UNDP VIET NAM POLICY DIALOGUE PAPER
2006/3

THE STATE AS INVESTOR: EQUITISATION, PRIVATISATION AND THE TRANSFORMATION OF SOEs IN VIET NAM

Ha Noi, October 2006

Foreword

Viet Nam's transition from central planning to the market has combined elements of gradualism and pragmatism with a firm determination to harness the energy and ambition of the Vietnamese people to the overriding national priorities of national unity and human development. Two decades of *doi moi* reforms have established an enviable track record of incremental policy innovation that has generated solutions specific to the characteristics of the Vietnamese economy.

The restructuring of state enterprises has formed an important part of these reforms. Casual observers often misconstrue the trajectory of state-owned enterprise reform as a process of 'privatisation' or the indiscriminate retreat of government from the sphere of industrial development. Yet as this UNDP Policy Dialogue Paper shows, the government's policy stance is more complex than this characterisation would suggest. The paper makes the important point that it is essential to place the government's equitisation strategy within its proper historical and economic context in order to understand the government's objectives and choice of instruments.

Like the other papers in this series, this UNDP Policy Dialogue Paper seeks to contribute to key policy debates in Viet Nam through an impartial consideration of the the country's development situation and potential implications for the future. It does not attempt to evaluate the government's strategy or make recommendations for policy change. Our aim is simply to encourage informed discussion and debate through the presentation of information and evidence collected and presented in a clear and objective manner.

While the views expressed in the paper do not necessarily reflect the official view of UNDP, we value the opportunity to contribute to discussions on this vital issue in Viet Nam's development. We congratulate the research team on their thorough and careful work and hope that the paper's publication will stimulate more research and analysis on the restructuring of state-owned enterprises in Viet Nam.

John Hendra
United Nations Resident Coordinator in Viet Nam
UNDP Resident Representative

Acknowledgements

This Policy Dialogue Paper was prepared by Scott Cheshier, Jago Penrose and Nguyen Thi Thanh Nga. Special thanks to Do Ngoc Huynh, Ministry of Finance, for providing comments and suggesting improvements. We would also like to thank Jonathan Pincus, Senior Country Economist, UNDP Viet Nam, for his support, comments and advice; Brian Dillon for reading several drafts and offering extensive comments and edits; Woocheol Lee, PhD candidate SOAS University, UK, for involvement on both trips to Hai Phong; Bui Truong Giang, Executive Deputy Director, Centre for International Security and Strategic Studies, Institute of World Economics and Politics, for help with the fieldwork; officials at the Hai Phong Department of Planning and Investment, for information and helping to arrange enterprise interviews; Trieu Quang Khang, Investment Promotion and International Cooperation, Hai Phong Department of Planning and Investment, for facilitating interviews; officials at the Hai Phong Department of Finance; and, Do Thuyet Nhung, Reference Associate, UNDP Viet Nam, for her help in tracking down circulars and government documents. Thanks also to Martin Gainsborough for reading and commenting on earlier drafts. The authors are responsible for any remaining errors. While this is a UNDP Policy Dialogue Paper, the views expressed here are the authors' alone and do not necessarily reflect the views of the United Nations or the countries it represents.

Contents

List of Tables and Boxes

Tables

Boxes

List of Acronyms

ADB	Asian Development Bank
CIEM	Central Institute for Economic Management
DATC	Debt and Asset Trading Corporation
DoF	Department of Finance
DPI	Department of Planning and Investment
EIU	Economist Intelligence Unit
GC	General Corporation
GSO	General Statistics Office of Viet Nam
IMF	International Monetary Fund
LLC	Limited Liability Company
MoF	Ministry of Finance
MPI	Ministry of Planning and Investment
NEU	National Economics University
NSCERD	National Steering Committee for Enterprise Reform and Development
PPC	Provincial People's Committee
PRSC	Poverty Reduction Support Credit
SCIC	State Capital Investment Corporation
SOE	State-Owned Enterprise
UNDP	United Nations Development Programme
VASS	Viet Nam Academy of Social Sciences
VDR	Viet Nam Development Report
VND	Viet Nam Dong

Executive Summary

This paper takes the government's statement that equitisation is not always privatisation as a starting point to explore the history of state-owned enterprise (SOE) reform. In the 1980s and early 1990s the Government of Viet Nam framed a variegated strategy for state enterprises. The asset stripping and de facto decentralisation of the central planning period left the central government in a tenuous position in relation to its ownership and control of SOEs. Leakage of capital severely drained state resources to the detriment of macroeconomic stability. In response, the state began redefining its role in the economy. While gradually moving away from central planning, the state has made clear its intention to remain involved in the economy even as it enlarged the space for private sector activity. This has involved a shift away from the direct management of state assets to a focus on managing investment. Emphasis has shifted to preventing losses of state capital and transforming SOEs into firms operating under the Enterprise Law.

SOE reform has followed two distinct trajectories. Most of the loss making state enterprises that drained state resources and contributed little to state budget revenues were smaller SOEs attached to departments of line ministries or lower levels of government over which the central government had little control. The transformation of smaller SOEs was an attempt to improve economic performance and also a means through which the central government could break the power of lower levels of government that had used smaller SOEs as tools for asset stripping and rent distribution. This process resembles privatisation programmes in other countries.

However, the government emphasises that the state will continue to play a leading role in the economy. Large SOEs are an important source of state budget revenues and provide the means through which the government can implement state plans and policies following the end of central planning. Larger state enterprises have been regrouped into General Corporations (GCs). Strategic sectors have been selected, listing areas of the economy in which the state will retain control. The criteria for keeping control of firms in these sectors are based on state investment levels and firm size. In addition, regulations for restructuring GCs have been issued. While stressing the need for transformation of SOEs into firms operating under the Enterprise Law, these documents also detail the investment-based mechanisms of influence for the state and General Corporations.

A team of UNDP and Viet Nam Academy of Social Sciences (VASS) researchers surveyed seventeen firms in Hai Phong in August and October 2005. Interviews were also conducted with officials from the Hai Phong Department of Planning and Investment (DPI) and the Hai Phong Department of Finance (DoF).

The interviews suggested that the state has three main concerns. First, state capital must remain intact. Second, GCs must meet targets and objectives set by the state. For many firms, these targets are simply growth targets. Third, GCs must develop certain key industries, with shipbuilding being the primary example among surveyed firms. The development of targets and objectives involves a high degree of consultation between GCs, member firms and supervising agencies. Growth targets are typically an outcome of member firm capacity and projected income. Firms are not required to meet their targets by operating solely in their registered business areas, as member companies are able to move into related or unrelated areas.

These interviews provide initial confirmation of the contours of reform outlined in SOE reform documents. The state will retain sole ownership or a majority capital share in firms in strategic sectors, exercising its influence according to the rules that govern all shareholders. Although transformed strategic SOEs and GCs will be governed by the rules of the private sector, their majority shareholder will not follow the same motivation as a non-state majority owner. Transformation of larger strategic state enterprises needs to be understood in this context.

1. Introduction

State-Owned Enterprise (SOE) restructuring in Viet Nam is a central feature of government reforms. It continues to figure prominently in government resolutions and plans concerning the transition to a market economy. It remains a core element of donor support as evidenced by the disbursement triggers included in Poverty Reduction Support Credits (PRSCs), and it is a recurring topic of scholarly debate.

The existing discussion of SOE reform in Viet Nam focuses on equitisation (*co phan hoa*) – transformation of an SOE into a joint stock company. While equitisation has assumed increasing importance within the reform process and is now seen by the government as the primary means of transforming SOEs, the government also maintains that equitisation is not necessarily a form of privatisation.[1]

However, much of the existing literature explicitly or implicitly equates equitisation with privatisation (World Bank 1995; World Bank 1997; Clowes and Sedlak 1998; Neilson 1998; Webster and Amin 1998; IMF 1999; Kokko and Sjoholm 2000; Wright and V.T. Nguyen 2000; CIEM and World Bank 2002; Evans 2004; Phillips Fox 2004c; Truong Dong Loc *et al* 2004; CIEM and World Bank 2005; EIU 2005; Vu Thanh Tu Anh 2005). Often drawing on the wider literature on privatisation programmes in Eastern Europe and the former Soviet Union, equitisation is perceived to be code for privatisation.

This paper takes the government statement that equitisation is not always privatisation as a starting point to explore the history of SOE reform. We will argue that due to political and economic conditions in the 1980s and early 1990s, the government embarked on a differentiated strategy, under which SOE reforms are not intended to have the same impact on all SOEs. While gradually moving away from central planning, the government has made clear its intention to remain involved in the economy even as it grants the private sector more legitimacy. This has required a new view of the role of the state and new mechanisms for exercising state influence. With the dismantling of administrative controls used during the planning period, the government has shifted away from direct management of state assets and towards the management of investment.

SOE reform has followed two distinct trajectories. Smaller state enterprises were released from state control through transformation into companies operating under the Enterprise Law, the law that regulates the operations of private companies in domestic markets . Larger state enterprises were regrouped into General Corporations (GCs) and the relationships between GCs, the state and member companies are increasingly defined through levels of investment. General Corporations, initially exempt from transformation, have recently been targeted for equitisation, but with the state retaining a majority capital share in firms in key or 'strategic' sectors. The state in this case exercises its influence according to the rules that govern all shareholders.

The equitisation of smaller SOEs can be understood as a form of privatisation, as the state intends to release these firms. As the majority of SOEs equitised to date have been small, the widespread linking of equitisation with privatisation is not surprising. However, there is a tendency to assume that equitisation will result in similar outcomes for larger SOEs, even though the government has repeatedly stated its intention to retain control over these firms. Equitisation as privatisation for smaller SOEs is not equivalent to transformation of large strategic SOEs and General Corporations in which the state will retain a majority share. Equitising large SOEs is not a means of relinquishing state control, it is part of a wider transformation of the role of the state and the mechanisms used to retain influence over the economy. To assess this process a small survey was conducted in Hai Phong during August and October 2005. The survey investigated the changing relationship between firms and the state and between member firms and GCs. The survey provides initial confirmation of the contours of reform outlined in SOE reform documents.

This paper is organised into four sections. Following this introduction, Section 2 examines the political and economic background of reform and traces the emerging redefinition of the state role through SOE reform documents, including the corporate governance structures of the 1999 Enterprise Law. We explore the implications of investment-based state influence and review the differentiated impact of SOE reform for small and large state enterprises. We also describe the ongoing classification of strategic sectors and GCs. Section 3 presents the results of the Hai Phong survey. The fourth section concludes.

[1] This is stated explicitly in Resolution 5 of the 3rd Party Plenum of the Ninth Party Congress of 24 September 2001. This is also stated in the national SOE reform committee's review of the history and objectives of SOE reform, including the role of equitisation (NSCERD 2006).

2. State-Owned Enterprise Reform

This section traces the contours of state-owned enterprise reform in Viet Nam. Excellent histories of SOE reform already exist and interested readers should consult these texts for the details of the reform process.[2] We briefly summarise and update this literature in the context of recent legislation and regulations.

2.1. The Background to Reforms

By the late 1970s Viet Nam was a struggling post-war economy. Chinese aid, which had buttressed the northern war economy, had ceased. Aid from the Soviet Union was reduced. The United States imposed an economic embargo. Attempts to extend collectivisation of agriculture did not produce the desired results. Widespread disregard of official planning arrangements – often referred to as 'fence-breaking' – was the dominant means of survival (Van Arkadie 1993; Fforde and dy Vylder 1996; Dang Phong and Beresford 1998).

Unlike the highly centralised planning system in the USSR, government control over the economy was relatively weak with significant de facto decentralisation and state enterprise autonomy (Van Arkadie 1993). By the 1980s many SOEs were quasi-private commercialised firms characterised by 'virtual shareholders' consisting of overlapping and competing state affiliated interests (Fforde 2004). Through access to state subsidised inputs and imports, SOEs could divert state assets to trade and sell on informal markets. Since the official price of goods sold by the state was lower than the free market price, huge profits could be made (Porter 1993). Weak oversight and pervasive conditions of scarcity resulted in SOEs redirecting business outside of the plan.

Nominal central planning masked a reality of divergent and conflicting state interests using state firms and state assets for a variety of unsanctioned activities. The result was pervasive asset stripping, mushrooming budget deficits and growing macroeconomic instability (Porter 1993; Van Arkadie 1993; Fforde 2004). By the middle 1980s the economy was imploding. Inflation soared to an annual rate of over 500 percent (Van Arkadie and Mallon 2003). A looming balance of payments crisis combined with chronic shortages and near famine conditions in many areas made reform an urgent necessity.

2.2. Redefining the Role of the State: The State as Investor

The Sixth Party Congress of 1986 is heralded as the birth of *doi moi* and the beginning of the sustained reform effort to move the economy from central planning to a market orientation. Faced with economic collapse, the government embarked on initial reforms aimed primarily at reigning in hyperinflation and correcting macroeconomic imbalances. Bureaucratic centralism and elements of central planning were abolished and a limited role for the private sector was granted. However, the state intended to remain involved in the economy. The issue was how to redefine both the role of the state and the mechanisms available to retain state control.[3]

The asset stripping of the planning period left the central government in a precarious position in relation to its ownership and control of capital invested in SOEs. This leakage of capital was a persistent drain on state resources and contributed to macroeconomic instability. With the reduction of administrative controls used during the planning period, the state began to shift away from direct management of state assets in order to focus on the management of investment.[4]

---

2 See Fforde and de Vylder (1996), Mallon (1996), Dang Phong and Beresford (1998), Vu Quoc Ngu (2002), Van Arkadie and Mallon (2003), Fforde (2004) and Vu Thanh Tu Anh (2005).

3 Fforde (2004) argues that due to fragmented control by competing levels of the state apparatus, the reforms of the 1990s are one of 're-statisation' with the centre attempting to regain and consolidate control. This involved securing state capital and breaking the hold of lower levels of government over smaller SOEs. The reform process is a retrenchment and redefinition of the state in response to the existing realities throughout the reform period. The analysis presented here draws heavily on this perspective.

4 The intention is not to argue for a clear vision or direction throughout the reform period. While a degree of continuity is present in SOE reform documents, political and economic conditions changed over time and therefore motives and outcomes varied. Pragmatic negotiation and flexibility are often seen as key strengths of the Vietnamese reform process and the notion of the 'state as investor' is used to provide analytical clarity. By 2001 this view of the state emerged quite clearly and investment-based relations of control became the norm in government documents. The degree to which this is an outcome of negotiation or vision is beyond the scope of this paper and is an interesting area for further research.

The following sections describe this redefinition of the role of the state. We trace the emerging focus on preservation and reinvestment of state capital and regulations for the management of state capital investments. Since SOE reform involves transformation of state firms into companies operating under the Enterprise Law, the corporate governance structures of the Enterprise Law will be examined. We then review the history of SOE reform.

Since 1995 there has been an increasing emphasis on the 'preservation and development' of state capital in SOEs. This became the primary responsibility of SOEs, as indicated in the following government documents:[5]

- 1995 Law on State Enterprises
- Decree 59 of 3 October 1996
- Decree 27 of 20 April 1999
- Decree 73 of 6 December 2000
- 2003 Law on State-Owned Enterprises
- Decree 153 of 9 August 2004
- Decree 199 of 3 December 2004
- Decision 152 of 20 June 2005
- 2005 Enterprise Law.

In 2001 explicit mention of the state as investor occurred in Resolution Five of the Third Plenum of the Ninth Party Congress, in which the return on capital became the benchmark for assessing SOEs. In 2003 the government issued performance evaluation criteria for SOEs.[6] State enterprises are classified into three categories and payment bonuses to management personnel are attached to 'good performance'. The actual evaluation system is geared towards preventing losses rather than encouraging profits. Only those SOEs that make a loss beyond a certain threshold are put into the lowest category and not eligible for reward.

The redefinition of the state as investor is also reflected in new regulations on the management of state capital, issued in Decree 73 in 2000 and amended in Decree 199 in 2004. Decree 73 addresses state capital invested in companies referred to as 'other enterprises' operating under the Enterprise Law, the Law on Foreign Investment or the Law on Cooperatives.

As independent SOEs transform into companies operating under the Enterprise Law, these regulations on 'other enterprises' come into force.[7] Responsibility for state capital remaining in transformed SOEs is transferred to the relevant supervising agency. The division of responsibility is presented in Table 1.[8] Ministries have been removed as supervising agencies, with their transformed SOEs supervised by the Ministry of Finance (MoF). Provincial People's Committees (PPCs) and GCs retain authority over their firms.[9] Decree 73 was an early effort to separate ownership from the regulation of state capital.

Decree 73 also provides guidelines for managing this capital.[10] The party responsible is tasked with using its investment to orient firms to the 'objectives of the state'. This is achieved by appointing a direct manager of state capital who participates in the management decisions of the firm, such as company strategy and the appointment of senior personnel. The direct manager must seek approval from the supervising agency before voting on the board of management or at general shareholder meetings.

---

5 All government documents are from the Official Gazette. Dates listed correspond to the date of promulgation rather than appearance in the Gazette or when they took effect. Annex 1 provides a list of government documents referenced.

6 Decision 271 of 31 December 2003. This builds on Decree 27 of 20 April 1999, amending Decree 59 of 1996 on the financial management of SOEs. Decree 27 added a new Article setting out the reward system for SOE boards of management and general directors. If an SOE met its tax obligations for the three previous years, increased profits or reduced losses, and preserved and developed its state assigned capital then the management received a higher reward level and was eligible for raises.

7 An independent SOE is an SOE that is not a member of a General Corporation. There is some ambiguity surrounding the status of transformed SOEs. For a discussion see Annex 3.

8 One member LLCs are not included in the division of responsibility in Decree 73. Regulations on transforming SOEs into one member LLCs did not appear until Decree 63 of 14 September 2001.

9 If an SOE member of a General Corporation transforms, then responsibility for state capital rests with the GC.

10 These guidelines apply to supervising agencies responsible for invested capital in former SOEs and SOEs that have themselves invested in 'other enterprises'. The objectives of the responsible party, whether SOE or supervising agency, are the same.

The direct manager is primarily responsible for protecting state capital from losses. This is accomplished by ensuring implementation of approved strategies and plans and supervising the recovery of dividends that accrue to state capital from company profits.[11] The ability of the direct manager to influence decisions is determined by the state's capital share and the associated rights granted under the Enterprise Law. The state share also determines the positions available to the direct manager, such as board member or participant in general shareholder meetings. Firms in which the state is not the majority shareholder are not required to have direct managers of state capital.

Decree 199 of 2004 replaced Decree 73. As part of the move towards a single regulatory framework, Decree 199 covers the management of state capital in existing SOEs, 'other enterprises' and GCs. This expanded coverage also includes explicit mention of 'developing' state capital, an element missing from Decree 73.

Following Decree 73, Decree 199 defines the scope of state influence according to investment levels guided by the Enterprise Law.[12] In firms with small amounts of state capital, a representative is not necessary but monitoring is again required. The minimum level of state capital is not defined and is only referred to as 'little'. For General Corporations, the state only invests in parent companies. GCs then invest in member companies with the relationship between GC and member company governed by the Enterprise Law. Section 2.4 will discuss this relationship in more detail.

Decree 199 introduced a revised division of responsibility for state capital in transformed SOEs. This is also presented in Table 1. A new State Capital Investment Corporation (SCIC) was introduced as the agency responsible for state capital.[13] This is again part of the attempt to separate the regulatory functions of ministries from ownership of state capital to improve governance structures.

Table 1: Responsibility for State Capital

Supervising Agency	Decree 73/2000	Decree 199/2004
MoF	invested central budget capital equitised independent SOEs established by ministries	invested central budget capital transformed (entire) GCs equitised independent SOEs established by ministries
Ministries	none	one member LLCs of transformed independent SOEs established by ministries
PPCs	invested provincial budget capital equitised independent SOEs established by PPC	invested provincial budget capital transformed independent SOEs established by PPC
GCs	invested provincial budget capital equitised independent SOEs established by PPC state capital invested in members	invested provincial budget capital transformed independent SOEs established by PPC state capital invested in members

MoF: Ministry of Finance *PPCs: Provincial People's Committees* *GCs: General Corporations*

[11] The use of profits from state capital is determined by the supervising agency. These profits can be directed to the funds supporting equitisation, which includes labour redundancy packages, and reinvesting in the company to increase the state capital share.

[12] In Decree 199 the 'direct manager' of Decree 73 is referred to as a 'representative'.

[13] Decree 199 of 3 December 2004 took effect 15 days after its publication in the Official Gazette, on 13-14 December 2004. However, the SCIC was not actually created until the issuance of Decisions 151 and 152 of 20 June 2005, which took effect 15 days after their publication in the Official Gazette on 27 and 28 June 2005. References to large state investment corporations exist in other documents prior to formation of the SCIC. For example, Article 11.1.b of the 2003 Law on State-Owned Enterprises mentions 'State financial investment corporations'. Articles 60 and 61 briefly describe the function and organisation of such a corporation to be established by the Prime Minister. Article 68.6 also tasks supervising agencies with transferring ownership rights to the 'state financial investment GC'.

The SCIC was formally established in 2005 but is not yet operational.[14] The responsibility for state capital will eventually be transferred from MoF, ministries and PPCs to the SCIC.[15] The intention is to consolidate ownership of state investments in order to prevent the loss of state capital, increase the efficiency of investment and improve corporate governance. The SCIC will be able to divest state capital from enterprises and investment projects by selling state shares. It will also have authority to invest state capital in enterprises and projects through purchasing shares or contributing capital. The SCIC will retain rights and responsibilities as the representative of state capital, with influence determined by the state capital share. These rights and responsibilities are established under the Enterprise Law.[16]

The Enterprise Law defines the authority of shareholders and this determines the extent of state influence over transformed firms in which it has invested.[17] The 1999 Enterprise Law took effect on 1 January 2000 and is the primary document used here since the majority of previous SOE transformations involved mergers or liquidation.[18] After 2000 the number of SOE restructurings resulting in operation under the Enterprise Law increased significantly.

The two predominant Enterprise Law company types for transformed SOEs are one member limited liability companies (LLCs) and joint stock companies.[19] One member LLCs are enterprises owned by one organisation. They cannot issue shares. Owners have the right to decide on the organisational and management structure of the company, the appointment and removal of management personnel, investment projects valued at 50 percent or more of the total assets, the use of profits and a range of other issues. If an SOE is transformed into this company type then the state retains control over major decisions under the Enterprise Law.

Since equitisation has become the predominant transformation method, the focus here will be on the structure of shareholding companies. The general meeting of shareholders is the highest decision making authority in joint stock companies. It can elect and remove members of the board of management and the inspection committee. It also decides on the reorganisation of the company and on the sale of assets valued at more than 50 percent of total company assets. The majority shareholder controls the general meeting of shareholders. The majority shareholder can appoint its own nominees to the board of management since it controls the votes necessary to pass resolutions of the general meeting. The board of management decides on company development plans and investment strategies. It also appoints and dismisses senior management personnel.

The majority shareholder does not directly decide on the plans and orientations of the company. It influences these decisions through its ability to appoint and dismiss members of the board of management. The role of the board of management is to run the company and provide shareholders with a return on their investment.

The redefinition of the state as an investor, focused on preventing the loss of state capital, is a central feature of the reform process. SOE reform involves transforming state enterprises into firms operating under the Enterprise Law. However, transformation of SOEs into firms operating under the Enterprise Law does not necessarily mean that they cease being controlled by the state.[20] The Enterprise Law sets out how majority shareholders retain decision making authority in firms and how the state will exercise its influence according to the rules that govern all shareholders.

[14] Decisions 151 and 152 of 20 June 2005. The SCIC will not include transformed members of GCs.

[15] The Prime Minister is tasked with issuing a transfer schedule.

[16] As discussed below, this can include the right of the SCIC to replace members of the board of management and other senior management personnel.

[17] These relationships may change with the 2005 Enterprise Law which takes effect on 1 July 2006. See section 2.4.2 below for further discussion.

[18] The 1999 Enterprise Law replaced the Law on Companies and Law on Private Enterprises of 21 December 1990, both amended in 1994.

[19] Further details on company types, share types and governance structures of the 1999 Enterprise Law are provided in Annex 4.

[20] See Annex 3 for discussion of the 2003 Law on State-Owned Enterprises and how it relates to the 1999 Enterprise Law. There are few differences in the decision making authority of SOEs under the 2003 Law on State-Owned Enterprises and of firms in the 1999 Enterprise Law.

In this context, SOE reform involves what can be referred to as 'keeping the big and releasing the small'.[21] Relatively early in the reform process, the state began treating big and small SOEs differently due to existing political and economic conditions out of which the state as investor emerged. Smaller SOEs, generally attached to provincial People's Committees or departments of line ministries, were to gradually be cut loose with the state seeking to minimise its capital holdings.

Large SOEs, generally attached to central ministries, were to remain under state control. This involved reorganising large SOEs into business groups, or General Corporations. Recent legislation has established the ways in which the state can maintain influence even as large SOEs and GCs themselves transform. These methods include defining strategic sectors in which the state will keep control and restructuring General Corporations based on the rights and responsibilities described in the Enterprise Law. These distinct reform paths are explored in the following sections.

2.3. Releasing the Small

Fforde (2004) views the reform process as a formalisation of the existing situation, a process of rationalising SOEs as 'virtual share companies' into legal joint stock companies. Most of the loss making SOEs that drained state resources and contributed little to state budget revenues were smaller SOEs attached to departments of line ministries or lower levels of government over which the central government had little control (Painter 2003a; Van Arkadie and Mallon 2003; Fforde 2004). Transforming smaller SOEs was an attempt to improve economic performance and also a means through which the central government could break the power of lower levels of government that had used smaller SOEs as tools for asset stripping and rent distribution (Porter 1993; Painter 2003b; Fforde 2004).

Decree 217 of 1987 is most often cited as the beginning of SOE reform under *doi moi*.[22] This decree introduced profit based accounting and replaced output targets with profit targets for SOEs. It also sought to increase the autonomy of SOE managers and abolish direct budgetary support for state enterprises. However, it relaxed controls on the creation of new SOEs by devolving establishment authority to lower levels of government. By 1990 the number of new SOEs was rapidly increasing along with a rise in the number of loss making enterprises, particular smaller local SOEs (Van Arkadie and Mallon 2003).

This led to Decree 388 of 1991 that sought to curtail the expansion of SOEs and force existing SOEs to apply for new operating licenses.[23] Re-registration was predicated on the business viability of the firm and aimed at increasing efficiency, reducing the number of loss making enterprises and putting SOE reform on firmer footing. The results are presented in Table 2.

Table 2: Estimate of SOE Transformations

	1991-1997	2001-2005
SOEs, Beginning	12,000	5,655
SOEs, End	5,500	3,200
Restructured	6,500	3,349
Equitised	15	2,188

Source: NSCERD (2006), Van Arkadie and Mallon (2003), Viet Nam News (2006), VDR (2006)

[21] This is borrowed from the Chinese 'grasping the large and letting go of the small' (Yuk-Shing Cheng and Dic Lo 2004). This is not meant to convey a grand plan driving reform but is instead simply a useful way of analysing reforms. Nor is it meant to imply that Vietnamese reforms simply mirror reforms in China. However, the reform processes do share similarities and evolve over roughly the same time period. Investigation of these similarities and differences is an important area for further research.

[22] Decree 217 of 14 November 1987. For a more detailed discussion of Decree 217 and earlier SOE reforms see Fforde and de Vylder (1996), Vu Quoc Ngu (2002) and Van Arkadie and Mallon (2003).

[23] Decree 388 of 20 November 1991.

Poor data quality and coverage are major obstacles to the analysis of these issues in Viet Nam. Estimates of SOE transformation are rarely consistent, even among government agencies and from the same source at different times. Interpretation of these data therefore requires extreme caution. However, general trends are indicative. See Box 1 for further discussion.

Between 1991 and 1994 nearly half of recorded SOEs were transformed, with the total number falling from around 12,000 in 1991 to around 6,000 by 1994. Roughly 3,000 SOEs were liquidated and 2,000 merged into other state firms. Most of these were small local SOEs with capital assets under 500 million VND. The total assets of the liquidated SOEs has been estimated at less than four percent of total state assets (CIEM and World Bank 2002; Van Arkadie and Mallon 2003). This period saw the single largest reduction in the number of SOEs to date.[24]

Box 1: How Many SOEs?

It is very difficult to arrive at precise figures for the number of SOEs, the number transformed or the use of different transformation methods. No consistent data set exists that covers the entire reform period. Different government agencies report different figures and the same agencies often report different figures for the same years at different times.

Part of the problem relates to the definition of restructuring. For example, some reports only count completed equitisations as transformations, while others include those in process. In general, reporting has improved since 2001. However, this is partly due to increasing reliance on a single source – the National Steering Committee on Enterprise Reform and Development (NSCERD) - rather than a clear improvement in data collection methods. Significant problems remain. Table 3 compiles figures provided by a variety of sources reporting on the SOE reform process in Viet Nam.

For 1991 to 1994, the time of the most dramatic restructuring in the SOE sector, many of the figures are simply rough estimates. This results in the commonly used ‘around 12,000’ figure for 1991 and ‘around 6,000’ estimate for 1994 of the number of SOEs. Attempts to refine these numbers are inconsistent. Mallon (1998) is perhaps the most careful estimate, listing only SOEs that actually re-register under Decree 388, which explains the differences between his various reports and figures. However, this leaves out the existing SOEs still operating but not yet re-registered. While the general trend is clear – a significant reduction in the number of SOEs due to transformation – the details remain difficult to pin down.

Similar issues arise in the 2001 to 2005 period. For example, between 2001 and 2002 the NSCERD reports a decline in the number of SOEs while GSO (2005) reports a slight increase. A recent news article (Source Q) mentions that according to MPI the number of restructured enterprises in 2005 was 724. However, in the next paragraph a ‘recent study’ of 850 SOEs equitised in 2005 is cited. This highlights the problems that researchers and reporters face when seeking accurate figures of the SOE reform process. Again, the general trend of a significant rise in the number of equitisations relative to other types of transformation is clear, but imprecise.

These data inconsistencies mean that conclusions are necessarily tentative. The trends seem consistent but the details are not. Improving data collection and quality should be a central component of the ongoing reform process.

(continued next page)

[24] Decision 90 of 1994 also extended Decree 388, calling for additional re-registration resulting in a further transformation of 1,500 SOEs by 1997 (CIEM and World Bank 2002; Van Arkadie and Mallon 2003).

Box 1: How Many SOEs? *(con't.)*

Table 3: Various Reports on Total Number of SOEs and Equitisations by Year

Total SOEs	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	*Source*
	12,300														3,800		A
												5,655	5,175				B
		12,297			6,264			5,500									C
			6,545									4,884	4,619	4,184			D
	12,084	9,832	9,300	5,704	5,835	6,310											E
	12,054					6,000											F
											5,759	5,355	5,364	4,845			G
		12,000			6,000												H
							6,020										I
											5,531						J
											5,266				3,811		K
															4,300		L
																3,200	M

Equitised	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
											211	203	185	537	805		A
				2	1	2	6	4	108	253	212						B
									102	249	212	197					C
												203	185	537			D
				2	1	2	6	4	101	254	212	204	164	611			N
												199	214	353	626		O
													164	537			P
																724	Q

Sources:

A Government of Viet Nam (2005)
B NSCERD
C Van Arkadie and Mallon (2003)
D Vu Thanh Tu Anh (2005)
E Mallon (1998)
F Mallon (1996)
G GSO (2005)
H CIEM and World Bank (2002)
I Webster and Amin (1998)
J Mekong Economics (2002)
K Viet Nam News (2005), quoting MoF
L EIU (2005)
M VDR (2006)
N Truong Dong Loc *et al* (2004)
O World Bank (2005), data from NSCERD
P Viet Nam Economic Times (2004), quoting NSCERD
Q Viet Nam Economic Times (2006), quoting MPI

In late 1991 the National Assembly approved a pilot equitisation programme and Decision 202 of 1992 initiated the process. However, as Table 2 shows, early results were not encouraging, with only 15 firms restructuing through equitisation by 1997. Decree 28 of 1996 ended the voluntarism of the pilot programme and tasked ministries and relevant authorities in all localities to begin equitisation of SOEs under their jurisdiction. This was updated and reissued with more detailed instructions in Decree 44 of 1998, and the number of equitisations began to increase.[25] As Table 2 shows, after 1998 equitisation became increasingly favoured as the means of restructuring SOEs. This is also reflected in recurring calls for faster implementation and explicit mention of equitisation as the primary restructuring method.[26] By the end of 2005, equitisation had become the most important SOE restructuring method.

However, to date the 'total capital of equitised enterprises accounts for an insignificant ratio of the SOE sector' (CIEM and World Bank 2005, p.6). The highest current estimate is that equitised SOEs account for only 12 percent of total state capital in state enterprises (Viet Nam News 2006).

2.4. Keeping the Big

The state's attachment to large SOEs is not difficult to explain. Viet Nam has not embarked on a rapid privatisation programme. At the outset of reform it was a socialist country looking to create a greater official role for private sector activity. The state fully intended to remain involved in production. It was taken as given that 'the state economy plays the leading role' (Van Arkadie and Mallon 2003). For example, Resolution Five of the Third Party Plenum of the Ninth Party Congress of 24 September 2001 notes that 'State-owned enterprises … play a key role in the economy and … [are] the core and major contributing force of the State economic sector in assuming its predominant role in the market economy with socialist orientation' and that the 'majority of State-owned enterprises must be of medium to large sizes'.[27]

Table 4: Financial Indicators of SOEs, 1997, billion VND

	100 Largest	200 Largest	Total
Total State Capital	40,492	44,332	73,075
Total Contribution to Budget	14,094	15,651	23,919
Total Profit Before Tax	3,275	4,942	8,177
Total Debt	29,369	40,237	101,439

Source: IMF (1999)

Table 4 demonstrates the importance of keeping firms in the state sector. The largest SOEs accounted for over half of SOE budget revenues in 1997, about one third of before tax profit and only about one third of total debt. Large SOEs also provide the means through which the government can implement state plans and policies following the end of central planning.

The reform process is expanding to include large SOEs and General Corporations. The recently stated goal of SOE reform is to transform all state enterprises into companies operating under the Enterprise Law by 2010 (VDR 2006). This is reflected in the following documents:

---

25 Decree 44 of 29 June 1998. This increase is not solely due to more detailed legislation. Gainsborough (2003b) argues that the increased pace of equitisation after 1997 is mostly due to an increasingly attractive private sector environment and more favorable government attitudes towards private activity. As the various controlling interests of SOEs weighed their options, it became progressively more beneficial to operate in the private sector.

26 For example: Directive 20 of 21 April 1998, Resolution 8 of 16 July 1998, Resolution 5 of the 3rd Party Plenum of Ninth Party Congress of 24 September 2001, Directive 1 of 16 January 2003, Resolution 34 of the 9th Party Plenum of the Ninth Party Congress of 3 February 2004, Directive 45 of 22 October 2004, Resolution 1 of 14 January 2005, and Directive 4 of 17 March 2005. Annex 1 provides the full titles of these documents.

27 This is echoed in the government's 'Overview of SOE Reform' (NSCERD 2006).

- Decision 58 of 26 April 2002, amended by Decision 155 of 24 August 2004, classifying strategic sectors in which the state will retain 100 percent and 50 percent stake in firms, with remaining SOEs not requiring state majority shareholdings after they transform;
- The 2003 Law on State-Owned Enterprises, introducing the holding company model for GCs in which all member companies operate under the Enterprise Law;
- Resolution 34 of 3 February 2004, calling for expanding the equitisation programme to include large SOEs and GCs;
- Decree 153 of 9 August 2004, introducing the parent-subsidiary model for organising GCs with all member companies operating under the Enterprise Law;
- Decree 84 of 13 May 2004, calling for the experimental equitisation of three large GCs; and,
- Decree 187 of 16 November 2004, the newest decree on equitisation, extending coverage to include large SOEs, GCs and state commercial banks.

This intended expansion involves two elements: state designated strategic sectors and the structure of General Corporations based on the authority levels described in the Enterprise Law. Strategic sectors are the areas of the economy in which the state will retain control. These sectors are defined by the level of state investment required in specific industries, with additional conditions based on the size of firms.

General Corporation structures have developed into the parent-subsidiary model requiring all member enterprises to transform and operate under the Enterprise Law. Parent company influence over subsidiaries is determined by the level of investment in member companies. This model has become the intended structure for most General Corporations. The state will remain majority shareholder in parent companies operating in strategic sectors. As member companies transform, the company structures and authority levels of the Enterprise Law will determine to a large extent the degree of influence the state retains over these firms through GCs. These two elements of reform will be discussed in the following two sections.

2.4.1. Strategic Sectors

As part of the SOE reform process, the government produced lists of sectors over which it would retain control. The 'leading role of the state economy' was left vague and undefined until the issuance of Directive 20 of 1998.[28] Directive 20 introduced a list of sectors in which the state would not yet equitise SOEs, including sectors in which the state would retain a monopoly or prevailing share. Decree 44 of 1998, the guiding decree as equitisation began to accelerate, incorporated the Directive 20 list in an appendix. The list, while not very detailed, sets forth the areas of state interest that has informed subsequent definitions of state controlled strategic sectors.

With Decision 58 of 2002 the level of detail increased dramatically.[29] The broad sectors of Directive 20 and Decree 44 remained but were disaggregated and refined. The first category was organised around sectors in which the state intends to hold 100 percent of the capital of SOEs. This was divided between state monopoly sectors and additional sectors in which SOEs meeting specific conditions would remain under state control. These specifications included state investment of 20 billion VND or more, an average level of budget remittance of three billion VND or more for three consecutive years, leading adopters of new and high technologies and firms contributing to macroeconomic stabilisation.

The second category listed additional sectors in which the state would hold 50 percent or more of SOE capital, on the condition that state investment in the SOE was 10 billion VND or more and an average level of budget remittance of one billion VND over three years. SOEs meeting these conditions in the '100 percent state capital' sectors were also included in the '50 percent or more' category.

Most recently, Decision 155 of 2004 revised the detailed lists and criteria of Decision 58.[30] Decision 155 is in many respects quite similar to Decision 58, but with two important changes. First, the state capital requirement for

[28] Directive 20 of 21 April 1998.

[29] Decision 58 of 26 April 2002.

[30] Decision 155 of 24 August 2004.

listing in the '100 percent' and '50 percent or more' categories increased to 30 billion VND and 20 billion VND, respectively. In addition, the budget remittance level was increased to two billion VND for the '50 percent or more' category. Second, a majority of the sectors included in the '100 percent with conditions' category in Decision 58 were shifted to the '50 percent or more' state capital category in Decision 155.[31] These changes are shown in Table 5.

By 2002 state control in strategic sectors was defined by state investment levels, and by 2004, with increased firm size requirements, the majority of state control centred on SOEs in the '50 percent or more' category. These companies are currently governed by the 2003 Law on State-Owned Enterprises, but as they transform state control will be determined by the Enterprise Law.[32] SOEs with 100 percent state capital will become one member LLCs, and SOEs with 50 percent or more state capital will become joint stock companies.

In addition to defining sectors in which the state will retain control over large SOEs, GCs provide another means for the state to influence enterprise level decision making. As with strategic sectors, this involves investment-based relationships for large state enterprises.

Table 5: Evolution of Strategic Sectors

Directive 20, 1998

Not to be equitised yet	Existing enterprises where State needs to hold prevailing share
Explosives	Public utility SOEs with more than 10 billion VND state capital
Toxic chemicals	Exploitation of specious and rare minerals
Radioactive elements	Oil and gas exploration
Printing money and certificates of monetary value	Production of fertilisers, insecticides, curative medicines and pharmaceutical chemicals
National and international information network	Large-scale production of non-ferrous metals and specious and rare metals
	Large-scale electricity production, electricity transmission and supply
	Repair of flying vehicles
	Post and telecommunications (excluding industry and construction)
	Rail and air transport
	Ocean-shipping
	Printing and publishing
	Large-scale production of alcohol, beer and cigarettes

Decree 44, 1998

Not to be equitised yet	Existing enterprises where State needs to hold prevailing share
Explosives	Public utility SOEs with more than 10 billion VND state capital
Toxic chemicals	Exploitation of precious and rare ores
Radioactive elements	Large-scale mineral exploitation
Printing of bank notes and valuable certificates	Technical service activities for oil and gas exploitation

(continued on page 12)

31 See Annex 2 for further discussion of Decision 155.

32 See Annex 3 for discussion of the differences between the 2003 Law on State-Owned Enterprises and the 1999 Enterprise Law.

Decree 44, 1998 *(con't.)*

Not to be equitised yet	Existing enterprises where State needs to hold prevailing share
National and international information network	Production of fertilisers, insecticides, medicines, chemicals and pharmaceuticals
	Large-scale production of nonferrous and precious and rare metals
	Large-scale production of electricity, power transmission and distribution
	Repair of flying vehicles
	Post and telecommunications exploitation services
	Railway, air and sea transport
	Printing, publishing, large-scale production of alcohol, beer and cigarettes
	Investment banks and banks for the poor
	Large-scale petroleum business

Decision 58, 2002

100% State Capital	100% State Capital with following conditions	50%+ State Capital with following conditions
Explosives	State capital of VND 20 billion +	State capital of VND 10 billion +
Toxic chemicals	Average 3+ billion VND state budget remittance for previous three years	Average 1+ billion VND state budget remittance for previous three years
Radioactive substances	Applying spearhead technologies and high technologies	Operate in areas covered by "100% State Capital with conditions"
National electricity transmission system	Contribute to macroeconomic stabilisation	
National and international communication axis networks		
Cigarettes	***In the following branches:***	***In the following branches:***
Flight control	Manufacture of electricity	Manufacture of sugar, milk, edible vegetable oil
Maritime security	Exploitation of important minerals: crude oil and natural gas, coal, bauxite, copper ore, tin ore, ores containing radioactives, gold, gemstones	Assessment of goods
Weapons, ammunition, cipher equipment and technology	Manufacture of mechanical engineering products: machine tools; dynamos; machinery and equipment for agriculture, forestry and fisheries; electric technical equipment and electric materials; special use industrial machines; building and repair of seaway, railway and airway transport equipment	Printing

(continued on page 13)

100% State Capital	100% State Capital with following conditions	50%+ State Capital with following conditions
Defense and security areas	Manufacture of electronic equipment	Labor cooperation services
Printing banknotes	Information technology	Trading in fair and exhibition floor space
Construction lottery	Manufacture of non-ferrous metals (tin, copper)	Manufacture of plant varieties and animal breeds and frozen sperm
Publishing	Manufacture of ferrous metals (pig iron, steel) with capacity more than 100,000 tons/year	Off-shore fishing services
Production of scientific films, newsreels, documentaries	Manufacture of basic chemicals	Technical expertise of motorised means of transport
Measurement and cartography	Manufacture of chemical fertilisers and plant protection drugs	Management and maintenance of land, road and waterway systems
National railway systems*	Manufacture of high quality cement by modern technology with capacity over 1.5 million tons/year	Management and maintenance of important railway stations and car terminals
Airports*	Exploitation, filtering and supply of clean water in cities	Management and exploitation of irrigation works
Seaports*	Building industry	
Headwater and large scale waterworks	Manufacture of consumer goods and foodstuffs: newsprint, writing paper, textiles, fibers, printing of more than 3 billion finished pages/year, production of salt, manufacture of beer with capacity over 50 million litres/year, manufacture of alcohol and liquor with capacity over 10 million litres/year	
Headwater forests, protective forests	Manufacture and supply of preventative and curative medicines and pharmaceutical chemicals	
Water drainage in large urban centers	Wholesale food	
Public lighting	Wholesale petroleum	
Other*	Airway, railway and seaway transportation	
Firms improving ethnic minorities in mountainous, deep-lying and remote areas	Base telecommunications services	
Control and distribution of radio frequencies	Trading in currencies and insurance	
Technical expertise of large motorised transport		

* large scale, decided by Prime Minister

Decision 155, 2004

100% State Capital	100% State Capital with following conditions	50%+ State Capital with following conditions
Explosives	State capital of VND 30 billion +	State capital of VND 20 billion +
Toxic chemicals	Average 3+ billion VND state budget remittance for previous three years	Average 2+ billion VND state budget remittance for previous three years
Radioactive substances	Applying spearhead technologies and high technologies	Operate in areas covered by "100% State Capital with conditions"
National electricity transmission system	Contribute to macroeconomic stabilisation	
National and international communication axis networks		
Cigarettes	***In the following branches:***	***In the following branches:***
Flight control	Petroleum processing	Electricity production
Maritime security	Exploitation of ores containing radioactive substances	Exploitation of coal, bauxite, copper ore, iron ore, tin ore, gold, gemstones
Weapons, ammunition, cipher equipment and technology	Build and repair air transport	Manufacture of mechanical engineering products: electric equipment and materials; machines exclusively for industries; machinery and equipment for agriculture, forestry and fisheries; building and repair of sea and railway transport
Defense and security areas	Printing political books and newspapers	Supply of telecommunication infrastructure
Printing banknotes	Wholesale medicines and pharmaceutical chemicals	Production of ferrous metals (pig iron, steel) with capacity over 100,000 tons/year
Construction lottery	Wholesale food	Production of high quality cement with capacity over 1.5 million tons/year
Publishing	Gasoline and oil wholesale	Production of chemical fertilisers and plant protection drugs
Production of scientific films, newsreels, documentaries	Air and railway transport	Production of consumer goods and foodstuffs: kitchen salt, milk, beer with capacity over 50 million litres/year, alcohol and liquor with capacity over 10 million litres/year
Measurement and cartography		Exploitation, filtering and supply of clean water in urban centers
National railway systems*		Sea transport
Airports*		Trading in currencies and insurance
Seaports*		Off-shore fishing services

(continued on page 15)

Decision 155, 2004 *(con't.)*

100% State Capital	100% State Capital with following conditions	50%+ State Capital with following conditions
Headwater and large scale waterworks		Management and maintenance of important road and waterway systems
Headwater forests, protective forests		Management and exploitation of water works
Water drainage in large urban centers		Labor cooperation services
Public lighting		Dealing in fair and exhibition floor space
Other*		
Firms improving ethnic minorities in mountainous, deep-lying and remote areas		

* large scale, decided by Prime Minister

2.4.2. General Corporation Structures

Decisions 90 and 91 of 7 March 1994 called for the formation of General Corporations with the aim of creating production synergies and pooling the investments of member enterprises.[33] Decision 91 in particular called for the creation of large state business groups for 'leading [state] companies … occupying important places in the national economy'. GCs 90 required at least five member companies, 100 billion VND of legal capital and were created by and report to provincial People's Committees and various ministries. GCs 91 required at least seven members, 1000 billion VND of legal capital and were separate entities created by and reporting to the Prime Minister.[34]

The original GC 90 and 91 structures were further developed with the introduction of new organisational forms for GCs including, most recently, the holding company and parent-subsidiary models.[35] The differences between these structures are important. The original GC model simply created an administrative unit above the member SOEs that often acted more as a hindrance than a facilitator of improved performance (Van Arkadie and Mallon 2003; Fforde 2004). The move to holding company and parent-subsidiary models is an attempt to redress these shortcomings by requiring what were formerly administrative units to transform themselves into separate operating enterprises. The relationship between firms is to be determined by investment in subsidiaries rather than administrative control, in order to reduce interference and maximise returns on investment.

GCs Established by the State and Holding Companies

The 2003 Law on State-Owned Enterprises divides GCs into those established by the state and those created by companies themselves. The latter type of GC is now defined as a holding company. Holding companies remain SOEs governed by the Law on State-Owned Enterprises, but all of their member companies operate under the

33 For more details on the history of Unions of Enterprises and GCs see Van Arkadie and Mallon (2003).

34 At this time around 60 percent of SOEs had capital under five billion VND (Van Arkadie and Mallon 2003).

35 The first such elaboration occurred in the 1995 Law on State Enterprises. The creation of economic groups has also begun but is still in the very early stages (Resolution 34 of 3 February 2001; Viet Nam Economic Times 2004; VDR 2006). Two recent examples are the formation of Viet Nam Post and Telecommunications Group out of the original GC 91 and Viet Nam Coal and Minerals Industrial Group which combines the GC 91 Vinacoal and the GC 90 Viet Nam National Minerals Corporation.

Enterprise Law.[36] The relationship between holding companies and member firms is based on the holding companies' shares in their subsidiaries. GCs established by the state are to begin transforming their member enterprises so that the GCs eventually become holding companies themselves.[37]

Holding companies exercise the rights of a majority shareholder and capital contributor as defined in the Enterprise Law. In addition, the holding company can appoint and dismiss the representative of state capital in member companies. This is similar to the direct manager of state capital described in the documents on the management of state capital in other enterprises. The holding company sets targets for representatives to meet in managing holding company investments in subsidiaries. The representative is required to seek the approval of the holding company prior to voting on important issues and is tasked with using the investment to meet the objectives of the holding company.

As the transformation of GCs established by the state has just begun, it is useful to describe the rights of GCs towards member companies as they currently exist. The boards of management of GCs established by the state are accountable to the supervising agency that established the GC. The board of management of the GC decides the long term strategy of the corporation and is authorised to make investment decisions, including sale of assets, up to 50 percent of the charter capital of the GC. The supervising agency makes decisions involving more than 50 percent of charter capital.[38]

Member companies of GCs established by the state are tasked with implementing the plans of the GC and achieving performance targets set by the GC. This is accomplished by fulfilling contracts provided by the GC and independent contracts that member companies obtain for themselves. Member companies have obligations to the corporation but are granted a significant degree of autonomy in pursuing business opportunities. GCs reinvest dividends and profits of member companies in the member companies.

The Parent-Subsidiary Model

Decree 153 of 2004 introduced the parent-subsidiary model. This is intended as the eventual business group structure for most GCs. Following the 2003 Law on State-Owned Enterprises, it differentiates between GCs established by the state and those established by companies. The focus of Decree 153 is on the former. Existing holding companies are not required to adopt the parent-subsidiary model, since their subsidiaries already operate under the Enterprise Law.[39]

The transformation of GCs established by the state is intended to finalise the move from administrative to investment-based relationships. The rights of the parent company are derived from its invested capital in member companies. GCs restructuring according to the parent-subsidiary model must transform all of their member enterprises. If the parent company is in one of the '100 percent' strategic sectors then it remains an SOE operating under the 2003 Law on State-Owned Enterprises. If not, the parent itself must transform and operate under the Enterprise Law. However, the state will retain a majority share.

The rights of the parent company are similar to those of holding companies and are based on investment levels in subsidiaries defined in the Enterprise Law. The board of management of the parent company decides on the strategies and plans of the corporation and coordinates its subsidiaries. The parent company decides on the management structure of member companies, for example whether or not subsidiaries will have their own boards of management. It also appoints representatives, again similar to the direct managers of state capital, to manage parent company capital invested in subsidiaries. The parent company approves the plans for use of after tax profits of subsidiaries and its dividends are reinvested in the member company.[40] Subsidiaries are tasked with fulfilling the contracts and projects assigned to them by the parent company while also conducting their own business under the Enterprise Law.

---

[36] These can be transformed SOEs or existing non-state enterprises.

[37] The restructuring options for GCs established by the state are updated in Decree 153 of 2004 on the parent-subsidiary model.

[38] The boards of management of independent SOEs have the same decisions making authority as GCs established by the state in relation to supervising agencies.

[39] The state supervising agency decides to transform the holding company into the parent-subsidiary model. See Annex 2 for more details.

[40] The reinvestment of profits in member companies is also a feature of Decree 199 of 2004 on managing state capital.

Within larger corporations, subsidiaries themselves can become parent companies. The relationship between grandparent and grandchildren companies is governed by the Enterprise Law. The grandparent company still sets corporate plans and strategies, but has much less influence over grandchildren firms than over its immediate member companies.

The parent-subsidiary model is relatively new. The call to extend SOE transformation to GCs is also fairly recent and GCs established by the state remain the predominant General Corporation structure. As larger state enterprises and General Corporation member companies begin to transform, the corporate governance structures of the Enterprise Law will determine to a large extent the degree of influence that the state retains over these firms.

3. Evidence from Hai Phong

A team of UNDP and Viet Nam Academy of Social Sciences (VASS) researchers surveyed seventeen firms in the port town of Hai Phong in August and October 2005. Interviews were also conducted with officials from the Hai Phong Department of Planning and Investment (DPI) and the Hai Phong Department of Finance (DoF). Given the small sample size, the evidence from Hai Phong is preliminary but it does shed some light on the trajectory of reform. Table 6 provides a summary of the interviewed firms.

Table 6: Interviewed Firms in Hai Phong, billion VND

Firm	Business	Capital	Revenue	Employees
Group 1				
a	Footwear	112.8	170	9972
b	Footwear	62.2	78	2500
c	Engineering	85	100	203
d	Construction	20	90	n/a
e	Construction	45	18	395
f	Construction	7.8	30	n/a
g	Steel	70	n/a	70
h	Tobacco	n/a	500	n/a
i	Import/ Export	150	1200	300
j	Construction	20	100	1100
Group 2				
a	Shipping	779	1375	n/a
b	Shipbuilding	119	320	550
c	Shipbuilding	77	840	2144
d	Machine Tools	9	50	32
e	Shipping	n/a	600	434
f	Waterway Maintenance	383	80	570
g	Construction	1370	1051	4412

The sample of firms was designed to cover a range of ownership structures. Firms have been organised into two groups consistent with 'keeping the big and releasing the small'. Group 1 contains 'the small' and includes equitised local firms. Group 2 contains 'the big' and includes members of General Corporations and one GC 90.

3.1. Group 1 Firms, The Small

Ten firms were interviewed in this group. Two firms are in strategic sectors, tobacco (firm 1h) and steel (firm 1g). As tobacco is a 100 percent state capital strategic sector, firm 1h was exempt from equitisation. Firm 1g is in the process of equitisation, but it does not meet the production requirement (100,000 tons of steel per year) to remain in the 50 percent or more strategic sector defined in Decision 155.

Of the remaining firms, one was an SOE, two were undergoing equitisation and five had already been equitised. As Hai Phong intends to retain only ten public utility SOEs after 2010, Group 1 firms with a majority state share reported that the intention had been to equitise their state capital but outside buyers could not be found. Thus ongoing state control of these firms is by accident rather than design. All the firms agreed with this description.

The average invested capital in Group 1 firms was 63.6 billion VND. The largest was 150 billion VND and the smallest 7.8 billion VND. Average revenue was 254 billion VND, ranging between 18 and 170 billion VND. However, these figures are skewed by one large firm attached to the Hai Phong Department of Commerce, 1i, which is engaged in activities other than its primary import/export business. The director of this firm indicated his intention to seek GC status for the firm. Although the firm, which had not been transformed at the time of the interview, could have been classified as a Group 2 firm, it was included in Group 1 as it is attached to a provincial line ministry. Another firm eligible for Group 2 was firm 1a, which had sufficient capital to transform itself into a GC 90.[42] However, this was the result of a recent capital injection following the signing a large processing contract with a Korean partner. The Korean investment is intended to expand production facilities to fulfill the contract.

Representatives of state capital in equitised local SOEs are members of the Department of Finance sitting on the inspection committee. In firms with a majority state share the DoF member is head of the inspection committee.

The state has withdrawn from directly influencing Group 1 firms, all of which stressed that they were not treated differently from private firms. However, state institutions still hold a degree of control over equitised firms and in some cases maintain an informal relationship. This is reflected in this response by a manager of a footwear company:

> *We are now equitised. We no longer rely on the State for investment capital, we have to make it on our own. What we want from the City is its help in clearing the land - a big issue facing us now, and in building public infrastructure… I think every enterprise, whether they are state-owned or private, needs support from the City… but the closer your relationship with the People's Committee is, the more information you have from them or information may come to you earlier than others.*

The state exercises control over Group 1 firms mostly by influencing the environment in which they operate, for example by providing public infrastructure and land. Another role of the Provincial People's Committee (PPC) is to facilitate contact with foreign markets and partners. While the Ministry of Trade operates a database to link domestic producers with international buyers in several industries, the PPC introduces prospective partners to local companies of all ownership types. Unless they are able to leverage their relationship with the PPC, equitised SOEs do not believe they receive special treatment. As a manager noted:

> *I think the People's Committee considers the strength, financial status and prestige of the enterprises regardless of ownership in introducing counterparts to them.*

The results of interviews with Group 1 firms in Hai Phong were consistent with the notion of 'releasing the small'. All Group 1 firms agreed that equitising small SOEs results in treatment similar to private firms, even if the state continues to hold shares after transformation.

3.2. Group 2 Firms, The Big

Group 2 firms were either already transformed or in the process of transformation. The firms included one GC 90 under the Ministry of Construction, one equitised member company of a GC 90, two member companies of GCs 90 undergoing equitisation, one member company of a GC 91 forming a joint venture, one GC 91 member company operating as a one member LLC and one member of a GC 91 about to be transformed into a one member limited liability company. The majority of Group 2 firms operated in strategic sectors such as shipbuilding and sea transport.

The average invested capital in Group 2 firms was 456.2 billion VND. The largest was 1,370 billion VND and the smallest nine billion VND. One firm did not report its total capital. Average revenue was 616.6 billion VND, ranging between 50 and 1,375 billion VND. The outlier of the group is firm 2d, with very low total capital and the lowest revenue among Group 2 firms. As a member company of a GC 90 it is included in Group 2. However, several

[42] The capital size requirement for GCs 90 is 100 billion VND, but the firm must also have five member companies.

Group 1 firms are larger than this firm. This shows the variable size of GC member companies and blurs the line between 'the big and the small' as a classification system. However, on the whole, GC members do tend to be larger firms.

The GC's main sources of influence are control over the general meeting of shareholders of joint stock member companies and sole ownership of one member LLCs. This allows the GC to discipline poorly performing firms by replacing managers. A GC director described the process:

> *If a joint stock company makes a loss, according to the law the board of management or the board of directors of that equitised company must take full responsibility. Sanctions will be in the form of personnel re-arrangement by the GC. A review will take place and we will replace him [the individual responsible]. If you fail as a leader production costs are higher and workers are worse off.*

All Group 2 firms gave a similar assessment.

While managers are now more responsible for good performance, the restructured GC model has granted member firms more autonomy. The relationship between member firms and the GC is now clearer and more streamlined. The following response was typical:

> *For instance, the decision relating to investment and development is not troublesome. Now it is within the company, the management board. In the past it had to be submitted to the general director, then to the board of directors and the office of civil engineering. Now we just get the decision and it is OK.*

The manager went further, suggesting that the presence of GC representatives in the decision making process reduced transaction costs:

> *In the past we had to report profits to the GC, which would have the final say about the use of a company's profits. But now the use of profits is decided by the board of management, who will introduce the plan for using profits to the meeting of stakeholders. The meeting of stakeholders will approve them and then report to the GC. But because the chairman of the board of management of this company is a GC member that is a kind of report.*

A large shipping company spoke similarly about its relationship with its GC. The frequency with which the firm had to report to the GC was high ('The father wants to make sure the daughter is back home by 10pm'). However, the director believed that because the GC 'knows each member company well', and the members of the GC management board had all at one time or another been involved in the industry (they were all 'shipping men'), most plans submitted to the GC were accepted. The implication was that GC representatives would intervene earlier in the decision making process if they had concerns.

None of the firms interviewed saw their GC as a hindrance. Firms described themselves variously as 'an independent unit doing business', 'separated from direct control of the corporation', an 'independent company' and the GC as 'the machine of management'. One GC 90 saw its member firms as 'sub-contractors'.

Nevertheless, firms were still dependent on the GC. A stated rationale for the GC structure is for GCs to use their size, connections with government and reputation to secure contracts to pass on to member firms. One shipbuilding firm entered a joint venture with a Dutch firm in a deal initiated by the GC:

> *The contract with the Dutch was signed by the enterprise. The GC made contact. We did the sales promotion and had the reputation. [The deal] was based on our available capacity and competence and the GC's output targets. The corporation helps the factory to maximise the output; the factory relies on the corporation to look for jobs.*

As discussed in section 2.4, GCs in which the state is a majority shareholder are responsible for keeping invested state capital intact. This was a significant concern for managers of all Group 2 firms, and was described by a board member of a GC in the following way:

> *The directors are expected to protect state capital. For example, I [the GC] give this company 10 billion as capital. He [the company director] has the responsibility to keep the capital intact. Unfortunately he happens to make a loss this year, say one billion, as a result of bad business or force majeure, then the capital of the enterprise is now only nine billion.*

However, GC's had further responsibilities including achieving growth targets, meeting obligations to the state and developing key sectors. The demands of the supervising agency on the GC varied by sector. However, all Group 2 firms were expected to meet growth targets. According to the managers surveyed, the targets were based on an assessment of the firm's capacity and market demand and were mostly incremental, 'based on the revenue of the previous year'. The supervising agency did not appear to set the final figure. A GC described the process:

> *Now the GC has to make the plan for itself based on the orientation for sector development. The Corporation makes a report to the Ministry. The Ministry then reviews the plan to see if it is consistent with the sector's development. The Ministry accepts, the Ministry does not assign.*

A manager of another firm emphasised that the capacities of individual firms are an important consideration when setting targets:

> *The government produces the general orientation, and the GC follows the orientation and assigns the member firm responsibility for implementing the orientation. The companies make a plan and send it to the corporation for approval. It is not the corporation that fixes the targets.*

Once the plan is made member firms retain the right to deviate from it, as long as they achieve the agreed objectives. Group 2 firms all gave answers similar to the following:

> *The company sets up the annual plan and submits it to the upper level [GC]. The upper level approves and assigns the plan. However, during implementation, it is not necessary to follow every step, just concentrate on the basic planned indicators.*

The level of detail and impact of state objectives varies significantly by sector. For example, in construction the state only specifies a revenue growth target and does not require specific implementation strategies by the GC(s). However, the goal to develop the shipbuilding sector required the shipbuilding GC to adopt a more proactive approach. Consultations between the GC and the ministry resulted in a local content target for Vietnamese built ships of 65 percent by 2015. The target was chosen following consideration of the capacity of the GC's member firms.[43]

To achieve the target, the GC is creating new firms and factories to increase the capacity of the GC and industry as a whole. The GC is also seeking out foreign partners to upgrade technology and provide advanced training to its technical staff. At the time of interview a shipbuilding firm was building a factory to assemble engines under the supervision of a Japanese firm. The GC is also building plants to produce steel, steel shafts and deck devices.

These responses indicate a definite move away from direct state management. Supervising agencies set general orientations and goals for different sectors, tasking sector GCs with achieving these broad objectives. Member firms submit plans to the GC, and the GC assesses its combined potential based on the capacities of its constituent firms.

A factor that may complicate the relationship between GCs and member companies is the existence of member firms with their own subsidiaries. Five Group 2 firms in the sample had subsidiaries and all were expected to operate with increasing independence as their capacity increased.[44] Subsidiaries were seen as a source of growth and diversification for member firms, which saw themselves as solely responsible for their subsidiaries:

> *Under the mother company we have child companies, which will operate according to the model of one member limited company, managing 100 percent of the mother company's capital. The company has full legal entity to operate. We set the scope for allocating tasks and personnel. Meanwhile, the child companies themselves decide production.*

GC member companies used subsidiaries as a way both to participate in the GC structure and retain control over non-GC business areas. For example, one large firm, anticipating its conversion into a one member LLC, was preparing to create new subsidiaries. According to the manager:

[43] Local content is currently 25 percent.

[44] Some Group 1 firms also had subsidiaries. However, the subsidiaries were factories only responsible for production, entirely dependent on the parent company and not large enough to operate with any independence.

[As] we are bigger [than other members of the GC] they [the government] want us to be a one member limited liability company. So we will still belong to the government. However, we can establish many member companies and become the mother company. [The GC] will, how do you say, be the grandfather company.

The firm would continue to operate in the GC's core business areas as a one member LLC. However, it would retain control over subsidiaries in non-core business areas. Another shipping company was in the process of equitising at the time of the interview and was planning to spin off current divisions into subsidiary companies. The company itself would remain involved in the GC's core business area, but would retain control over non-core businesses through its relationships with its subsidiaries.

I think that's [creating subsidiaries] the tendency now… The company becomes a general company and that is only general management and here we undertake only one main activity.

The plan was approved by the GC, which simply wanted to ensure capacity in its core business.

3.3. Summary of Evidence from Hai Phong

The reform strategy of 'keeping the big and releasing the small' was echoed in the interviews with transforming and transformed companies. Smaller firms reported that since equitisation they operate in ways similar to private firms, and are influenced by the government through channels that apply equally to public and private firms.

Group 2 firms are either GCs or members of GCs. The GCs are custodians of state capital and retain influence over that capital in member firms. According to SOE reform documents, Group 2 firms will eventually operate according to the parent-subsidiary model. The firms interviewed in Hai Phong were all in the process of, or had already completed, transformation, although at the time of the interviews none of the firms operated according to the parent-subsidiary model. Nevertheless, GCs and member firms behaved in ways consistent with the legislation, moving from administrative relationships to investment-based relationships. Moreover, the combination of GC reform and SOE transformation means the state is subjecting the representatives of state capital to the same rules that govern all shareholders.

Group 2 firms all believed that they now had more autonomy and that their relationships with the GC were more streamlined and efficient. The interventions of GCs themselves appeared, on the whole, to be based on the competitive ability of member companies. Firms with the capacity to grow beyond the requirements of the GCs were able to move into new business areas and create subsidiaries. The interviews suggest that subsidiaries are expected to develop independence and presence in the market place, minimising the need for parental support.

The GC, however, can influence member companies operating in core business areas. The majority shareholder or sole owner influences member firms by disciplining managers, allocating contracts and having final say over large investments. Similar terms govern the relationship between member companies and their own subsidiaries, in which the GC parent does not have a presence.

Managers and local officials in Hai Phong also suggested that the state has three main concerns. First, state capital must remain intact. Second, GCs must meet targets and objectives set by the state. For many firms, these targets are simply growth targets. Third, GCs must develop certain key industries, with shipbuilding being the primary example among surveyed firms. The development of targets and objectives involves a high degree of consultation between GCs, member firms and supervising agencies. Growth targets are typically an outcome of member firm capacity and projected income. Firms are not required to meet their targets by operating solely in their registered business areas, as member companies are able to move into related or unrelated areas. The findings in Hai Phong generally confirm the contours of reform detailed in government documents.

4. Conclusion

The asset stripping and de facto decentralisation of the central planning period left the central government in a tenuous position in relation to its ownership and control of SOEs. Leakage of capital severely drained state resources to the detriment of macroeconomic stability. In response, the state began redefining its role in the economy. This involved a shift away from the direct management of state assets to a focus on managing investment and transforming SOEs into firms operating under the Enterprise Law.

This included an emerging emphasis on preservation and development of state capital. Evaluation criteria for SOEs focus on preserving state capital. Documents on the management of state capital stress the importance of preserving and developing state capital, and detail ongoing attempts to separate the ownership and regulatory functions of supervising agencies. The authority levels and corporate governance structures of the Enterprise Law define the rights of the state as investor as SOE reform continues. The state will exercise its influence according to the rules that govern all shareholders.

SOE reform involves two distinct paths, referred to as ‘keeping the big and releasing the small’. Smaller SOEs generally attached to departments of line ministries or People’s Committees are being released from state control with the intention of divesting state capital holdings in these firms. This was undertaken to reduce the impact on the state budget of loss making enterprises over which the central government had little control. This process resembles privatisation programmes in other countries.

Large SOEs remain an important source of state budget revenues and provide the means through which the government can implement state plans and policies following the end of central planning. Larger state enterprises have been regrouped into General Corporations. Strategic sectors have also been defined, listing areas of the economy in which the state will retain control. The criteria for determining whether the state will retain control of firms in these sectors are based on state investment levels and firm size. In addition, regulations for restructuring GCs have been issued. While stressing the need for transformation into operation under the Enterprise Law, these documents also detail the investment-based mechanisms of influence for the state and GC parent company.

The interviews from Hai Phong provide initial confirmation of the contours of reform outlined in SOE reform documents. Smaller SOEs are being transformed, and the state does not intend to retain control over these companies. Member companies of GCs reported a focus on preserving state capital. They also indicated that relations between member firms, GCs and the state are governed by investment levels and the rights of the Enterprise Law.

However, the concept of ‘developing’ state capital remains ambiguous. While receiving more emphasis in the SOE reform legislation, the interviews in Hai Phong did not provide a clear sense of how this is defined by the state or how it will be achieved. Government intentions and plans vary by sector. In addition, GC performance and the relationship between GC and member firms also vary by sector. The impact of ‘strategic sector’ designation on GC performance remains unclear. These are research questions that deserve further exploration.

The history of SOE transformations to date, the definition of strategic sectors emphasising firm size and state investment levels and the evidence from Hai Phong support the notion of ‘keeping the big and releasing the small’. The state as investor will retain sole ownership or majority shareholdings in larger SOEs and GCs operating in strategic sectors. It exercises influence over firms through investment-based relationships as GCs and member companies transform into firms operating under the Enterprise Law. Although transformed strategic SOEs and GCs will be governed by the rules of the private sector, their majority shareholder will not follow the same motivation as a private majority owner. Transformation of larger strategic state enterprises needs to be understood in this context.

Annex 1: Government Documents Referenced

This Annex provides a list of government documents referenced in this paper. It is not a comprehensive list. Additional references are included in Annex 2. A detailed list of reform documents through 2002 is available in Van Arkadie and Mallon (2003).

Decree 217-HDBT of 14 November 1987, 'Renovating planning, economic accounting and socialist business of state enterprises'

Decree 388-HDBT on 20 November 1991, 'Establishing and liquidating state enterprises'

Decision 202-CT of 8 June 1992, 'Implementing experiments to convert state enterprises to share holding companies'

1993 Law on Bankruptcy

Decision 90-TTg of 7 March 1994, 'Continuing the rearrangement of state-owned enterprises'

Decision 91-TTg of 7 March 1994, 'Establishment of pilot business groups'

1995 Law on State Enterprises

Decree 34-CP of 27 May 1995, 'Tasks, powers and organisation of the General Department for Management of State Capital and Property at Enterprises'

Decree 28-CP on 7 May 1996, 'Transformation of a number of state enterprises into joint stock companies'

Decree 59-CP of 3 October 1996, 'Regulation on financial management and business cost accounting at state enterprises'

Decree 25-CP of 26 March 1997, 'Amending a number of articles of Decree 28-CP of 7 May 1996 on the transformation of a number of state enterprises into joint stock companies'

Directive 20/CT-TTg of 21 April 1998, 'Stepping up the reorganisation and renewal of state enterprises'

Decree 44/ND-CP of 29 June 1998, 'Transformation of state enterprises into joint stock companies'

Resolution 8/NQ-CP of 16 July 1998, 'Measures to direct the plan for the last six months of 1998'

1999 Enterprise Law

Decree 27/ND-CP of 20 April 1999, 'Amending and supplementing the regulation on financial management and business cost accounting at state enterprises issued with Decree 59-CP of 3 October 1996'

Decree 73/ND-CP of 6 December 2000, 'Regulation on management of state capital in other enterprises'

Decree 63/ND-CP of 14 September 2001, 'Converting state enterprises, enterprises of political organisations or socio-political organisations into one member limited liability companies'

Resolution 5/NQ-TW of the 3rd Party Plenum of IXth Party Congress of 24 September 2001, 'Continuation of the restructuring, reforming, developing and improving the efficiency of state-owned enterprises'

Decision 58/QD-TTg of 26 April 2002, 'Classification criteria and list of to be classified state enterprises and GCs of various types'

Decree 64/ND-CP of 19 June 2002, 'Transformation of state enterprises into joint stock companies'

Circular 79/TT-BTC of 12 September 2002, 'Guiding the determination of value of enterprises upon their transformation into joint stock companies'

2003 Law on State-Owned Enterprises

Directive 1/CT-TTg of 16 January 2003, ‘Further reorganising, renovating, developing and raising the efficiency of state enterprises’

Decision 271/QD-TTg of 31 December 2003, ‘Issuance of regulation on SOE supervision and performance evaluation’

Resolution 34/NQ-TW of the 9th Party Plenum of the Ninth Party Congress of 3 February 2004, ‘A number of major policies, strategies and solutions to successfully implement Resolutions of the IXth Party Congress’

Decision 84/QD-TTg of 13 May 2004, ‘Experimentally equitising a number of state corporations’

Decree 153/ND-CP of 9 August 2004, ‘Organisation and management of state corporations and transformation of GCs and independent state companies after the parent-subsidiary company model’

Decision 155/QD-TTg of 24 August 2004, ‘Classification criteria and list of to be classified state companies and independent cost accounting member companies of GCs’

Directive 45/CT-TW of 22 October 2004, ‘Accelerating the restructuring, renewal, development and raising of efficiency of state enterprises in 2004 and 2005’ as described in Decision 13/QD-TTg of 14 January 2005, ‘Plan on the implementation of Political Bureau Directive 45/CT-TW of 22 October 2004’

Decree 187/ND-CP of 16 November 2004, ‘Transformation of state-owned companies into joint stock companies’

Decree 199/ND-CP of 3 December 2004, ‘Regulations on financial management of state companies and management of state capital invested in other enterprises’

Resolution 1/NQ-CP of 14 January 2005, ‘Solutions to directing the implementation of the 2005 socioeconomic plan and state budget’

Directive 4/CT-TTg of 17 March 2005, ‘Rapid and sound intensification of state owned enterprises equitisation’

Decision 151/QD-TTg of 20 June 2005, ‘Establishing the Corporation for State Capital Investment and Trading’

Decision 152/QD-TTg of 20 June 2005, ‘Ratifying the organisation and operation charter of the State Capital Investment Corporation’

Annex 2: Government Documents 2003-2005

Existing summaries of government documents pertaining to SOE reform cover the period up to 2002. This Annex updates these accounts to the end of 2005. Not all government documents relating to reform are covered as some are only timetables. Government action plans following Party resolutions are an example. This Annex does not cover banking sector reforms, developments in securities markets or other financial reforms. VDR (2006) includes discussion of recent reforms in these areas.

2003 Law on State-Owned Enterprises
This law took effect on 1 July 2004 and replaced the 1999 Law on State Enterprises. It covers establishment of new SOEs operating under the Enterprise Law, introducing several new SOE forms including State Joint Stock Companies, State One Member Limited Liability Companies and State Limited Liability Companies with Two or More Members. See Annex 3 for more details. This law also introduced the holding company model for GCs. This applies for corporations established by companies themselves through investment in other enterprises. Corporations established by the state remain GCs but can begin transforming into GCs established by companies and thus subject to the guidelines on holding companies (Article 53). For example, state GCs established under the 1995 Law on State Enterprises will begin transforming into holding companies (Article 74.3). See Decree 153 of 2004 for more details.

Directive 1/CT-TTg of 16 January 2003, 'Further reorganising, renovating, developing and raising the efficiency of state enterprises.' This directive calls for increasing the pace of SOE reform to meet the objectives of Resolution 5 of the 3rd Plenum of the Ninth Party Congress of 24 September 2001. It calls for MoF to issue SOE performance criteria and a decision on financial investment corporations. The directive tasks NSCERD with formulating a plan for the creation of economic groups in strategic sectors. It also calls for a plan on allowing boards of management to sign contracts directly with general directors to be submitted to the Prime Minister.

Decision 36/QD-TTg of 11 March 2003, 'Regulation on contribution of capital to and purchase of equities from Vietnamese entrepreneurs by foreign investors.' This decision reiterates Article 5 of Decree 64/ND-CP of 19 June 2002 on 'Transformation of state enterprises into joint stock companies' by setting the maximum level of foreign investment at 30 percent of enterprise charter capital. If an SOE is being equitised then the supervising agency decides whether or not foreigners can purchase first time shares. If the enterprise is already operating as a joint stock company then the general meeting of shareholders or board of management decides depending on the organisation of the company. Foreign investors deal directly with enterprises or intermediary financial institutions.

Decision 109/QD-TTg of 5 June 2003, 'Establishment of the company for sale and purchase of enterprise outstanding debts and assets.' This decision creates the Debt Sale and Purchase Company, also referred to as the Debt and Asset Trading Corporation (DATC). Resolving outstanding debt has been identified as a major area of concern and one of the primary reasons for slow implementation of SOE restructuring plans. This company will handle SOE debts in order to improve enterprise finances and speed up transformation. The decision details the initial capital allocations to DATC, its scope of activities and financial structure. The Ministry of Finance is tasked with setting up the organisational structure of DATC and appointing its senior management. The decision calls for experimental handling of 20 SOEs with debts and assets valued at more than five billion VND from which to draw relevant experiences. See VDR (2006) for more details.

Decision 271/QD-TTg of 31 December 2003, 'Issuance of regulation on SOE supervision and performance evaluation.' This decision outlines the performance criteria and reward system for SOE management. Three classification categories are possible: A, B, and C. Only loss making SOEs beyond a certain threshold are put into the lowest category and not eligible for reward.

Resolution 34/NQ-TW of the 9th Party Plenum of the Ninth Party Congress of 3 February 2004, 'A number of major policies, strategies and solutions to successfully implement Resolutions of the IXth Party Congress.' This resolution calls for continuing SOE restructuring with a focus on equitisation. It also calls for expansion of equitisation to include larger SOEs and GCs in the electricity, metallurgy, mechanics, chemicals, fertiliser, cement, construction, road transportation, river transportation, air transportation, sea transportation, telecommunications, banking and insurance sectors. It seeks to expand the pilot conversion of GCs into holding companies and prepare for the creation of large economic groups consisting of state GCs. It calls for an end to subsidies in the form of soft loans and debt write off to SOEs along with making investments in SOEs through state financial investment companies. It seeks to develop the stock market and increase the number of equitised SOEs listed, particularly large SOEs.[45]

Circular 39/TT-BTC of 11 May 2004, 'Guiding the order, procedures and financial handling of activities of purchasing, selling, delivering, receiving and handling enterprise outstanding debts and assets.' This circular supplements Decision 109 of 2004 establishing the DATC. It provides definitions of relevant financial terminology used, provisions for purchasing outstanding debts through negotiation and under mandate and the division of collected amounts between DATC and the state budget. DATC will retain 20 percent of collected amounts to cover expenses related to receiving and managing debts and assets and to cover any valuation and auction expenses. It will retain a further 10 percent for allocation to enterprises holding assets not delivered to DATC and to be destroyed by that enterprise. This is intended to cover management expenses. Conversion of received debts and assets into contributed capital in other enterprises are recorded as state capital increases for DATC. The remainder is remitted to the state budget for use in the fund for state enterprise reform.

Decision 80/QD-TTg of 12 May 2004, 'The number of deputy general directors and deputy directors of state enterprises.' GCs of special grade, which is not defined, are allowed a maximum of five deputy general directors. GCs not of special grade or transformed into parent companies are allowed a maximum of four. One member LLCs, independent large SOEs and SOEs transformed into joint stock companies are allowed a maximum of 3 deputy general directors.

Circular 40/TT-BTC of 13 May 2004, 'Guiding the accounting upon transformation of state enterprises into joint stock companies.' This circular provides detailed accounting guidelines for SOEs prior to equitisation, equitised SOEs and corporations and companies with equitised members companies.

Decision 84/QD-TTg of 13 May 2004, 'Experimentally equitising a number of state corporations.' This decisions calls for the experimental equitisation of three GCs: Viet Nam Electronics-Informatics Corporation under the Ministry of Industry; Viet Nam Export, Import and Construction Company under the Ministry of Construction; and The Trade and Construction Corporation under the Ministry of Transport.

Circular 43/TT-BTC of 20 May 2004, 'Guiding the handling of state enterprise losses arising in the period from the time of enterprise valuation to the time of their official transformation into joint stock companies.' This circular covers situations in which an SOE undergoing transformation incurs losses during the equitisation process. If the losses are smaller than the state capital share and the SOE is not in a strategic sector then equitisation plans are adjusted by reducing the amount of state capital in total capital. If this is not enough then state capital intended for preferential sale prices and preferential shares will be reduced. If this is also not enough then, after state capital has been reduced to zero, an extraordinary meeting of shareholders will be called to decide whether or not to continue operations, sell the enterprise or declare bankruptcy. If losses are smaller than the state capital share but the enterprise is in a strategic sector then the charter capital of the transformed SOE will be reduced but the state capital amount will remain the same. Preferential treatment of labourers and raw material suppliers as stipulated in law will also be reduced. This is to ensure that the state retains a dominant share after equitisation. If losses are larger than the state capital portion then the SOE must switch from equitisation to assignment, sale or bankruptcy. Equitised SOEs suffering losses more than 500 million VND require MoF approval before those losses are handled. Supervising agencies are tasked with using their enterprise reorganisation funds to offset losses. If these are not enough then requests can be submitted to MoF.

Decree 153/ND-CP of 9 August 2004, 'Organisation and management of GCs and transformation of GCs and independent state companies after the parent-subsidiary company model.' This decree provides details of the organisational structure of GCs and introduces the parent-subsidiary model. The parent company is an SOE operating under the 2003 Law on State-Owned Enterprises (Article 19.1). The parent company exercises owner's rights derived from their invested capital in other enterprises (Article 20). The parent is now a company rather than administrative body as with GCs. Following the 2003 Law on State-Owned Enterprises it divides corporations into those established by the state and those established by companies themselves. Transforming GCs established by the state into parent-subsidiary model corporations is designed to 'shift from the administrative association through the capital assignment mechanism to … association through the financial investment mechanism' and

[45] Phillips Fox 2004a was consulted in compiling this summary.

'create conditions for their developing into economic conglomerates' (Article 28.1). GCs already operating as holding companies do not need to transform into the parent-subsidiary model since they already have an SOE parent with transformed subsidiaries operating under the Enterprise Law (Article 29.2).[46] GCs intending to transform into the parent-subsidiary model must transform all of their member enterprises, must be on the list of strategic sectors in which the state will hold 100 percent state capital, need to have large capital amounts and need to have 'development potential' (Article 30.1). If existing GCs do not meet these conditions then they must be transformed into companies operating under the Enterprise Law (Article 30.3).

Decree 155/ND-CP of 20 August 2004, 'Amending and supplementing a number of articles of Decree 41/ND-CP of 11 April 2002 on policies towards labourers redundant due to the restructuring of state enterprises.' This decree expands and clarifies coverage of Decree 41 of 2002. If an SOE restructures then it is eligible for financial assistance. Decree 41 provides financial support to SOEs to cover redundant workers resulting from transformation.

Decision 155/QD-TTg of 24 August 2004, 'Classification criteria and list of to be classified state companies and independent cost accounting member companies of GCs.' This decision replaces Decision 58 of 26 April 2002. The state capital requirement for being in the '100 percent' and '50 percent or more' categories increased to 30 billion VND and 20 billion VND respectively. The budget remittance level was increased to two billion VND for the '50 percent or more' category. The majority of the sectors included in the '100 percent with conditions' category in Decision 58 were shifted to the '50 percent or more' state capital category in Decision 155. See Table 5 for the strategic sectors listed in this decision.

The strategic sectors listed apply to large independent SOEs and member companies of GCs. Decision 155 also provides details on GCs. These must meet certain criteria or be restructured by merger, consolidation or dissolution after restructuring their member enterprises. The criteria are operation in the following sectors: oil and gas exploitation and processing; gasoline and oil wholesale; electricity production and supply; exploitation, processing and supply of coal and important minerals; metallurgy; mechanical engineering; cement production; post and telecommunications; electronics; aviation; maritime and railway transport; chemicals and chemical fertilisers; production of textiles, paper, salt, coffee, rubber, wood processing, liquor, beer, cigarettes; curative medicines; pharmaceutical chemicals; construction; food wholesale; banking and insurance. GCs must also have more than 500 billion VND state capital or not less than 100 billion VND in special industries.[47] They are required to average at least 50 billion VND per year in budget remittances over the previous three years, or not less than 20 billion VND for GCs in special industries. This is up from 10 billion VND for special industries in Decision 58. They must have advanced technology and management, high quality products and be competitive in domestic and international markets.[48]

Decision 155 of 2004 separates independent SOEs and GC member companies from GCs themselves. It provides a separate list of sectors and size requirements for GCs to avoid restructuring. However, it is unclear how the '100 percent' strategic sectors for parent companies in Decree 153 align with the distinctions of Decision 155 of 2004.

Decree 180/ND-CP of 28 October 2004, 'Establishment, reorganisation and dissolution of state companies.' This decree replaces Decree 50/CP of 28 August 1996 and Decree 38/CP of 28 April 1997 amending Decree 50. Like previous decrees of this type it includes a list of sectors and geographic areas in which new SOEs can be established. These match the sectors of Decision 155 of 2004. The initial capital levels of new SOEs are increased to 30 billion VND for independent state companies and 500 billion VND for GCs. This also matches Decision 155. The decree also lists the authority levels and responsible state agencies for establishment, reorganisation and dissolution of SOEs.

Decree 187/ND-CP of 16 November 2004, 'Transformation of state-owned companies into joint stock companies.' This decree replaces Decree 64/ND-CP of 19 June 2002. It extends the scope of equitisation to include large GCs, state commercial banks and state financial institutions. The sector classifications of Decision 155 of 2004

[46] The supervising agency decides to transform the holding company into the parent-subsidiary model.

[47] These 'special industries' are decided by the Prime Minister.

[48] Phillips Fox 2004b was also consulted in compiling this summary.

determine whether or not an SOE will be equitised (Article 2.1). The par value of one share is now 10,000 VND instead of 100,000 VND (Article 7.1). Decree 64 of 2002 treated financial issues together whereas Decree 187 covers them separately and in more detail. This includes handling debts, valuing SOEs and the requirement for transferring unrecoverable debts which have been excluded from SOE value to the DATC (Article 11.2).

Decree 187 also provides three valuation methods including the asset method, discount cash flow method and other methods (Articles 16-22). In Decree 64 only the asset method was available.[49] Decree 187 requires that SOEs with 30 billion VND or more in total assets as listed in their accounting books be valued by a specialised valuation organisation. This can be domestic or foreign and includes auditing companies, securities companies and investment banks. Previously, valuation was conducted by a valuation council, now SOEs under 30 billion VND in total assets can perform their own valuation (Article 23).

Decree 187 increases the initial share options for employees to 100 shares for each year of employment discounted at 40 percent of auction price. Previously, this was 10 shares per year discounted at 30 percent of par value. It also changes the initial share options for strategic domestic investors including SOE suppliers. They are entitled to purchase a maximum of 20 percent of shares discounted at 20 percent of the auction price. Previously, this was a 30 percent discount of par value. Decree 187 reduces the minimum level of shares that must be made available to other investors, including foreign investors. Previously, this was 30 percent but is now 20 percent (Articles 26-28).[50]

Decree 199/ND-CP of 3 December 2004, 'Regulations on financial management of state companies and management of state capital invested in other enterprises.' This decree replaces Decree 56/CP of 2 October 1996 on 'State enterprises engaged in public utility activities', Decree 59/CP of 3 October 1996 on 'Regulation on financial management and business cost accounting at state enterprises', Decree 27/ND-CP of 20 April 1999 on 'Amending and supplementing the regulation on financial management and business cost accounting at state enterprises issued with Decree 59-CP of 3 October 1996', and Decree 73 of 6 December 2000 on 'Regulation on management of state capital in other enterprises'.

Circular 126/TT-BTC of 24 December 2004, 'Implementation of Decree 187/ND-CP of 16 November 2004 on conversion of state-owned companies into shareholding companies.' This circular replaces Circular 76/TT-BTC on 'Guiding financial settlements when transforming SOEs into joint stock companies', Circular 79/TT-BTC of 12 September 2002 on 'Guiding the determination of value of enterprises upon their transformation into joint stock companies' and Circular 80/TT-BTC of 12 September 2002 on 'Providing guidelines on auction and underwriting for share offering of SOEs conducting equitisation'. This circular states that SOEs not meeting the conditions for equitisation will not receive additional state capital in order to equitise but will be restructured in other ways. It provides further details on inventory and classification of assets, handling of SOE debts, use of the SOE reward and welfare funds, holding initial share auctions and maximum levels of equitisation related expenses. It also offers formulas and descriptions of available enterprise valuation methods.

2005 Enterprise Law

This law is intended to unify the legal framework for domestic and foreign firms operating in Viet Nam. Many of the major changes concern the increased scope of activities for foreign firms. The law excludes state-owned enterprises. Article 166.2 states that the 2003 Law on State-Owned Enterprises will apply to areas not covered in this law during the conversion of SOEs into enterprises operating under the Enterprise Law. The time limit for conversion is 2010. Article 168.1 stipulates that the state will exercise its rights as owner of contributed capital as an investor in order to maintain and develop state capital.

The law came into effect 1 July 2006. It replaced the 1999 Enterprise Law, 2003 Law on State-Owned Enterprises, the 1996 Law on Foreign Investment and the 2000 Amendments to the Law on Foreign Investments.

[49] The discount cash flow method was introduced in Circular 79/TT-BTC of 12 September 2002 on 'Guiding the determination of value of enterprises upon their transformation into joint stock companies' supplementing Decree 64 of 2002. This has been incorporated into Decree 187 of 2004.

[50] Phillips Fox 2004c was consulted for this summary.

The major difference with the 1999 Enterprise Law regarding transformation of SOEs is the raised authority levels from 51 to 65 percent for most joint stock company decisions. How this will effect GC-member company relations will depend on the level of investment the GC has in transformed joint stock member companies. Chapter VII covers holding companies and economic groups. Holding companies will exercise their rights and obligations according to the investment-based corporate governance structures of this law. Economic groups and structures will be detailed in future government documents.

Directive 4/CT-TTg of 17 March 2005, 'Rapid and sound intensification of state-owned enterprises equitisation.' This directive lists equitisation as the primary restructuring method for SOEs. It calls for increasing the speed and scope of the programme including equitisation of entire GCs after their members have been transformed.

Circular 38/TT-BTC of 18 May 2005, 'Procedures for financial settlement upon establishment, reorganisation and dissolution of state companies.' This circular supplements Decree 180 of 2004. It replaces Circular 130/TT-BTC of 30 September 1998 on 'Guiding the handover, takeover and settlement of financial problems of state enterprises during merger or consolidation' and Circular 66/TT-BCT of 6 August 2002 on 'Procedures and financial handling upon dissolution of state enterprises'. The circular provides details on the financial settlement mechanisms for SOEs that are merged, consolidated and dissolved.

Decision 151/QD-TTg of 20 June 2005, 'Establishing the Corporation for State Capital Investment and Trading.' This decision creates the SCIC as a state corporation operating under the 2003 Law on State-Owned Enterprises. It details the functions and tasks of SCIC and stipulates the capital allocations for its establishment. It also provides a basic organisational structure.

Decision 152/QD-TTg of 20 June 2005, 'Ratifying the organisation and operation charter of the State Capital Investment Corporation.' This decision supplements Decision 151 of 2005 and provides much greater detail on the functions, tasks and organisation of the SCIC. The SCIC operates under the 2003 Law on State-Owned Enterprises.

Decree 80/ND-CP of 22 June 2005, 'Assignment, sale, business contracting and lease of state companies.' This decree replaces Decree 103/ND-CP of 10 September 1999 on 'Assigning, selling, business contracting or leasing state enterprises' and Decree 49/ND-CP of 24 April 2002 on 'Amending and supplementing a number of articles of Decree 103/ND-CP of 10 September 1999'. These are alternative restructuring methods for SOEs and apply when an SOE cannot be equitised. This usually occurs because the companies in question have less than five billion VND state capital. The decree provides updated and more detailed definitions of terms and procedures for the alternative methods. As in previous versions of this decree, preference is given to potential buyers, business contracts or lessees that will employ the most workers. Discounts are also given according to the number of workers retained. Enterprises that have undergone assignment prior to this decree but not yet paid back the 30 percent equity value to the state do not have to pay this back (Article 62.3).

Circular 72/TT-BTC of 1 September 2005, 'Guiding the formulation of the regulation on financial management applicable to state companies operating after the parent company-subsidiary company model.' This circular provides financial guidelines for GCs, independent cost accounting member companies of GCs and independent state companies operating under the parent-subsidiary model of Decree 153/ND-CP of 9 August 2004.

Circular 81/TT-BTC of 19 September 2005, 'Guiding the transfer of the right to represent the owner of state capital portions at enterprises to the State Capital Investment and Trading Corporation.' This circular contains the regulations and procedures for transferring the representative rights over state capital to the SCIC. This applies to independent transformed 'other enterprises' defined as state one member limited liability companies, state two or more member limited liability companies and the state share in joint stock companies. For independent SOEs transforming after 1 January 2006 this transference of rights occurs at the same time as transformation. The value of invested state capital, the percentage of state capital in legal capital, a financial report and details of the business activities of the firm are required for the transference to occur. The Ministry of Finance supervises the transference of representative rights from ministries and provincial People's Committees to the SCIC.

Directive 33/CT-TTg of 13 October 2005, 'Effective application of the parent company-subsidiary company model.' This directive calls for further transformation of GCs to the parent-subsidiary model. It notes that this model bases management of enterprises on capital investment and calls for the selection of more GCs to be equitised in which the state will hold a majority share. Parent companies operating in sectors in which the state need not hold 100 percent capital will be transformed into joint stock companies or limited liability companies. The directive calls for increasing the number of transformed two or more member LLCs. Member companies operating in sectors where the state will hold majority shares must have majority shares held by the parent company.

Decree 132/ND-CP of 20 October 2005, ‘Exercise of rights and performance of obligations of the state-owner to state companies.’ This decree follows the contours of the 2003 Law on State-Owned Enterprises regarding authority levels of supervisory agencies and boards of management for state companies and GCs. The state is the owner of state companies. Decision making authority, responsibility and liability follows the 2003 Law on State-Owned Enterprises. The Prime Minister is responsible for approving transformation plans, with delegated responsible agencies submitting proposals for state companies they established. Supervising agencies and boards of management are jointly responsible for liabilities, approved loan guarantees, investment decisions and efficient use of capital.

Decree 145/ND-CP of 21 November 2005, ‘Amending and supplementing a number of articles of Decree 63/ND-CP of 14 September 2001 on conversion of state enterprises, enterprises of political organisations or socio-political organisations into one-member limited liability companies.’ This decree adds more detail on the obligations and responsibilities of the board of management and the general director of one member limited liability companies owned by the state. Mismanagement results in loss of rewards, similar to Decision 271/QD-TTg of 31 December 2003 on evaluating SOE performance. In certain instances, such as failing to achieve targets and causing the loss of state capital, the general director can be subject to reduced wages or dismissal.

Circular 109/TT-BTC of 8 December 2005, ‘Guiding a number of financial contents in assignment, sale, business contracting and lease of state companies.’ This circular replaces Circular 47/TT-BTC of 24 May 2000 and Circular 51/TT-BTC of 2 June 2000. These previous circulars provided guidelines for Decree 103/ND-CP of 10 September 1999. Circular 109 provides guidelines for Decree 80/ND-CP of 22 June 2005 on ‘Assignment, sale, business contracting and lease of state companies’.

Directive 39/CT-TTg of 9 December 2005, ‘Exercise of rights and performance of obligations of the state owner towards state companies provided for in Decree 132/ND-CP of 20 October 2005.’ In this directive the Prime Minister details a list of tasks to be undertaken by supervisory agencies to increase state enterprise autonomy, responsibility, competitiveness, production and efficiency.

Decision 330/QD-TTg of 13 December 2005, ‘Regulation on auction of state companies.’ This decision expands upon Decree 80/ND-CP of 22 June 2005 by providing detailed guidelines on conducting auctions of independent state companies, independent cost accounting member companies of GCs and parts of state enterprises. The guidelines do not apply to state agricultural or forestry farms. State companies with total asset value over 30 billion VND recorded in the accounting books are required to contract a valuation organisation from the list provided by the Ministry of Finance. State enterprises with under 30 billion VND can designate a valuation organisation or value the enterprise itself (Article 7.b).

Related Laws:
2004 Bankruptcy Law
2004 Law on Competition
2005 Investment Law

Annex 3: SOEs and the Enterprise Law

The 2003 Law on State-Owned Enterprises defines an SOE as 'an economic organisation where the State holds the entire charter capital or majority share … organised in the form of a State-owned company, joint stock company or a limited liability company' (Article 1). Article 3 defines the terms used in the Law and introduces several new company forms operating under the Enterprise Law as SOEs. These include:

- State Joint Stock Companies where the shareholders are all SOEs or organisations authorised by the state to contribute capital;
- State One Member LLCs solely owned by the state; and
- State LLCs with Two or More Members all of whom are SOEs or authorised by the state to contribute capital.

The representative of state capital in a state joint stock company, state one member LLC and a state two or more member LLC is subject to the Law on State-Owned Enterprises (Article 2.2.b). Representatives of the state majority shares or majority capital contribution in other enterprises are also subject to this law (Article 2.2.c).

Article 3 also defines enterprises in which the state holds majority shares as companies in which the state retains 'controlling rights'. These are then defined as the right to make decisions on the appointment and dismissal of key personnel, management arrangements and 'other important decisions'.

Together these provide the mechanisms to ensure that firms achieve the objectives established by the state. The 2003 Law on State-Owned Enterprises guides decisions by representatives of state capital in SOEs and transformed SOEs with majority state capital as these firms operate under the Enterprise Law. Whether the firm is a new SOE or a company with majority state capital, the state retains control.

Article 1.2 of the 1999 Enterprise Law states that SOEs 'shall, upon being converted into limited liability companies or shareholding companies, be subject to this Law.' The 2003 Law on State-Owned Enterprises supports this. However, ambiguity still exists. While the 1999 Enterprise Law states that transformed SOEs now operate according to these guidelines, it does not state whether these firms are still considered SOEs. The 2003 Law on State-Owned Enterprises states that if the government holds majority capital in transformed SOEs operating under the Enterprise Law then they are still SOEs.

Confusion arises because the Enterprise Law covers firm organisation and operation while the Law on State-Owned Enterprises covers the representative of state majority capital in these firms. Article 4 of the 2003 Law on State-Owned Enterprises attempts to clarify the situation. Conflicts between the Law on State-Owned Enterprises and other laws, including the Enterprise Law, involving company operations defer to the other laws (Article 4.1). Conflicts over the rights of the representatives of state capital defer to the Law on State-Owned Enterprises (Article 4.2). This is to ensure state control over firm decisions where it is the majority shareholder or capital contributor.

The holding company detailed in the 2003 Law on State-Owned Enterprises is considered an SOE even though all of its member enterprises operate under the 1999 Enterprise Law (Article 58). The same applies for parent companies (Article 19.1, Decree 153 of 9 August 2004). However, even parent companies are now being considered for transformation into companies operating under the Enterprise Law.

There does not appear to be clear resolution of the issue of whether or not transformed SOEs operating under the Enterprise Law are still considered SOEs when the state holds majority capital. According to the 2003 Law on State-Owned Enterprises they remain SOEs. From one perspective this is not important. The crucial issue is the power of the state to influence firms. This is accomplished in both the Law on State-Owned Enterprises and the governance structures of firms described in the Enterprise Law.[51]

The decision making structures in the 2003 Law on State-Owned Enterprises for SOEs and GCs are very similar to the 1999 Enterprise Law. Boards of management have a responsibility for strategies and plans and decide on

[51] The 2005 Enterprise Law defines an SOE as an enterprise in which the state holds at least 50 percent of total capital (Article 4.22).

investment decisions, including asset sales, up to 50 percent of the value of total assets. The difference is the highest authority.

In the 2003 Law on State-Owned Enterprises the highest authority is the supervising agency for independent SOEs and GCs. Member companies of GCs are responsible to the GC. In the Enterprise Law the highest authority is the general meeting of shareholders for joint stock companies and the owner is the highest authority for one member LLCs. If the state is the owner or holds a majority share then the supervising agency is the highest authority even under the Enterprise Law. The state as owner controls a one member LLC and the state as majority shareholder controls the general meeting of shareholders, both through the boards of management. If the firm does not have a board of management then the state can appoint and dismiss the director. Even if SOEs transform to operate under the Enterprise Law, investment-based lines of control remain. Whether these firms are listed as SOEs or not is necessarily relevant.

This does not mean that SOEs and transformed SOEs are the same. Employment responsibilities of SOEs remain a major constraint and the ability to restructure the workforce is a key incentive inducing SOEs to transform. However, the authority levels of boards of managements in SOEs and transformed SOEs are roughly the same.

In late 2005 the Government published the 2005 Enterprise Law, which came into effect 1 July 2006. This law unifies the regulatory framework for private and foreign invested firms. SOEs are excluded. SOEs that have not transformed will continue to operate under the 2003 Law on State-Owned Enterprises. The time limit for conversion to the Enterprise Law is 2010. The biggest change from the 1999 Enterprise Law with regard to SOE transformation is the increased authority level from 51 to 65 percent for joint stock companies. This will alter the dynamic for existing transformed SOEs in which the state holds a 51 percent share. However, since very few large SOEs and GCs have actually transformed, this is not necessarily a problem as the state could now insist on keeping 65 percent or more state capital in strategic transformed SOEs.

Annex 4: The 1999 Enterprise Law

The 1999 Enterprise Law was still in effect when firms in Hai Phong were interviewed.[52] However, in July 2006 the new Enterprise Law took effect. The anticipated impact of the new law on relations with SOEs and transformed SOEs is discussed in Annex 3. Most of the structures described here remain in the 2005 Enterprise Law. The major relevant change is the increased authority level from 51 to 65 percent for most decisions and from 65 to 75 percent for key decisions in joint stock companies. Additional changes may occur in implementing guidelines.

One member LLCs in the 1999 Enterprise Law are enterprises owned by one organisation that cannot issue shares (Article 46). Owners have the right to decide on the organisational and management structure of the company, appointment and removal of management personnel, investment projects valued at 50 percent or more of the total value of assets recorded in the company accounting books, the use of profits, and a range of other rights (Article 47). If an SOE is transformed into this company type than the state retains control over major decisions under the Enterprise Law. This is referred to as a State One Member LLC in the 2003 Law on State-Owned Enterprises.

Chapter IV of the 1999 Enterprise Law is devoted entirely to shareholding companies. These are defined as companies in which the charter capital is divided into shares of equal proportion. Shareholders can be organisations or individuals, with a minimum of three shareholders and no maximum (Article 51).

Founding shareholders are the original members of a shareholding company (Article 3.10). They must together hold a minimum of 20 percent of the ordinary shares for the first three years of business (Article 58).

There are different classes of shares including ordinary shares, voting preference shares, dividend preference shares and redeemable preference shares (Article 52). Ordinary shareholders have the right to attend and vote on all matters falling under the authority of the general meeting of shareholders with each ordinary share casting one vote. They are also entitled to receive dividends at the rate decided by the general meeting (Article 53). Ordinary shares cannot be converted into preference shares (Article 52.3).

Voting preference shares carry more votes than ordinary shares as stipulated in the company charter. Holders of voting preference shares have the same rights as ordinary shareholders except they cannot assign these shares to other persons (Article 55). Only organisations authorised by the government and founding shareholders can hold voting preference shares (Article 52.3). The voting preference shares of founding shareholders are valid for three years and then become ordinary shares (Article 52.3).

Dividend preference shares receive a higher dividend rate than ordinary shares or are paid at an annual fixed rate. Holders of these shares are only allowed to receive dividends. They do not have the right to vote, attend shareholder meetings or nominate candidates to the board of management or inspection committee (Article 56). Redeemable preference shares can be redeemed at any time upon demand. They are similar to dividend preference shares in that holders cannot participate in company decision making (Article 57).

The structure of joint stock companies includes a general meeting of shareholders, a board of management and general director or director. If there are more than 11 shareholders then the company must also have an inspection committee (Article 69). Shareholders or groups of shareholders holding more than ten percent of ordinary shares for six months consecutively can nominate candidates for the board of management and the inspection committee (Article 53).

The general meeting of shareholders is the highest decision making authority of the company. It decides on the rate of annual dividends, elects and removes members of the board of management and inspection committee, oversees reorganisation and dissolution of the enterprise and sale of assets valued at 50 percent or more of the total value of assets recorded in company accounting books (Article 70).

[52] Nguyen Dinh Cung and Scott Robertson (2005) also provide a detailed examination of the corporate governance structures in the 1999 Enterprise Law.

A general meeting of shareholders occurs when attending shareholders represent at least 51 percent of voting shares (Article 76). Resolutions are passed when approved by at least 51 percent of total voting shares of attending shareholders. Approval of reorganisation, dissolution and sale of assets valued at more than 50 percent of total assets require 65 percent of the votes (Article 77).

The board of management is the main decision making body of the enterprise. Each member of the board has one vote (Article 80.3) and the board cannot have more than 11 members (Article 80.4). It makes decisions on behalf of the firm except when requiring a vote from the general meeting of shareholders (Article 80). The board of management decides on company development strategies and investment plans. It also approves purchase, sale, borrowing and lending contracts valued at more than 50 percent or more of the total value of assets recorded in company accounts. The board of management appoints and removes the general director or director and other key management personnel, decides on the firm organisational structure and internal management rules, establishment of subsidiaries and representative offices, and capital contribution or purchase of shares in other enterprises (Article 80.2). The board of management elects the chairman of the board from its members (Article 81).

A shareholding company with more than 11 members must have an inspection committee of three to five members. One of these members must be a professional accountant (Article 88). The inspection committee elects one of its members to be its head and this person must be a shareholder in the company (Article 88). Members of the board of management, the general director or director, the chief accountant or their relatives cannot serve on the inspection committee (Article 90).

The inspection committee reports and is accountable to the general meeting of shareholders and is responsible for conducting inspections to verify that management is conducting business in a lawful manner (Article 88, 91). It is also responsible for the accuracy of the company accounting books and financial statements (Article 88). Finally, while the board of management and general director or director must promptly provide information and documents to the committee (Article 89), the inspection duties cannot disrupt the ‘normal activities’ of the board of management or ‘day to day business operation’ of the company (Article 88).

The role of the inspection committee is ambiguous. Scope has been given for the board of management and other management personnel to resist on the grounds of interference. Furthermore, the Committee is accountable to the general meeting of shareholders. If this means the majority shareholder than its ability to influence firm decision making is curtailed.

The 1999 Enterprise Law describes the corporate governance structures of several types of firms. The owner controls a one member LLC. The majority capital contributor can control a two or more member LLC through the members’ council. The majority shareholder can control a shareholding company through the general meeting of shareholders and the board of management. The state as investor can influence firm decision making – whether as owner, majority capital contributor or majority shareholder – through these lines of control.

References

Abonyi, George (2005) ‘Policy Reform in Viet Nam and the Asian Development Bank’s State-Owned Enterprise Reform and Corporate Governance Loan Programme’, ERD Working Paper No. 70, August.

Beresford, Melanie (2005) ‘Doi Moi in Review: State, Society and Politics’, paper presented at the First High Level Roundtable Meeting on 20 Year Review of Doi Moi, held by UNDP and VASS, Ha Noi, 12 January.

Central Institute for Economic Management (CIEM) (2005) ‘Viet Nam’s Economy 2004’, Ha Noi.

Central Institute for Economic Management (CIEM) and World Bank (2002) ‘Viet Nam’s Equitised Enterprises: An Ex-Post Study of Performance, Problems and Implications for Policy’, unpublished report, Ha Noi, August.

Central Institute for Economic Management (CIEM) and World Bank (2005) ‘Report on the Study of Post-Equitisation of State-Owned Enterprises’, Ha Noi, September.

Clowes, Damian and Eric Sedlak (1998) ‘Viet Nam Edges Ahead in Equitisation Process’, *International Financial Law Review*, 17:10, 25-30.

Dang Phong and Melanie Beresford (1998) *Authority Relations and Economic Decision-Making in Viet Nam: An Historical Perspective*, Copenhagen: NIAS.

Dixon, Chris (2003) ‘Developmental Lessons of the Vietnamese Transitional Economy’, *Progress in Development Studies*, 3:4, 287-306.

Economist Intelligence Unit (EIU) (2005) ‘Country Profile 2005: Viet Nam’, http://www.eiu.com.

Evans, Mark (2004) ‘Embedding Market Reform Through Statecraft – The Case of Equitisation in Viet Nam’, Political Studies Association Conference, Lincoln, 2004.

Fforde, Adam (2003) ‘SOEs, Law and a Decade of Market-Oriented Socialist Development in Viet Nam’, paper presented at Law and Governance: Socialist Transforming Viet Nam, Asian Law Centre and the School of Law at Deakin University, held at the Melbourne Law School, 12-13 June.

Fforde, Adam (2004) ‘Vietnamese State-Owned Enterprises: ‘Real Property’, Commerical Performance and Political Economy’, SEARC Working Paper Series No. 69, August.

Fforde, Adam and Stefan de Vylder (1996) *From Plan to Market: The Economic Transition in Viet Nam*, Boulder: Westview Press.

Gainsborough, Martin (2002) ‘Understanding Communist Transition: Property Rights in Ho Chi Minh City in the Late 1990s’, *Post-Communist Economies*, 14:2, 227-243.

Gainsborough, Martin (2003a) *Changing Political Economy of Viet Nam: The Case of Ho Chi Minh City*, London: Routledge Curzon.

Gainsborough, Martin (2003b) ‘Slow, Quick Quick: Assessing the Course of Equitisation in Viet Nam and Its Implications for Future Enterprise Performance’, *Journal of Communist Studies and Transition Politics*, 19:1, 49-63.

Gainsborough, Martin (2005) ‘Equitisation and the Changing Nature of State Power in Viet Nam: Private Indirect Government?’, paper presented at the Fourth Symposium on contemporary Viet Nam at CERI/Sciences Po, Paris, 9-10 December.

General Statistics Office of Viet Nam (GSO) (2005) *Statistical Yearbook 2004*, Ha Noi: Statistical Publishing House.

Government of Viet Nam (2005) ‘Offering Circular’, Ha Noi, October.

International Monetary Fund (IMF) (1999) ‘Viet Nam: Selected Issues’, IMF Staff Country Report No. 99/55, Washington, D.C., July.

Kokko, Ari and Fredrik Sjoholm (2000) ‘Some Alternative Scenarios for the Role of the State in Viet Nam’, *The Pacific Review*, 13:2, 257-277.

Mallon, Raymond (1996) ‘State Enterprise Reform in Viet Nam: Policy Developments, Achievements and Remaining Constraints’, report prepared for ADB, Ha Noi, May.

Mallon, Raymond (1998) ‘Enterprise Reform Project: Enterprise Restructuring to Create More Equitable Opportunities for Private and State Enterprises in the Industry Sector’, background paper prepared for the Enterprise Reform Project for MPI and ADB, Ha Noi, January.

Mekong Economics (2002) ‘SOE Reform in Viet Nam: Background Paper’, Ha Noi, November, available at http://www.mekongeconomics.com/publications/ National Economics University (NEU) (2005) ‘Report on the Survey of Restructured Enterprises Receiving Subsidy Under the Decree 41/2002/ND-CP’, Center of Socio-Economic Data Processing and Forecasting, Ha Noi, August.

National Steering Committee for Enterprise Reform and Development (NSCERD) (2006) ‘Overview of SOE Reform’, http://www.nscerd.org.vn/english/DMDN/tqcs.asp.

Neilson, William (1998) ‘Asia’s Economic Crisis Poses Challenges for Viet Nam as Doi Moi Enters Second Decade’, *East Asian Executive Reports*, 20:2, 9-13.

Nguyen Dinh Cung and Scott Robertson (2005) ‘Corporate Governance in Viet Nam’, Policy Brief No. 36, William Davidson Institute, University of Michigan, August.

Official Gazette (Cong Bao), selected issues and years, Viet Nam Law and Legal Forum, Ha Noi.

Painter, Martin (2003a) ‘The Politics of Economic Restructuring in Viet Nam: The Case of State-Owned Enterprise ‘Reform’’, *Contemporary Southeast Asia*, 25:1, 20-43.

Painter, Martin (2003b) ‘Marketisation, Integration and State Restructuring in Viet Nam: The Case of State-Owned Enterprise Reform’, SEARC Working Paper Series No. 39, January.

Painter, Martin (2005) ‘The Politics of State Sector Reforms in Viet Nam: Contested Agendas and Uncertain Trajectories’, *Journal of Development Studies*, 41:2, 261-283.

Phillips Fox (2004a) ‘Viet Nam Legal Update: April 2004’, Phillips Fox – Viet Nam

Laws, Ha Noi, April, http://www.vietnamlaws.com.

Phillips Fox (2004b) ‘Viet Nam Legal Update: October 2004’, Phillips Fox – Viet Nam

Laws, Ha Noi, October, http://www.vietnamlaws.com.

Phillips Fox (2004c) ‘Viet Nam Legal Update: November 2004’, Phillips Fox – Viet Nam

Laws, Ha Noi, November, http://www.vietnamlaws.com.

Porter, Gareth (1993) *Viet Nam: The Politics of Bureaucratic Socialism*, Ithaca: Cornell University Press.

Ryan, Jordan and Jens Wandel (1996) ‘Viet Nam’s Reform Experience – The Quest for Stability During Transition’, UNDP Programme Staff Paper, Ha Noi, May.

Truong Dong Loc, Ger Lanjouw and Robert Lensink (2004) 'The Impact of Privatisation on Firm Performance in a Transition Economy: The Case of Viet Nam', SOM theme C report, University of Groningen, available at http://som.eldoc.ub.rug.nl/FILES/reports/themeC/2004/04C31/04C31.pdf.

Van Arkadie, Brian (1993) 'Managing the Renewal Process: the Case of Viet Nam', *Public Administration and Development*, 13:4, 435-451.

Van Arkadie, Brian and Raymond Mallon (2003) *Viet Nam: A Transition Tiger?*,

The Australian National University: Asia Pacific Press.

Viet Nam Development Report (VDR) 2006: Business. Joint Donor Report to the Viet Nam Consultative Group Meeting, Ha Noi, 6-7 December 2005.

Viet Nam Law and Legal Forum, http://news.vnanet.vn/vietnamlaw.

Viet Nam News (2005) 'SOE equitisation still faces challenges', 2.12.2005, http://vietnamnews.vnagency.com.vn.

Viet Nam News (2006) 'Government prioritises SOE equitisation', 20.1.2006, http://vietnamnews.vnagency.com.vn.

Viet Nam Economic Times (2004) 'Breakthrough Year: As part of an accelerated SOE reform process, a number of bigger general corporations are headed for restructuring in 2004', No. 122, 1 April, www.vneconomy.com.vn/eng.

Viet Nam Economic Times (2006) 'SOEs more efficient after equitising', 4.1.2006, www.vneconomy.com.vn/eng.

Vu Quoc Ngu (2002) 'State-Owned Enterprise Reform in Viet Nam: Process and Achievements', ISEAS Visiting Researchers Series No. 4, October.

Vu Thanh Tu Anh (2005) 'Viet Nam – The Long March to Equitisation', Policy Brief No. 33, William Davidson Institute, University of Michigan, April.

Webster, Leila and M. Reza Amin (1998) 'Equitisation of State Enterprises in Viet Nam: Experience to Date', Private Sector Discussions 3, MPDF, Ha Noi, March.

World Bank (1995) 'Viet Nam Economic Report on Industrialisation and Industrial Policy', Report No. 14645-VN, October.

World Bank (1997) 'Viet Nam Deepening Reform for Growth: An Economic Report', Report No. 17031-VN, October.

World Bank (2005) *Taking Stock: An Update on Recent Economic Developments and Reforms*, Ha Noi, 6-7 December.

Wright, Philip and V.T. Nguyen (2000) 'State-Owned Enterprises (SOEs) in Viet Nam: Perceptions of Strategic Direction for a Society in Transition', *The International Journal of Public Sector*, 13:2/3, 169-177.

Yuk-Shing Cheng and Dic Lo (2004) 'Firm Size, Technical Efficiency and Productivity Growth in Chinese Industry', SOAS Department of Economics Working Papers No. 144, London, December.