

many regulations that were unsuited to, and even became obstacles to, the reality of the banking business. The following are some examples:

- The ordinances didn't affirm the relative independence of the State Bank in the government machinery, and duties and rights of the State Bank in making and controlling the monetary policy.

This problem was under public discussion in early 1970s and has been materialized in laws on the central bank of different nations (the U.S., Japan, European countries, etc.)

- The ordinances didn't make clear the basic difference between a normal government body and the central bank which played a definite role in the monetary policy and at the same time, made some profits. This is the feature of the banking system, not only in Vietnam but the world also. This problem is causing a lot of controversy among scientists and experts, because it related to the financial regime of the State Bank and the banking system as a whole.

- The ordinances didn't cover all kinds of credit organizations affected by laws. This led to the fact that many organizations having no function to do banking business could carelessly supply credits or receive deposits... without the control of the State Bank and make it difficult for the State Bank to control inflation and stabilize the monetary system.

- Many articles provided for in the ordinances (about reserve requirement, settlement, protection of deposits loans, issuing and buying shares, pooling, procedures for forming joint stock commercial banks or credit unions, sanctions against violations, etc.) are vague and irrational, while these are of great importance to the safe operation of the banking system in transition to the market mechanism. This situation forced the Government to make too many adjustments to regulations relating to the banking operation, and therefore, the legal infrastructure became unstable.

In such conditions, the effectiveness of the monetary policy, of banking inspection and supervision is not high; the money market develops slowly and doesn't meet requirements posed by the economy; there is no keen competition between credit organiza-

tions, the banking business still involves a high degree of risk... But frankly speaking, the ordinances came into being at a time when the legal infrastructure was poor and lacked many laws needed for an economy in a transitional stage. This situation made the realization of the ordinances more difficult and their effect more limited although they contained many basic principles of the banking operation in the market mechanism and many progressive factors suited to the international practices.

Moreover, the renovation of the economy and the banking system has made better progress than what was predicted. The legal infrastructure has been reformed considerably since the promulgation of the ordinances (many laws have been made and come into force). Some regulations set forth by the ordinances have become vague and unsuited to the banking operation at present and in future as well.

In order to remove inconsistency between the ordinances and related laws (example: procedures for establishing or dissolving a credit organization are related to the Company Law; procedures for opening rep offices or branches of foreign banks or foreign trust funds are related to the Foreign Investment Law; supplying loans to the public treasury and the dedicated revolutionaries is related to the Finance Act, etc.), the State Bank has to wait for directives from the National Council and the Government, and then, has to consult related governmental bodies before issuing instructions to carry out the ordinances. To some extent, this practice could meet actual requirements but it also leads to the bureaucracy and obstacles to the implementation of the ordinances.

The estimate of the realization of two ordinances on banking in the past five years isn't an easy task. However, we can say that we have got main and principal achievements. Some defects we have are of less importance and difficult to avoid them in present conditions. Therefore we should estimate carefully each ordinance in order to make out its active effects and find out measures to enhance its effects on adjustment of the banking business and innovation of the banking system. ■

(to be continued)

GIVING RAFFLE TICKETS TO MARKET SHARES

RIGHT OR WRONG ?

by TRẦN TÔ TỬ

In the end of 1995, an HCMC-based commercial bank made a public issue, that is, offered its shares to the public. This was an interesting event but it went unnoticed by authorized bodies.

1. Signs of a stock exchange...

Last year, regulated by the State Bank, many joint stock commercial banks of small-scale (with small registered capital) should increase their registered capital to at least VNĐ50 billion. This became a challenge to commercial banks, because they were facing a lot of difficulties: business environment involved a high decree of risk, there was a surplus of fixed deposits and a shortage of borrowers. If they issue new shares, where can they invest new capital in to pay dividends?

In such a situation, making a public issue isn't easy. Some joint stock commercial banks attract more capital from existing shareholders and their relatives, the rest of them tried to increase their capital with difficulty. Therefore, some of them had to make a public issue. This could be considered as a sign of an unofficial stock exchange which was coming into being while we were waiting for the birth of an official one.

Public issues could be considered as the starting point for the birth of public limited companies, a class of company which can give birth to the stock exchange. This class of companies can offer its shares to the public, unlike private limited companies which mustn't invite the public to subscribe for their shares. Members of public companies can transfer their shares to other persons, thereby creating a secondary market.

This fact shows that although the stock exchange and secondary market aren't officially formed, but the Company Law can give birth to private companies. These companies, because of the need for more capital, will change into public companies and lead to the formation of stock exchange. That is how an unofficial stock exchange comes into being.

2... And they are worrying

The history of stock exchanges in foreign countries shows that the unready formation of stock exchanges would produce bad effects on the economy and a nation should pay a heavy price in return for a healthy stock exchange today. Therefore, the fact that a joint stock commercial bank made a public issue, in the light of laws on stock exchange of foreign countries, caused us to worry. How have these shares been offered to the public?

Through advertisements in the newspapers, the said joint stock commercial bank has marketed its shares to the public by using a classical marketing technique: giving raffle tickets. The share, especial commodity, has been marketed as other normal consumer goods.

This way of doing business will be banned in developed countries. Although there is no law on issuing shares, but we can easily see that this deed has violated the item 4, article 35 of the Company Law: "A joint stock company, in issuing new share, must have clear plan and program to invite the public to subscribe for its shares. This plan and program must help the public understand, correctly and

clearly its business performance, financial situation and prospect in order to provide a basis for them to decide on buying shares".

Instead of observing this rule, the said commercial bank has promised that a portion of profit earned in the two-year period (1996-1997) would be changed into prizes given to ticket holders selected by 8 successive draws. Its advertisements said that: "... in any draws, you can have a chance of being selected".

Nobody knows in the said period whether the commercial bank will make a profit or not. The answer remains a mystery. But at present, its advertisement has invited the public to buy shares as lottery tickets. The public know nothing about risk when they invest money in the said bank. In the present condition in Vietnam particularly, how can the public learn about financial difficulties of a commercial bank? Who will protect buyers of this special commodity?

3. Waiting for law or enforcing law?

Foreign experience shows that it's not easy for any joint stock company to attract and employ money of the public. Laws on stock exchange of foreign countries always force companies which make public issues to publicize information about them.

According to these laws, before the issue day, the companies must publish its prospectus which was audited and certified by government bodies authorized to grant licence to issue shares. If the number of shares issued is small, the company can publish an abridged prospectus or an offering circular. Besides these documents, the company isn't allowed to use any other ways of advertising which can cause misunderstanding over the shares offered.

In the prospectus, there are three documents of utmost importance: the company's by-law, the balance sheet, and the profit and loss statements for the last three years. All these documents should be certified by an independent auditing company. In the prospectus, there is also a sentence reminding the public that the certification made by authorized bodies doesn't mean that the value of shares issued by the company is assured. The function of authorized bodies is to inspect the company for dishonest acts. Buyers of new-issued shares must estimate the value of shares by themselves.

At present, in Vietnam, there is no law forcing companies to publicize in-

formation about their financial situation before issuing shares, but the Ordinance on Commercial Bank has ruled that all joint stock commercial banks should do a similar thing: "Within 60 days as from the end of the financial year, all credit organizations must publish the balance sheet, the profit and loss statement and the newest list of members of the Board of Directors and of executive officers. All financial statements must be certified by auditor" (Articles 40-42)

But in fact, up to now most commercial banks haven't observed this rule yet and the State Bank hasn't applied any sanction against this violation. Thus, if there is no change, and if commercial banks keep on making public issues, will a financial crisis, the same as the collapse of credit unions in 1991, become a possibility? And then, what is the price the public treasury must pay to save the situation?

Besides foreign experience in building the stock exchange, the Vietnam's collapse of credit unions in 1991 always reminds us that the shortage of the legal infrastructure will pose difficult problems for the government when the financial market develops fast and uncontrollably. The fact that there is law but no law enforcement will lead to the same disaster as what the shortage of law did.

"Prevention is better than cure" as the saying goes, we think that the Government had better take measures to make the Company Law and the Ordinance on Commercial Bank more effective. Moreover, decrees or regulations on issuing and trading shares must be promulgated as soon as possible, instead of waiting for the birth of a stock exchange in Vietnam. ■

