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VIETNAM'S ECONOMIC LIBERALIZATION AND OUTREACH: LEGAL REFORM

Phong Tran*

I. INTRODUCTION

MANY people have traced Vietnam’s socialist formation back to the country’s struggle against colonialism for independence and peace. Socialism came into Vietnam as a result of the country’s experience with the colonial exploitation and hostility toward the capitalist order, Socialism emerged in Vietnam. Socialism stressed community effort, simplicity of lifestyle, equalization of wealth and opportunity, all of which had strong overtones in Vietnam’s Confucian tradition. Notably, Confucian teachings were in conflict with the concepts of materialism and individualism professed by capitalist economists. Such conditions oriented Vietnamese society and economy toward socialism following the cause of independence.

In 1975, post-war Vietnam embraced the Soviet economic model of central planning and state subsidies on a larger scale. The building of heavy industry and large-scale projects, however, proved inefficient and drained too many investments. More importantly, the high collectivization of the agricultural sector turned farmers into industrial workers. This forced Vietnam, an agricultural nation, to rely on substantial imports to fill shortages of rice and other foods. In the mid 1980s, Vietnam’s economy was running short of common goods; the annual inflation rate reached three digits, and people’s lives were drastically affected. The economic situation of Vietnam was compounded by the Soviet Union’s economic problems, which sharply reduced its aid to Vietnam. Vietnam maintained a large budget deficit, and its foreign debt was rising.

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2. Id. at 63.
Recognizing this economic failure, the Vietnamese government initiated the "Doi Moi" policy, or "renovation." This meant implementing a program of socio-economic reform to transform its centrally planned economy into a market-based system. The main features of this policy included the decollectivization of the agricultural sector, price liberalization, the relaxation of state control, the diversification of ownership rights, the establishment of a two-tier banking system, and the opening of the economy to free market forces.6

From the outset, the Vietnamese government has recognized the importance of creating a transparent, reliable, and favorable legal system to underlie the transition to a market economy. This article analyzes Vietnam's legal reform during the process of economic transformation in Vietnam thus far. Following an introduction to Vietnam's Doi Moi policy in part I, part II briefs the social and economic background since the country's reunification, giving rise to conditions and needs for economic liberalization. Part III discusses the initiation of the Doi Moi policy and its commencement in the earlier phase. This phase is characterized by the abandonment of the economic command system, although a replacement system was not adopted until the mid to late 1990s.7 The cornerstone of Vietnam's legal reform occurred in this stage with the enactment of the Law on Foreign Investment in 1987. But the encouragement of foreign investment was not successful until the next stage, when Vietnam committed itself to world economic integration. Part IV analyzes the broader legal reform during Vietnam's integration into the regional and world economy in the 1990s. A large body of legislation was developed to address every aspect of the transitional economy. In addition, Vietnam is developing its own legal system, which can be characterized as socialist in nature with elements of both civil and common law.8

The discussion of Vietnam's legal reform focuses on several main areas including: state sector; private sector and domestic investment promotion; foreign investment; contract rights; banking and financial reform; intellectual property protection; and Vietnam's international economic integration and Bilateral Trade Agreement with the United States. A prevailing concern is whether such a legal system can achieve its consistency, integrity, and efficiency, thereby furthering the economic reform in the wake of political skepticism and reluctance. Finally, the conclusion gives some thoughts on future legal reforms.

II. VIETNAM POST-WAR BACKGROUND

Vietnam's postwar economic restructuring took place in the midst of anti-capitalism. First, Vietnam's attempt to establish diplomatic relations

8. Schot, supra note 6, at 34.
with the United States, under the 1973 Paris Peace Agreement, failed. Vietnam next aligned with the Soviet Union and isolated itself from countries existing outside the communist bloc. As a result, the country limited its international trade relations to the Comecon. The economy depended solely upon monetary aid from the Soviet Union.

Soon after the war ended in 1975, the “socialist transformation” program was implemented in every aspect of the Vietnamese economy. The market economy in the South was converted and merged into the nationwide central-planned economy. Private businesses were confiscated and nationalized. The government controlled the domestic market through its central plans and targets, and the operation of state-owned enterprises. In the agricultural sector, the collective system was implemented on a large scale in terms of organization and management. Under a workday based system, farmers labored on their land as workers. Only two types of ownership rights and economic sectors were constitutionally recognized: state ownership (or, as the Vietnamese call it, the ownership belonging to the entire people) and collective ownership. In 1980, Vietnam’s Constitution abolished the private sector that had previously existed. The “socialist transformation” program rested on the Marxist view of hegemony, in which markets are neither mixed nor neutral, but a reflection of politics. State control therefore, was exercised in both political and economic structures.

From 1976 to 1980, the Vietnamese government pooled most of the country’s resources to reconstruct the economy toward the building of heavy industry and large-scale projects. No market existed in a practical sense because all purchases, sales, and prices were controlled by the government. In addition, economic planners paid no attention to the production of consumer goods and export commodities. As a result, the economy soon dried up due to the low efficiency of an overly saturated market for capital construction. The limited supplies caused prices to rise. Furthermore, the government increased foreign borrowing to finance imports, resulting in a large budget deficit.

In the agricultural sector, farmers became members of collectives and surrendered their right to control land. Farmers, like workers in industrial factories, had to sell the crops at low prices that were fixed by the government. Farmers were grouped in collectives, sharing the farming and related work. Crops were distributed to members based on their

11. Frye, supra note 9, at 812.
14. Id.
15. Id.
workday calculations. Farmers had no real interest in the land since their compensation was based on their workday productivity, as opposed to the production of the farm. State-sponsored food companies were instructed to purchase crops from collectives with no discretion as to the quality or quantity of the products. This system further diminished incentives for farmers to invest in the land, improve quality and productivity, or raise output. As a result, Vietnam had to import about one million tons of rice each year during this period.\textsuperscript{16}

Faced with the economic inefficiency and a shortage of food, the Vietnamese government implemented limited adjustments in the agricultural sector in the early 1980s. To create incentives for farm production, collective farmers contracted for a specific output and enjoyed the excess production. This adjustment helped to increase agricultural production without significant investment.\textsuperscript{17}

Some people trace the inception of Vietnam’s economic reform back to such agricultural adjustments. In practice, it was not unusual for farmers to disregard the state imposed mechanism and take their own initiatives to change the farming production and management. The government could then react by officially adopting the new adjustments. This practice shows that the so-called reform was very limited. The adjustments did not root out the inherent problem of the mandatory collectivization in agriculture that prevented farmers from reaping the benefits of their land.

By the mid 1980s, despite some economic adjustments, the Vietnamese economy was dysfunctional. The building of heavy industry failed to address the need to develop production, improve the supply of goods, or meet the people’s needs.\textsuperscript{18} The bureaucratic and centrally planned system blocked all market forces. Likewise, the dynamic economy of private businesses was restricted. In the agricultural sector, farmers lacked personal interest in cultivation under the collectivization structure. To make matters worse, a black market was emerging with much higher prices, absorbing from the organized market the already scarce supply of goods.\textsuperscript{19} In 1985, in efforts to cope with the increasing inflation, the government responded by raising prices in the public sector, increasing wages, and revaluing the currency (by administrative withdrawal of money supply from circulation). Despite the government’s efforts, after these changes the inflation reached a rate of 775 percent.\textsuperscript{20} Consequently, state subsidies further increased the budget deficit.

Vietnam’s international trade had no positive move in the wake of the United States’s trade embargo imposed on Vietnam. Economic contracts with Vietnam were prohibited, including commercial exports to Vietnam of all but the most basic humanitarian commodities, and imports of all

\textsuperscript{16} See id.
\textsuperscript{17} See Analysis, supra note 5, and accompanying text.
\textsuperscript{18} Political Report VI, supra note 3, and accompanying text.
\textsuperscript{19} Khoa, supra note 13.
\textsuperscript{20} See Analysis, supra note 5.
Vietnamese commodities into the United States.\textsuperscript{21} Vietnam was isolated from the rest of the world outside the Soviet bloc. Meanwhile, a radical reform to improve the social and economic downgrade was led by Gorbachev in the Soviet Union. In addition, China had gained success in a shift to a market economy almost a decade earlier. Thus, the international context influenced the Vietnamese leaders toward a fundamental reform to overcome this domestic dilemma.

III. DOI MOI POLICY AND INITIAL ECONOMIC LEGISLATIONS

From the outset, Vietnam’s Doi Moi policy followed the movement of social and economic relaxation among the socialist countries led by the Soviet Union’s reform in the mid to late 1980s. The main objective of this reform was to revitalize the economy under government control. This characteristic was conceptualized as a mixed economy in a transitional period in the initial stage of a socialist evolution.\textsuperscript{22} Initial efforts of Doi Moi focused on the decollectivization of the agricultural sector, price liberalization, and diversification of ownership rights. The concept of a multi-sector economy was introduced, comprising the state sector, collective sector, small-scaled individual business sector (including individual farmers), private capitalist sector, and state-capitalist sector (i.e. joint form of state and private ownership).\textsuperscript{23}

In 1986, Vietnam initiated the Doi Moi policy and commenced the social and economic reform to revitalize the stagnant economy. The government had abandoned its system of economic command and control, but did not clearly adopt a replacement.\textsuperscript{24} The budget deficit swelled to 10 percent of the gross domestic product. Savings were negative and the value of exports was less than half of the import bill for 1988.\textsuperscript{25} Inflation remained at its peak of three digits, and macroeconomic policies were out of control. It was not until late 1988 that the Vietnamese government made a turnaround into the array of the market oriented transformation, and implemented a series of accelerated reform measures. Official price controls were abolished for almost all goods and services in the economy, and consumer goods sold through state outlets were priced at the free market level.\textsuperscript{26} The Dong was devalued drastically to bring the official rate in line with the prevailing market rate. State-owned enterprises were granted more autonomy, and official state allocations and planning targets were abandoned.\textsuperscript{27}

\textsuperscript{21} Cao, supra note 12, at 1038.
\textsuperscript{22} The concept of a mixed economy can be traced back to Lenin’s New Economic Policy of the late 1910s and early 1920s in the Soviet Union.
\textsuperscript{23} Political Report VI, supra note 3.
\textsuperscript{24} Dinh, supra note 7, at 866.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} See id.
One radical change introduced by Doi Moi was the opening of the economy to foreign investment. Due to this feature, Doi Moi is well known as the "open door policy." The Vietnamese government hoped foreign investment would aid the ailing economy and improve its economic environment. The Law on Foreign Investment (LFI) was enacted on December 29, 1987, and was recognized as one of the most liberal foreign investment laws among the developing countries. Incidentally, the LFI was the first economic legislation ever enacted by the Vietnamese Congress. The LFI has played an important role in developing and reforming the Vietnamese legal system for a market economy.

The LFI expressly guarantees that the invested capital and assets of foreign investors will not be requisitioned or expropriated, and that an enterprise with foreign invested capital will not be nationalized. Direct foreign investment may be made through one of the following forms under the LFI: (i) Joint Venture Company, (ii) Wholly Foreign Owned Company, and (iii) Business Cooperation Contract. Build-Operate-Transfer Company is often referred to as another investment form although it essentially falls into the former categories. Foreign investment projects are only authorized to commence business upon the issuance of the investment license.

The encouragement of foreign investment reflects both Vietnam's political preference and strategy. The domestic private sector was ideologically disfavored and had been constrained for several years. The Vietnamese government looked to foreign capital as a proper means to revitalize the ailing economy. In addition, by jointly participating in foreign investment projects through state-owned enterprises, the Vietnamese government hoped to supervise this economic activity. State capitalism was a preferred concept and way of doing business. Therefore, in the initial stage, the LFI required businesses in most areas to be set up in the form of a joint venture in which state-owned enterprises held at least 30 percent of the contributed capital. The joint venture company's board of management was to make most important business decisions on a unanimous basis. This decision-making mechanism gives minority shareholders, normally Vietnamese state-owned enterprises, a veto right. Many joint venture companies needed to convert into wholly foreign owned companies under government approval at the later stage.

Along with the policy on foreign investment encouragement, Vietnam's recognition of a multi-sector economy legitimizes private businesses and farming households. This recognition initially brought about significant progress in agriculture. The collectives were decentralized, which left farming households responsible for production. Farming households

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30. Id.
31. Schot, supra note 6, at 51.
were allocated land and given the right to dispose of their crops, thus allowing farmers to benefit from their productivity. This led to increased agricultural production, and the country was able to afford its requirement of food for the first time, particularly with respect to imported rice. Self-financed business households were emerging in various production and service areas, signaling the increase in business activities.

The Law on Companies and the Law on Private Enterprises, enacted on December 21, 1990, allowed private investors to start up and run their business as a limited liability company, shareholding company, or "private enterprise" (i.e., sole proprietorship). The limited liability company is essentially a privately held corporation while the shareholding company is based on the structure of a public corporation. Nevertheless, private investors showed their reluctance to invest, especially in production, because of a lack of a guaranteed business environment and a lack of confidence in the stability of state policies. As a result, the government did not promote private businesses. During this period, one rarely saw any government policies, administrative or economic, that supported private businesses. Consequently, this primitive market and cumbersome bureaucracy paralyzed private businesses.

This gave rise to the most difficult and continuous reform, the reform of the state economic sector. A large number of state-owned enterprises (SOEs) had been set up without considering efficiency. SOEs had strong social and political motivations to function as job generators under the government's umbrella. In the transitional period, the Vietnamese government planned to allow SOEs to operate autonomously where they would be largely subject to market forces. In 1987, the Vietnamese government stopped subsidizing SOEs for the most part. As a result, the top-down state plans and targets were reduced substantially. Rather than providing direct funds, the government funded SOEs through bank loans, and in return SOEs have an obligation to repay these loans with interest. The SOEs management was authorized to direct day-to-day business activities, with the sponsoring ministries' power being limited to state management over SOEs (as opposed to business administration).

That was the first step aimed at separating the ownership rights and the management rights of SOEs. Many people compared the autonomy of the SOEs with the self-management right of farming households. The government's decision breathed a new spirit into the operation of SOEs, and SOEs began to produce most of the national output. Specifically,

34. See Analysis, supra note 5.
SOEs played a significant role in encouraging foreign investment, notwithstanding the absence of a strong private sector. In practice, however, SOEs have never gone beyond state interventions, or been able to overcome their bureaucratic style of management. Thus, SOEs continue to be at the forefront of Vietnam’s economic reforms.

The development of contractual rights in Vietnam was designed to accommodate transactions in the market setting. Previously, exchanges of goods had been based on state plans and orders to fulfill the state imposed targets. State controlled entities had no right to negotiate business transactions. The rights and obligations of the state controlled entities were administrative in nature, and governed by administrative regulations.

The Vietnamese Congress issued two separate sets of laws and regulations on contracts: “economic” and “civil.”35 This distinction in legal theory is based on the nature of participants and their objectives in contractual transactions. The economic contract regulations govern contracts that are entered between legal entities for a commercially profitable purpose (as opposed to individual consumers). Meanwhile, the civil contract regulations govern transactions for consumer consumption purposes.

The distinction results in differences in legal rights and obligations, remedies, and dispute settlement procedures, and the like. Similar to contract laws of many former socialist countries in Eastern Europe and the former Soviet Union,36 this distinction reflected the substantial retention of the state control in the economy. The Ordinance on Economic Contracts states in its foreword that it governs the economic contractual relations that involve state targets and plans.37 The Ordinance on Economic Contracts does not appear to anticipate contractual relations among various business entities other than state entities. The legally artificial segregation of contractual transactions has proved difficult to apply to the diversified participants in the market. Different contract regimes create difficulty for contractual parties to assess their obligations, rights, and remedies. The dichotomy between economic and civil contracts makes the contract law less predictable and efficient.

Banking law is another important part of the legal framework supporting the market system. The renovation of the Vietnamese banking system started with the issuance of two Ordinances on May 23, 1990, thus shifting the one-tiered banking system into a two-tiered system.38 The State Bank is the country’s central bank. It is charged with managing money, credit, and banking operations throughout the country in order to stabilize the value of money.39 It does not, however, function as a commercial

36. Trang, supra note 28, at 1080.
38. Schot, supra note 6, at 142.
39. Dinh, supra note 7, at 874-75.
bank by lending directly to any enterprise, agency, economic organization, or private person.

The State Bank regulates and oversees the banking services of the commercial banks. In its regulatory capacity, the State Bank grants and revokes operating licenses, issues regulations, and acts as a clearing-house for credit institutions.\(^\text{40}\) Banking business is organized in the form of state-owned commercial banks, shareholding commercial banks, joint venture banks (with foreign banks), and branches of foreign banks. Other financial business forms are credit cooperatives and financial companies. The commercial banking system remains dominated by state-owned banks. This is largely because the State Bank gives preferential treatment to the state-owned commercial banks, and foreign or joint venture banks are limited by regulatory constraints.\(^\text{41}\) According to official figures, the four state-owned commercial banks accounted for 77 percent of deposits and 89 percent of loans in 1989, and the World Bank estimates that they "accounted for nearly 90 percent of total assets held by deposit money banks."\(^\text{42}\)

Although being chartered as commercial banks to operate for profit, the state-owned banks are often required to extend credit to state-owned enterprises at low interest rates, which are offset by charging higher interest rates to other state-owned enterprises with higher profit potential.\(^\text{43}\) This arrangement of credit extension disrupted the banks' capital market as a means of efficient capital allocation and economic development.\(^\text{44}\)

IV. ECONOMIC INTEGRATION AND LEGAL REFORM DURING THE 1990S

Vietnam's social and economic improvements following radical policies adopted since the mid to late 1980s favored furthering the reform process. For example, rice production overcame the chronic shortage, thus exceeding domestic consumption and enabling an export surplus.\(^\text{45}\) In addition, state subsidies, through capital allocations, prices for basic raw materials, and wages declined substantially, which helped reduce the budget deficit. Lastly, free exchange of goods and relaxation of price controls encouraged production and servicing activities. A multi-sector economy was emerging.

Coupled with the progress in domestic markets, the international situation in the early 1990s turned Vietnam to commit to world economic integration. By this time, the Soviet Union's aid was about to end. Vietnam

\(^{40}\) See id. at 875.

\(^{41}\) Id.

\(^{42}\) Id.

\(^{43}\) Dinh, supra note 7, at 877.

\(^{44}\) Id.

began the process of normalization with China given the past relationship between the two communist neighbors had been frozen for more than a decade. For the first time, Vietnam proclaimed "for equal and mutually beneficial co-operation with all countries regardless of different socio-political systems and on the basis of the principle of peaceful co-existence."\textsuperscript{46} The Vietnamese government sought to improve its relations with the Western world, particularly by normalizing its relationship with the United States. The collapse of the Soviet Union and other Eastern European communist countries pushed the Vietnamese economy closer to a market-based system.

The Vietnamese Communist Party's Seventh Congress in 1991 was viewed as the watershed for the reform process in Vietnam. Comprehensive policies were adopted in anticipation of a mixed market economy. Setting the stage for substantial changes, legal reform was given priority. In 1992, the country's Constitution was amended to allow the multi-sector economy and restructure the government system. The 1992 Constitution laid the foundation for issuing and amending the most important laws and regulations affecting Vietnam's transitional economy.

A. State Sector

The continuing reform of the state sector reflects, to the highest extent, the tension between market-oriented and control policies in Vietnam. It also indicates an ideological implication in the reform process, particularly in legal reform. Unlike the transitional economies in Eastern Europe and Russia, where the state-owned capital and assets were privatized on a large scale, Vietnam opted to retain the dominance of the state sector. The state sector is determined to lead and become the foundation of the multi-sector economy.\textsuperscript{47} The Vietnamese government had hoped, through the dominant state sector, to be able to direct the economy to its objectives.

However, the efficiency and competitiveness of the economy will not be evaluated if the state sector is seen as having a "dominant presence." A "boom" in formation of state-owned enterprises in every economic area came away from government control. A large number of SOEs proved inefficient as a result of undisciplined management. Insolvent SOEs were freezing state investment capital since there was no effective legal procedure for bankruptcy and liquidation. In 1991 and 1992, the government carried out SOE reorganization and attempted to eliminate half of the SOEs, which would have reduced of the number of SOEs to approximately 6,000.

The reorganization of SOEs continued with the enactment of the Law of State-owned Enterprises in 1995 (LSOE).\textsuperscript{48} The LSOE was a great effort to regulate and strengthen the activities of SOEs. It sets out proce-

\textsuperscript{46} See id.
\textsuperscript{47} VIETNAM CONST. 1992, art. 19.
The LSOE stipulates that the SOE is an independent legal entity, and limits its liabilities to its allocated capital. It should be noted that the legal separation does not restrict the government from asserting sovereign immunity in transactions involved in by SOEs with foreign parties. The separation of state ownership and SOE’s autonomy is articulated through the management’s structure and responsibilities. Imitation of the private company’s management with the board of management (i.e. the board of directors) is copied into large state corporations. Those large state corporations were established in all important economic areas, maintaining monopoly power in most cases. In practice, however, the board of management proves bureaucratic and dysfunctional, since it acts as a quasi-administrative agency rather than a business supervising body.

Bureaucratic and troublesome characteristics inherent to the SOE management continue to result in many unprofitable SOEs. Privatization (or the preferred term of “equitization” used in Vietnam) emerged as a method of restructuring and reducing SOEs. Vietnam is seen as following the Chinese model of reform by the retention of the dominant state sector and the creation of a parallel private sector. In this context, privatization is aimed to those twin purposes. The initial understanding of the state sector’s “dominant presence” has been changed in a practical sense in that SOEs remain in some key economic areas, as well as in areas where private investors are unwilling to participate. From this point of view, private investment is encouraged in every business except for limited areas in which the government maintains a monopoly.

In 1992, the Vietnamese government commenced its pilot program to sell the stock of some SOEs to foreign investors. Then in 1995, it issued a regulation setting out a procedure to sell the stock of SOEs to private investors. Despite the legal framework, the privatization process has made little progress so far due to both technical and conceptual issues. Questions about the value of land use rights as well as asset evaluation have hindered the privatization process. SOEs’ sponsoring ministries, management, and employees to some extent, resist the sale of SOEs due to either their own interests or ideological unwillingness. It is seen that the conversion from state to private ownership in SOEs would need a level of reform that would soften ideological perception. In the wake of economic globalization, many expect that the need for the economy’s efficiency and competitiveness would accelerate the privatization process in Vietnam.

49. Cao, supra note 12, at 1040.
Vietnam’s Constitution, as most recently amended on December 25, 2001, emphasizes the importance of the continuing consolidation of the state sector, especially in the key areas. It remains to be seen which approach the Vietnamese government will adopt to reform this dominant sector of the economy.

B. PRIVATE SECTOR AND DOMESTIC INVESTMENT PROMOTION

Vietnam’s pursuit of state sector dominance has adversely affected the development of the private sector. Initial legislation on private businesses focused more on control rather than promoting business growth. Business forms under both the Law on Private Enterprises and the Law on Companies were subject to various restrictions, namely state approval for establishment (separate from business registration), open ending of pre-incorporation documents, expensive cost of incorporation, minimum capital requirement, additional special licenses for a number of activities, closure to foreign investors, and limited involvement in foreign invested projects. The two-tier incorporation procedure vested in the discretion of state agencies was an uncertain and time-consuming process. This frustrated private trying investors starting up their own businesses. Many investors complained that in order to put their business into operation they were facing multiple barriers through various government agencies’ “sub-licensing procedures.” Many others could not get out of the process. In addition, the government’s financing policy did not favor private businesses. State credit support was solely conferred on state-owned enterprises. Furthermore, banks required equivalent collateral for any grant of loan even though private businesses are mostly small-scale. Real estate, a business’s most valuable asset, would not meet the bank’s collateral requirements because, until recently, land could not be mortgaged and liquidated.

In contrast to restrictions imposed on the starting of a business, relevant legislation does not delineate an effective supervisory framework for the operation of private businesses. This situation led to the overwhelming fraudulent and illegal activities of private businesses that slowed down the already weak private sector. In effect, legal restrictions, impediments, and loopholes have constrained the private sector.

In pursuit of its new focus on domestic capital, in the late 1990s the Vietnamese government reexamined the private sector and carried out significant reforms designed to foster this sector. The Law on Domestic Investment Promotion (LODIP), adopted on June 22, 1994, revamped the existing regulatory ground of private businesses, even though it focuses on a broader scope of domestic investment (including investment made by SOEs). Central to the LODIP is a wide range of investment incentives granted to domestic investments in certain economic areas.

51. Thuyet, supra note 33, at 564.
52. Law on Domestic Investment Promotion (June 22, 1994) (Vietnam).
This policy aims to support domestic investors in their competition with foreign investors who enjoy favorable incentives under the foreign investment legislation. Vietnamese overseas investors can choose either form of foreign or domestic investment. In other words, the existing laws on private businesses were opened to Vietnamese overseas investors through the channel of domestic investment promotion. In addition, foreign investors are allowed to own up to 30 percent of a private company with the government's approval, though such approval has been rare so far.

The enactment of the Law on Enterprises (LOE), adopted on January 1, 2000, is seen as a radical change to the legal framework governing private businesses. The LOE consolidates the previous Law on Private Enterprises and Law on Companies, and expands its scope to cover most private business forms. Partnership and parent-subsidiary companies are added to the existing forms of shareholding company, limited liability company, and private enterprise.

One of the major changes made by the LOE is the abolition of state approval for establishing a business. Now applicants can register their business without waiting for government approval. Application documents and their standard forms are to be expressly fixed by the LOE, leaving no discretion to the business registration authority. Business activities that are subject to additional conditions are to be stipulated by laws, as opposed to subordinate regulations to be issued by the government or its agencies. This is designed to keep the certainty of business incorporation away from the varying interpretation and intervention of administrative authorities. The total number of private businesses doubled after just a year following the LOE's effective date and is considered to be an astonishing result. The liberal legal authority set out by the LOE, however, has still been tested in practice as government agencies resist losing their power in the business incorporation process through their own licenses. The Vietnamese government has made a great effort to remove eighty-four licenses, but 300 such licenses still remain. This reality shows the burden of Vietnam's administrative reform accompanying any possible success of more liberal economic policies.

The LOE also incorporated the provision on foreign shares introduced by the Law on Domestic Investment Promotion. However, no further step was taken to relax the government's case-by-case approval procedure of foreign investors' participation. Foreign investment through this channel remains far from being encouraged. A view is arising to support an ambitious plan to expand the LOE's scope covering every business form in the Vietnamese economy. This view is based on the need of leveling legal ground of all business forms for fair competition. State-owned
enterprises are argued to be in the LOE’s form of limited liability company of a sole owner (the government, for example), while the foreign investment forms are currently compatible with those of the LOE. Such accomplishment is not simply vested on legal restructure in the context of Vietnam’s current policy of different treatments among businesses of different sectors.

C. FOREIGN INVESTMENT

The 1992 Constitution reflects the strong commitment of the Vietnamese leaders toward encouraging foreign investment. The Law on Foreign Investment was amended in 1990 and 1992 in an effort to streamline the investment licensing procedure widely known to be slow and cumbersome. The government issued a large body of implementing regulations to provide detailed guidance on foreign investment. The government’s investment licensing authority was designed to be “a one-stop shop.” Positive implementation of the LFI was made in the context of the collapse of the communist bloc in the Soviet Union and Eastern Europe. This prompted Vietnam to shift course to world economic integration. Foreign investors saw Vietnam as a promising market. Many hoped the country’s timely reform with its “large number of literate and entrepreneurial people, coupled with Vietnam’s close proximity to China” would make it “the perfect Asian niche economy.” Vietnam started recording significant annual increases in inward foreign investment capital.

It is commonly known, however, that foreign investment inflow is not solely based on the host country’s adequate legal framework. In the height of a foreign investment surge in Vietnam by the mid 1990s, the LFI’s investment licensing procedure was not reduced much in terms of its bureaucratic and troublesome features. In practice, the licensing authority coordinated the review of the license application by the various central and local government agencies and it was referred to as “a one-stop shop with many doors.” Foreign investors at that time were advised to anticipate at least a six-to-eight month wait before they would get an investment license. Application processing took from several months to occasionally several years despite the set timeframe. It was not unusual for foreign investors, upon receiving a license, to return to the licensing authority because the market conditions changed while their application was pending.

The post-investment licensing procedure was another headache for foreign investors. To put their projects into operation, foreign investors were required to obtain various government agencies’ approvals and con-

56. VIETNAM CONST. 1992, art. 25.
57. Brown IV, supra note 55, at 97-98; Tuyen Quang, All Go Below, All Caution Above, ECONOMIST, June 10, 2000, at 48.
58. SCHOT, supra note 6, at 54.
59. Id. at 57.
sents, including a land use right certificate, import-export license, construction permit, approval of technology transfer, environmental certificate, accounting registration, and expatriate’s work permit. Thus, foreign investment projects are exposed to administrative intervention and abuse.

Many foreign investors expected that the Vietnamese government would continue introducing more liberal economic policies, to keep pace with the progress of free markets. From the foreign investors’ perspective, however, the amendment of the LFI in 1996 did little or nothing to clear the way for foreign investment. This revision simply incorporated existing subordinate regulations into law. The amendment failed to introduce a new principle or method to reduce the current obstacles facing foreign investors. Instead, the attempts by hardliners to tighten the regulation of foreign investment found its way into the 1996 revision. The scope of unanimous approval maintained its hardship in the operation of joint venture enterprises. The 1996 revision allowed the investment licensing authority to terminate a joint venture project before its expiration upon request by any party. Foreign investors saw this provision as jeopardizing the prospect of foreign investment projects. If a project is terminated early, foreign investors would suffer great losses because they normally contribute financial capital to create fixed assets. Vietnamese parties would not risk such losses, since their capital contribution is mainly land and buildings. Furthermore, Vietnamese parties, often state-owned enterprises with strong connections to the government, would influence the licensing authority whenever conflict arises with foreign parties.

A wave of foreign investment moving out of Vietnam signaled problems much earlier than the Asian crisis. In addition to Vietnam’s weak and underdeveloped economic and financial framework, foreign investors were frustrated with the bureaucratic and troublesome administrative system. This is partly due to the fact that the Vietnamese government showed its reluctance to encourage the infusion of foreign capital. The government switched its focus to domestic investment without fully considering the potential impact on foreign investment. Foreign investors viewed the Vietnamese government’s campaign against “social evils” in 1996 as discouraging foreign investment given that they were prohibited from placing foreign names on their shops. Consequently, foreign investors started to leave the country.

Vietnam was not beyond the reach of the Asian crisis, despite the fact that its market has not been opened to foreign portfolio investment (as opposed to foreign direct investment). On one hand, this led to a large withdrawal of foreign investment from Vietnam, putting many projects into deadlock. On the other hand, the Asian crisis cast doubt upon the wisdom of opening the Vietnamese market to the West, thus causing the

country to slow any ongoing reform that would have eased foreign entry into its market.\textsuperscript{62} Inward foreign investment fell back to the level of the early 1990s.\textsuperscript{63} Foreign investment decline created difficulties for Vietnam's balance of payment in the short run, since the country gradually lost its ability to service its debts and payment for current transactions.\textsuperscript{64} Furthermore, the long-term effect of the decline led to difficulty in financing economic development and growth.\textsuperscript{65}

Since 1999, the Vietnamese government has attempted to renew the reform process to push up the stagnant economy by opening the country once again to foreign investment.\textsuperscript{66} Pending amendment of the LFI, the government issued a number of urgent measures to encourage foreign investment. Those measures focused on higher tax incentives, preferential treatments, and the cut and reduction of various pre and post investment licensing procedures. The LFI was amended, effective July 1, 2000, to create a more favorable legal framework for foreign investors. This aims to maintain the existing foreign investors and to attract new ones.

The amended LFI grants foreign invested enterprises the right to mortgage their land use rights with banks. This amendment is considered very important because it creates new means of financing for foreign invested projects to raise capital.\textsuperscript{67} Other amendments aimed to aid foreign investment include: (i) the guarantees of government's loan; (ii) the abolition of the compulsory reserve fund, which is now subject to the decision of foreign invested enterprises; (iii) the reduction of the profit-remittance tax; (iv) the liquidation of the remaining value of land use rights as capital contribution to joint venture enterprises; (v) the relaxation of requirement on investment forms and capital structure;\textsuperscript{68} and (vi) the lessening of the unanimity principle in joint venture enterprises.

The amended LFI made a step towards reforming the investment licensing procedure. The approval procedure was replaced by a registration procedure for foreign investment projects that satisfy prescribed criteria, e.g. export rate and categories of business sectors and geographical areas. For those projects, foreign investors do not have to secure government approvals before they are able to legally invest as foreign companies in the Vietnamese market.\textsuperscript{69} Furthermore, the post licensing burden on foreign investors must be reduced, particularly for land site clearance. Vietnamese parties or the local authority must now take this responsibility.

These amendments are appreciated as a positive move towards alleviat-

\textsuperscript{62} Brown IV, supra note 55, at 99; Goodnight Vietnam, supra note 61.
\textsuperscript{64} See id.
\textsuperscript{65} Id.
\textsuperscript{66} Brown IV, supra note 55, at 100; Pulling Teeth, ECONOMIST, July 29, 2001, at 71.
\textsuperscript{67} Brown IV, supra note 55, at 101;
\textsuperscript{68} Id.
\textsuperscript{69} Brown IV, supra note 55, at 101; Margot Cohen, A Glimmer of Hope, FAR E. ECON. REV., June 8, 2000, at 76.
ing the day-to-day headaches faced by foreign investors in Vietnam. However, Vietnam is only half way there, as a large number of proposed favorable changes were not incorporated. The amended LFI has not overcome its restrictive nature imposed by the 1996 version toward liberalization of the foreign investment framework in Vietnam.

D. Contract Rights

The development of contractual rights in Vietnam reached its stage of proliferation in the late 1990s with the enactment of the Civil Code and the Commercial Law. The Civil Code, enacted on October 28, 1995, and effective on July 1, 1996, is viewed as the most fundamental legislation second to the Constitution. Adopting the French Civil Code model, the Civil Code is the most comprehensive code ever enacted, governing a broad scope of legal relations in the society (namely individuality, legal personality, obligations, contracts, housing, intellectual property, foreign element’s involvement, and the like). Contract rules under the Civil Code are introduced in a separate chapter that sets out contract formation, contractual rights and obligations, breaches, remedies, and types of specific contracts.

Contrary to expectation, the Civil Code does not expressly address the dichotomy between the civil and economic contracts. The Civil Code was promulgated to supersede the Ordinance on Civil Contracts (OCC), as well as other prior relevant legal documents. Thus, the segregation of civil and economic contracts still exists after the Civil Code. However, there is neither a stipulation in the Civil Code referring to the economic contract, nor one defining the “civil” contract as did by the OCC. Therefore, the question is whether the Civil Code’s contract rules should be narrowly applied to solely govern civil contracts or should the Civil Code’s general rules on contract formation and performance should be broadly applied to any contracts, including economic contracts.

The view supporting the narrow application of the Civil Code’s contract rules is based on the following rationales. By superseding the OCC, the Civil Code does not implicate the Ordinance on Economic Contracts (OEC). Therefore, the Civil Code and the OEC function as two continuing separate sets of rules that govern civil and economic contracts, respectively. In the absence of a definition, the “civil” contract is now understood to be different than the economic contract as defined by the OEC. This view narrows the scope of the Civil Code by continuing the previous legal fiction of contracts without relying on any authority from the Civil Code.

The other view supports the broad application of the Civil Code in an effort to reduce the tension in application of relevant contract rules, and

70. Brown IV, supra note 55, at 102.
71. Only twenty-three out of the seventy-five proposed amendments were written into law. Id. at 103.
72. Trang, supra note 28, at 1082.
integrate Vietnamese contract laws. This view agrees that the Civil Code will govern contracts falling outside the OEC's definition of economic contract. Because of the absence of a definition in the Civil Code or elsewhere, the "civil" contract exists as a practical designation (as opposed to economic contract) rather than a legal designation. Having ceased its existence, the OCC did not pass any legal definition or effect. In addition, in its broad scope, the Civil Code governs not only "civil" or consumer transactions, but also commercial and business transactions (a clear example is its regulations on intellectual property licensing and technology transfer). Therefore, the Civil Code is not limited to non-business relations. In that context, the Civil Code can be seen as providing general contract rules while the OEC provides specific contract rules, for example, those for economic contracts. Thus, economic contracts must be governed by the OEC specifically. But in the absence of specific rules under the OEC, the relevant contract rules in the Civil Code will apply. Further, the OEC's specific rules should not contradict the general contract principles set out by the Civil Code. This principle would exist according to the hierarchy between the Civil Code and the OEC, that is, the OEC is an ordinance subordinate to a code or law. More importantly, this principle would ensure the integration of the contract law framework by creating a gap filling mechanism.

The issue of the Commercial Law cast further doubt upon the clarity of Vietnamese contract laws. The Commercial Law governs "commercial acts" among business entities, including the sale and purchase of goods, business representation, agency, and other trade related activities. The Commercial Law provides for contract formation, rights and obligations, as well as performance and remedies for each specific type of commercial contract.

The Commercial Law follows the notion of the dualistic legal system (similar to that of France or Germany), which applies special rules to commercial contracts different from the general rules on sales. In that system, it does matter whether a party is a merchant or not. However, the Commercial Code does not clarify its scope in relation to the OEC and economic contracts. As a result, another set of contract rules is added to the already overlapping legal framework of contract law in Vietnam. Although the Commercial Law's contracts appear to be specific types in comparison with economic contracts; there is no clear answer as to whether the OEC would act as the gap-fillers of the Commercial Law.

In relation to the Civil Code, the Commercial Law refers to various specific contract rules of the Civil Code instead of stipulating on its own. This reference, on the one hand, affirms the above discussion that the Civil Code contract rules are not limited to non-commercial transactions. On the other hand, this reference indicates a possibility to refine Viet-

73. Id. at 1083.
74. Id. at 1084.
VIETNAM'S ECONOMIC LIBERALIZATION

Vietnam's contract laws, in which the Civil Code's contract rules are to be gap-fillers for any specific type of contract and rules. To that end, the conflicts between the OEC and the Commercial Law should be eliminated. The OEC’s economic contract regime could be transformed to rules of more specific types of contracts.

E. BANKING AND FINANCIAL REFORM

Since 1990, Vietnam’s banking and financial sector has grown exponentially, even though the country's capital formation focus has been directed almost exclusively at foreign direct investment. In the late 1990s, the government planned to move beyond heavy reliance on foreign direct investments by raising investments from domestic sources for sustainable economic growth. It is certain that any substantial progress for Vietnam's capital formation efforts depends, in large part, on Vietnam’s ability to develop its financial sector.

Besides the domination of the state-owned banks, Vietnam's banking business has been diversified with the participation of private joint-stock banks, foreign joint venture banks, and branches of foreign banks since the mid-1990s. The competing forces that came along with existence of the joint-stock and foreign banks have transformed the commercial banking industry, in part by improving the technology of services. Despite an increase in number and market share, foreign and joint venture banks are rather limited in their permitted operation, which is subject to, inter alia, relatively high requirements of minimum capital, various compulsory reserve requirements (as to capital and deposits), limited acceptance of Vietnamese currency deposits, and limitation of interest rates and fees for foreign loans in U.S. dollar. As a result, most of them operate in the realm of trade finance.

At the same time, a large body of government regulations governing and affecting the banking industry was issued without collaborative efforts to make this industry efficient. For instance, under the land laws, land use rights were inadequate as property interests in the context of the government’s unclear policies affecting such rights. As a consequence, banks are now less willing to extend loans without adequate collateral.

In late 1997, the Vietnamese Congress enacted the Law on State Bank and Law on Credit Institutions, both becoming effective October 1, 1998. Based on the old banking ordinances, the two laws are compiled to gov-

75. SCHOT, supra note 6, at 141.
76. Dinh, supra note 7, at 872.
77. Id. at 874.
78. Id. at 876; Nick Freeman, Going for a Dong, BANKER, Jan. 1996, at 33.
79. Dinh, supra note 7, at 876.
82. Dinh, supra note 7, at 879.
83. Id.
ern the entire scope of banking activities and supervision. The principle of lending based on the profitability of the project has been recognized. Although the Law on Credit Institutions is considered to provide more specific and efficient regulations for banking activities, bankers expect a move toward lesser restriction on the banking industry and more reliance on self-regulation within the industry. To further the banking reform process, Vietnam must cope with the lack of a market oriented environment, strict foreign exchange control, obsolete banking infrastructure and technology, state intervention with a large portfolio of under-performing loans, and insufficient capacity of domestic banks’ services.

The liberalization of the insurance sector was marked with the government’s removal of the state-owned insurer’s monopoly in 1994. Since then, several state-owned and joint-stock insurance companies were formed, and over twenty foreign insurance companies set up representative offices in Vietnam. Under the government’s first regulation on insurance business, which was issued on December 18, 1993, a wide variety of insurance services were permitted with regard to life, health, personal accidents, property and loss, cargo, hull and civil liability for ship owners, co-insurance, aviation, automobile, fire, credit and financial risk, business loss, agriculture, and other insurance services which shall be stipulated by the Ministry of Finance. Under this regulation, insurance business is to be organized in the form of state-owned enterprises, shareholding companies, mutual insurance companies, foreign-invested companies (either joint venture or wholly foreign owned form under the LFI), or branches of foreign insurance companies.

In the initial stage, very limited participation of foreign insurance companies was allowed. Beginning in 1999, the Vietnamese insurance market was opened to foreign investors. Four foreign life insurance companies and several foreign property and loss insurance companies were granted investment licenses to do business in Vietnam. The Law on Insurance Business enacted on December 9, 2000, codified the previous government regulations, including the legal framework for insurance business activities.

Development of a securities market had long been planned by the Vietnamese government in order to fully install market forces for the transitional economy. The securities market operates to ensure efficient allocation of capital and promote economic growth. In the context of Vietnam, this market would also help to mobilize idle savings from the public, which has long distrusted the banking system, and to expedite the privatization of state-owned enterprises. However, Vietnam’s earlier stage of economic development did not seem adequate for such sophisti-
Vietnam’s State Securities Commission (SSC) was established in late 1996 to oversee the future stock exchange. A regulatory framework setting forth a stock exchange was formulated in 1998, with the issuance of the government’s regulations on the stock exchange. All business forms, including foreign invested enterprises, are allowed to engage in securities business (brokers, underwriters, investment funds, advisers). The existing rules limit the amount that foreign investors can jointly hold to 20 percent of any single listed company’s equity. Foreign investors are not allowed to sell shares for three years if they have taken part in the management of the company during that period, while similar restrictions in many jurisdictions are normally six months to a year.\(^8\)\(^9\) The SSC accelerated the qualification of several privatized state-owned enterprises’ stocks. On July 20, 2000, Vietnam’s stock exchange was set up in Ho Chi Minh City with the first four listed companies’ stocks and government bonds. With a very limited number of stocks offered thus far, the stock exchange is a long way from being a main channel of the capital markets.

In an effort to pump more securities into the stock market, the Vietnamese government has carried out its pilot program to convert a number of foreign invested companies into shareholding companies. Once converted, those companies will list their stocks. This possibility is attractive to foreign invested companies because the securities market will serve as a source of capital and make their investments liquid. The pilot program faces a lack of legal authority, because the Law on Foreign Investment does not avail the form of shareholding company to foreign investors. Foreign investors hope this move will eventually lead to some relaxation of the restrictions placed on them as the issuers, purchasers, and traders in Vietnam’s stock exchange.

\section{F. Intellectual Property Protection}

Copyright laws, as part of intellectual property laws, have always existed in Vietnam, although the government paid little attention to the enforcement of these laws for a long time. Since Doi Moi, the Vietnamese government has attempted to enforce the copyright laws and to take new steps toward revamping the intellectual property protection system in Vietnam.\(^9\)\(^0\) The current intellectual property laws are embodied in the Civil Code, which as of July 1, 1996, superseded the Ordinance on the Protection of Industrial Property Rights and the Ordinance on the Protection of Copyrights. There are two regulatory regimes under Vietnam’s intellectual property laws that govern copyrights and “industrial property

\(^{88}\) Dinh, \textit{supra} note 7, at 883-85.
\(^{89}\) Brown IV, \textit{supra} note 55, at 107.
In a recent development, Vietnam extended intellectual property rights to include trade secrets and trade names, and incorporated the regime of unfair competition to the framework of intellectual property protection.

The Civil Code provides that the industrial property rights of foreign organizations and individuals that have been registered in Vietnam pursuant to Vietnamese law shall be protected in accordance with Vietnamese law and international treaties to which Vietnam is a party. Vietnam is a signatory to the Paris Convention and the Madrid Agreement, as well as the Stockholm Convention of 1967 (which established the World Intellectual Property Organization). However, since Vietnam's laws on intellectual property are largely homegrown, all principles and systems may not conform to international standards.

Vietnam has adopted a first-to-file rule, which gives trademark protection in Vietnam to the first party to file there with the exception of international, well-known trademarks. Priority in applications for protection is determined according to the date on which the relevant state authority receives the application or in accordance with applicable international treaties. Applicants who wish to rely on international treaties in establishing a right of priority must make an express statement to that effect in their application, and must present evidence in support of their priority claim. Until the United States becomes a member of the Madrid Agreement, U.S. companies should register their property rights directly in Vietnam rather than resort to such international registration.

After a long history of dysfunctional application, the copyright regime introduced by the Civil Code and implementing regulations provides important details and guidelines for registration, enforcement, and resolution of disputes. The Civil Code provides that copyright protection with respect to foreign individuals and entities, will be limited to works which are first published or disseminated in Vietnam or which are created and take definite form in Vietnam. Many hoped that the Civil Code omits the "thirty day rule," established in previous legislation, which required foreign authors to publish their works in Vietnam within thirty days of publishing the work elsewhere in order to receive protection in Vietnam. However, the implementing regulations of the Civil Code reinstate this "thirty day rule." Foreign authors who first publish their works in another country currently have to rely on international or bilateral treaties to which Vietnam is a signatory (or enters into) for copyright protection within Vietnam. At this time, only the United States has signed an agree-

91. Objects of industrial property rights which are protected under Vietnamese law comprise inventions, utility solutions, industrial designs, trademarks and appellation of origin of goods.
92. Vietnam's Civil Code, article 837.
93. Nass, supra note 90, at 301.
94. Frye, supra note 9, at 795.
95. Nass, supra note 90, at 299.
96. Id. at 300.
ment for copyright protection with Vietnam, which overrides the "thirty day rule" for its nationals.

In the late 1990s, the Vietnamese government attempted to improve copyright law enforcement in order to attract foreign investors and to participate in world trade. In 1996, Vietnam and the United States signed an agreement for protection of copyrights as part of an eventual bilateral trade agreement between the two countries. The United States required Vietnam to enhance its copyright law to conform with common copyright standards under the Universal Copyright Convention.

Under the Bilateral Trade Agreement signed with the United States on July 13, 2000, Vietnam agreed to adopt the World Trade Organization (WTO) standard for intellectual property protection. In order to bring it in line with international standards, Vietnam is now in the stage of revising its intellectual property system and facilitating the implementation of Trade-Related Aspects of Intellectual Property Rights (TRIPs) under the Bilateral Trade Agreement.

IV. VIETNAM'S INTERNATIONAL INTEGRATION AND BILATERAL TRADE AGREEMENT WITH THE UNITED STATES

In the 1990s, Vietnam embarked on a new stage of international economic integration along with its domestic economic reform. As the foundation of the open door policy, Vietnam's foreign policies are diversified to support economic progress and integrate itself into the international trade system.

Once the George H. Bush administration ended so did the United States's veto on new lending to Vietnam by multilateral aid organizations, and the International Monetary Fund (IMF) agreed to resume lending to Vietnam in October 1993. This announcement led the World Bank and the Asian Development Bank to recommence their lending shortly thereafter. In February 1994, the Clinton administration lifted the embargo on trade with Vietnam, and announced the normalization of diplomatic relations with Vietnam in July 1995. Within a year, the United States became the sixth largest foreign investor in Vietnam.

In 1995, Vietnam turned into the mainstream of Southeast Asia with its membership in the Association of Southeast Asian Nations (ASEAN). Vietnam's trade with ASEAN members has increased by about 30 percent every year and investment by ASEAN countries accounts for a substantial part of foreign investment in Vietnam. In July 1995, Vietnam also signed a trade cooperation agreement with the European Union in

97. Frye, supra note 9, at 796.
98. Id. at 798.
100. Dinh, supra note 7, at 867.
an effort to foster the trade and investment relations with Western European nations. In 1998, Vietnam joined the Asia Pacific Economic Cooperation (APEC) forum.

Although in 1995 Vietnam and the United States began negotiations of a bilateral trade agreement (BTA), little progress was made for several years since Vietnam resisted U.S. demands for increased access to Vietnam's market. In the absence of a BTA, the Clinton administration's annual grant of a Jackson-Vanik waiver was initiated in 1998. This waiver allowed the United States to begin extending U.S. export promotion and investment support programs to Vietnam through Export-Import Bank, the Overseas Private Investment Corporation, and the U.S. Department of Agriculture. The year 2000, however, witnessed a quick move by the Vietnamese government to conclude negotiations with the United States on a BTA in the wake of China's entry into the World Trade Organization. The BTA was signed on July 13, 2000, and ratified a year later by the two nations' congresses, thus taking effect on December 19, 2001.

The BTA is a major step toward normalizing the two countries' commercial relations as it restores reciprocal Most Favored Nation treatment. By entering into the BTA with Vietnam, the United States hoped to promote far-reaching changes in the Vietnamese economy. For the first time, Vietnam agreed to allow all Vietnamese firms and, over time, U.S. persons and firms, the right to import and export freely from within its borders. In addition, the BTA provides for a significant reduction in tariffs on exports from 40 percent to less than 3 percent, and it will phase out all non-tariff measures by adherence to the WTO standards. Moreover, Vietnam agreed to adopt the WTO standards for intellectual property protection. U.S. persons and firms will be allowed to enter Vietnam's services market in the full range of services areas by the phased-in time periods.

The BTA has led to additional significant measures by Vietnam. For instance, Vietnam has agreed to protect U.S. investments from expropriation, has eliminated local content and export performance requirements, and agreed to phase out its investment-licensing regime for many sectors. Vietnam has agreed to adopt a fully transparent regime in each agreed upon area by issuing draft laws, regulations, and other rules for comments. Vietnam is also ensuring that advance public notice is given for all such laws and regulations, thus assuring that these documents are public.

103. Id.
105. Nass, supra note 90, at 303.
lished and available, and allowing U.S. citizens the right to appeal rulings made with respect to all such relevant laws and regulations.\textsuperscript{107}

After entering into the BTA with the United States, Vietnam is going to conclude similar agreements with other countries, particularly with the European Union and Japan. Vietnam’s implementation of TRIPs under the BTA and the restoration of its Most Favored Nation status with the United States will make it likely to be accepted to the WTO.\textsuperscript{108} If admitted into the WTO, Vietnam will be entitled to non-discriminatory access to all WTO members.\textsuperscript{109} In the immediate future, Vietnam’s implementation of the BTA will help to raise its legal, regulatory, and economic systems to the WTO’s standards.\textsuperscript{110}

VI. Conclusion

Since Doi Moi, the legal system of Vietnam has developed substantially, along with the economy’s transformation and expansion. The Law on Foreign Investment enacted in 1987 marked the starting point of Vietnam’s legal reform process. A wide range of new laws has been introduced in every aspect of the economy since that period. The laws enacted thus far, however, show the tendency of over-regulation. The large volume of laws and regulations has not been directed to create the transparency and predictability of an effective legal system. In the eyes of Vietnamese authorities, the regulation has been viewed as the desired method to shape and guarantee the development of economic relations. In fact, however, regulation by all possible means and with such rigidity is not always the best choice to facilitate the formation of new economic relations in a transitional economy. In practice many economic sectors indicate the need for deregulation to a certain extent, thus allowing considerable competition.

Vietnam’s over-regulation also stems in part from its mechanism of decentralized regulatory power. Law, that is congressional legislation, leaves the application of implementing regulations by the government and its administrative agencies. Such practice can be seen in many jurisdictions. But in Vietnam, laws are normally drafted in very broad and vague terms, and discretion is given to the executive branch in order to put the laws into application. The problem is not so much the absence of law, but a lack of experience in dealing with commercial business concepts.\textsuperscript{111} From the front end, laws lose their force to check the validity of subordinate regulations and ensure the actual hierarchy of legislation. From the back end, subordinate regulations may undermine national laws\textsuperscript{112} and conflict among themselves.

\textsuperscript{107} Murphy, supra note 102, at 701; Press Release, White House Press Office, Vietnam Bilateral Trade Agreement (July 13, 2000).
\textsuperscript{108} Nass, supra note 90, at 303.
\textsuperscript{109} Id.
\textsuperscript{110} Id. at 304.
\textsuperscript{112} Dinh, supra note 7, at 869.
Another factor implicated in the legal reform in Vietnam is the government’s skepticism regarding economic reform. One could see the see-saw approach prevailing during Vietnam’s reform process. This reflects the tension between the control and market-oriented policies. In this regard, law enactment could be relied on as a powerful tool to overcome hard-line attitudes. The Law on Enterprise discussed above is observed as a rare departure from the see-saw approach. The law sets out a firm reform regime within itself to mandate its enforcement by relevant authorities.

Vietnam’s quick gains in the early stage of reform may reflect elimination of inefficiencies in past economic mismanagement. However, Vietnam’s business environment is still quite difficult. Businesses are hindered in assessing the potential costs and risks of doing business in Vietnam. The principle of economic efficiency has not underlied the recent proliferation of commercial-oriented regulations. Vietnam must continue to reform its legal system. A stable legal framework designed to translate policy into a set of rules of law will be necessary to foster and sustain long-term economic development. Vietnam is on the way to open itself to global competition. Transparency and predictability in Vietnam’s legal system could be achieved through hard work and commitment to the international standards.

113. Id. at 857.
114. Tran-Trong, supra note 4, at 1619.
115. Thuyet, supra note 33, at 547.
Comment and Case Notes