

# CHAPTER 5

## Legal Aspect of Renovation Policy

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The Purpose of this chapter is to review the legal reform after 1986, when the Sixth 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 a central planned economy to market-oriented economy. The second element is legal development from a traditional market to a modern market. The third element is legal reform accompanied by international and regional economic structures. In the area of international law, the formation 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 needs to harmonize the legal system at the international level.

Since 1987 many laws and regulations were legislated in Vietnam. Many foreign legal experts and foreign businessmen complain about Vietnam's very complicated legal system. The process of Vietnam's reform reflects the degree of Vietnam's socio-economic development. Therefore, by reviewing this process, we can determine some issues which exist in Vietnam's economy. The Sixth 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 the legal framework as an institutional infrastructure for economic renovation.

### **1. Law Reform for Multi-Sector Structures in the Economy**

#### **Constitution**

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

#### **Legal System for the Private Sector**

According to the decision of Sixth Party's Congress, new laws for the activities of the private sector were established. The National Assembly in December 1990, approved the Private Business (Enterprise) Law and the Corporation Law.

Under the Private Business Law, "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 State (Art. 4). However, through these

Laws, private enterprises are prohibited from engaging in business activities or establishing companies in seven business sectors, which include the following sector: electricity, water, information, postal and telecommunications service, sea and air transportation and international tourism .

Although these laws limit the activities of private business, the implementing regulations of these laws provide some incentives for certain specified fields. The Corporation Law applies to two types of enterprises, which are limited liability companies and share-holding companies. The Corporation Law covers the right and duties of private companies, the establishment, business registration, dissolution and bankruptcy. Regarding bankruptcy, the Business Bankruptcy Law was approved by the National Assembly in December 1993, and enforced on the July, 1994. The Bankruptcy law aims:

- (1) to protect the legal rights and benefits of the creditors, indebted enterprises and people concerned,
- (2) to define the responsibilities of indebted enterprises upon settlement of business bankruptcies,
- (3) to contribute to the business efficiency requirement of enterprises, and
- (4) to ensure social order and discipline.

The Bankruptcy Law applies to enterprises, all forms of ownership including state-owned enterprises (SOEs). The establishment of the Bankruptcy Law required to amend some articles of the Corporation Law and the Private Business Law, concerning bankruptcy. These amendments issued in July 1994, provide that the settlement of the bankruptcy of companies and private businesses shall be effected as stipulated in the Bankruptcy Law.

The 1992 Constitution, the Corporation Law and the Private Enterprises Law permit the ownership of private sector, however, Civil Code has not yet been established. The Sixth Session of the National Assembly, Ninth Legislative, decided to include the Civil Code in its legislation program for 1995.

## **2. Legal Framework for Market-oriented Economy**

### **Reform of State Sector**

The state sector is composed of SOEs. The 1992 Constitution indicates the following: "The state sector shall be consolidated and developed, especially in key branches and areas, and plays a leading role in the national economy"(Art. 19). Before renovation, under the former economic system, SOEs played the most important part in the national economy and controlled 100% of key branches. For many years, the problems of the state sector have been serious. Faced with problems such as inefficiency in productivity and pressure of huge subsidies on the state budget, the Council of Ministers issued the Stipulations on Renovation Policies of Planning and Socialist Business Accounting Policies for SOEs . The Sixth Party's Congress also decided to renew the management mechanism, ensure the right to autonomy for SOEs, really shift to cost accounting and socialist enterprises, and restore discipline and order in economic activities.

After this, the Council of Ministers issued some decrees in order to renovate and reorganize inefficient SOEs:

- Decree on Renovation of state-run industrial enterprises (Decree No. 50-HDBT, March 22, 1988),
- Decree concerning the Reorganization of Production and Business in Public Sector (Decree No. 315-HDBT, September 1, 1990),
- Decree concerning Regulations for the Formation and Dissolution of State Enterprises (Decree No. 388-HDBT, November 11, 1991).

This process has been successful to some extent. The number of SOEs decreased from 12,297 units in January 1990 to 6,544 in June 1993. On the other hand, the share of the SOEs in state revenue increased from 53.5% in 1990 to 68.3% in 1992.

The next process of renovation of the state sector is equitization and consolidation. The Council of Ministers issued two decrees concerning SOE reform. These are the Decree concerning Plan to Continue Management Renovation in Basic Economic Units (Decree No. 462-

HDBT) and the Decree on Implementation of Economic Experiments on the Transfer of State Enterprises to Corporations, in June 1992, (Decree No. 202-HDBT, June 8, 1992). The Vietnamese government adopted a policy of consolidating SOEs and establishing general enterprises in 1994. As of November 1994, the Prime Minister decided to reorganize SOEs in three sectors such as trade, energy and coal. Although the Government has determined to reorganize state companies into state general companies, the legal framework concerning their legal status and responsibility is not clear.

### **Legal Framework for Economic Transactions**

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

### **Settlement of Economic Disputes**

The State Committee for Arbitration was established to settle economic disputes between SOEs in Vietnam, 30 years ago. In 1990 the Ordinance on Economic Arbitration was enacted. Under this ordinance, economic arbitration has three functions. The first is to determine disputes; the second is to deal with breaches of economic contracts; the third is to carry out state management of economic contracts. Economic cases subject to the courts include the following: (1) any dispute over an economic contract between two juridical persons, between a juridical person and individuals who are registered for business operations; (2) any disputes between a company and members of the company, and among members of a company with respect to the establishment, the operation and dissolution of the

company; (3) any disputes over dealings in bonds and stocks; (4) other economic disputes as stipulated by the law (Art. 122).

Regarding disputes between the parties concerning joint-venture enterprises and business cooperation contracts, the Foreign Investment Law provides for settlement by arbitration on failure by negotiation and conciliation (Art. 25). The implementing regulations of the Foreign Investment Law (Decree No.18-CP) approve settlement by foreign arbitration, as follows:

- A Vietnam arbitrator, or the arbitrator of a third country, or an 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 Center. According to this decision, the Vietnam International Arbitration Center was established at the Chamber of Commerce and Industry. In 1994, the Economic Court was organized within the system of the People's Court. The Economic Courts deal with disputes over economic contracts and business bankruptcies. (The Law on Amendments and Additions to a number of articles of the Organization Law of the People's Court promulgated on January 10, 1994; Ordinance 29/LCTN). In March 1994 the Standing Committee of the National Assembly passed the Ordinance on Procedures on Arbitration of Economic Disputes. This ordinance stipulates the concrete procedures for the arbitration of the disputes.

Besides these two organization for settlement of 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, September 5, 1994).

## **3. Open Policy And Expansion of External Relations**

The legal framework for open policy has two sides. One side is the legal system as domestic law and the

another side is the legal system at the international law level. Main external economic relations are external trade, foreign investment and economic cooperation.

### **Trade and Foreign Investment Reform Law**

Before 1986, Vietnam traded chiefly with the Soviet Union and other socialist countries in Eastern Europe. The Report of the Sixth 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."

Firstly, Law on Export and Import Duties of Commercial Goods was issued in 1987, in order to manage foreign trade. This law was replaced with the Law on Export and Import Duty Law dated December 26, 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 State Management of Commodities Imports/Exports, was issued by the Council of Ministers in April 1992 (Decree No.114/HDBT).

### **Law on Foreign Investment**

The Sixth Party's Congress decided to introduce the foreign investment promotion policy in various forms. Along with the decision, the Foreign Investment Law was approved by the National Assembly on December 29, 1987. The 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 promotes foreign investment in conformity with Vietnamese law and international laws and guarantees the right to lawful ownership of funds, property and other interests by foreign organizations and individuals. In addition, 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 enterprises. The Foreign Investment Law provides incentives for investment into some key sectors. In addition, the Government approved the creation of

export processing zones and incentive measures for foreign companies invested to EPZ.

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

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

Direct foreign 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 transfer of technology (TOT) are required. The laws and regulations concerning TOT legislated in Vietnam, are as follows;

- Ordinance on the Transfer of Technology (December 5, 1988)
- Decree on the Transfer of Technology into Vietnam. (Decree No. 49-HDBT, Council of Ministers, (March 4, 1991) )
- Protection Ordinance of Industrial Property Rights (January 28, 1989)
- Copyright Decree (Council of Ministers, (November 14, 1989) ).

A recent development in this field, is the establishment of Copyright Ordinance in December 1994.

## **4. Reform of Legal System in Other Field**

In order to promote economic reform, Vietnam

needed to reform the monetary and financial system, and the land system. These systems are the legal infrastructure for economic reform as well as for expanding external economic relations.

### **Monetary and Financial System**

The State Bank was established in 1951. Before Doi Moi, the State Bank had two functions. The first was the issuance of bank notes, and the second was that of financing and controlling the economic development fund. The Vietnam government started the banking reform in 1987. Order No. 218/CT tried to reorganize this banking system into a two-tier system, which was composed of the State Bank and the Commercial Banks. Along with this order, some branches of the State Bank were reorganized into official commercial banks. This measure was adopted as a pilot case. In March 1988, the Council of Ministers issued Decision No. 53/HDBT which approved the activities of the commercial banks. Under this system, the State Bank would manage and control commercial banking activities. According to the decision, five commercial banks were approved.

In 1990, two ordinances were promulgated. They were the State Bank Ordinance and the Banks, Credit Cooperatives and Finance Companies Ordinance. 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 laws and regulations relating currency, credit payments, foreign exchange and banking (Art. 2-2).

The Commercial Banking Ordinance provides three types of finance organization. The first type is commercial banks, including State-run commercial banks, equity commercial banks, foreign banks and joint-venture banks. The second type is investment and development banks.

This type is also a State-run bank (Art. 1-2). The third

is the credit cooperatives. Regarding foreign banks and joint-venture banks, the regulation of foreign bank branches and joint-venture banks 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" is one of the most important tasks. Especially to strengthen the ability to mobilize funds for development is an urgent task. However, Vietnam's legal system in this field is yet to be developed. Although the Vietnamese government has decided to establish the first stock market in Hanoi and Ho Chi Minh City in early 1995, the legal framework for the stock market has not yet been completed. The government will promulgate some decrees on the stock market system in advance, and after reviewing the implementation of the decrees a new Law on Stocks will be adopted.

### **Land System**

Land reform in Vietnam started as a part of agricultural reform. In December 1987, the National Assembly approved the Land Law. 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, a new Land Law was promulgated according to the provisions of 1992 Constitution. The new Land Law reaffirms the land ownership of the State and the right to use land for the private sector. Under the current land system, land transaction becomes possible in the market. In 1994, new laws and regulations are legislated to implement the Land Law. These 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.

### **Legislation in Other Fields**

I have to mention about the development of legal reforms in other field concerning economic development

(Laws on labor relations). The Law on Trade Union was passed by the National Assembly on June 30, 1990. This Law provides the functions, powers and obligations of trade unions. 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 employees and employers; the labor standards and principles for labor use and management (preamble). This Code recognizes the right to strike and provides the procedures in the settlement of labor disputes.

Regarding environmental protection, the Environment Protection Law was enacted in December 1993. The Decree on Guidelines for the Implementation of the Environmental Law was issued in October 1994 (Decree No. 175/CP, October 18, 1994). Provisions concerning environmental protection are found in the Forestry Law, the Decree on Protection and Development of Aquatic Resources (May 5, 1989), Regulations on Environmental Protection in Marine Petroleum Operations (September 5, 1990), and the regulations on forest protection and allocation of forest land for reforestation (Decision No. 202/TTg, May 2, 1994).

## **5. Some Issues on Legal Reform for Future Development**

Vietnam's economic development will soon be in the

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

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

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