominant shares, but has the right to decide on some important issues of the enterprise.(Art.3)

The enterprises in which the State needs to own the predominant share and the special share, shall be decided by the Government.(Art.51) It seems that these provisions aims to keep an effective State control over the management of the corporatized enterprises.

The Law on State enterprises shows the direction that the State sector should be strengthened and has the task to develop key industries. On the one hand, the Law aims to give autonomy of management to state enterprises, but on the other hand it aims to contain the state control through ownership to form strong state sector in the multi-sector economy. A series of the measures of the State reform since 1992, are not similar to the process of privatization, but the process of restructuring the state sector into strong sector.

## 2. The role of non-State Sector

According to the Constitution of Vietnam of 1992, "the State promotes 'a multi-component commodity economy' in accordance with the market mechanisms, 'under the management of the State and following socialist orientation'. (Art.15) The multi-sector is made up of three sectors. They are the State sector, the collective sector and the private sector. The non-State sector includes the collective sector and the private sector. The private sector can be divided into two parts which are private individuals and private capitalist, including domestic capital and foreign capital. Each sector and economy has its basic law corresponding to its activity, except the collective sector. (Table 1)

**Table 1**

<u>Actor</u>	<u>Basic laws after 1987</u>
State sector	The Law on the State sector
Collective sector	
Private sector	
Householding economy	Decree No.29-HDBT on the Householding economy
Individual enterprise	Decree No.66-HDBT on individuals and business groups having a capital lower than the legal capital prescribed in Dcree No.221-HDBT
Private enterprise	The Law on Private enterprises
Company	The Law on Companies
Foreign enterprises	The Law on Foreign Investment

### *a. The Collective sector*

In Vietnam, the collective sector was organized to strengthen collective ownership in the past process before Doi Moi. In the past, the collective sector functions not only as an economic unit, but also as a social unit.

Household economy was permitted its activities in the framework of cooperative system.

In the process of Doi Moi, the collective sector has reduced its function. The multi-sector economy system separates householding sector from cooperative sector. The issue of the cooperative sector at present is to clear its role and status in the new economic system. The draft of law on cooperatives is under revision, and will be submitted to the National Assembly next year. The State has not yet established the status of the collective sector, but it has adopted the measure to encourage the renewal and development of the cooperative sector. The Decision No.763-TTg issued on December 1994 recognized the status of the cooperatives in the field of the small industry, handicrafts, construction, transport and services. In accordance with the Decision, the cooperatives can receive loans from the State investment and development funds.

*b. The Private sector*

The New Industrial Policy of 1994 adopted the policy encouraging the private sector "through joint venture and collaboration with the State sector in various manners".

Statistics shows the rapid development of the private sector. However the greater part of it is shared by householding economy including farming. The private companies and enterprises are still minorities.

The objects of the Company Law of 1990 (amended in June 1994) are limited liability company and shareholding company. Generally the companies established by the Company Law is domestic private companies. However, relating to the 'corporatization' of SOEs, the corporatized enterprise is to be regulated by the Company Law. (Decree 202-CT) And the modalities of 'corporatization' includes the sale of shares to non-Vietnamese (foreigners). The progress of the 'corporatization' will require to reconsider the legal framework of the Company Law.

### *c. The Foreign Capital Sector*

The Foreign Capital Sector is basically regulated by the Law on Foreign Investment. In fact, the economic activities are controlled through the various sub-legal documents issued by the Government and concerned Ministries.

The Law on Foreign Investment (amended in 1990 and 1992) provided the legal status of the foreign investment, according to the provisions of the Constitution of 1992.

The foreign capital sector are composed of the following :

1. Contractual business cooperation
2. Joint venture enterprise
3. Enterprise with 100% foreign owned capital

And the Build-Operation-Transfer (BOT) contract is treated as a special form of foreign investment.(Art.19-b)

The Law 'welcomes and encourages' foreign investment in Vietnam (Art.1), guarantees the ownership of the capital investment and other rights of the foreign investors, and provides favorable conditions. (Art.1) Foreign organizations and individuals may invest in Vietnam in any sector of its national economy.

The principles and the provisions of the Law on Foreign Investment looks very simple and open for foreign investors.

However, the procedures of application which requires the acquisition of licenses including license of the State Committee for Cooperation and Investment (SCCI), the concerned ministries and local People's Committee, are very complicated and takes a long time. This intricate licensing system has been a bottle-neck in promoting foreign direct investment into Vietnam. The Government has adopted some measures to simplify the procedures in the end of 1994. The Decree No. 191-CP (28 December 1994) provided regulations on the formation, evaluation and implementation of foreign direct investment. Since 1994, foreign direct investments have increased rapidly. In the recent

foreign investment into Vietnam, one feature is the growth of investment into the industrial sector, and another feature is the increasing of large-scale investment. These new trends are supported by the Vietnamese positive policy to attract foreign investment and the rapid growth of Asian regional economy as 'new emerging market'.

### **Foreign sector under the New Industrial Policy**

The New Industrial Policy states the foreign direct investment in the part of capital policy as follows, "Priority is on foreign direct investment, particular from world-wide large multi-national corporations and transnational corporations to take advantage of the transfer of technology and managerial skills, opening access to region and world markets".

The New Policy stresses the role of foreign enterprises as supplier of technology, management know-how and new export market. Generally speaking, the measures to control foreign investment are regulation and incentives.

### **Regulations to foreign investment**

The Law on Foreign Investment stipulated the conditions on foreign direct investment into Vietnam. According to the Law, in case of joint venture, the share of foreigner should be at least 30% of legal capital of concerned enterprise. The upper limit of foreigners share is not regulated by the Law, but actually foreigners capital contribution of more than 75% is rarely authorized by the SCCI. The Law requires the Board of Management to be in charge of supreme decision making in the joint venture enterprise. The members of the Board must be composed of the representative of each party according to its capital contribution. The Board must have one member who is a Vietnamese Citizen. About the important matters of the enterprise such as projects of production and business, budget, loans, amendments of the Charter of the enterprise and appointment and dismissal of the Board Chairman, Director General, the Board must make decision 'on the principle of unanimity.' (Decree



No.18-CP, Art.33) The principle of unanimity means the veto of each member of the Board.

The criteria of evaluation for authorizing foreign investment is unclear in the Law on Foreign Investment and the Decree No.18. The Decree No. 191 of December 1994 provides the procedures and criteria on foreign investment project. The contents of the evaluation are as follows;

1. The legal status, financial capacity of foreign and Vietnamese investors;

2. The compatibility of the project objectives regarding the planning and orientation for economic and social development;

3. The benefits to be obtained by the State of Vietnam and the Vietnamese Party,

- Ability to create new production capabilities, new industries and products, ability to expand markets;

- Ability to give employment to laborers;

- Financial revenue;

4. Expertise an applied technology, reasonable use and protection of resources, the protection of the environment and ecology;

5. Compatibility of the use of land, plans to make the compensation for site clearance, evaluation of assets to be contributed to the capital of the Vietnamese Party (if any);

6. Tax rates, land, water and sea surface rentals and preferences. (Art.5, Decree 191)

The concrete criteria of the above is not clear by the Decree. The concerned Ministry and People's Committee have their own criteria for the evaluation of foreign investment projects.

The SCCI issued the new Guidelines for Foreign Direct Investment (SCCI Circular 215UB/LXT, 8 Feb. 1995). A change that can be seen in the

new Guidelines, is the concrete explanation about the 'increase in capital contribution of the Vietnamese Party' to the prescribed capital of the joint venture enterprise and the 'purchase of the capital of 100% foreign-owned enterprise. The Law on Foreign Investment provides an increase of capital contribution of the Vietnamese party in the joint venture enterprise (Art.8), and 'to buy back the parts of capital of enterprises' which belong to important economic establishment.(Art.14) In author's view, the new Guidelines reflects the policy which aims to increase the Vietnamese share in the foreign sector, particularly in some profitable industries<sup>(4)</sup> .

In certain industrial field, the SCCI issued the Guidance for investment in these fields. The guidance for the investment in manufacture and assembly of consumer electronic products (SCCI No.1730/HTDT-TD, 8 Sep.1994), requires foreign investments to product components and spare parts in Vietnam.

For automobile and motorcycle industries, the SCCI issued similar guidance including the requirement of local production of components and spare parts. (SCCI No.2308/UB-TD, 14 Nov. 1994; SCCI No.1536/UB-VP; 11 Aug, 1994) For the garment and footwear industries, the Guidance stipulates the requirement of export ratio of products. These Guidances function as the measures to incorporate foreign investment into the industrialization program.

### **Incentives for foreign investment**

The Law on Foreign Investment provides a favorable treatment concerning tax payment for the foreign investment. According to the Decree 18-CP, standard tax rate of profit tax to foreign investment is 25%. The more

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(4) The SCCI announced a new policy increasing the Vietnamese capital contribution in hotel, office and house-for lease joint ventures to over 30% of the total investment capital. And the duration of these joint venture should be shortened. (The SCCI announcement No.2200/UB-DT, 9 Oct.1995.)

VIR. No.209, 16-22 October 1995.

favorable tax rate may be permitted to the investment into the areas which the State encourages investment. The criteria of these tax incentives is as follows;

1. Tax rate 20%;

- More than 500 employees are used (job-creation)
- Advanced technologies are used (transfer of technology)
- At least 80% of the total products are exported (export promotion)
- The prescribed capital or contribution for the implementation of the business contract shall be at least US\$ 10 million (capital contribution)

2. Tax rate 15%;

- For construction of infrastructure works
- For exploitation of natural resources (except for petroleum and gas production and precious natural resources)
  - Concerning heavy industries such as metallurgy, principal chemical substances, mechanical engineering
- For planting perennial industrial crops
- Investing in the mountainous areas
- Transfer without any compensation to Vietnam after the termination of its duration.

3. Tax rate 10%;

- To construct infrastructure projects in mountainous areas
- To afforest
- For the projects of special importance.

The incentive measures of tax reduction and exemption are also applied to the foreign investment in accordance with the order of above priority. (Art. 66, 67 and 68)

In case of re-investment, the investor will be refunded the amount of paid profits taxes of the profits generated from the reinvestment for 3 years. (Art.72)

In the middle of 1995, the Government issued a new Guideline concerning the selling of foreign currency to foreign invested enterprises, in accordance with the provision of the Decree No.18-CP. The Guideline permits the foreign enterprises involving production of import-substitute goods and infrastructure construction to buy foreign currencies preferentially.

These incentive measures aims to attract foreign investments into the area and industrial field which the State gives priority in order to build-up the national economy.

The new Industrial Policy attaches importance to the foreign capital as a supplier of advanced technology.

### **Transfer of technology (TOT)**

The Law on Foreign Investment stipulates the protection of all legal rights and interests of the transfer of technology, and encourages the transfer of advanced technologies. (Art.58) The technology transferred by the foreign investment can be accounted as capital contribution to the investment project.

The technologies transferred to implement the investment projects must satisfy all standards defined by the Ordinance on the Transfer of Foreign Technology into Vietnam of 1988. According to the ordinance and the Decree on the Transfer of foreign Technology into Vietnam (Decree 49-HDBT, 4 March 1991), the requirements of TOT are as follows;

1. the raising of the technology level of production;
  - increasing labor productivity
  - economical use of fuel, materials and energy
  - improvement in design and product quality

- creation of new products to meet the demand of local consumption and export

2. The rational exploitation of local resources such as raw materials and fuel; use abundant labor force; creation of jobs or rational exploitation and development of recyclable resources;

3. not to be detrimental to the safety of production;

4. not to damage the environment

The TOT shall be carried out in pursuant to a written contract. Some restrictive clauses defined by the Art.7 of the Ordinance, cannot be permitted in the contract.

The capital contribution value of the technology is limited from 3% to 8% of the total investment capital (excluding the capital contribution value in the land use right or compensation and land site clearance). The maximum royalty rate is 5% of the net sales price. The requirements of the maximum rate are to satisfy the following criteria ;

- the contents of technology transfer have great significance to the economic development;

- the products (on service) have high quality and bring large profit;

- the export percentage of the product is high.

(Ministry of Science, Technology and Environment, Circular No. 28-TT/QLKH, 22 Jan.1994)

The Government is doing all efforts to form an appropriate environment for the TOT. The legal framework has been made since the late 1980's. The Ordinance on the Protection of Industrial Property Right was promulgated in 1989, and in 1994 the Ordinance of Copyright was passed by the National Assembly. Nowadays, patent, utility model, industrial design, trade mark are protected in Vietnam. However, there are many problems concerning the industrial property right and technology transfer. According to the Department of Industrial Ownership under the Ministry of Science, Technology and Environment, about 200 disputes were recorded since 1981 when the

Vietnamese State issued legal documents on the industrial property rights<sup>(5)</sup>. The disputes and violations of trade mark and industrial design often occurred. The Government adopts measures to spread the knowledge about the right on trade mark in order to avoid such disputes and violations.

The import of equipment and machinery are not included in the TOT in Vietnam, but they are an important element of the production technology. In May 1995, the SCCI issued the documents implementing the evaluation on import equipment and machines by the foreign investment enterprises. The SCCI concluded a cooperation contract with SGS Company (Societe Generale de Surveillance) in order to examine the prices of equipment and machinery. (SCCI No.1165/UB-VP, 19 May 1995). Also the Guidelines to investment in garment and footwear industries issued in 1994, stipulates that any imported used equipment must be appraised in order to ensure the retention of at least 80% of its original quality. At present, the Ministry of Science, Technology and Environment prepares the regulations aiming to control the import technology to domestic enterprises and foreign enterprises and to restrict the import of second-hand equipment by foreign enterprises.(Ministry of Science, Technology and Environment Decision No.1726/QD-PTCN)

### III. THE CONCRETIZING OF THE DEVELOPMENT STRATEGY

The adoption of the New Industrial Policy has been accompanied by some changes in the measures for industrial development. The role of the domestic investment has been stressed in the development strategy. The New policy states that export promotion and import substitution in the industrial development shall be encouraged at the same time. In June of 1994 the Law on Encouragement of Domestic Investment was promulgated, and furthermore, in the end of this year, the Decree on the Regulation on Industrial Zone (Decree No.192-CP, 28 December 1994).

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<sup>(5)</sup> 'Disputes and Settlement of Disputes over Industrial Property', Vietnam Law and Legal Forum, Oct. 1994.

In the Vietnamese strategy for economic development up to 2000, the ratio between domestic investment and foreign investment will be 50:50. In order to attain this target, mobilizing domestic capital into national economy will be a critical issue. How to and how far to encourage domestic investment is a crucial issue of the Government.

### **Switch from Export processing Zone to Industrial Zone**

The system of Export Processing Zone (EPZ) was established in 1991. (Decree No.322-HDBT, 18 October 1991) The EPZ aimed to promote investment involving production for export. The enterprises invested in the EPZ, including foreign companies, overseas Vietnamese and Vietnamese enterprises, can receive privileges of preferential tax rate and tax exemptions on the profit tax. The troubles concerning land allocation do not exist there. The first license of EPZ construction was permitted to the Tan Thuan EPZ in September 1991. After that time up to now, five more EPZ projects were authorized. However, these projects have not gone well except the Tan Thuan EPZ. The main reason is the shortage of capital. The Government made its effort to encourage the investment into EPZ through adopting the 'one-door' system on licensing. At present the EPZ system is still encouraged by the Government. But, the weight of importance in the industrial policy seems to shift to Industrial Zone (IZ).

According to the Decree on IZ, the concept of the IZ is wider than that of EPZ. IZ may include EPZ in its project. In EPZ the enterprises cannot sell its products to the domestic market, but in the IZ system, the enterprises which export at least 80% of their products can enjoy the preferential tax rate and at the same time can sell their products to the domestic market. Now a lot of IZ projects are planned and waiting the Government's permission. And furthermore the Government is considering to turn some of the unsuccessful EPZ into IZ.

## **The measures for encouragement of domestic investment**

The Government needs to mobilize development fund from all sources, in order to be able to invest into various industries and areas that the Government has appointed as priority area. The Law on Encouragement of Domestic Investment was passed by the National Assembly in June 1994. This Law aims to promote domestic investment into the certain areas and industries defined by the Government through providing some incentive measures, and at the same time, it is a measure to alleviate the complaints among the domestic enterprises about discriminative treatment for them comparing with that of foreign enterprises.

### **The scope of domestic investment**

The objectives of the Law include all economic sector (excluding foreign investment), and overseas Vietnamese.

Investments under this Law includes the following forms;

1. Investment for establishing production and business in any economic sectors;
2. Investments for enlarging the scale, raising the production capacity, research on the development and renovation of technology
3. Purchase of shares in companies, capital contributions to business, including State business allowed to diversify their form of ownership. (Art.4)

### **The National fund for Investment Supports**

According to the Law, the State shall provide support for direct investment from the budget, in order to create employment, alleviate poverty, facilitate sedentary farming, replant bare hills, tap unused water surface and realize other objectives. (Decree No. 29-CP, 12 May 1995.)

The National Fund for Investment Support it with a view to:

1. Mobilizing mid-term and long-term capital from organizations and individuals at home and abroad;



2. Making mid-term and long-term loans for the investment into the projects of priority industries and areas. (Decree 29, Art.7)

The Law also stipulates to provide preferential treatment by State-owned Commercial Banks in taking loans for production and procurement of goods for export, for the enterprises producing priority goods for export. This provision is implemented by the State Bank in September 1995. (Vietnam State Bank Circular No.3/TT-NH, 1 September 1995)

### **Preferential treatment on tax**

The industries can enjoy preferential treatment on tax in accordance with the criteria of industries, technology and areas;

[1] Investment in industries and crafts described in List A<sup>(6)</sup>

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<sup>(6)</sup> List A:

1. Investment in projects of afforestation, planting rubber, coffee, tea, mulberry for silk worm, cashew, pepper, etc on unused and waste land and on bare hills and mountainous areas; aquatic products in unused water surface and fishing sea products in remote offshore areas;

2. Construction of technical infrastructure; development of urban public transport and social infrastructure such as education and training, health care and ethnic cultures, and science and technological research.

3. Processing of farm, forest and aquatic products and direct technological services for agriculture, forestry and fisheries;

4. Production of export goods;

5. Priority industries for development (in the 1995-2000);

- production of consumer goods: textile, leather ware, garment, house utensils, paper and school utensils;

- Manufactured and electronic-informatic goods: manufacturing machines and facilities for agriculture, forestry, fishing and industries of consumer goods; manufacturing of equipment and facilities for construction and mining; building of ships, locomotives and coaches; assembling cars; manufacturing equipment for electrical grids and transformer stations.

- Production of materials, fuels and semi-finished products: production and processing of oil, gas and coal; milling and rolling of steel; producing non-ferrous metals, cement and other construction materials; producing fertilizers and basic chemicals.

- Traditional crafts: wood carving, mother-of-pearl inlaying, lacquer ware, wickerwork, carpet making, ceramics, earthenware and natural-silk weaving.

[2] Investment in production establishments which use modern technology

[3] Investment in production establishments employing at least:

- in urban areas: 300 laborers;
- in mountainous areas: 50 laborers;
- in other areas: 200 laborers.

[4] Investment in districts of ethnic minorities or in mountainous or island areas (List B)

[5] Investment in other difficult areas ( List C)

The Law on the Encouragement of Domestic Investment improves the environment for activities of domestic capital to some degree. But the effect is limited because of the shortage in financial sources. Particularly, regarding the medium and small-scale private enterprises, the Government has not adopted any supporting measures. At present, large-scale companies or enterprises in the private sector are still few. The development of private enterprises is necessary to form strong and efficient national economy, from the view of avoiding monopoly of large state-owned enterprises and making up competitive circumstances in Vietnam. If the government will go ahead with its corporatization of SOEs, the supporting measures for medium and small-scale enterprise is the necessary condition for it.

#### IV. THE STATE MANAGEMENT OF INVESTMENT

The National Assembly of October 1995 has authorized the Government plan on its State administration reform. In accordance with it, the State Planning Committee (SPC) and the State Committee for Cooperation and Investment (SCCI) were merged into the Ministry of planning and Investment (MPI) in November 1995. Previously the function of the SPC was to provide overall recommendations on the strategies, schemes and plans for socio-economic development for the whole country and formulate the mechanism for economic management'. (Decree No.86-CP, Art.1, 12 Aug. 1994) On the other hand the SCCI has the function of the administration of all forms of

direct investment by foreigners and overseas Vietnamese. (Decree no.39-CP, Art.1, 9 June 1993). In previous administration system on foreign investment, the SCCI has the power to evaluate investment project and to issue license on it. However, in fact, the SCCI was the coordinator among the various concerned Ministries and local government. The approval process was very complicated and wasted a lot of time. It discouraged foreign investor from investing into Vietnam. This situation however improved through the streamlining and simplification of approval procedures by the Decree 191 of 1994.

The main functions of new MPI are as follows;

- to define the orientation and structure of investment project (including ODA project and direct investment from home and abroad),
- to maintain the balance of domestic and foreign investment,
- to evaluate investment projects

The MPI is in charge of managing and using the ODA capital sources and issuing investment licenses. The aim of the establishment of the MPI is to form a comprehensive system on the management and control of investment projects. Its task is to allocate investment funds appropriately according to the national development plan.

## **CONCLUDING REMARKS**

Under the New Industrial Policy, Vietnam continues to strengthen economic development. The key actor of the economic development are the SOEs and foreign capital. Regarding the strategic sectors, the form of joint venture between SOEs and foreign capital must be encouraged by the Government. The Government intends to promote the activities of mixture sector between public and private. However the measures for the

encouragement of private sector is lagging that of the State-sector. The development among the multi-sectors should be kept in appropriate balance in order to encourage healthy competition. What should be the appropriate balance ? In the trend of the privatization of the SOEs in the neighboring countries, Vietnam has her own way of strengthening the State-sector with the assistance of foreign capital. The crucial issue of this kind of development investment is to coordinate the profit of the concerned parties following the principle of 'mutual profit'. Although Vietnam have not experienced the serious disputes on foreign investments, some frictions between the State and foreign companies have already occurred. In order to avoid such frictions and to attain the targets of economic development, a clear investment conditions under the New Industrial Policy must be presented to the foreign investors and they should not be changed frequently. Shaping-up the mutual relations between the State and foreign investors is very important issue.

Recently the Vietnamese open-policy have greatly succeeded. However, this success brought a new problem into the Vietnamese industries. The requirement of the tariff reduction following Vietnamese participation into the AFTA, will exert a negative effect on the Vietnamese industries which are not sufficiently competitive. Thus, the domestic and small-scale enterprises are the one's who will suffer most, unless, a sound measure to ensure their stabilities or help them in order to adapt to the repercussions of global competition or the AFTA, be adopted.