

CHAPTER VII

LEGAL ASPECT OF RENOVATION POLICY

INTRODUCTION

The Purpose of this chapter is to review the legal reform after 1986, when the VIth National Congress of the Communist Party of Vietnam decided to adopt a policy of economic renovation ("doi moi"). Legal reform in Vietnam has three elements. Firstly, this is a legal reform in conformity with policy changes from central planned economy to market oriented economy. The second element is legal development from traditional market to modern market. The third element is legal reform accompanied with international and regional economic structures. In the area of international law, formations of regional economic zones such as ASEAN, NAFTA, EU, APEC and so on require their legal coordination and integration. On the other hand, the issue of environmental protection also need to harmonize legal system at international level.

Since 1987 many laws and regulations were legislated in Vietnam. Many foreign legal experts and foreign businessmen complains about Vietnam's legal system, because her legal system is very complicated. The process of Vietnam's reform reflects the degree of Vietnam's socio-economic development. Therefore, through reviewing this process, we can find out some issues which exist in Vietnam's economy.

The VIth National Congress of the Communist Party decided to adopt economic renovation policies. The basic directions of economic renovation were as follows;

(1) to recognize 'multi sector' structure in the economy (as a feature of the transitional period),

(2) to recognize the economy which operates according to 'a market mechanism',

(3) to expand and heighten the effectiveness of external economic relations (open-door policy).

In order to promote the economic renovation policy, it is necessary to reform legal framework as a institutional infrastructure for economic renovation.

I. LAW REFORM FOR MULTI-SECTOR STRUCTURE IN THE ECONOMY

1. Constitution

Before 1987, the Vietnamese Constitution of 1980 authorized two sectors. They are state sector and collective sector.(Art. 18) Economic activities in private sector was limited in agriculture, handicrafts, small industries and services.(Art. 23 and Art. 24) In 1992, the National Assembly approved new Constitution. New Constitution permits "a multi-component commodity economy functioning in accordance with market mechanisms".(Art. 15) 1992 Constitution provides 3 types of ownership as follows; by the entire people (state sector), by collectives and by private individuals. According to the Article 15 of the Constitution, state sector and collective sector are fundamental sector. Function of private sector is limited to supplement to the fundamental sectors. However, Article 22 of the Constitution provides that these 3 sectors are "equal before the law; their capital and lawful property shall receive State protection."

2. Legal system for private sector

According to the decision of VIth Party's Congress, new laws for activities of private sector were established. The National Assembly in December 1990, approved the Law on private business (Enterprise) and the Law on Companies.

Under the Law on Private Business, "the State recognizes the long-term existence and development of private enterprise and its equality before the law with other enterprises and the lawful generation of profit by its business." (Art. 7) The ownership of private enterprise is protected by the States.(Art. 4) However, by these Laws, private enterprises are prohibited from engaging in business activities, establishment of companies in seven business sectors, such as the sector of electricity or water, information, postal and telecommunications service, sea and air transportation and international tourism.¹

Although these Laws limits the activities of private business, the implementing regulations of these laws provides to permit some incentives for certain specified fields.²

The Law on Companies provides 2 types of enterprises, which are limited liability companies and share-holding companies. The Law on Companies provides about the right and duties of private companies (Chapter I), the establishment, business registration, dissolution and bankruptcy. Regarding bankruptcy, the Law on Business Bankruptcy was approved by the National Assembly in December 1993, and enforced on the first July 1994. The Bankruptcy law aims,

¹ The Law on Private Business, Art. 5; the Law on Company, Art. 11

² Decree of the Council of Ministers on the Regulation of Concretization of some articles in the Law on Private Business, (Decree No. 221/HDBT, 23 July 1991), Art. 6-7

(1) to protect the legal rights and benefits of the creditors, indebted enterprises and concerned people,

(2) to define the responsibilities of indebted enterprises upon settlement of business bankruptcy,

(3) to contribute to the necessities of business efficiency of enterprises, and

(4) to ensure social order and discipline.

The Bankruptcy law applies to enterprises all forms of ownership including state enterprises. The establishment of the Bankruptcy law required to amend some articles of the Company Law and the Law on Private Business, concerning bankruptcy. These amendments issued in July 1994, provides that the settlement of the bankruptcy of company and private business shall be effected as stipulated in the Bankruptcy Law.

The Constitution 1992, the Law on Companies and Law on Private Enterprises permit the ownership of private sector, however, Civil Code has not yet established. The sixth session of the National Assembly, Ninth Legislative, decided to include the Civil Code among the legislation program for 1995.

II. LEGAL FRAMEWORK FOR MARKET-ORIENTED ECONOMY

1. Reform of state sector

The state sector is composed of state-run enterprises. The 1992 Constitution provided as follows, "The state sector shall be consolidated and developed, especially in key branches and areas, and play the leading role in the national economy."(Art. 19)

Before renovation, under former economic system, the state enterprises played the most important part in the national economy and

controlled 100% of key branches. During many years, problems of state sector became seriously, as Dr. Vo Dai Luoc states in the Chapter I of this book. Faced with the problems such as in-efficiency of productivity and pressure of huge subsidies to the state budget, the Council of Ministers issued the Stipulations on Renovation Policies of Planning and Socialist Business Accounting Policies for State Enterprises.³ The VIth Party's Congress also decided to renew the management mechanism, ensure the right to autonomy for the state-run economic units, really shift to cost accounting and socialist enterprise, and restore discipline and order in economic activities.

After this, the Council of Ministers issued some decrees in order to renovate and reorganize inefficient state-run enterprises.

+ Decree on Renovation of state-run industrial enterprises.(Decree No. 50-HDBT, 22 March 1988)

+ Decree on Reorganizing Production and Business in the public Sector. (Decree No. 315-HDBT, 1 September 1990)

+ Decree on Regulations for the Formation and Dissolution of State Enterprises. (Decree No. 388-HDBT, 11 November 1991)

This process succeeded to some extent. The number of state-run enterprises decreased from 12297 units in January 1990 to 6544 in June 1993. But on the other hand, the share of state enterprise in state revenue increased from 53.5% in 1990 to 68.3% in 1992.

The next process of renovation of state sector is equitization and consolidation. The Council of Ministers issued two decrees concerning state enterprise reform. They are the Decree on Plan to Continue

³ Decree No.217/HDBT, 14 November 1987

Management Renovation in Basic Economic Units (Decree No. 462-HDBT) and the Decree on Implementation of Economic Experiments on Transfer of State Enterprises to Corporations, in June 1992. (Decree No. 202-HDBT, 1992.6.8)⁴ The Vietnamese government adopted a policy of consolidating State Enterprises and establishing general enterprises in 1994. As of November 1994, the Prime Minister decided to reorganize state enterprises in 3 sectors such as trade, energy and coal.⁵ Although the Government has determined to re-organize state companies into state general company, their legal framework about their legal status and responsibility is not clear.⁶

2. Legal framework for economic transaction

Among recent legal reforms in Vietnam, legal framework in the field of commercial law is less developed. The Law on Economic Contract was promulgated in 1989. The Law on Civil Contracts was established in 1991. The Law on Economic Contract defines commercial contracts as those concerned with the production or exchange of commodities, services, researches, the application of scientific to chemical knowledge and other area of economic and commercial activities. However, commercial laws which is the most fundamental law for economic transaction has not yet established. In order to develop a competitive environment in market, to establish laws on competition such as anti-monopoly law, law on fair trade and law on consumer protection, is necessary as legal framework.

⁴ Natalie G. Lichtenstein, "A survey of Vietnam's Legal Framework in Transition", The World Bank, April 1994, pp.14-32.

⁵ Prime Minister Decision No. 92/TTg, No. 563/TTg, 26 September 1994

⁶ Natalie G. Lichtenstein, *ibid.*, p. 33; Decree on Arbitration for State Contract, Resolution No. 59/CP, 18 April 1963, Law on Arbitration of State and Economy, ND75-CP, 14 April 1975

3. Settlement of economic disputes

In Vietnam, the State Committee for Arbitration was established to settle economic disputes between state enterprises, 30 years ago.

In 1990 the Ordinance on Economic Arbitration was enacted. Under the Ordinance, the economic arbitration has 3 functions. The first is determining disputes, the second is dealing with breaches on economic contracts, the third is carrying out state management of economic contracts. Economic cases subject to the Courts are including 3 economic cases; 1. Any dispute over an economic contract between a juridical person and another juridical person, between juridical person and individuals who has register for business operation, 2. Any disputes between a company and members of the company: and among members of a company with respect of the establishment, the operation and dissolution of the company; 3. Any disputes over a dealings in bonds and stocks; 4. Other economic disputes as stimulated by the laws.(Art. 12)

Regarding to the disputes between the parties concerned in the joint venture enterprise and business cooperation contract, the Foreign Investment Law provides settlement by arbitration after failing to settle by negotiation and conciliation.(Art. 25) The Implementing Regulations of Foreign Investment Law (Decree No. 18-CP) approves settlement by foreign arbitration, as follows;

-A Vietnam Arbitrator ,or the Arbitrator of third country, or the International Arbitrator.

-A panel of Arbitrators whose establishment is agreed upon by the parties.(Art. 100)

In April 1993, the Prime Minister issued the Decision on the Establishment of the Vietnam International Arbitration Centre. According to this decision, the Vietnam international Arbitration Centre was established at the Chamber of Commerce and Industry in Vietnam.⁷

In 1994, the Economic Court was organized within the system of the People's Court. The Economic Courts deals with disputes over economic contracts and business bankruptcy. (The Law on Amendments and Additions to a number of Articles of the Law on Organization of the People's Court promulgated on 10 January 1994; Ordinance 29/LCTN). The Standing Committee of the National Assembly passed the Ordinance on Procedures on Arbitration of Economic Disputes, in March 1994. This ordinance stipulates the concrete procedures to arbitrate disputes.

Besides these two organization for dispute settlement on economic disputes, the Government decided to establish the third institution in September 1994. This new institution is the Economic Arbitration, which is a non-governmental organization governed by the Ministry of Justice and the People's Courts. (The Government Decree No. 116/CP, 5 September 1994)

III. OPEN POLICY AND EXPANDING OF EXTERNAL ECONOMIC RELATIONS

Legal framework for open policy has two sides. One side is legal system as domestic law and another side is legal system at the level of international law. Main external economic relations are external trade, foreign investment and economic cooperation.

⁷ Ngo Ba Thanh, "Vietnam's Integration into the World Business Community for Peace, Development, Mutual Benefit, through the Rule of Law", Hanoi, 1993

1. Law reform on Trade and Foreign Investment

Before 1986, Vietnam traded chiefly with the Soviet union and other socialist countries in Eastern Europe. The Report of the VIth Party's Congress stated, "In the whole area of external economic relations, the most important task is to boost exports so as to meet the needs in import."⁸

Firstly, Law on Export and Import Duties Commercial Goods was issued in 1987, in order to manage external trade. This Law was replaced with the Law on Export and Import Duties dated 26 December 1991. According to the 1991 Law, the objectives of the Law are to manage and increase the effectiveness of export and import activities; expand external economic relations; contribute to the development and protection of production, guide domestic consumption and create a source of revenue for the state.(Preamble) Concerning state trade management, the Decree on the States management of commodities imports/exports, was issued by the Council of Ministers in April 1992.(Decree No. 114/HDBT)

2. Law on Foreign Investment

The VIth Party's Congress decided to introduce the policy of encouraging foreign investments in various forms. Along with the decision, The Law on Foreign Investment was approved by the National Assembly on 29 December 1987. The Law on Foreign Investment Law was amended in 1990 and 1992. At present, the effective law is the Law of 1992.

The 1992 Constitution provides that the state encourages foreign investment in conformity with Vietnamese law and international law

⁸ Document, "VIth National Congress of the Communist Party of Vietnam", p. 33.

and it guaranties the right to lawful ownership of funds, property and other interests by foreign organization and individuals. In addition to this, Foreign Enterprise with foreign investments shall not be nationalized.(Constitution, Art. 25)

Under the 1987 Foreign Investment Law, three forms of Foreign Investment were approved; (1) business cooperation venture, (2) joint venture enterprise, (3) wholly foreign-owned enterprise. The Foreign Investment Law provides incentives for investment into some sectors. In addition, the Government approved the creation of export processing zones and incentive measures for foreign companies invested to EPZ.⁹

The Law on Foreign Investment was amended in 1992. The provisions on EPZ (Export Processing Zone) and BOT(The Build-Operate-Transfer). (art. 14, art. 15) were added in the Foreign Investment Law. This amendment also stipulates that Vietnamese partner can increase or buy back the capital contribution of Vietnamese side with agreement between the parties, provided that the Government decided. (Art. 19a and Art. 19b) The Law on Foreign Investment of 1992 approves to give preferential conditions to the foreign companies which make investment to EPZ, BOT and certain encouraged area which were decided by Implementing Regulations of the Law on Foreign Investment.¹⁰

⁹ The Regulations concerning the Establishment of Export Processing zones, issued on 18 October 1991

¹⁰ Decree No. 18/CP on Implementing Regulations of the Law on Foreign Investment, 16 April 1993, Art. 27, 35a and Art. 67; Decree No. 87/CP on Regulations on Investment in the form of Build-Operate-Transfer Contract, 23 November 1993

In my view, these amendments in the Foreign Investment Law of 1992 show a direction of Vietnam's FDI policy. It means a development of legal system concerning FDI according to the recent economic development or economic needs.

Foreign direct investment is effective not only for capital contribution to Vietnam, but also for introducing management know-how and technology. Then as a part of legal framework for foreign investment, laws on technology transfer (TOT) is required. The laws and regulations concerning TOT legislated in Vietnam, are as follows;

- The Ordinance on the Transfer of Technology (1988.12.5)

- The Decree on the Transfer of Technology into Vietnam. (Decree No. 49-HDBT, Council of Ministers, 1991.3.4)

- The Ordinance on the Protection of Industrial Property Rights (1989.1.28)

- The Decree on Copyright (Council of Ministers, 1989.11.14). A recent development in this field, is establishment of the Ordinance on Copyright in December 1994.

IV. REFORM OF LEGAL SYSTEM IN THE OTHER FIELD

In order to promote economic reform, Vietnam needed to reform monetary and financial system, and land system. These systems are legal infrastructures for economic reform as well as expanding external economic relations.

1. Monetary and financial system

The State Bank was established in 1951. Before Doi Moi, the State Bank had two functions. The first was the function of issuing banking note, the second was that of financing and controlling of

economic development fund. The Vietnam government started banking renovation in 1987. The Order No. 218/CT tried to reorganize above banking system to two tier system, which was composed of State Bank and Commercial Banks. Along with this Order, some branches of State Bank were reorganized to official commercial banks. This measure was adopted as a pilot case. In March 1988, the Ministry of Councils issued the Decision No. 53/HDBT which approved the activities of commercial bank. Under this system, State Bank shall manage and control commercial banking activities. According to the Decision, five commercial banks were approved.¹¹

In 1990 two Ordinances were promulgated. They were the Ordinance on the State Bank and the Ordinance on Banks, Credit Cooperatives and Finance companies. The Ordinance provides the function of the State Bank as follows;

- Managing money, credit and banking operations throughout the country in order to stabilize the value of money

- The only agency with power to circulate the currency of the Socialist Republic of Vietnam.(Art. 1)

The State Bank has competence to issue rules and regulations under its authority in relation to currency, credit payments, foreign exchange and banking and to implement and review the implementation of laws and regulations relating currency , credit payments, foreign exchange and banking.(Art. 2-2)

The Ordinance on commercial banking provides 3 types of finance organization. The first type is commercial bank including State-run commercial bank, equity commercial bank, foreign bank and joint-venture bank. The second type is investment and development bank.

¹¹ Natalie G. Lichtenstein, *ibid.*, pp. 41-42

This type is also State-run bank.(Art. 1-2) The third is credit cooperatives. Regarding foreign bank and joint-venture bank, the Regulation on foreign Bank Branches and Joint-Venture Bank Operating in Vietnam was promulgated in June 1991. (Decree No. 189/HDBT)

For Vietnam's further economic development, "To Continue strengthening and renewing banking and financial operations in order to meet the needs of production, business and capital mobilization"¹² is one of the most important tasks. Especially to strengthen ability to mobilize funds for development is a urgent task. However, in Vietnam, legal system on this field is less developed. Although Vietnam government has decided to establish the first stock market in Hanoi and Ho Chi Minh City in early 1995, legal framework for stock market is not completed yet. The government will promulgate some decrees on stock market system in advance, and after review of implementation of the decrees a Law on Stocks will be adopted.

2. Land System

Land reform in Vietnam started as a part of agricultural reform. In December 1987 the National Assembly approved the Law on Land. The 1992 Constitution provides that the land belongs to the state. (Art. 17) The Constitution also provides that "the State shall entrust land to organizations and private individuals for stable and lasting use" and "they may transfer the right to use the land entrusted by the State, as determined by law." (Art. 18)

In 1993, new Land Law promulgated according to the provisions of 1992 Constitution. The new Land Law reaffirms the land ownership

¹² "On the tasks for 1995", Resolution of the Ninth National Assembly, Sixth Session, "Vietnam Law and Legal Forum", vol. 1, No. 4, December 1994, p. 5

belonged to the state and the right to use land for private sector. Under the current land system, the land transaction becomes possible in market. In 1994, new laws and regulations are legislated to implement the Land Law. Those are The Law on Tax on Land-Use Right Assignment issued in May 1994, and the Ordinance on the Rights and Obligations of Foreign organizations and Individuals who lease land in Vietnam in October 1994. The Prime Minister issued a series of decisions about land management.¹³

3. Legislation in other field

I have to mention about development of legal reform in other field concerning economic development (Laws on labor relations).

The Law on Trade Union was passed by the National Assembly on 30 June 1990. This Law provides the functions, powers and obligations of trade Union. The Vietnam's Labor Code was promulgated in June 1994, and will be effective from January 1995. The new Code defines the rights and obligations of employee and employer, the labor standards and principles for labor use and management.(preamble) This Code recognizes the right to strike and provides the procedures in settlement of labor disputes.

Regarding environmental protection, the Environment Protection Law was enacted in December 1993. Decree on guideline for implementation of Environment Law was issued in October 1994.(Decree No. 175/CP, 18 October 1994) Provisions concerning environmental protection are found in the Forestry Law, the Decree on Protection and Development of Aquatic resources(5 May 1989), the Regulations on Environment Protection in Marine Petroleum

¹³ Decision 87/CP on the Regulations on the Land Tariff; Decision 88/CP on the Urban Land Use and Management; Decision 89/CP on the Collection of Land Rental and Fees, and etc.

Operations(5 September 1990), and the Regulations on forest protection and allocation of forest land for reforestation.(Decision No. 202/TTg, 2 May 1994).

V. SOME ISSUES ON LEGAL REFORM FOR FUTURE DEVELOPMENT

The Vietnam's economic development is in transition to the second stage, namely next development plan 1996-2000. Legal system is an infrastructure of new economic system. However, legislative process will influenced by the degree of actual economic development. The Vietnam's economy has many weaknesses as the Prime Minister stated at the National Assembly in October 1994. The Government will take various measures to overcome these weaknesses, including reform of legal system. This process will be a process of trial and error, as past experiences in Vietnam is showing.

International assistance for legal reform to Vietnam are provided by international organizations and foreign governments. For example, UNDP/World Bank assistance for the area of Bankruptcy Law, State-Owned Enterprise Law, Securities Market regulation and Land Law, UNDP/ILO assistance for the area of Labor Law, UNDP/ESCAP assistance for the area of Mining Law, SIDA(Sweden) assistance for Bankruptcy Law and Commercial Law, French assistance for Commercial Law and so on.

As a result of various legal assistance, these laws was respectively drafted and will be drafted based on different legal system. The task of the Vietnam Government will be to heighten abilities of law experts in Vietnam and coordinate separate legal system in order to integrate into new Vietnam's legal system.