

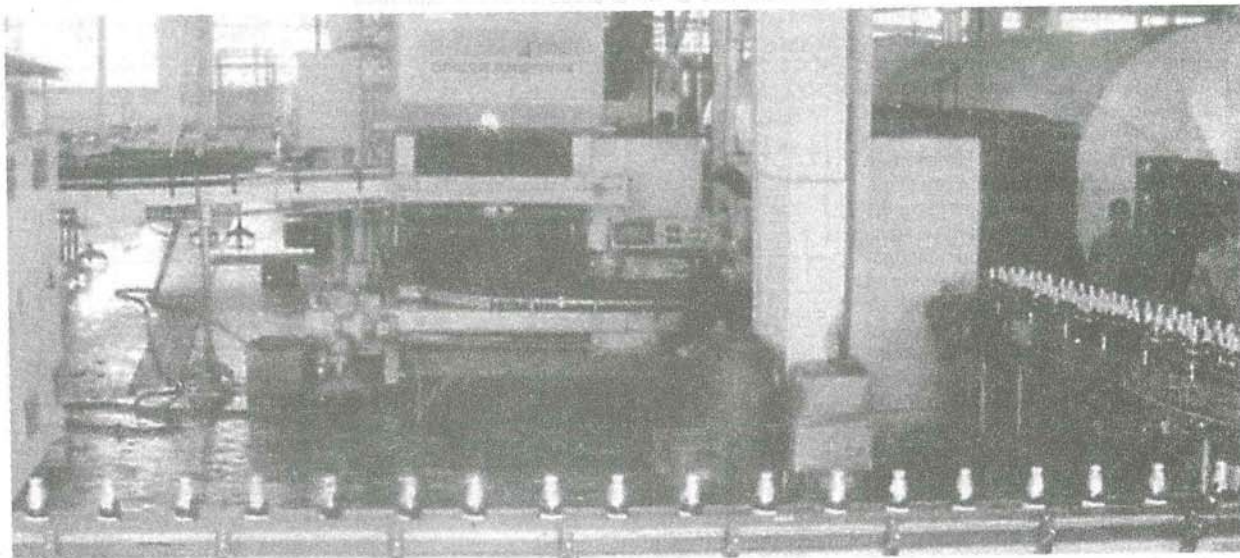
In the early stage of trade, firm was deemed as merchant vessel from its establishment to operation. First, it was the time of building vessel, recruiting sailors, fixing equipment and registering with the local government to have the registration book including the vessel's name, owner, list of sailors and maximum tonnage. That is, the authorities offered to this new vessel legal and occupational status, as well as told the owner not to carry goods over the tonnage and

on the vessel only, and their onshore properties were not affected. But the owner sometimes had to compensate for damage by their own money in compliance with the court's judgment that it was wholly the owner's fault because he had not observed strictly occupational principles as stated in law. From this fact, the concepts "limited liability" and "unlimited liability" arose and many countries have legalized these forms of liability.

Since the National Congress of the Vietnamese Communist Party in 1986, with the policies for economic reform and integration into the international community in terms of technological and economic development; the National Assembly passed the Company Law and the Private Enterprise Law, effective as from April 15, 1991. These two laws ruled the business entity had ownership of capital equipment only (Article 4 of the Private Enterprise Law and Article 5 of the Company

## OWNERSHIP AND OPERATION OF PRIVATE FIRMS IN THE NEW ENTERPRISE LEGISLATION

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comply with international and domestic regulations on navigation and commerce. In this stage, the vessel symbolized business entity obtaining full rights and obligations. This entity might be derived by one or many persons contributing money to build it. These previous figures through many centuries led to the concept of private enterprise, and joint stock company. Regarding ownership, despite one or many persons pooling capital, they had legal ownership of the registered vessel, that is, they owned the capital equipment only. In case where the vessel sank, the owner would be responsible for the freight

In our country, in the process of economic reform and integration into the world trade, the National Assembly adopted the Company Law and the Private Enterprise Law in 1991, and these laws were effective until late 1999. In the past 10 years, many contents should be amended in line with the facts and changes in economic situation, so the new Enterprise Law takes shape and effect from January 1, 2000. What happens to the ownership and operation of private firms when the new law is effective?

### I. OWNERSHIP IN THE 1990 PRIVATE FIRM LEGISLATION

Law). The limited ownership was in compliance with the 1980 Constitution. In addition, according to the Civil Code, the enterprise is permitted to leave for inheritance its capital and asset. In the meantime, the Government ensures the enterprise's rights and legal benefits, respects its long existence and development and recognize the private firm's equality before law with other forms of business and its legal profitability.

As such, the former law did not open the door wider to the ownership of various kinds of the firm's assets, but defined the ownership of capital equipment. It did



not specify the range of these assets. The former Ministerial Council's (now called the Government) decree guiding the implementation of the Private Enterprise Law set the prescribed capital for each industry and occupation from VND20 million to VND250 million at most, that is, the small- and medium-sized enterprises were entitled to be established in the market economy. The legislation also made favorable conditions for the enterprise to expand its activities with a view to developing the economy.

## II. SCOPE OF ACTIVITIES OF PRIVATE FIRMS

The 1991 Private Enterprise Law allowed the owners to take the initiative in doing business in compliance with law. Meanwhile the private sector was banned from some occupations. To engage in these occupations, they had to be approved by the Prime Minister. These occupations include manufacturing and trading in harmful chemicals and explosives; exploiting precious minerals; producing and supplying electricity and water in large scale; means of wave transmission; telecommunications services; radio and television broadcasting; publishing; international shipping; air transport; import and export; and international tourism. These industries and occupations belonged to the state-owned enterprises' monopoly due to their leading role in the economy. In the meantime, the Ministerial Council issued Decree 221-HDBT on July 23, 1991 encouraging private enterprises in such occupations as producing goods for export, manufacture and consumption; import substitutes (including equipment, machinery, raw materials; spare parts); textiles, garments, footwear, handicrafts; processing agro-forest-marine products for export; manufacturing chemical fertilizer and basic chemicals; afforesting and covering bare hills and waste land; building and repairing means of transport and infrastructures across the country or in cities. The Government also offered some incentives as tax exemption and reduction; preferences of land granting for business establishment or expansion; making favorable conditions for import and export, especially exporting the enterprise's products. Moreover, if approved to operate in some occupations, the enterprise had to observe the conditions regulated by ministries and provincial people's

committee as follows: some areas in the mining industry; energy; manufacturing and assembling electronic appliances, plastics; rubber, producing chemical fertilizers, insecticide.

Although the legislation on ownership was restricted, the size and scope of activities were not large, but the private sector has recorded some achievements in creating jobs, and contributing to the economic growth (see Table 1) and the State

expand the ownership and operation of the private sector.

## III. OWNERSHIP AND OPERATION OF PRIVATE ENTERPRISES IN THE NEW LAW

1. Ownership: In Vietnam, there are many laws concerning the enterprises' ownership and operation such as the Civil Code, Commerce Law, Labor Code, Domestic Investment Promotion Law, Import and Export Law. The ownership in the

Table 1: Private Sector's Contribution

	1990	1991	1992	1993	1994	1995
1. Workers (%)	100	100	100	100	100	100
- in the public sector	11.28	10.12	9.36	9.05	8.70	8.66
- in the private sector	88.72	89.88	90.64	90.95	91.30	91.34
2. Contribution in GDP (%)						
- the public sector	32.50	33.30	36.20	39.20	40.20	42.20
- the private sector	67.50	66.70	63.80	60.80	59.80	57.80

Source: The General Department of Statistics

Table 2: Structure of State Budget Revenues

	1991	1992	1993	1994	1995
Percentage of tax and fee collection in the total State budget (%)	95.08	88.07	90.79	89.90	94.67
- From the public sector	38.80	31.70	29.90	30.70	29.80
- From the foreign-invested sector	19.70	21.20	19.60	17.30	16.40
- From the non-state sector	9.60	9.90	10.70	10.60	11.30
- From the non-state farming	7.20	7.00	4.70	3.10	2.40

Source: Ministry of Finance

budget revenues (see Table 2)

As a result, the 1991 Private Enterprise Legislation has produced good effects and initial framework for an economic sector which is able to attract many workers and idle money; and make positive contributions to the economic growth and State budget revenues. Private enterprises are both preconditions in terms of theoretical and practical management efficiency, creating healthy competition in the market economy. But the former legislation is not suitable to the reality when entering the new millennium and does not meet urgent requirements of the national industrialization and modernization. It reveals many obstacles to the businesses' best use of their internal sources for expansion and success in fierce competition.

To realize these pressing requirements, the National Assembly has adopted the new Enterprise Law, effective from early 2000 to

new law is higher, the enterprise has rights to possess, use and dispose its property (Article 7, Point 1). The right to possess is the right of an owner to keep and manage property under his ownership. For example, he may reside at the factory to manage and keep the asset. But he may authorize another person to manage his property (Article 190, Point 2, the Civil Code). The person transferred the right to possess must obtain a civil transaction contract in line with the owner's will and this person must execute his obligations as authorized in accordance with transaction contents and targets. Regarding the right to possess, the Civil Code has 9 articles including the possession without legal basis but in good faith (Article 195); continuous possession (Article 196) and open possession (Article 197).

The right to use is the right of the owner to exploit the functions, enjoy fruits and revenues from his



property. A person who is not the owner of a property also has the right to use that property in case the owner of the property transfer the right to use that property via a contract or in cases provided for by law. This person must use the property in line with its function and method. A non-owner may have the rights of continuous, open possession or in good faith and even right to use a property in the long period but this person is not the actual owner because he is authorized only.

The right of disposition is the right of the owner to transfer the ownership of his property to another person, or to waive that ownership.

The owner has the right himself to sell, exchange, gift, lend, leave for inheritance, give up the property, or exercise other forms of disposition of his property. The owner may authorize another person to dispose of his property. The right of disposition shall be restricted in cases where the property is sealed up, pledged, or mortgaged, and in other cases as provided for by law. This is basic regulations on civil transactions which the enterprise must comply with so as to avoid criminal indictment when it sells at will the mortgaged or pledged property.

2. In business activities, the owner has rights to take the initiative in selecting occupations, investment location and form including entering joint venture with another business, and expanding the size and occupation. The 1992 Constitution also affirms that individuals have the right to choose the form of production and business, establish enterprises regardless of size of activities in industries and occupations beneficial to the economy. The family economy is encouraged to develop. (Article 21, the Constitution).

3. In business transaction, the enterprise has the right to find markets, clients and sign contracts. At present, most of enterprises have the right to sign economic, trade, export-import contracts and 13 common civil contracts such as contracts of property sale, services, processing, insurance and mandate.

4. The enterprise has the right to opt for forms and methods of mobilizing capital (Article 7, Point 4, the Enterprise Law). Regarding stock issuance, the legislation allows only joint stock companies to issue stocks to the public in compliance with the regulations on securities (Article 51, Point 2).

5. The enterprise has the right to do import-export business, and employ workers. The Labor Code also permits all kinds of enterprises to recruit workers and sign employment contracts. However, some foreign firms and organizations still face restrictions on procedures to hire workers. The government's regulations on import-export activities are increasingly widened to all economic entities, reducing limits and monopoly in export and import.

6. The enterprise has the right of autonomy in doing business, applying modern technologies to improve its performance and competitiveness. In the process of joining AFTA and implementing CEFT agreement in 2003, the modernization of technologies, and promotion of product quality is a must with a view to competing with goods from ASEAN countries as well as entering the European and American markets.

7. As ruled by current law, the enterprise has the right to reject and accuse any agency, individual or organization of their requests for supplying illegal resources, except for voluntary contributions for charity and public utility. Currently, the legislation on complaint and denunciation gives to all citizens the right to denounce illegal deed of any agency, organization or individual that damages or threatens to damage benefits of the Government, citizens and organizations. The funds which the enterprise contributes for charity and public utility cannot be deducted as reasonable costs in the calculation of corporate income tax. The funds that the enterprise granted to the national football team, poor students as scholarship, orphanage are not reasonable costs as stipulated in the Law on Corporate Income except for the case where they do it through a contract of advertisement (Article 9, the Law on Corporate Income).

8. The private firm's owner himself declares his total investment capital in Vietnamese *đồng*, foreign currency, gold and other assets. The capital calculated by machinery, fixed assets must include its quality and remaining value. The total capital, and assets including loan capital, leased assets used for the enterprise's business must be put in its accounting books and financial statements. In its operation, it has the right to increase or reduce its investment capital but it shall note

changes fully in the books. The enterprise's owner has full autonomy in business activities, use profits after paying tax and implementing other financial obligations. The owner may hire another person to manage the business for him; when hiring the director, the owner shall inform the business registration agency and still assume all responsibilities for his business. The owner is the enterprise's representative, plaintiff, defendant or the person having relevant rights, obligations and benefits before the court or the arbitration board in disputes concerning the enterprise. The owner may rent total his firm through a notarized civil contract but shall keep the agencies of business registration, and of taxation informed. In the period of renting his enterprise, the owner still assume responsibility before law as the enterprise's owner. He may sell his enterprise to another person after fulfilling his administrative obligations, debts and other liabilities. The purchaser shall make business registration, and comply with regulations, especially on labor. The owner has the right to halt business activities temporarily, and notify the registration and taxation agency in writing of the term of halting business, not exceeding 15 days before the firm halts its business. In the period of closing, the owner and shall pay completely the tax arrears, take charge before lenders and of the contracts signed with clients and workers except for the case where they reach another agreement.

These above-mentioned facts mainly focus on the private firm's ownership and operation. They indicate that the legal frame has been wider and more liberal on the way to the new millennium for all enterprises. They are also green lights for the economy in future and commercial activities in the process of integration. In the international trade relations, the private enterprise is a key condition for admission to the World Trade Organization (WTO), a popular economic entity in late 20<sup>th</sup> century and early 21<sup>st</sup> century in terms of labor productivity and efficiency; helps generate full employment in the economy; and is a criterion to isolate public from private finance. It also increases tax revenues for the State budget when the private enterprise makes profit and workers' income rises■