

### 1. Shortcomings of the legal infrastructure for the stock market

To Vietnam, the stock market is very new. Both the government and the public have almost no experience and knowledge of this business, and as a result, the legal infrastructure for the stock market isn't perfect and consistent. This situation, therefore, becomes an urgent problem when Vietnam is trying its best to integrate into the world market and attract foreign investors.

Up to now, the bulk of subordinate legislation regulating securities and the stock market includes several dozen documents issued by different authorities (ordinances, decrees, decisions, circulars, etc.). The most important and of the highest level is the Decree 48/CP issued by the Government on July 11, 1998.

mation disclosure, etc.). The Civil Code, Commercial Code and Bank Law also have regulations relating to the stock market. Until recently, the Government also issued documents regulating operations of the stock market, such as Decree 01/2000/NĐ-CP on Jan. 13, 2000 on the issue of government bonds, Decision 39/2000/QĐ-TTg on March 27, 2000 by the PM on provisional tax incentives offered to the trade in securities, etc.

In spite of many efforts to develop and perfect the legal infrastructure for the stock market, this infrastructure still reveal many shortcomings. The following are some of the most remarkable:

(1) The stock market involves high degrees of risk and therefore requires strict regulations and laws, but law documents relating to the

securities (such as regulations about accounting, auditing, financial disclosure, rating services, etc.) with the result that the stock market involves higher degrees of risk.

The following are some examples:

a. Bonds: At present, government bonds have been issued according to Decree 72/CP dated July 26, 1994 but there are many difficulties in trading these bonds on the stock market:

- Transfer of government bonds: Article 11 of Decree 72/CP states that government bonds (as registered bonds) aren't listed for trading on the stock market. This regulation made the transfer of these bonds limited.

- Custody of government bonds: Article 12 of the said Decree states that government bonds could be left in the custody of branches of State Treasury and doesn't mention the

## MORE PERFECT LEGAL INFRASTRUCTURE FOR SECURITIES AND STOCK MARKET IN VIETNAM

Besides this decree, there is the Decision 139/1999/QĐ-TTg made by the PM on June 10, 1999 on participation of foreign parties in the Vietnamese stock market. The Government also issued the Decree 22/2000/NĐ-CP on July 10, 2000 introducing fines for malpractice in the securities markets and Decree 17/2000/NĐ-CP on May 26, 2000 defining the state supervision and control of the stock market. In addition, the State Securities Commission also issued many documents directing the implementation of the said decrees and decisions, such as: Decision 04/1998/QĐ-UBCK dated Oct. 13, 1998 on operation and organization of brokerage firms; Circular 01/1998/TT-UBCK dated Oct. 13, 1998 on issue of bonds and shares; Decision 04/1999/QĐ-UBCK dated March 27, 1999 on status of members of the stock market, listing, information disclosure and trade in securities.

The Companies Law passed by the National Assembly on June 12, 1999 includes many regulations on the stock market (issue of shares, share pricing, share transfer, acquisition and merger of companies, changes in forms of company, infor-

stock market in Vietnam of the highest authorities are decrees issued by the executive branch.

(2) Up to now, all law documents relating to the stock market have limited themselves to regulations on securities listed in the organized stock market and failed to deal with over-the-counter securities. The bulk of law documents also fails to regulate the operation of the Association of Securities Dealers and the settlement of disputes over securities trading.

(3) There are disagreements between law documents regulating the stock market because many of them were promulgated before the stock market came into being. If regulations introduced by these documents are implemented, the stock market will meet with difficulties in developing its operation and face with many risks. Some documents issued after the stock market was formed also include regulations that aren't consistent with other documents. This situation makes it difficult for the Securities Commission to fulfil its functions.

(4) Law documents fail to provide detailed regulations on the trade in

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custody of brokerage firms. This means that owners will meet difficulties in trading these bonds on the stock market.

- Potential buyers of government bonds: The said Decree states that government bonds aren't sold to foreign visitors, foreign organizations and foreign-invested companies operating in Vietnam without permission from the Ministry of Finance.

- Term of government bonds: All government bonds have a short term and they are hardly traded on the stock market.

- Issue of government bonds: Article 7 of the said Decree allows commercial banks, finance companies and insurance companies to act as issue brokers. This regulation limits operations of brokerage firms, and therefore the issue and distribution of securities of a state company is also limited.

The issue of bonds by state companies and state commercial banks are usually prolonged with the result that these bonds don't have the same term and interest rate, and they are hardly listed and traded on the stock market.



Article 20 of the Provisional Statute of the issue of bonds by state companies (included in Decree 120/CP dated Sep. 17, 1994) states: "The transfer of state company bonds (registered ones) should be done at the office of the issuing state company." This regulation makes the listing and trading of these bonds on the stock market difficult.

The above-mentioned Decree 120/CP and Circular 91-TC/KBNN issued by the Ministry of Finance on Nov. 5, 1994 decided that bond owners who want to get prepayment for their bonds are denied the interest. This means that bond owners can't transfer their bonds before the repayment date. This regulation discourages potential investors from buying bonds of state companies.

b. Shares: Commercial banks can issue shares according to the State Banking Law, companies issue shares according to the Companies Law and state-owned companies after privatization could issue share according to Decree 44/1998/NĐ-CP promulgated by the PM on June 29, 1998. Thus, these shares have differences in conditions for the issue, issuing and transferring ways, face value, etc. To list these shares for trading on the stock market, issuers should meet listing requirements stipulated by Decree 48/1998/NĐ-CP dated July 11, 1998 and other guidelines by the State Securities Commission. In fact, there are difficulties in listing and trading these shares.

- Face value: Shares to be listed for trading on the stock market should have the same value (VND10,000 each as stipulated by Decree 48/1998/NĐ-CP dated July 11, 1998), but shares issued according to Decree 44/1998/NĐ-CP didn't have the same value. The Companies Law didn't set the required face value of shares and thus, shares issued by companies differ widely from one another. As a result, their face values need to be converted into standard value set by Decree 48/1998/NĐ-CP when listing on the stock market.

- Forms of shares: Shares issued by companies usually take form of certificates and their forms aren't the same. This is also a difficulty for dealers because regulations require shares traded on the stock market should have the same form.

Generally, two documents regulating the issue of shares by companies have certain differences that cause troubles for companies and potential investors, either foreign or local ones. In summary, problems with the legal infrastructure for the stock market are as follows:

- The stock market needs a law, instead of the bulk of subordinate legislation of today.

- Law documents relating to the stock market are inconsistent and contain many contradictions.

- Many operations in the stock market aren't regulated by laws.

- Most of current regulations are based on foreign experience and haven't been justified by realities of Vietnamese stock market.

## **2. Measures to beef up the infrastructure for the stock market**

From the above analyses we can work out measures to deal with the shortcomings.

a. Regulations on the over-the-counter market: At present, the law system doesn't provide for the existence and operation of this market but this is a source of commodities for the organized stock market. The State Securities Commission had better petition the Government to recognize and make regulations on this market.

b. Regulations about membership of the stock market: The membership of the stock market could include:

- Organizers and supervisors: State Securities Commission, Ministry of Finance, State Bank of Vietnam, Ministry of Justice, Stock Exchange Boards, associations of securities dealers, etc.

- Issuers: Many organizations could act as issuers according to current regulations. They are central and local governments, state companies, joint stock companies, mutual funds, commercial banks and other banking institutions. At present, local government, mutual funds, joint stock companies and banking institutions can hardly issue any shares or bonds. Regulations about their membership, however, are still needed because these regulations can help them get accustomed to the stock market.

- Investors: All organizations and individuals are potential investors and the law should protect their legitimate interests with a view to encouraging them to make financial investments.

- Brokerage firms: Adjustments should be made to current regulations in order to create favorable conditions for their business and encourage them to supply more services to dealers and investors.

- Financial intermediaries: Laws dealing with banking institutions, insurance companies and trade in securities should be perfected in order

to encourage these intermediaries to engage in the stock market as issuers, dealers and investors.

The Foreign Investment Law could be amended with a view to allowing foreign-invested companies operating in Vietnam (foreign-owned companies or joint ventures with local partners) to go public, thereby taking part in the Vietnamese stock market.

c. A Securities Law for the present period: To help the stock market operate effectively and protect interests of investor community, the National Assembly should make a Securities Law because:

- A Securities Law will provide a stable legal infrastructure for the stock market.

- A Securities Law can regulate the trade on both organized and OTC markets.

- d. Amendments to current law documents: Many articles of the following laws need amendments:

- Companies Law of 1999: articles about the issue of shares and information disclosure by companies.

- Civil Code of 1995: articles about the definition of property and safekeeping contracts.

- State Companies Law of 1995: articles about changes in ownership of state companies after issuing their shares.

- Banking Institutions Law of 1997: articles about the issue and transfer of shares by banking institutions.

- Amended Foreign Investment Law of 2000: articles about foreign indirect investment (financial investment) and the issue of bonds and shares by foreign-invested companies.

- Criminal Code: articles about such crimes as insider trading, illegal issue of shares to the public, etc.

e. Other new laws: The stock market also needs other laws to ensure its sound operation. They are Laws on accounting, auditing, exchange control, economic contracts and civil procedures.

The stock market is an effective instrument for mobilizing and distributing sources of finance reasonably. In the past months, operations of the Vietnamese stock market revealed many shortcomings, especially legal loopholes that could lead to crimes in the future. To perfect the legal infrastructure for the stock market is the best way to help it operate well, mobilize more and more capital from home and abroad and integrate into the regional stock market. ■