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## STATE CONTROL Providing an Open Environment or Establishing Barriers

by DIỆP VĂN SƠN

**I**f the market can be compared with water, companies are fish. The role of government when controlling the market economy is to keep the water clean and free from pollutants in order to help fish grow and multiply. Relationship between government and companies varies over time and it is affected by different theories and trends of different periods. In reality, this relationship changes reamarkably when concept and form of ownership change.

### 1. Problems with the state control over companies

#### *a. Control over non-public companies:*

Generally, non-public companies are typical entities in the market economy. The inter-

vention and control of the state over them are limited but autonomy for these companies is somehow regulated by rules and laws.

The government uses laws to control operation of companies and ensure interests for all parties involved in economic activities; and employs its bodies and agencies to ensure law obedience and struggle against violations of laws.

The government also orients non-public companies towards its macroeconomic strategies. In countries with planned economy, the government points out development targets, works out measures to regulate the structure of industry, suggests medium- and long-term development plans, and

predicts development trends, thereby affecting operations in non-public sectors. Although its plans are considered as guidelines, not compulsory requirements, they can affect greatly the non-public sectors because they associate with tax and various financial policies. In countries where the government regulates the economy at macro level, laws; annual economic reports and other surveyed are used for establishing diections and targets for the sociaoeconomic development; and financial instruments are used for orienting investments and other operations of companies.

The government also offer some support to the non-public sectors by supplying soft loans, carrying out protectionist



measures, placing orders, building the infrastructure, providing various services, and even giving preferential treatment to, or financing, some companies.

In competing against one another, many disagreements and disputes may take place between companies. Related governmental bodies and agencies can help solve them and introduce necessary rules and regulations to ensure fair competition and equal opportunity for all.

The government supplies many useful services to the non-public sector (statistical researches, predictions, etc.) Mechanisms for collecting feedback from the public, holding meeting with consumers, and offering business information and suggestions to companies are established in many countries. Many governments invest in infrastructure projects that are beyond reach of private companies; scientific researches and training; and create favorable conditions for development of private companies.

#### ***b. Control over the public sector:***

The relationship between the state and the public sector is closer in comparison with the one with the non-public sectors. The government introduces detailed rules and regulations about all activities in this sector. Officials can carry out regular inspections and supervision of state-run companies but this doesn't mean that governmental bodies can intervene at will in daily business of state-owned companies. Besides some requirements and instructions, the government refrains from violating the business autonomy of companies in organizing their production and distribution, entering business contracts, recruiting and firing

employees, training and promoting their personnel, and so on.

State-owned companies, however, have to observe targets and policies decided by the central authorities; some of them even enjoy monopoly to a certain extent, which make them less proactive and competitive. And as a result, many of them have poor performance, suffer losses and become heavy burdens to the government. To deal with this situation, many western governments have reform the state management of the public sector in which the government reduces its interventions, gives more autonomy to state-owned companies and ensures equal treatment for both public and non-public sectors. In Vietnam, the government has started to equitize, or privatize, state-owned companies, that is, to sell the whole or part of these companies to the public. This means that the government stops intervening in financial matters or directly controlling these companies. However, many monopolies that are essential to the economic growth and political stability are still under the state ownership. What should be reformed in the relationship between the government and state-owned companies is the mechanism for running these companies and regulating their operation and development. The right approach is to separate governmental and corporate functions, ensure the business autonomy for companies and control state-owned companies in the same way applied to non-public companies. This approach will lead to a healthier and productive relationship between the government and state-owned companies.

#### ***c. Changes in the state***

#### ***control over companies***

The new relationship means changing functions of the government according to principles of the socialist market economy. Feasible measures to achieve this aim are as follows:

- Specialized agencies needed for the centrally-planned economy could be dissolved, thereby freeing companies from their governing ministries and allowing them to operate as permitted by laws. This means that the role of the government is limited to the task of working out medium- and long-term socioeconomic development strategies instead of intervening too much in regular business of the companies. Thus, the government should concentrate on the following four duties: controlling the representatives for the state capital in companies, beefing up supervision and law making process, making economic policies, and developing social insurance.

- Classifying degrees of government intervention in companies: State-owned companies could be divided into two classes: (1) monopolistic companies and competitive companies. The State could have total control or hold the better part of the equity capital of monopolistic companies; appoint directors and decide on the use of profit (or decide to cover losses if they come from the fact that the companies have to implement policies). As for competitive companies, they could be allowed to operate as joint stock companies in other sectors; and the government limits itself to such tasks as enforcing rules and regulations, introducing policies and selecting its representatives in the companies.

- Administrative ranking in companies must be removed



because it easily leads to a bureaucracy in business management. Chairman of the board of directors, directors-general and the staff are not high-ranking officials. Ministers and NA members are not allowed to be present in the board of directors. Officials who are assigned to the board of directors should resign from their positions in governmental bodies.

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## 2. Barriers to remove

### *a. Additional permits:*

There are no numeral data about how many additional and extra permits are valid. Results of the examination of 300 kinds of additional permits carried out by the task force on implementation of Companies and Investment Laws in recent years show that the task of removing these permits faces with great difficulties.

Identifying and removing additional permits was carried out from 1998 to 2000 after the Companies Law came into effect in 1999. The fact that 145 permits were removed was a remarkable

result. Regrettably, from then on, such permits keep on increasing causing a lot of troubles for companies. One additional permit comes into being every week on average, according to a rough estimate. It's worth noting that most of these permits have no legal basis and necessary purposes. For example, Article 12 of the Decree 19/2005 – NĐ-CP about estab-

lishing employment agencies requires that the agency must have: specific head office that is large enough for its operations; rooms for advisory service and presentation; rooms for information services with computers, phones, fax machine, other documents

relating to labor market and other necessary facilities; five employees who graduate from universities specializing in economics, law, foreign languages, and have good work ethics, clear background and CV, and no record of conviction.

We can see that this degree has intervened too much in organization of the companies (requirements about rooms, area, head office, etc.). It's unreasonable to demand employees to have certificates from district or commune authorities about their "good work ethics, clear background and CV with no record of conviction"

because this means that the employees have to prove their innocence; and persons with previous convictions are denied the right to do business. Moreover, there are no principles that allow local authorities to provide such certificates. It's easy to find similar examples, and such paper work only cause waste of time and money for companies who want to do their business in honest manners.

These additional permits originate from obsolete way of thinking. Many officials and civil servants always have suspicion that all companies and businesspersons are trying to evade taxes, commit commercial frauds, or produce fake goods. These permits could be also considered as a sign of the failure of authorities to supervise economic activities and a way to milk something from companies.

Removing all additional permits seems impossible because there is no court to decide whether these permits are legal or not. If a permit is proved wrong, the issuer needs only revoke it without being punished or disciplined. Apparently, this effort requires strong sanctions and radical changes in the way of thinking.

### *b. Discrimination against private companies:*

The Companies Law came into effect in 2000 and helped liberate all possible resources and ensure the freedom of business for all private persons. The private sector, however, still faces a lot of challenges.

It is not easy to persuade civil servants and high-ranking officials to accept new concepts of the role and importance of the private sector because this effort goes against the traditional thinking that still affects the way of designing and shaping devel-



opment tendencies.

Private businesspersons know that their operations are considered as necessary and useful and worth supporting as long as they cause no harm to the "leading role" of the public sector. That is why they never feel sure about their businesses. In the past 10 years, subsidies to state-owned companies haven't been cut. Before 1990 the subsidy is usually in kind when the national budget income was limited, but in the past 10 years, the financial subsidies have become increasingly generous.

Until recently, bold policies have been adopted to remove subsidies to state-owned companies, including one to erase discrimination against non-public sectors with a view to integrating fully into the WTO. And as a result, the system of economic and business laws is applied equally to all sectors and companies. This effort is meeting with great difficulties: the reorganization of the public sector by forcing state-owned companies to operate according to the Companies Law seems impossible if the ownership and organization of these companies experience no changes. This is the main cause of the impasse in this effort when ministries and governmental bodies have to act as investors and take responsibility for too many state-owned companies and investment projects. Measures taken to free ministries and other bodies from this burden could do nothing but transfer it from one shoulder to another instead of making it less heavy. In addition, what makes the equitization, or privatization, increasingly time-consuming because of reluctance to reform the organizational structure of the company.

#### *c. Tax, a long story:*

Many foreign investors believe that the tax policies in Vietnam are not clear enough and personal income tax is still high in comparison with regional countries. Not only businesspersons who lack full knowledge of tax meet with troubles, quite a few law-abiding companies are embarrassed by tax officials. These officials may lack a full knowledge of tax laws but they may do so intentionally to extort something from businesspersons. A foreigner working in Vietnam, when declaring his personal income tax, may be required to produce his tax declaration in his home country while law only requires him to declare incomes that generates in Vietnam and take responsibility for his declaration without getting his declaration certified by any authority. To pay tax, businesspersons are not required to produce the contract to lease their office if they don't want to include the rental in their business cost, but many tax officials still insist on examining this contract. Many businesspersons think tax officials are kings who can do anything at will. To fulfil their tax obligations, businesspersons are ready to follow instructions given by tax agencies but these instructions vary over officials with the result that their documents never get handled. Many companies have to assign all tax matters to tax officials and pay for this service and consider it as the cheapest solution.

#### *d. Inconstant and complicated rules and regulations:*

There are numerous examples of this situation. The most common is the situation in which one rule allows something while another bans it. A Vietnamese expatriate works as a member of the board of

directors of a private company and current rules exempts him from getting labor contract after he got residence permit. When he wants to receive goods from foreign suppliers at customs warehouse, he is required to produce his labor contract because Decree 154 demands that foreigners have to produce such document if they want to have their imports exempted from duties.

#### *e. Troubles with investment certificates:*

Procedures for granting the investment certificate and business license include many complicated matters, especially when foreign investors buy shares or acquire local companies. In this case, the transfer of shares or the whole company is only the transfer of ownership without any change in contents of the business license. This means that new owners need not manage to get new business license. Ways of handling this case, however, differ over provinces. One province requires new business licenses based on the Companies Law; most provinces wait for guidelines from related ministries and force businesspersons to wait with them; while the ministries are very slow to issue such guidelines.

Thus, there is no clear definition of two ownership rights: the investor's ownership of the company and the company's ownership of assets contributed by investors.

These complicated matters have long become loopholes that lead to corruption and extortion. The economy could be compared with a boat in which the government undertakes the task of steering the boat while companies and the public in general row it. It's unreasonable for the former to cause troubles for the latter ■