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Privatization in Vietnam: The Next Step in Vietnam's Economic Transition from a Nonmarket to a Market Economy

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PRIVATIZATION IN VIETNAM: THE NEXT STEP IN VIETNAM'S ECONOMIC TRANSITION FROM A NONMARKET TO A MARKET ECONOMY

I. INTRODUCTION

The recent breakdown of the political and economic systems of nonmarket economy nations (NMEs) has led many of these nations to institute market economies.[1] For the NME, this transition involves eliminating government ownership and control over the nation's means of production and transferring it to private parties.[2] Significantly, this transition requires the government from which economic power is taken to draft laws making this possible.[3] As one treatise points out, market economies are not wholly exempt from governmental regulation, but are subject to "taxes, banking rules, minimum wage laws, product safety standards, review for national security reasons" and so on.[4] The market, however, not the government, still largely determines what to produce, how much to produce and how much to charge.[5] When the government prohibits market influences through mechanisms like price controls, state-run industries and collectivized agriculture, the nation is a NME.[6]

This Note examines Vietnam's transition from a NME to a market-oriented system, with emphasis on its laws pertaining to privatization. Part II of this Note discusses privatization in transitional economies generally by considering two privatization models: the "big bang" approach followed by Eastern

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1. For a general background addressing the changing economies in Eastern Europe, the former Soviet Republics and China, see CHANGING POLITICAL ECONOMIES: PRIVATIZATION IN POST-COMMUNIST AND REFORMING COMMUNIST STATE (Vidat Milor ed., 1994) [hereinafter CHANGING POLITICAL ECONOMIES].

2. *See* Andrei A. Baev, *Is There a Niche for the State in Corporate Governance? Securitization of State Owned Enterprises and New Forms of State Ownership*, 18 HOUS. J. INT'L L. 1, 47 (1995) (arguing that privatization is a process of "cutting back the range of government[al] supervision over *private affairs*" that does not necessarily go as far as the "abolition of this supervision.").

3. *See id.* at 3.

4. RALPH H. FOLSOM & MICHAEL W. GORDON, INTERNATIONAL BUSINESS TRANSACTIONS 796-97 (1995).

5. *See id.* at 797.

6. *See id.*

Europe and the gradual approach used by the People's Republic of China (PRC or China).[7] Examining the approaches taken in these nations reveals the significance of the economic and political context within which each nation instituted privatization.[8] Further, the consequences of each approach serve as guides for Vietnam's economic transition. Part III examines the political and economic context within which Vietnam began to reformulate its economic strategy and the objectives behind this reformulation. Particular attention will be given to the importance of the reorganization of Vietnam's Communist Party (VCP) and the passage of the Law on Foreign Investment (FIL)[9] as the starting points for reform. Part III considers the tension between reformers who want to maintain economic change at its current pace and conservatives who want to forestall reform.[10] Of concern is whether Vietnam's efforts to transform its economy are realistic given the political dichotomy within the VCP.

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7. *See* Lan Cao, *The Cat That Catches Mice: China's Challenge to the Dominant Privatization Model*, 21 BROOK. J. INT'L. L. 97, 100 (1995); *see also* CHANGING POLITICAL ECONOMIES, *supra* note 1 (presenting articles which challenge the traditional approach to privatization).

8. *See* Cao, *supra* note 7, at 107-08. Cao points to the ideological and to the economic considerations that "underlie the decision to adopt one model over the other." *Id.* at 108. She further notes:

> A political motive was fundamental to the decision by Eastern European countries to pursue a model founded on speedy and mass privatization of state owned enterprises. In a similar vein, an equally fundamental political impulse caused China to adopt a model that insulates the state sector from change and preserves, to the extent practical, vestiges of social ownership.

Id.; *see also* Robert Seidman, et al., *Big Bangs and Decision-Making: What Went Wrong?*, 13 B.U. INT'L. L.J. 435, 436 (1995) (arguing that "[u]nless specifically responsive to the imperatives of their particular circumstances, laws and regulations remain all growl and no bite. Context is all.").

9. Law on Foreign Investment, Dec. 29, 1987 (amended 1990 and 1992), *translated in* 1 STATE COMMITTEE FOR CO-OPERATION & INVESTMENT & PHILLIPS FOX, FOREIGN INVESTMENT LAWS OF VIETNAM, at I-1 (1994) [hereinafter SCCI & FOX].

10. *See Economic Reforms Threatened*, BUS. VIETNAM, Aug. 1996, *available in* LEXIS, News Library, Busvie File. "A bitter power struggle between conservatives and reformers over the past year in VN has seen the country's decade-old reform process almost grind to a halt." *Id.* A similar conflict exists in the People's Republic of China (PRC or China) between the government's desires to obtain "private capital and improve enterprise performance" and "the basic principle of Marxism that the 'ownership of the means of production' must remain in the hands of the state as surrogate for all the people." *See* Matthew D. Bersani, *Privatization and the Creation of Stock Companies in China*, 1993 COLUM. BUS. L. REV. 301, 305.

Part IV discusses and evaluates three laws that promote privatization in Vietnam: the Law on Companies (LC),[11] the Law on Private Enterprises (LPE)[12] and the Temporary Regulation on the Issuance of Bonds and Stocks of State Owned Enterprises (TRIBSSOE).[13]

Part V evaluates Vietnam's success at instituting market reform and encouraging the development of a private sector. Part V concludes that Vietnam's political and economic position provides the prerequisites for successful transformation and privatization using the gradual approach. Part V also emphasizes that Vietnam's economic reform is still considerably dependent on investments, resources and loans from international institutions and other countries that favor speedy economic reform. As such, Vietnam's gradual reform needs to proceed steadily. In conclusion, this Note proposes specific steps the VCP should undertake in order to proceed with its transition to a market economy.

II. PRIVATIZATION IN TRANSITIONAL ECONOMIES

Broadly defined, privatization is the introduction of a private enterprise into the economy.[14] A law allowing a florist to become self-employed by opening his own shop illustrates this type of privatization.[15] The more common, narrow definition of privatization is the transfer of state owned enterprises to private ownership.[16] Legislation permitting the sale of state

11. Law on Companies, Dec. 21, 1990 (amended July 1, 1994), *translated in* 3 SCCI & FOX, *supra* note 9, at XIV-13.

12. Law on Private Enterprises, Dec. 21, 1990 (amended July 1, 1994), *translated in* 3 SCCI & FOX, *supra* note 9, at XIV-1.

13. Temporary Regulation on the Issuance of Bonds and Stocks of the State Owned Enterprises, Sept. 17, 1994 [hereinafter TRIBSSOE]; TRIBSSOE was issued in connection with Decree No. 120/CP, Sept. 17, 1994 [hereinafter TRIBSSOE Decree]. Both TRIBSSOE and the TRIBSSOE Decree were available on the internet at <http://home.vnd.net/english/legal_docs/doc00042.html> as of January 22, 1998.

14. *See* Richard M. Phillips & Marian G. Dent, *Privatizing Eastern Europe: A Challenge for the Nineties,* 575 PRAC. L. INST. COMM. L. PRAC. COURSE HANDBOOK SERIES 445 (1991).

15. *See id.*

16. *See id.* (stating this is the definition used today in the context of Eastern Europe). *Cf.* Cao, *supra* note 7, at 144-51 (exploring reformation of China's existing state sector). Cao observes that China's economic transition began with reforms that improved public sector efficiency and productivity. These reforms have "had a percolating effect on the behavior and performance of the state sector." *Id.*

owned firms to private entities through direct sale,[17] a public offering or private sale of shares[18], or voucher distribution[19] exemplifies this more familiar model of privatization.[20] Nations determine their approaches to privatization by the goals they intend to achieve and the political and economic contexts within which they institute reform.[21]

The past few decades provide several examples of NMEs changing their economies to private-oriented systems.[22] An examination of the countries in Eastern Europe and the PRC provides a foundation for an effective analysis of the privatization process in Vietnam. The nations in Eastern Europe and the PRC embarked on their transitions with different goals and within distinct political and economic contexts.[23] The overthrow of Communism in Eastern Europe motivated Soviet-bloc nations to initiate rapid privatization schemes, the object of which was aimed to completely transfer property rights from public to private ownership.[24] In contrast, the transformation of Soviet Communism in the PRC motivated that nation to begin a gradual process of privatization, whereby private sector development was encouraged while maintaining the state sec-

at 146. Only then did China begin to gradually allow private ownership of state enterprises. *See id.* at 104.

17. *See* Baev, *supra* note 2, at 8.

18. *See id.* at 10.

19. *See id.* at 10-11. "Voucher privatization" involves distributing privatization vouchers to every citizen in the country to "be used to acquire shares in the state enterprises without any additional compensation." *Id.* This method of privatization was popular in Eastern Europe where many individuals did not have the money to purchase shares in state-owned firms. *See id.* However, as Professor Baev points out, under the conditions of a nonmarket economy, with an absence of liquidity and a lack of effective legal rules and institutions to protect public investors, voucher privatization might not be as efficient as it tends to be in developed industrial countries. *See id.* at 11.

20. *See generally* Richard C. Schneider, Jr., *Privatization in One Country: Foreign Investment and the Russian Privatization Dynamic*, 17 HASTINGS INT'L & COMP. L. REV. 697, 709-12 (1994) (discussing the Western economic doctors' prescription for the ailing Soviet economy).

21. *See* Cao, *supra* note 7, at 108-11. China is an example of a nation that has privatized gradually, *see id.* at 100, while the countries in Eastern Europe exemplify an immediate approach to the privatization of state enterprises. *See id.* at 106, 107.

22. *See* CHANGING POLITICAL ECONOMIES, *supra* note 1.

23. *See* Cao, *supra* note 7, at 108-30.

24. *See* Bersani, *supra* note 10, at 303. This is the traditional method of reform. *See* Cao, *supra* note 7, at 99. It involves fast-paced change coupled with the complete transfer of state ownership to private hands. *See id.*

tor.[25] The approach and speed by which these nations privatized their economies varied depending upon different political and economic reasons for instituting change.

A. *Goals of Privatization*

The most common goal of privatization is the complete transfer of property rights from public to private ownership.[26] There are many reasons that a NME decides to redistribute these rights. State ownership of commercial enterprises often becomes unsuccessful, plagued by inefficiency and the production of poor quality goods.[27] State owned enterprises prefer to over-employ and remain unproductive rather than see unemployment rise and unproductive industries shut down. As such, the cost of maintaining state enterprises tends to become a tremendous burden on the state's economy.[28]

Political changes in a NME nation are another common reason for privatization.[29] Economic reform may be part of a shift in the nation's political ideology, as in the Eastern European nations. Further, a desire for foreign investment may cause a NME to privatize.[30] Market-oriented institutions are

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25. *See* Bersani, *supra* note 10, at 303. This is the non-traditional approach to privatization. *See* Cao, *supra* note 7, at 107. It employs a gradual program of establishing market oriented processes into the economy prior to any transfer of property rights from public to private hands. *See id.* The non-traditional approach may not even involve any transfer of property rights. *See generally* Baev, *supra* note 2, at 48 (arguing that privatization for some socialist countries means liberalization and deregulation and not simply property redistribution).

26. *See, e.g.*, Seidman, *supra* note 8, at 437-38 (discussing Poland's "jump" to a market economy); *see also* Baev, *supra* note 2, at 8-9. Among the most common types of privatization are: sale of enterprise assets, reorganization of large state enterprises into separate entities, private investment in state enterprises, decrease of government's equity position, acquisition by the workers of controlling interests in state enterprises and public offerings or private sales of shares. *See id.*

27. *See* Paul B. Stephan III, *Toward a Positive Theory of Privatization—Lessons from Soviet-Type Economies*, 16 INT'L. REV. L. & ECON. 173, 174 (1996) (observing that, according to 1990 estimates, the Soviet Union achieved significantly lower levels of consumption per capita and labor productivity than the Organization for Economic Cooperation and Development countries, with the difference growing over time).

28. *See id.* (observing that central planning could not seem to "provide the general population with the benefits that a command system was expected to provide.").

29. *See* Cao, *supra* note 7, at 97-98; *see also* discussion *infra* Part II.B.1.

30. *See* F. Gale Connor, *Vietnam: Trading with the Enemy or Investing in the Future?*, 25 L. & POL'Y INT'L BUS. 481, 482 (1994) (observing that the "new

more attractive to investors than are centrally-planned enterprises. Investors who want to compete in free markets without overly intrusive governments may refuse to invest in NME nations. In addition, not surprisingly, investors will be reluctant to invest in nations where their assets could end up being appropriated.

The goal of privatization is not always the complete transfer of property rights from public to private ownership. As an alternative, some nations institute private sector development while maintaining the state sector rather than effect an absolute transfer of property rights.[31] Under this scenario, a nation may, as the PRC did, strive to achieve greater efficiency in state owned firms, rather than pursuing a complete transfer to private ownership.[32] In addition, when changes in public ownership occur, they may take the form of the acquisition of shares in limited amounts rather than complete relinquishment to private hands.[33]

1. "Big Bang" Privatization

A nation striving to completely transfer public property rights to private ownership follows the traditional approach to privatization, referred to as the "big bang." The "big bang" is a rapid departure from government control of the economy and the immediate institution of private ownership.[34] "Big bang" privatization involves: introducing free prices, opening economies to international trade and investment, removing state

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policy toward investments" reflected in the Law on Foreign Investment in Vietnam "virtually invited foreign businesses to return to Vietnam."). Similarly, as economic reform in China has gone forward, the PRC has concentrated on encouraging foreign investment in reformed state-owned enterprises. *See* Preston M. Torbert, *China's Evolving Company Legislation: A Status Report*, 14 NW. J. INT'L L. & BUS. 1, 2 (1993).

31. *See* Cao, *supra* note 7, at 100 (discussing privatization in China).

32. *See* Torbert, *supra* note 30, at 2-3.

33. *See id.* at 3 (noting that the PRC has "allowed, on an experimental basis, changes in ownership to include the acquisition of shares in state owned enterprises by employees and, in some cases, by third parties.").

34. *See* Cao, *supra* note 7, at 99; Seidman, *supra* note 8, at 436. Big Bang privatization has been referred to as "transition in a single gulp." *Id.* This method of privatization "involves an open sale of assets in which particular state organs that have indisputable right to convey assets transfer an unambiguous bundle of ownership rights in those assets to persons in the private sector." Stephan, *supra* note 27, at 184. Change under this approach is commonly referred to as "shock therapy." Cao, *supra* note 7, at 98.

subsidies, making currencies freely convertible, tightening fiscal and monetary policies, selling off state owned enterprises, closing inefficient factories and laying off unnecessary workers.[35]

"Big bang" privatization is the dominant approach to market reform. A nation that is anxious to have an economy based on private property rights often thinks that the immediate transfer of state assets to private ownership is the best means to implement a market economy.[36] Privatization is considered the key to economic reform. The proponents of "big bang" privatization include many developed countries as well as international organizations like the International Monetary Fund, the World Bank and the Organization for Economic Cooperation and Development (OECD).[37] These countries and organizations often make privatization and the establishment of free markets a requirement before investing or providing financial assistance to a NME nation.[38] Therefore, it can be inferred that a nation in need of foreign investment and financial assistance will be reluctant to diverge from "big bang" measures.

The immediate results of "big bang" privatization are very often higher prices, unemployment, lost income and greater foreign debt.[39] Proponents argue that these are short-term effects that lead to long-term benefits.[40] The problem with this argument is that the dramatic transfer in property rights does not necessarily result in higher efficiency in the use of productive assets.[41] The "big bang" approach does not address the problems that lead to inefficiency, poor management and low production.[42] Nations following the "big bang" method tend to focus almost exclusively on privatization—as if it were a magic solution—and tend to overlook the unintended conse-

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35. *See* CHANGING POLITICAL ECONOMIES, *supra* note 1, at 1; Seidman, *supra* note 8, at 437-38.

36. *See* Cao, *supra* note 7, at 115. Among the countries in Eastern Europe, "most embraced the privatization of state enterprises as the linchpin of market reform." *Id.*

37. *See id.* at 116; *Private Sector Role Defined,* BUS. VIETNAM, July 1996, *available in* LEXIS, News Library, Busvie File.

38. *See* Cao, *supra* note 7, at 116.

39. *See* CHANGING POLITICAL ECONOMIES, *supra* note 1, at 1.

40. *See id.* at 1-2.

41. *See id.* at 2.

42. *See* Seidman, *supra* note 8, at 444-45.

quences of privatization.[43] Consequently, management by private owners may disappointingly be as unprofitable and inefficient as it was by the state.

2. Gradual Privatization

There is debate as to the effectiveness and necessity of the "big bang" approach for all NMEs in transition. As a result, a non-traditional approach has emerged, referred to as "gradualism." The gradual model involves establishing a private sector in which companies can freely operate before transferring state owned enterprises into private hands.[44] In addition, gradual privatization involves improving state firms, rather than merely transferring ownership.[45] A gradual system allows partial public ownership of state enterprises through the sale of shares or bonds rather than complete relinquishment to the private sector.[46] Proponents of gradualism argue that focusing on improving state firms prior to transfer, rather than merely selling them as is, permits firms to address the reasons for inefficiency, low production and the lack of profitability. In contrast, "big bang" proponents assume private ownership is the solution to these deficiencies. Therefore, by establishing a private sector prior to state sector privatization, gradualism often avoids the problematic results of "big bang" privatization.[47]

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43. *See id.* at 445.

44. *See* Cao, *supra* note 7, at 107. The Chinese model favors retention of state enterprises and encouragement for the creation of new enterprises in a separate private sector. *See id.*

45. *See* Torbert, *supra* note 30, at 2-3.

46. *See* Baev, *supra* note 2, at 12. "Mixed state-public property enterprises are a worldwide phenomenon of our day." *Id.* In 1991, the French government permitted the partial privatization of certain state-owned enterprises through the sale of minority interests of shares, investment certificates, equity loans and various other financial instruments to the public. *See id.*; *see also* Anthony E. Boardman & Aiden R. Vining, *The Behavior of Mixed Enterprises*, 14 RES. L. & ECON. 223, 223 (1991) (describing "[m]ixed enterprises (MEs)" as "corporations where some percentage of the shares are held by private shareholders and some percentage by national or sub-national governments.").

47. *See infra* Part II.C.

B. *Political and Economic Factors Determining Processes of Privatization*

Certain circumstances determine whether a nation follows the "big bang" model or the gradual approach to privatization. Nations that are experiencing political and economic turmoil are less inclined to privatize gradually than nations that are privatizing under conditions of greater stability.[48] The transitions undergone in Eastern Europe provide examples of nations that embarked on the process of privatization amidst turmoil and instability.[49] In contrast, the transition undergone in the PRC was conducted in a more stable political and economic environment.[50] By examining how these nations defined their privatization approaches and reviewing the results, insights for developing an effective plan for privatization in Vietnam are revealed.

1. Nations in Eastern Europe

The fall of Communism in Eastern Europe from 1989-91 motivated the nations in that region to establish free-market economies.[51] Reformers attempted to privatize as quickly as possible for several reasons: the economies were failing,[52] state-run enterprises were inefficient and unprofitable[53] and there were political voids that required immediate action.[54] In addition, there was a political motive for fast reform.[55] Politi-

48. *See* Cao, *supra* note 7, at 113. The countries of Eastern Europe aimed to abandon their Communist past as quickly as possible by transforming their centrally-planned economies to free-market systems. *See id.* Conversely, China had no such objective. *See id.* China's foundation for economic transformation involved maintaining stability while instituting change. *See id.*

49. *See id.* at 97.

50. *See id.* at 113.

51. *See generally id.* at 97 (attributing the collapse of the Berlin Wall to the introduction of market-oriented economic reform in Eastern Europe).

52. *See* Phillips & Dent, *supra* note 14; Stephan, *supra* note 27, at 174. Phillips & Dent argue that overthrowing the communists in Eastern Europe was the easy part. *See* Phillips & Dent, *supra* note 14. The huge challenge faced by the governments of Eastern Europe was rapidly privatizing their economies in order to raise capital, eliminate the burden on state budgets and develop ways to encourage long term economic growth. *See id.*

53. *See* Phillips & Dent, *supra* note 14. Years of management under state-control resulted in inefficiency. *See id.*; Cao, *supra* note 7, at 114.

54. *See* Cao, *supra* note 7, at 114 (describing Eastern Europe's "sense of political urgency.").

55. *See* Vidat Milor, *Introduction* to CHANGING POLITICAL ECONOMIES, *supra*

cal parties and lobbying groups barely existed in Eastern Europe when post-Communist governments took office.[56] This provided an opportunity to make radical changes guided by practical concerns rather than partisan pressures.[57] Thus, to avoid the risk that political opponents would try to block economic reform, privatization had to be implemented quickly.[58]

Immediate privatization had tremendous appeal since there was no time to experiment with other methods. At a time when there was a political vacuum and the economy was in shambles, remedying state enterprises was less appealing than transferring them to private hands. Since free markets worked well and central planning did not, changing immediately from state to private ownership was considered the best and most expedient, path to profitable market economies.[59]

2. The People's Republic of China

On the other side of the world, the PRC began transforming its economy under different circumstances and for different reasons. There was no political mandate requiring the PRC to drastically change its entire economy. In fact, the central tenet of economic reform in the PRC was to maintain central planning and gradually introduce market-oriented enterprises into a separate new private sector.[60] From an economic standpoint, the primary purpose of privatization in the PRC was to mobilize the vast resources the nation had accumulated.[61] Citizens had collectively become rich, harboring huge amounts of money in personal savings.[62] Private control over such massive resources created a potential political threat to the govern-

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note 1, at 1, 2.

56. *See id.*

57. *See id.*; *see also* Cao, *supra* note 7, at 114. "The process of privatization entails enormous risk, and there [was] a real possibility that the process [w]ould still become paralyzed." *Id.* at 114 (quoting Jeffrey Sachs, *Accelerating Privatization in Eastern Europe: The Case of Poland,* in 1991 PROCEEDINGS OF THE WORLD BANK CONFERENCE ON DEVELOPMENT ECONOMIES). Political opposition in Eastern Europe could have come from adversely affected groups such as labor unions, old Party members and former owners wanting to reclaim their property. *See* Cao, *supra* note 7, at 114.

58. *See* Milor, *supra* note 55, at 2.

59. *See* Cao, *supra* note 7, at 107.

60. *See id.* at 107.

61. *See* Bersani, *supra* note 10, at 303.

62. *See id.* at 304.

ment.[63] The PRC's solution to this problem was to permit these financial resources to be invested in state enterprises.[64]

Reformers in the PRC adopted a gradual approach to privatization. This involved the creation of a private sector prior to limited privatization of the state sector.[65] Gradual privatization provided several economic and social benefits which serve as guides for Vietnam. First, it is arguably more beneficial to commit economic resources to creating new, privately-owned firms rather than investing in the transfer of state firms to private ownership or the complete destruction of state firms.[66] In addition, it is advantageous to establish a nonstate sector strong enough to absorb some of the disruption that occurs with state sector privatization.[67] With a market framework in place, the government is better suited to promote economic reform while maintaining stability in the nation.[68]

C. *The Results of Privatization and Insights for Vietnam*

The results of the privatization programs adopted in Eastern Europe and the PRC provide important insights for Vietnam. "Big bang" transitions throughout Eastern Europe created recessions, unemployment, sinking levels of industrial production and inflation.[69] Economists have predicted that these economies will not reach pre-transition production levels for at least ten years.[70] Not surprisingly, political instability ensued

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63. *See id.*
64. *See id.*
65. *See* Cao, *supra* note 7, at 99-100.
66. *See id.* at 121
67. *See infra* Part II.C.
68. *See* Cao, *supra* note 7, at 110. "A basic premise underlying the Chinese model is that the fundamentals of a market-oriented economy must be established before state sector privatization can be successfully pursued, if pursued at all." *Id.* at 107.
69. *See* Seidman, *supra* note 8, at 438. As Seidman points out, in Czechoslovakia and Poland, industrial production in 1993 fell to about 65% of the last pre-transition year. In East Germany, it fell from an index of 190 in 1990, to an index of 70 in the last quarter of 1991. Inflation grew to serious levels everywhere. In Poland, for example, it persisted at 35% per year. Unemployment, which was formerly close to 0% by official estimates, shot up. In Poland, it rose to 11.4%. *See id.* Real wages fell and, quite importantly, the countries attracted little foreign investment. *See id.* at 439. Economic inequity increased, social supports disappeared without adequate substitutes and social evils like prostitution flourished with the freedom from any central constraint. *See id.* at 440.
70. *See id.* at 438.

under such dire economic circumstances. Throughout Eastern Europe, the people voted to replace reformers with former Communists.[71]

The PRC's gradual privatization avoided many of the adverse results of the "big bang" approach. Over a period from roughly 1985 to 1995, the PRC underwent remarkable growth in its Gross Domestic Product (GDP) that averaged approximately 10% per year.[72] In addition, the PRC saw rises in both average and median standards of living.[73] The PRC, however, experienced its own problems. Inflation was difficult to manage, domestic and foreign debt increased, substantial income and wealth disparities emerged and, in many economically advanced areas, sweatshops and child labor appeared.[74] The PRC's one-party political system did not allow the people to vote out the reformers as in Eastern Europe.[75] As a result, since the late 1980s, the Chinese have expressed their dissatisfaction in messages to the government through strikes and other labor actions, as well as through peasant unrest.[76]

As Vietnam formulates its privatization program, it should gain insights from the experiences of the nations of Eastern Europe and the PRC. The dramatic changes that took place in Eastern Europe created economic and political unrest. Since Vietnam does not need to evade its political past as the nations of Eastern Europe did, it is unnecessary for Vietnam to pursue such drastic reform. Vietnam's political and economic conditions allow for gradual implementation of its economic goals, similar to the PRC's experience. Gradual privatization has the potential to increase Vietnam's GDP and its standard of living. However, the PRC had problems with controlling inflation, monitoring debt and overseeing labor conditions. In light of this, even with gradual privatization, Vietnam would need to institute effective monetary policies, contain national and foreign debt and provide for fair employment conditions.

The insights Vietnam derives from the experiences of other NMEs do not nullify Vietnam's own obstacles. Within the VCP,

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71. *See id.* at 440.
72. *See id.* at 440-41.
73. *See id.* at 441.
74. *See id.*
75. *See id.* at 442.
76. *See id.*

there is ongoing debate between conservatives who want to forestall economic reform and reformers who want to maintain the pace or speed it up.[77] In addition, Vietnam needs a considerable amount of economic assistance from international organizations and other nations who generally favor market economies.[78] Although Vietnam should privatize gradually to avoid the negative consequences of dramatic reform, it cannot afford to proceed too slowly. The result of too much hesitation toward privatization could be decreased foreign investment and economic assistance, which would seriously threaten Vietnam's economic resurgence and entrance into the world economy.[79]

III. FOUNDATIONS OF VIETNAM'S ECONOMIC TRANSFORMATION

The current state of Vietnam's economy is a result of its political and economic history. With a population of over 76 million people, Vietnam represents one of the larger markets in Asia.[80] Furthermore, the people are a comparatively well-educated,[81] productive workforce[82] and the country is abundant in raw materials.[83] However, Vietnam's political history and governmental structure historically kept the nation economically isolated and under-developed. Since the early 1990s, however, the nation embarked on a path of economic transformation in order to better utilize its abundant resources, develop its economy and, ultimately, establish a market-driven economic system.

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77. *See Economic Reforms Threatened, supra* note 10; *Vietnam: Review 1997*, ASIA & PACIFIC REV. WORLD INFO., May 1997, *available in* LEXIS, News Library, Curnws File.

78. *See* discussion *infra* Part III.B.

79. *See Vietnam*, IBC INT'L COUNTRY RISK GUIDE, June 1997, *available in* LEXIS, World Library, Busanl File.

80. *See id.* This number represents the July 1996 estimate.

81. As of 1989, the percentage of the population, age 15 and over, who could read and write broke down as follows, (1) total population: 88%; (2) male: 93%; and (3) female: 83%. *See Vietnam, in* CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 1995, at 453 (1995).

82. *See generally id.* (recording a 1990 estimate of the size of the labor force as 32.7 million and breaking this figure down by agriculture (65% of the labor force) and industrial and service (35% of the labor force)).

83. *See generally id.* at 454 (reporting that crude oil and rice comprise Vietnam's most abundant natural resources and observing that Vietnam is the third largest exporter of rice in the World, behind the U.S. and Thailand). Nearly 75% of Vietnam's export earnings are generated by crude oil and rice. *See id.* Additional export products are agricultural products, marine products and coffee. *See id.*

A. Historical Background

Vietnam was ruled by China from the second century B.C. to the tenth century A.D.[84] In the late 1850s, the French gained control[85] and ruled until May 7, 1954.[86] As a result of foreign rule, the Vietnamese were limited in their ability to own land,[87] to improve technology and to industrialize.[88] On May 7, 1954, the French were forced to surrender and Vietnam gained its independence.[89] Vietnam was partitioned into two sections: the communist-oriented Democratic Republic of North Vietnam and the western-oriented Republic of South Vietnam.[90] The division was supposed to be temporary, providing for country elections and unification within two years.[91] This did not happen. Tensions developed between the North and South.[92] The North waged guerrilla warfare against the South, elections to unite Vietnam were never held and Vietnam remained at war until 1975.[93]

While Vietnam was at war, the North received economic and military aid from the Soviet Union and China and the South received military aid from the United States.[94] On April 30, 1975, South Vietnam fell[95] and the United States included it in the trade embargo that had already been im-

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84. GEORGE L. HARRIS ET AL., DEP'T OF THE ARMY, U.S. ARMY AREA HANDBOOK FOR VIETNAM 7, 7 (reprint 1964) (1962).

85. *See id.* at 16-17 (discussing French conquests of South Vietnam from 1858-1867 and North Vietnam from 1867-1883).

86. *See id.* at 1, 8, 28.

87. *See id.* at 1. Most Vietnamese were rice farmers. *See id.* The French government confiscated land belonging to former Vietnamese officials who had fled or resisted them and transferred it to French or Vietnamese collaborators. *See id.* Many Vietnamese were left to work for large landowners, paying to use the land and forced to provide a share of the crops they harvested as rent. *See id.* at 2.

88. *See* Robert L. Wunker, *The Laws of Vietnam Affecting Foreign Investment*, 28 INT'L LAW. 363, 364 (1994). The lack of technological improvements drained Vietnam's natural resources, ultimately resulting in its poor economic standing. *See id.*

89. *See* HARRIS ET AL., *supra* note 84, at 8.

90. *See id.* at vii; Barbara G. James, *Vietnamese Law in English: A Selected Annotated Bibliography*, 84 L. LIBR. J. 461, 463-64 (1992); Thomas R. Stauch, Comment, *The United States and Vietnam: Overcoming the Past and Investing in the Future*, 28 INT'L LAW. 995, 999 (1994).

91. *See* HARRIS ET AL., *supra* note 84, at vii; James, *supra* note 90, at 463.

92. *See* Stauch, *supra* note 90, at 999.

93. *See id.* at 1000; James, *supra* note 90, at 463.

94. *See* Stauch, *supra* note 90, at 1000.

95. *See id.* at 1004.

posed on North Vietnam.[96] The following year, Vietnam was unified as the Socialist Republic of Vietnam (SRV).[97]

Upon the unification of Communist Vietnam, the VCP instituted a centrally-planned, socialist economy. The 1992 Constitution describes the 1976 unification. "On 2nd July 1976, the National Assembly of unified Vietnam decided to rename the country the Socialist Republic of Vietnam and the entire country embarked on a transition to socialism, trying to build the country and defend with perseverance the fatherland while performing its international obligations."[98] The Constitution established socialist production relations with a highly centralized managerial mechanism.[99] The state controlled the economy and all means of production.[100]

With its tumultuous history, Vietnam's past is important to understanding the issues it faces as it attempts to shift its non-market economy to a market-oriented system. Years of foreign rule, from the second century B.C. until 1954, resulted in the development of a socialist government in Vietnam dedicated to maintaining political and economic control. Accordingly, as the country embarks on its economic transition, there is a divide within the government between proponents and opponents of economic reform.[101]

96. *See id.* The regulations that were part of the U.S. trade embargo included 31 C.F.R. § 500.204 (1996) (banning purchases, transport, imports and transactions with respect to merchandise originating in Vietnam) and 31 C.F.R. § 505.10 (1996) (banning transactions involving the shipment of certain merchandise from any foreign country to Vietnam). These regulations continued until President Clinton lifted the trade embargo on February 3, 1994. *See* 31 C.F.R § 500.578 (1996) (authorizing new transactions involving property in which Vietnam or its nationals have an interest).

97. *See* CONST. OF THE SOCIALIST REPUBLIC OF VIETNAM preamble, para. 4 (1992), *reprinted in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, at 3 (Albert P. Blaustein & Gisbert H. Flanz eds., 1992) [hereafter CONSTITUTIONS].

98. *Id.*

99. *Id.* art 15, *reprinted in* CONSTITUTIONS, *supra* note 97, at 6. *See generally*, Hoang The Lien, *On the Economic Provisions in the 1992 Constitution of Vietnam*, VIETNAM L. & LEGAL FORUM, Apr. 1995, at 29 (comparing the provisions on the economic system in the 1946, 1959 and 1980 Constitutions).

100. VIETNAM CONST. art. 15, *reprinted in* CONSTITUTIONS, *supra* note 97, at 6.

101. *See Vietnam: Review 1997*, *supra* note 77.

B. Vietnam's Economy Since the War

The adoption of communism in Vietnam was accompanied by isolation from the U.S. economy[102] and from the economies of other industrialized nations that avoided dealing with Vietnam in order to preserve their own economic relations with the United States.[103] Vietnamese trade was thus conducted almost exclusively with the Soviet Union and the communist nations of Eastern Europe.[104] As a result, much of Vietnam's investment and commercial legislation concentrated on encouraging foreign investment from these nations.[105]

Vietnam experienced economic difficulties with central planning.[106] Previously profitable industries stagnated[107] and the Vietnam average per capita income fell to under US$200 per year.[108] Not surprisingly, Vietnam became one of the world's poorest countries.[109] A devastating harvest in 1982 forced the VCP to acknowledge that its socialist economy

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102. *See* Foreign Assets Control Regulations, 31 C.F.R. § 500.201 (1996) (prohibiting all individuals subject to United States jurisdiction from engaging in virtually any transaction with Vietnam); *see also* Connor, *supra* note 30, at 485; Stauch, *supra* note 90, at 1008-09; Paul B. Walsh, Comment, *Vietnam's Labor Law: Can Labor Peacefully Coexist with Foreign Investment, Economic Development, and Structural Reform?*, 8 TRANSNAT'L LAW. 125, 125 (1995).

103. *See* Stauch, *supra* note 90, at 1008-09; Walsh, *supra* note 102, at 125.

104. *See* Stauch, *supra* note 90, at 1009; Walsh, *supra* note 102, at 126.

105. On November 3, 1978, the Government of the U.S.S.R and the Socialist Republic of Vietnam signed a treaty of friendship and cooperation. The provisions of the agreement stress the need to advance the economies of both countries. *See* Treaty of Friendship and Co-operation, Nov. 3, 1978, U.S.S.R.-Vietnam, 17 I.L.M. 1485. Based on the principles set out in this treaty, in 1983, the countries signed the Agreement on Long-Term Program for the Development of Economic, Scientific and Technical Cooperation, Oct. 31, 1983, U.S.S.R.-Vietnam, 23 I.L.M. 659.

106. *See* Stauch, *supra* note 90, at 1009. Central planning included "the forced collectivization of agriculture and the rapid centralization of all industry and commerce in the south." Connor, *supra* note 30, at 482.

107. *See* Stauch, *supra* note 90, at 1009.

108. *See id.*

109. *See id.*; Connor, *supra* note 30, at 482 (describing the results of economic socialization as "an economic disaster."). One author has observed:

> Dr. Nguyen Xuan Oanh, a former prime minister of South Vietnam described the Communist transformation as follows: "In 1976, one year after the liberation—actually, they called it liberation but we don't call it that at all, we call it defeat—they joined the countries into one system, one made up of Maoism and Stalinism. Step by step, the country ground to a halt."

Stauch, *supra* note 90, at 1009.

was failing.[110] In addition, the Soviet Union's economic problems led that nation to decrease trade with, and economic aid to, Vietnam.[111] As a result of its worsening economic situation, the VCP realized the need for reform.[112]

C. *The Beginning of Economic Reform in Vietnam*

Vietnam's economic reform has occurred in phases. As one author observes, "the Vietnam Government hesitantly introduced economic reforms as early as 1979, but those reforms were not implemented until the VCP's Congresses of 1986 and 1991."[113] The devastating 1982 harvest prompted the VCP to take decided steps.[114] The Soviet Union's economic problems were yet another stimulus for reform.[115] Finally, upon the dissolution of the Soviet Union, the VCP reformulated its economic strategy.[116] The two starting points for Vietnam's economic reform were the reorganization of the VCP and the passage of the FIL.

1. The Influence of Political and Economic Conditions on Reform

Vietnam was virtually bankrupt, economically isolated and politically ostracized when economic reform began. Nevertheless, the VCP was reluctant to give up control of the political and economic life in the nation.[117] The VCP took hasty measures that resulted in further economic problems; the plan resembled those instituted in Eastern Europe. As one authority observed:

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110. *See* Stauch, *supra* note 90, at 1010.

111. *See id.* at 1010; *Premier Presents Government Work Report*, BBC SUMMARY OF WORLD BROADCASTS, Apr. 10, 1997, *available in* LEXIS, World Library, Curnws File.

112. *See* Stauch, *supra* note 90, at 1009-10. The government's reluctance to change is attributable to several factors: (1) the long struggle for independence, (2) years of isolation from non-Communist nations, (3) a lack of willingness to give up control and (4) fear of the capitalist excesses invading the nation.

113. *See id.* at 1009-10.

114. *See id.* at 1010.

115. *See id.*; Walsh, *supra* note 102, at 126.

116. *See* Stauch, *supra* note 90, at 1010.

117. *See* Mark Sidel, *Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training*, 11 UCLA PAC. BASIN L.J. 221, 221-22 (1994); Stauch, *supra* note 90, at 1010-11.

> In derogation of the traditional Stalinist approach, the 1985 reform plan had included replacing heavy industry with light industry and agriculture, decentralizing control, emphasizing free market forces, eliminating state worker subsidies and devaluing currency. The results of these reforms included an increase in prices, currency speculation, lower production and shortages.[118]

Similar to the fast-paced transitions in Eastern Europe, an explosive, dramatic approach to change in Vietnam failed.[119]

In 1986, a reorganization of the VCP leadership began with many members replaced by economic reformers.[120] In 1987, still more members were replaced and forced retirement was imposed upon approximately 60% of the delegates to the National Assembly.[121] The next election, in 1987, for the first time allowed candidate nominations at public meetings instead of by party appointment.[122] This election resulted in the political demise of the party's conservative stranglehold. It is significant that these political changes occurred through elections rather than party appointment. This placed the new VCP in a favorable position to pursue economic reform with public support.[123]

Although the changes in VCP membership were extensive, they were less chaotic than similar changes in other communist nations. For example, in the former Soviet Union, explo-

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118. W. Gary Vause, *Doing Business With Vietnam-Prospects and Concerns for the 1990s*, 4 FLA. J. INT'L L. 231, 240-41 (1989).

119. *See id.* at 240.

120. *See id.* As described by one author:

> Eight cabinet members responsible for economic management were replaced at a Central Committee meeting which ended June 6, 1986 . . . .
>
> An election at Sixth Communist Party Congress, held December 15-18, 1986, produced new leaders in the most drastic political change the party had experienced in its fifty-six years of existence . . . .

Id. at 241. These men had been "associated . . . with Ho Chi Minh." *Id.*

121. *See id.* at 242 (noting that "[t]he new leadership clearly was moving to eliminate the deadwood in the National Assembly before the [next] Assembly election.").

122. *See id.* at 243 (observing that there were "more candidates on the ballot than in previous elections. Eight hundred twenty-nine candidates campaigned for 496 seats in 1987, compared to only 600 candidates in 1981 who competed for the same number of seats.").

123. *See id.* at 244. This public support for reform contrasts sharply with the context of reform in Eastern Europe. *See supra* Part II.B.1.

sive political uprisings preceded economic reform, resulting in economic disaster.[124] Additionally, in Eastern Europe, the nations attempted to abandon communism as quickly as possible and the result was hasty reform with problematic results.[125] In Vietnam, communism remained and the changes in VCP membership occurred within the Communist regime. The changes in VCP membership were enough to launch economic reform. Similarly to the PRC, economic reform in Vietnam began within the Communist political system.[126] Accordingly, the PRC's gradual approach to instituting a market economy is instructive for the VCP as it decides how economic reform will proceed.

2. *"Doi Moi"* and the Law on Foreign Investment

In 1986, the VCP held its Sixth Communist Party Congress in which the new economic policy of *"doi moi,"* or renovation, was introduced.[127] *Doi moi* began with the implementation of an open-door economic policy to encourage foreign investment.[128] The goal of *doi moi* was the attainment of economic support and investment from other countries to regenerate Vietnam's failing economic system, promote economic expansion and, ultimately, to establish a private sector and a market economy.[129] Vietnam suffered for several centuries to attain political and economic sovereignty. As such, allowing diversified ownership of its economic assets was a pivotal step in its transition to a free-market economy.

The FIL was the first notable piece of legislation that was passed to spearhead economic reform. At the time, as one commentator observed, the FIL was considered to be "one of the most liberal foreign investment codes of any developing nation in the world, let alone Southeast Asia."[130] The purpose of the

124. *See* Stauch, *supra* note 90, at 1030.
125. *See supra* Part II.C.
126. *See supra* Part II.B.2.
127. *See* Connor, *supra* note 30, at 482; Luke Aloysius McGrath, *Vietnam's Struggle to Balance Sovereignty, Centralization, and Foreign Investment Under* Doi Moi, 18 FORDHAM INT'L L.J. 2095, 2095-96 (1995); Stauch, *supra* note 90, at 1010; Walsh, *supra* note 102, at 128; Ngo Quang Xuan, *Vietnam: Potential Market and New Opportunities*, 19 FORDHAM INT'L L.J. 32, 32 (1995).
128. *See* Jonathan L. Golin, *Tiger by the Tail*, A.B.A. J., Feb. 1995, at 62, 62.
129. *See id.*
130. Stauch, *supra* note 90, at 1011; *see also* Wunker, *supra* note 88, at 365;

FIL was "to expand economic co-operation with foreign countries, develop the national economy and increase exports on the basis of the efficient exploitation of natural resources, labour, and all other potential of the country."[131]

The goals of the FIL were economic growth and industrial development through increased hard-currency foreign investment, open competition and private sector development. It was a major step toward decreasing the VCP's control over the economy. The law, as one commentator points out, "requires no minimum levels of Vietnamese participation or equity in Vietnamese projects and—100 per cent foreign investments are permitted," though "there is a minimum level of foreign participation or equity, set at 30 per cent."[132] Under Article 3, foreign organizations and private entities are authorized to invest in any sector of Vietnam's economy.[133] Consequently, the FIL has opened Vietnam to substantial foreign investment since its passage.[134]

John Dick & Paul A. Delemarre, *Vietnam*, INT'L FIN. L. REV. Spec. Supp., July 1991, at 62, 62; Peter Ruderman, *Joint Ventures*, INT'L FIN. L. REV. Spec. Supp., Feb. 1995, at 17, 17.

131. Law on Foreign Investment, *supra* note 9, preamble. The FIL was issued by the Eighth Legislature of the National Assembly of the SRV on December 29, 1987 and was twice amended on June 30, 1990 and again on December 23, 1992. Law on Foreign Investment in Vietnam (amended, supplemented) (visited Nov. 19, 1998) <http://home.vnd.net/english/legal_docs/doc00241.html>; *see* Wunker, *supra* note 88, at 364-65; Stephen Hayward & Jennifer Lay, *A Brief Overview of Vietnam's Foreign Investment Regulations*, INT'L FIN. L. REV., Spec. Supp. Feb. 1995, at 9, 9. On February 6, 1991, the Council of Ministers issued its Decree Providing Regulations on Foreign Investment in Vietnam. Decree Providing Regulations on Foreign Investment in Vietnam, No. 28-HDBT (1991); *see* Wunker, *supra* note 88, at 365; Dick & Delemarre, *supra* note 130, at 62. The decree laid out the procedures for implementing the Law on Foreign Investment. The most recent Implementing Regulations were enacted under Decree 18-CP on April 16, 1993. *See* Regulations in Detail for the Implementation of the Foreign Investment Law, Decree No. 18-CP (1993); *see* Wunker, *supra* note 88, at 365.

132. *See* Dick & Delemarre, *supra* note 130, at 62.

133. *See* Law on Foreign Investment, *supra* note 9, art. 3(1). To further encourage investment where it is needed, Article 33 provides for the granting of exemptions from or reductions of taxes by the State body in charge of foreign investment. *See id.* art. 33. In addition, Article 35 allows the State body to grant exemptions from or reductions of export and import duties. *See id.* art. 35.

134. As of June 27, 1995, the State Committee for Cooperation and Investment (SCCI) approved 1,402 foreign investment projects by foreign partners valued at 16,085,241,667 United States Dollars (USD). *See* Ngo Duc Manh, *Investment Vehicles Under the Law on Foreign Investment in Vietnam*, 1 VIETNAM L. & LEGAL F., July 1995, at 3, 4. The number of projects in operation totaled 1,182 valued at 14,818,096,199 USD. The ten largest investor countries accounted for 76.5 percent

The FIL offers three ways for investors to do business in Vietnam: the business cooperation contract, the joint venture enterprise and the wholly-owned foreign enterprise.[135] The business cooperation contract is a partnership between a foreign investor and a Vietnamese partner.[136] The joint venture enterprise is "an enterprise set up in Vietnam either by the two sides pursuant to a joint venture contract, each side comprising one or more parties, or pursuant to an agreement between the Government of the Socialist Republic of Vietnam and a foreign government . . . ."[137] There is no ceiling on the maximum contribution that the foreign partner can make.[138] As such, the foreign partner can contribute all of the capital in the joint venture and receive all of the profits from its operation. The wholly-owned foreign enterprise is "an enterprise the capital of which is one hundred (100) per cent owned by foreign organizations or individuals and which is authorized by the Government of the Socialist Republic of Vietnam to be established in Vietnam."[139]

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of the projects in operation and 79.9 percent of the total capital invested. The countries, listed in descending order of dollars invested, are Taiwan, Hong Kong, Japan, the Republic of Korea, Singapore, Malaysia, Australia, the United States, France and Switzerland. *See id.*

135. *See* Law on Foreign Investment, *supra* note 9, art. 4.

136. *See id.* art. 5 (also providing that the rights, obligations and responsibilities of the partners are to be apportioned by mutual agreement within the business contract). The business cooperation contract is considered the simplest form of business investment and no legal entity is created in this connection. As a result, the business cooperation contract does not offer the limited liability or tax benefits that the joint venture and wholly-owned foreign enterprise offer. *Id.*

137. *Id.* art. 2(11). Article 27 affords the joint venture limited liability and tax breaks, making it the most common method of investment for foreign companies. *Id.* art. 27. Article 27 states:

> [A] joint venture enterprise may be exempted by the State body in charge of foreign investment from payment of profits tax for a maximum period of two years commencing from the first profit making year and it may be allowed a fifty (50) per cent reduction of profits tax for a maximum period of the two successive years.
>
> Operating losses incurred by a joint venture enterprise in any year may be carried forward to the following year and set off against the profits of that year. Any losses remaining after such set off may be carried forward on the same basis for up to five successive years.

Id. As of 1994, joint ventures accounted for 80 percent of the foreign operations in Vietnam. *See* Stauch, *supra* note 90, at 1015.

138. *See* Law on Foreign Investment, *supra* note 9, art. 8.

139. *Id.* art. 2(12). Article 14 provides that in the case of the wholly-owned foreign enterprise, the owners "shall assume full responsibility for management of the enterprise, be subject to the control of the State body in charge of foreign

The FIL contributes to Vietnam's transition to a market economy in several ways. First, by opening its economy to foreign investment, Vietnam has much to gain in production, technology and management expertise.[140] Second, the wholly-owned foreign enterprise and some forms of joint ventures authorize complete foreign ownership.[141] Further, the FIL gives investors almost complete control over management of the enterprise.[142] With respect to joint venture enterprises, management is vested in a board whose members are chosen by the joint venture partners.[143] Finally, the FIL guarantees protection for foreign investors. Under Article 21, "[t]he capital and assets invested in Vietnam by foreign organizations or individuals shall not be requisitioned or expropriated through administrative measures. An enterprise with foreign owned capital shall not be nationalized."[144] This provision ensures that the government will not appropriate the property or the assets of foreign investors. As such, it alleviates a prime concern of investors interested in economies that are ruled by a Communist Party, or that are affected by a changing political system.[145]

The government's hesitation to give up too much control over the economy is revealed by the detailed provisions requiring all foreign investment projects to gain approval and licensing by the State Committee for Cooperation and Investment and the local People's Committee of the province in which the enterprises seek to be established.[146] An application laying out the details of the enterprise must be submitted to these committees: a process investors find time consuming and frus-

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investment, and be entitled to enjoy the rights and be liable to carry out all obligations stated in the investment license." *Id.* art. 14. The wholly-owned foreign enterprise, like the joint venture, enjoys limited liability.

140. *See* Stauch, *supra* note 90, at 1016.

141. *See* Law on Foreign Investment, *supra* note 9, arts. 2(12), 8.

142. *See* Dick & Delemarre, *supra* note 130, at 64 (noting that "[w]ith respect to business cooperation contracts and 100 per cent foreign investment enterprises, the parties are free to determine their own management arrangements.").

143. *See id.*

144. Law on Foreign Investment, *supra* note 9, art. 21.

145. *See* Stauch, *supra* note 90, at 1018.

146. *See* Law on Foreign Investment, *supra* note 9, art. 37 (requiring "application for approval of a business co-operation contract or a joint venture contract, the establishment of an enterprise with one hundred (100) per cent foreign owned capital or for investment incentives shall be submitted to the State body in charge of foreign investment.").

trating.[147] Also, as a rule, joint ventures between foreign and Vietnamese partners are preferred.[148] This reveals the conservative VCP influence over the liberal statutory provisions of the FIL.

3. Results of the FIL

Despite a few ideological inconsistencies, Vietnam has attracted a surge of foreign investment since the FIL was introduced. The FIL has even been a catalyst for the reconciliation of Vietnam with the United States. On December 28, 1993, the United States amended its Foreign Assets Control Regulations to allow U.S. citizens to participate in development projects in Vietnam sponsored by certain international institutions.[149] Then, on February 3, 1994, President Clinton

147. The application must "be accompanied by the business co-operation or joint ventures contract, the charter of the joint venture enterprise or enterprise with one hundred (100) per cent foreign owned capital, a study of the economic and technical feasibility of the project and such other documents as may be required by the State body in charge of foreign investment." *Id.* The feasibility study itself needs to set out the scope of the venture, the investment to be made by both parties, the benefits it will bring to the region, the estimated profitability of the business and the environmental impact. As one author writes:

> At the moment, there are far too many government agencies involved in the foreign investment process, and there are far too many approvals required at the national, provincial and local levels for foreign investment to go forward expeditiously for the good of the country or for the good of foreign investors, and there are far too few people who understand what the expectations of foreign investors are if they are going to invest substantial funds.

Irwin Jay Robinson, *Current Problems and Opportunities in Vietnam and American Shortsightedness: a Commentary*, BUS. VIETNAM, July 1995, *available in* LEXIS, News Library, Busvie File.

148. *See* Manh, *supra* note 134, at 6.

149. *See* Participation in International Institutions' Development Projects in Vietnam, 58 Fed. Reg. 68,529 (1993) (codified at 31 C.F.R. § 500.576). The President signed this amendment in partial recognition of steps taken by the Vietnamese government to account for U.S. prisoners of war and missing in action from the Vietnam war. *See id.* at 68,530. The amendment authorizes U.S. citizens to participate in projects in Vietnam formally proposed or approved by international institutions such as the International Bank for Reconstruction and Development, the Asian Development Bank, the United Nations Development Program and the World Health Organization. *See id.* U.S. citizens may provide goods and services for eligible projects as contractors, subcontractors and suppliers. *See id.* The authorization also permits equity participation in qualified projects such as joint venture corporations formed to participate in the project. *See id.* The FACR was also amended authorizing U.S. banking institutions to process transactions of qualified international institutions with respect to Vietnam. *See id.* (codified at 31 C.F.R.

lifted the United States' trade embargo that had been in effect against North Vietnam since 1964 and against South Vietnam since it fell to the North in 1975.[150] Finally, on January 28, 1995, the United States and Vietnam entered into the Agreement Concerning the Settlement of Certain Property Claims, "with a firm desire to reach an early settlement of property claims in order to develop bilateral economic and trade relations . . . ."[151] Vietnam now receives considerable foreign investment from the United States. As of 1995, the United States was Vietnam's eighth largest investor nation.[152]

In addition to the United States, Asian and European nations have invested considerably in Vietnam since the enactment of the FIL.[153] The FIL created a regulatory framework and vehicles for foreign investment. As companion legislation, Vietnam also issued decrees covering matters such as taxation, banking, accounting and bankruptcy which provide stability and certainty in business transactions.[154]

Subsequent to the enactment of the FIL, the VCP passed the 1992 Constitution to promulgate its new approach to economic activities. No articles on the economic system contained in the 1980 Constitution were adopted into the 1992 Constitution. The 1992 provisions aim to temper the old centralized state managerial mechanisms and establish market mechanisms within the economy. Chapter 2 of the 1992 Constitution contains the articles on the economic system. Chapter 2, Arti-

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§500.777).

150. *See* Prospective Lifting of Vietnam Embargo, 59 Fed. Reg. 5696 (1994) (to be codified at 31 C.F.R. § 500.578). The President felt that lifting the trade embargo against Vietnam offered the best way to resolve the fate of American prisoners of war and missing in action. *See id.* This regulation authorizes by general license new transactions involving property in which Vietnamese or its nationals have an interest. *See id.* The authorized transactions include imports from and exports to Vietnam, new investment, travel-related transactions and brokering transactions. *See id.*

151. Agreement Concerning the Settlement of Certain Property Claims, Jan. 28, 1995, U.S.-Socialist Republic of Vietnam, 34 I.L.M. 685, 686.

152. *See* Manh, *supra* note 134, at 4.

153. *See id.*

154. *See generally* Ordinance on the State Bank of Vietnam, May 23, 1990, *translated in* 1 SCCI & FOX, *supra* note 9, at VI-1; Law on Business Bankruptcy, Dec. 6-30, 1993, *translated in* 3 SCCI & FOX, *supra* note 9, at XIV-47; Decision on Establishment of Business Corporations, Mar. 7, 1994, *translated in* 3 SCCI & FOX, *supra* note 9, at XIV-70-7; Decision on Re-structuring of State Owned Enterprises, Mar. 7, 1994, *translated in* 3 SCCI & FOX, *supra* note 9, at XIV-70-1.

cle 15 states:

> The state develops the multisectoral commodity economy in accordance with the *market mechanism* based on state management and socialist orientations. The multisectoral economic structure with its various diverse forms of production organization depends on the system of ownership of the entire people, of collectives, and of *private parties* with the system of ownership of the entire people and collectives being at the core.[155]

The VCP also passed several laws to institute the multisectoral economy it promulgated in the 1992 constitution. These laws serve as starting points for privatization in Vietnam by diversifying ownership rights and providing for a private sector in Vietnam's economy.

IV. PRIVATIZATION IN VIETNAM

In December 1990, with significant increases in foreign investment and its economy expanding, the VCP passed two laws which began the process of market reform and privatization. First, the LC permits the establishment of private limited liability and share-holding companies.[156] Companies initiate all business operations[157] and own all production materials, capital and assets.[158] Second, the LPE permits individuals to establish private enterprises separate from the state.[159] As with the LC, owners can freely conduct their businesses and make independent business decisions.[160] The owners also own the means of production, capital and assets.[161]

Several years later, in September 1994, the VCP issued the TRIBSSOE which allowed the diversification of state owned firms through the issuance of bonds and the sale of shares to private entities.[162] State firms approved for these issuances were authorized to accept investments from private

155. VIETNAM CONST. art. 15, *reprinted in* CONSTITUTIONS, *supra* note 97, at 6 (emphasis added).
156. *See* Law on Companies, *supra* note 11, art. 1.
157. *See id.* art. 4.
158. *See id.* art. 5.
159. *See* Law on Private Enterprises, *supra* note 12, preamble.
160. *See id.* art. 3.
161. *See id.* art. 4.
162. *See* TRIBSSOE, *supra* note 13, art. 1.

parties. It should be noted that the purpose of TRIBSSOE was not to completely transfer ownership and management of state firms into private hands. The purpose was to mobilize capital for investment within state owned enterprises.[163] Therefore, private owners were more like investors than true owners of the state-run firms. Also, the decree was issued for one year as an attempt, on a trial basis, to incorporate free market mechanisms into Vietnam's state sector.

A. *Legislative Measures*

Vietnam's market reform legislation demonstrates the VCP's interest in developing a multi-sector economy and in protecting investors. The legislation reveals the VCP's concomitant desire for investment in both the private and state sectors, as well as the VCP's willingness to decrease its control over the economy. At the same time, Vietnam's market reform legislation also reveals a degree of hesitancy to give up too much control.[164]

1. The Law on Companies

The LC permits Vietnamese individuals to establish limited liability and shareholding companies.[165] Individuals are the sole owners. They invest "capital, share the profits, and bear the losses."[166] Further, a company is "free to carry out business and make independent decisions in relation to business activities."[167] The government does not make business decisions or assist ailing firms. Thus, company owners are encouraged to pursue the efficient and productive use of company assets. Companies that are not productive do not and should not survive. In fact, the LC contains provisions for the dissolution of companies through the Law on Business Bankruptcy.[168] By allowing companies to operate, free from govern-

163. *See id.* arts. 1, 2.

164. *See* Law on Companies, *supra* note 11, preamble; Law on Private Enterprises, *supra* note 12, preamble.

165. *See* Law on Companies, *supra* note 11, art. 1.

166. *Id.* art. 2.

167. *Id.* art. 4.

168. *See id.* art. 23; Law on Business Bankruptcy, *supra* note 154. The Law on Business Bankruptcy is an example of Vietnam's commitment to creating the necessary legal framework for a workable market economy.

ment interference, the LC induces competition and free market behavior, providing a foundation for a free market in Vietnam.

The economic liberalization offered by the LC is not absolute. Like investors under the FIL, the founding members of a company must submit an application to the People's Committee of the province or city where its head office will be based.[169] This permits the government to maintain control and to carefully consider applications, rejecting any which would, in its expectation, fail to improve the economy.[170]

Article 11 requires approval from the Prime Minister for the establishment of companies proposing to conduct business in certain economic sectors.[171] This allows the government to maintain a significant degree of control over certain areas of the economy. Article 13 further infringes on company autonomy by requiring the company to give priority to the use of domestic labor.[172] This can hurt businesses that would benefit by using the specialized skills of foreign individuals.

Further government control occurs if a company wants to establish a branch office outside of the province where its head office is located. Article 20 requires another application to be submitted to the People's Committee.[173] Similarly, when a

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169. *See* Law on Companies, *supra* note 11, art. 14.

170. *See* Stauch, *supra* note 90, at 1032.

171. *See* Law on Companies, *supra* note 11, art. 11. Specifically, Article 11 requires approval of the Prime Minister for

> companies which propose to conduct business in the following areas and occupations:
>
> 1. Manufacture and distribution of explosives, poisons and toxic chemicals.
>
> 2. Mining of certain precious minerals.
>
> 3. Production and supply of electricity and water on a large scale.
>
> 4. Manufacture of information transmitting facilities, postal and telecommunication services, broadcasting, television and publication.
>
> 5. Ocean shipping and air transportation.
>
> 6. Specialist export and import business.
>
> 7. International tourism.

Id.

172. *See id.* art. 13(2).

173. *See id.* art. 20(1).

company wants to change its objectives, area of business, charter capital, or any other items on its business registration file, Article 21 provides that it must notify the planning committee which issued its certificate of business.[174] Finally, Articles 22 and 23 control a company in the case of dissolution. Article 22 sets forth the circumstances—such as achievement of objectives, loss of "three fourths of its charter capital," or "insurmountable difficulties"—under which a dissolution would be permitted.[175] An application must be submitted to the People's Committee clearly stating the procedures for liquidation of assets, the time for payment of debts and the settlement of all contracts. A company's dissolution may only occur upon a grant of approval of the application.[176]

2. The Law on Private Enterprises

The LPE allows Vietnamese individuals to establish private enterprises. The private enterprise is defined as "a business unit which has a level of capital no less than that of its legal capital, which is owned by an individual who shall . . . be responsible for its business activities."[177] The business is permitted to generate profits from its operations, the sale of its products, or the provisions of its services.[178] The private owner is free to operate the business and make independent decisions in relation to its activities.[179] The state no longer decides what, when, how and how much to produce. Accordingly, private enterprises are given a significant degree of autonomy. As with the LC, this allows private enterprises to pursue methods that are efficient, productive and highly competitive, thereby minimizing their risk of failure.

As with the LC, the economic freedom provided by the LPE is limited. The government requires individuals to submit

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174. *See id.* art. 21.

175. *Id.* art. 22.

176. *See id.* art. 23.

177. Law on Private Enterprises, *supra* note 12, art. 2.

178. *See id.*

179. *See id.* art. 4. Article 22 of the LPE grants the owners of private enterprises important rights that include the right to choose the area of activities and scale of businesses, select methods of raising revenue, select customers, enter into direct transactions and sign contracts with customers, hire required labor, use earned foreign currencies, make decisions regarding how to use remaining revenue and take initiatives in all registered business activities. *See id.* art. 22.

applications to the People's Committee, which is authorized by the Government to grant licenses.[180] Article 9 of the LPE states several requirements that must be met before a license will be granted. First, the enterprise's specific business plan must be provided to the People's Committee defining in detail the enterprise's "[o]bjectives, branches, and areas of business."[181] Second, the initial capital in the enterprise must be no less than the amount mandated by the Government for that type of business.[182] Finally, the owner or manager employed by the owner must have the qualifications required by law for that area of business.[183]

The LPE's Article 9 requirements restrict private owners from making several important decisions. When an individual attempts to establish a business in a certain area, the government may impose restrictions in order to protect itself. Further, the initial capital requirement prevents owners from deciding the amount of capital they want to initially invest. Where the Government's required initial capital is significantly higher than the capital an individual can muster, a potential owner may be stymied. Finally, the qualifications for owners and managers may prevent individuals from establishing businesses in areas in which their technical knowledge is found to fall short of the level required by the government. Some requirements, such as those for doctors, pharmacists and engineers are reasonable. However, if a business is not particularly technical, such restrictions may be unnecessarily burdensome.

Similar to the LC, the LPE requires approval when a private enterprise wants to establish a branch or representative office outside the province of its head office.[184] It also requires the same notification when a business wants to change its objectives, area of specialization, initial invested capital, or other items contained in its business registration file.[185] Bankruptcy procedures also work the same as in the LPE.[186]

Article 24 of the LPE addresses enterprise sales and merg-

180. *See id.*, art. 10.
181. *Id.* art. 9(1).
182. *See id.* art. 9(2).
183. *See id.* art. 9(3).
184. *See id.* art. 14.
185. *See id.* art. 15.
186. *See id.* art. 16.

ers, an area not mentioned in the LC. While enterprise sales and mergers are authorized under the LPE, the owner must again submit an application to the People's Committee and the sale or merger may only take effect after the application is approved.[187] Finally, Article 25, like Article 13 of the CL, further intrudes on enterprise autonomy by requiring owners to give priority to the use of local labor.[188] This restricts businesses that may benefit from the use of foreign workers.

3. The Temporary Regulation on the Issuance of Bonds and Stocks of State Owned Enterprises

The TRIBSSOE was Vietnam's first step toward privatizing state owned firms. The Government Decree containing TRIBSSOE authorized the issuance of bonds and stocks of state owned enterprises.[189] Although the objective was to mobilize capital for operating state owned enterprises,[190] purchasers received some interests and decision making control.[191] The rights and duties of stock-owners included: participating in stock holder meetings to vote for the board of managers and on amendments to by-laws, business plan and profit sharing arrangements; receiving share interests in production output; enjoying tax preferences on the revenues from share interests; and liability for disbanded or bankrupt enterprises in accordance with enterprise by-laws and bankruptcy law.[192] Although bond holders did not receive the same rights, the mere fact the bonds must be attractive to investors gave poten-

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187. *See id.* art. 24.

188. *See id.* art. 25(3).

189. *See* TRIBSSOE Decree, *supra* note 13, art. 1.

190. *See* TRIBSSOE, *supra* note 13, arts. 1, 2.

191. *See id.* art. 23 (listing stock owner's interests and responsibilities). The TRIBSSOE provides that the following persons are eligible to buy the stocks and bonds of state-owned enterprises:

> a. Vietnamese nationals residing both in and out of the country [and] foreigners living and working in Vietnam.
> b. Vietnamese enterprises of all economic fields and sectors. . . .
> c. Mass associations and organizations.
> d. Enterprises with foreign invested capital operating in accordance with the law on foreign investment in Vietnam.

Id. art. 5. "[S]tate offices, the armed forces, and [state] social associations are prohibited from using capital provided by the State budget to buy bonds and stocks of state-owned enterprises." *Id.*

192. *See id.* art. 23.

tial bond purchasers some degree of indirect control. To the extent that bonds issued by state firms had to be attractive to investors, some degree of free market behavior was introduced into this area.

Not surprisingly, as in the LC, the LPE and the FIL, in order to issue bonds and stocks state firms had to meet specific requirements. In order to issue bonds, state owned enterprises had to be profit-yielding during the three years immediately preceding the issue, must have been financially healthy and must have had prospects for development.[193] In addition, the enterprises had to be guaranteed by the Ministry of Finance or a "prestigious intermediate financial organization."[194] State enterprises wishing to issue stocks were required to obtain business licenses and permission to privatize.[195] Newly formed enterprises had to be authorized prior to their establishment and had to assure that the "total value of state stocks" would "not be less than 30 per cent of the total capital of the enterprise[]."[196] In addition, they had to submit applications for issuing stocks, enterprise by-laws, business plans, plans for the stock issue and the draft announcement of the issue.[197]

B. *Evaluation of Vietnam's Privatization Laws*

Prior to economic reform, individuals could only concede to the economic activities of the VCP. Since the goal of socialism was to manage the economy for the good of all Vietnamese citizens, this was considered sufficient to guarantee economic well-being. "For the good of all" is an illusive objective, however, defined by whoever is in power at the time. Thus, what is considered good for Vietnamese citizens by the ruling government may not be satisfactory to the individual citizens themselves. With the LC, LPE and the TRIBSSOE, the VCP granted specific rights to individuals and economic organizations to participate in economic activities with less government interference.

193. *See id.* art. 18(3).
194. *See id.* art. 18(5).
195. *See id.* art. 25(1).
196. *Id.* art. 25(2).
197. *See id.* art. 26.

Vietnam is now in a position to develop thoughtful policies and laws for privatization. Politically, there has not been an explosive rebellion or abrupt ousting of the government as there was in Eastern Europe.[198] The changes in the Vietnamese government occurred through the electoral process with many VCP leaders being defeated by new, more liberal politicians.[199] These new party members have spurred some of the first changes in the balance of economic power between the state and private entities within the confines of the VCP. Although political tensions persist between conservative VCP members and the new liberal forces, they have yet to reach the point of paralyzing reform.

The VCP's attempt to establish a market economy has been successful in several ways. The legislation passed in the last few years promulgates initial steps toward creating a private sector in Vietnam's economy. The LC and the LPE provide a foundation for a market economy by allowing individuals to establish companies and private enterprises in which they can generate profits and incur losses. These laws induce investment into a private sector and encourage competition and market-oriented behavior among businesses.

The LC and the LPE also establish obligations for business owners that greatly encourage the development of a strong economy in Vietnam. They include: guarantees for the quality of goods, observation of regulations protecting the environment, protection of social security, keeping books of accounts required by the Ordinance on Accounting and Statistics and paying taxes. These requirements, along with provisions concerning bankruptcy, corruption and procedures for breaches, provide an economic and legal infrastructure in Vietnam.

The VCP's openness toward domestic and foreign investment and establishing a private sector in its economy is limited in several ways. These limits hamper the country's implementation of a market economy. To some investors, the LC and the LPE provisions that require approval of a detailed business plan in order to obtain a development license, the use of domestic labor wherever possible, approval when changing objectives, area of business or capital contributions and approval

198. *See* discussion *supra* Part II.A.1.
199. *See* discussion *supra* Part III.C.1.

when declaring bankruptcy, create frustrating delays and generate excess bureaucracy. In effect, these provisions allow the VCP to safeguard its power. Investors are likely to view these approval provisions as opportunities for government corruption and favoritism which previously inhibited them from investing in Vietnam. Consequently, the VCP's attempt to protect its own power could create investor reluctance which would undermine economic reform and stall the country's transition to a market economy.

The approval processes, however, are not completely problematic. It is not unusual for businesses to be required to register with the appropriate economic authority within a city or state. In fact, filing is fundamental for effective economic transactions such as financing and property transfers. Furthermore, several approval requirements are reasonable considering the sectors of the economy they address. Both the LC and the LPE require approval by the Prime Minister when proposing to conduct business in areas usually preserved for the state. These areas include, for example, supply of electricity and water, postal and telecommunication services, broadcasting, television and publication and manufacture and distribution of explosives. Due to the degree of public service these areas entail, many nations regulate them heavily.[200]

The VCP's attempt to privatize its state sector with the TRIBSSOE reveals several things. First, the VCP is proceeding cautiously. Companies were required to have 3 years of profit and prospects for growth in order to sell bonds or shares of stock. This highlights the government's desire to prevent economic hardship, while it attempts to improve or privatize state firms. Second, the fact that decisions allowing state firms to issue bonds or stock were made by the Ministry of Finance and other government bodies indicates that the VCP still wants to control how much privatization of the state sector occurs. The decision to relinquish control over particular firms remains, ultimately, with the VCP.

Furthermore, it is important to realize that the decree to sell bonds and stocks in state enterprises was temporary. That is, it was issued with the stipulation that after a trial year, the Minister of Finance and the Governor of the State Bank of

200. *See* Baev, *supra* note 2, at 12.

Vietnam would draw conclusions and experiences for adding to and completing the document. Then, the Government would review these conclusions and consider officially using the document to further implement a market economy.[201]

Considering the tensions within the VCP between conservatives and reformers in the last several Party Congresses, it is uncertain whether this temporary regulation will attain a degree of permanence any time soon. Although the decree was a bold effort to implement privatization in the state sector, the effect has been less robust than might have been anticipated. Few state firms have been completely privatized. Among 6,000 state firms in 1995, only 8 had been privatized by April 1996.[202]

Vietnam's legislative measures reveal that the VCP is implementing a market economy cautiously. In contrast to Eastern Europe, the VCP is not completely eliminating the state sector. The VCP is maintaining and restructuring state firms while encouraging the establishment of private enterprises, stock and limited liability companies and foreign investment projects. Similar to the PRC, Vietnam seems to be establishing the foundations of a market economy and inducing market-oriented behavior in a separate private sector while introducing limited privatization in the state sector.[203]

V. CONCLUSION

A. *Vietnam's Economy at the End of the 20th Century*

Currently, Vietnam is at a significant point in its economic transition. It is imperative that the VCP continue to focus on establishing a private economic sector and furthering its process of privatization in order to fully realize its transition to a market economy.[204] For the first time in many years, Vietnam is freed from isolation and embargo and it is becoming

201. *See* TRIBSSOE Decree, *supra* note 13, art. 2.

202. *See Vietnam Moves to Clarify Privatisation Process*, REUTER EUR. BUS. REP., Apr. 18, 1996, *available in* LEXIS News Library, Curnws File.

203. *See* Cao, *supra* note 7, at 107.

204. *See* John Chalmers, *Hanoi Wins World Bank Loan Pledges and Praise*, REUTER ASIA-PACIFIC BUS. REP., May 9, 1996, *available in* LEXIS, News Library, Curnws File. World Bank President James Wolfensohn told a news conference after meeting Vietnam's leadership that "to keep economic growth on track Hanoi needed to promote the private sector." *Id.*

integrated into the world economy.[205] Several factors exist which can be expected to add pressure for continued, or even accelerated, movement to a privatized economy. International organizations such as the World Bank, OECD and the Asian Development Bank are providing loans and economic aid to Vietnam.[206] These organizations generally favor the swift development of market mechanisms.[207] They offer Vietnam important resources and thus have the power to exert pressure on Vietnam by withholding support if Vietnam does not further implement a market economy. Vietnam has also become an official member of the Association of Southeast Asian Nations (ASEAN).[208] Its membership status could be affected if state firms prevent tariff reductions in the ASEAN Free Trade Area.[209] In addition, Vietnam's attempt to become a member of the World Trade Organization could be considerably inhibited if it fails to pursue market reform.[210] Finally, foreign investors from market economy nations could become reluctant to invest in Vietnam if reform does not proceed quickly. Consequently, in order for Vietnam to further its economic transition, it should maintain a steady course as it pursues privatization.[211]

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205. *See Premier Presents Government Work Report*, *supra* note 111.

206. In the middle of 1996, the World Bank offered $1.5 billion in development loans to Vietnam over the next three years. *See id.* In addition, the Organization for Economic Cooperation and Development (OECD) invited Vietnamese officials to participate in workshops and seminars for reforming former Soviet-type economies. *See Private Sector Role Defined*, *supra* note 37. Further, the Asian Development Bank plans to lend Vietnam $1.5 billion for 1997-2000. *See Vietnam: Review 1997*, *supra* note 77.

207. *See supra* note 193 and accompanying quote referring to the World Bank; *see also Private Sector Role Defined*, *supra* note 72 (referring to OECD). OECD officials visiting Hanoi in July 1996 said that private enterprises and an equal playing field for all in Vietnam's economy, including foreign firms, were both essential. *See id.*

208. *See id.*

209. *See Vietnam*, *supra* note 78. In December 1996, Foreign Minister Nguyen Manh Cam affirmed Vietnam's commitment to meet Association of Southeast Asian Nations Free Trade Area tariff reduction targets in 2006. *See id.* Some economists believe that vested interests in the state sector will be a counterweight against such reductions. *See id.*

210. *See generally Vietnam*, *supra* note 78 (discussing the government level mission that Vietnam set up in early May 1997 to negotiate for the country's admission to the WTO); *Premier Presents Government Work Report*, *supra* note 111 (explaining Vietnam's efforts to join the WTO by establishing diplomatic ties with more than 150 nations).

211. As of August 1996, Vietnam has attracted $20 billion in foreign investment. *See Economic Reforms Threatened*, *supra* note 10. However, of the more

An additional issue concerning Vietnam's economic transition is the political dichotomy within the VCP. Reform-minded VCP members want to keep economic reform at its current pace. Old-time conservatives want to slow down and proceed gradually.[212] These conflicts further threaten Vietnam's economic progress.[213] During its June 1996 Party Congress, the VCP reaffirmed the key role of the state in development and made it clear that it wanted to see the state's role in the economy increased and its own influence enhanced.[214] The country's economic legislation and reform measures reveal that the VCP is promoting change while maintaining a large degree of control.[215] The government allows some economic freedom without giving up its control.[216]

While the number of state owned enterprises has shrunk, through mergers and closures, by approximately 50% since 1991, of those remaining, the majority are making a small profit or breaking even.[217] The overall return on capital invested in the state sector is still low, making a small contribu-

than 6,000 state firms, few have been equitized. *See Vietnam Moves to Clarify Privatisation Process, supra* note 202. "Equitisation" is the government's term for privatization. *See id.* It refers "to plans for the partial selling off of state enterprises under moves aimed at raising capital for reinvestment and increasing efficiency." *Id.* Furthermore, the stock market, originally planned for 1996, is unlikely to open until 1999. *See Vietnam Says Stock Market Will Take Three Years*, REUTERS FIN. SERVICE, March 9, 1996, *available in* LEXIS, News Library, Curnws File. With so much investor interest in Vietnam, the government is losing the opportunity to utilize foreign capital by failing to further economic change. Japanese firms are reluctant to invest billions of yen in Vietnam until the reform process both quickens and strengthens. *See Balance Sheet Blues Delay Privatization*, BUS. VIETNAM, May 1995, *available in* LEXIS News Library, Busvie File. Although Japan is Vietnam's biggest trading partner and aid donor, in May 1995, Japanese firms had only pledged investment of $950 million since 1988, behind top investor Taiwan with $2.5 billion. *See id.*

212. *See Economic Reforms Threatened, supra* note 10.

213. *See generally id.* (reporting about a political report issued in April 1996 reaffirming the primacy of state management and socialism). As of the middle of 1996, conservative VCP members were succeeding in stunting Vietnam's privatisation program advocated by the World Bank. *See id.*

214. *See id*; John Chalmers, *Vietnam's Party Clinches Stability, Continuity*, REUTERS WORLD SERVICE, July 1, 1996, *available in* LEXIS, News Library, Curnws File.

215. *See* Stauch, *supra* note 90, at 1013 (defining this as market socialism); *cf.* Cao, *supra* note 7, at 100 (pertaining to China).

216. *See* Stauch, *supra* note 90, at 1031-32.

217. *See Vietnam: Review 1997, supra* note 77.

tion to state revenues.[218] It is arguably more beneficial to focus new laws and reform measures on developing a new private sector than to attempt to re-regulate, re-legislate and restructure state owned enterprises, which have long been inefficient and costly. The VCP has yet to concede to this argument. Privatization of state owned enterprises has occurred slowly and reluctantly.

Vietnam is adopting a gradual privatization model similar to the PRC. Due to its political context, this is appropriate. Vietnam faces political divisions similar to the PRC between economic reformers and conservatives. As such, gradual privatization will prevent the political upheaval that can occur if reform proceeds too quickly. Vietnam's economic circumstances differ from the PRC. The PRC instituted privatization as a means of divesting citizens of the enormous savings they had accumulated. Conversely, most Vietnamese do not have a large build-up of savings. The country needs considerable economic support from international institutions and other nations in order to sustain economic growth. Vietnam needs to consider the preferences of these institutions and nations in order to ensure their continued support. Many of the institutions and nations from which Vietnam needs such support are proponents of "big bang" privatization. Therefore, Vietnam needs to keep progressing with its transition to a market economy in order to continue to attract investment and capital. Vietnam does not need to transform as urgently as the Soviet-bloc countries in Eastern Europe. However, reform needs to proceed steadily in order to maintain Vietnam's new economic growth, new relationships and new ties with the world economy.

B. Proposals for Vietnam into the 21st Century

During the early 1990s much was achieved by Vietnam in a short period of time. The country actively encouraged foreign investment and prepared for privatization by establishing the foundations for a private sector. The country is currently proceeding at a slower pace than during the early years of reform. In order to further its transition from a NME to a market economy nation, this Note proposes several steps for Vietnam.

In order to strengthen the effect of the LC and the LPE,

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218. *See id.*

the government should draft implementing regulations. Such regulations would provide clarity and predictability in the procedures for setting up enterprises, filing the proper forms and redressing grievances. The implementing regulations should include specific guidelines directed to ministries when they determine whether to grant a license to a particular enterprise. This would help to prevent the corruption and favoritism that infiltrate laws that allow such extensive government regulation.

Vietnam also needs to develop a more consistent national policy for economic reform. This is especially important because of the country's need for financial assistance. The political dichotomy within the VCP has the potential to deter international organizations from contributing financial support and foreign investors from investing. The VCP needs to be more united than it has been in the past few years. It needs to stop vacillating between reform and no reform policies. Of course, it is utopian to think that the vestiges of communism and state control will be whisked away by the new liberal VCP members. However, it would benefit Vietnam's economic transition considerably if conservatives would acknowledge the progress Vietnam's economy has experienced as a result of its economic reform measures and that this progress is at risk if the government reverses its course. Gradual privatization of Vietnam's state owned enterprises has some substantial advantages, such as controlling unemployment and maintaining levels of production. Moreover, by proceeding with the development of a private sector with market-mechanisms, the sale or dissolution of inefficient state owned enterprises will not have as devastating an impact on the economy as would an immediate transfer from state to private ownership without a private sector in place.

Finally, the VCP needs to continue to develop a legal framework to support its economic growth. As more individuals establish companies and invest in business enterprises, it will be necessary to have courts and laws that address the inevitable breaches, grievances and problems that arise from business transactions.

With clearer application of its economic legislation, more privatization of state firms and a legal framework to support business transactions, Vietnam has the potential to become an economic center of Asia as it proceeds into the 21st century.

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