Loyola of Los Angeles International and Comparative Law Review

Volume 21 | Number 4 | Article 3

8-1-1999

The Vietnamese Stock Market: Viability in Southeast Asia and Appeal around the World

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COMMENTS

THE VIETNAMESE STOCK MARKET: VIABILITY IN SOUTHEAST ASIA AND APPEAL AROUND THE WORLD

INTRODUCTION

The opening of a Vietnamese stock exchange has been frequently discussed among Vietnamese government officials for many years. They set 1998 as the operational target date, but the end of 1999 is now a more realistic target.[1] Foreign bankers and consultants do not see a viable stock market until the year 2000 at the earliest. The Vietnamese also acknowledge that many key areas must be addressed before establishing a stock market.[2] For example, there is a need for a stable legal environment, for market institutions and rules, and for a favorable macro-economic environment to enable the creation of saving sources and stock distribution entities.

This Comment examines the laws and regulations drafted by the Vietnamese Government that will provide the framework and regulatory regime for the Vietnamese securities industry. To

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1. In October, 1998, the Chairman of the State Securities Commission, Le Van Chau, announced "that the launch would be delayed until next year because of uncertainties stemming from regional economic problems." *Exchange Delayed*, VIETNAM ECON. TIMES, Nov. 1998, at 6. As of January 1999, the legal regulations for a securities market are in final draft form and need approval from the Vietnamese National Assembly. *See id.*

2. On the similarities between the stock markets in Thailand and Indonesia and the stock market in Vietnam, Chairman Chau stated, "[i]n drafting the Ordinance on Stocks and the Stock Market, we have studied many similar legal documents of countries in North America, Western Europe, Asia, and Australia . . . . We will develop a model (of the stock market) appropriate with the Vietnamese economy instead of a stereotyped model of such-and-such a country." Thai Thanh, *Stock Market Will and Must Come Up*, SAIGON TIMES DAILY, Aug. 27, 1997, at 1.

evaluate the structure's effectiveness, this Comment compares it to Singapore's stock market, the most advanced stock exchange in Southeast Asia. Part I provides the economic background on, and information about, both stock markets. Part II sets forth the contemporary challenges facing both countries' stock exchanges and discusses their respective positions in the world economy.

Part III evaluates the impact of the Asian economic crisis[3] on a globalizing market environment of domestic political systems that depend on traditional, personalized control of elite groups rather than on strong, independent institutions and legal systems. Foreigners imagine a contemporary stock market for Vietnam where shares are traded freely. The Vietnamese Government, on the other hand, envisions shares in the equitised[4] companies held by workers, management, and government. Thus, it is clear that obstacles in the Vietnamese economy and government bureaucracy hinder the establishment of a functional stock market. The viability of Vietnam's stock exchange depends on the lessons learned from the crisis.

Part IV concludes by explaining that a successful and viable stock exchange requires per capita income that is high enough to allow asset shifts between savings and stock investments, which is not possible without obtaining capital from foreign investors. Foreign participation in the stock market will be limited and must necessarily involve joint ventures with Vietnamese counterparts. Success requires a comprehensive and transparent legal structure that promotes a viable stock market, not only within the country, but outside its borders as well.

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3. For a discussion of the Asian economic crisis, see *infra* Part III.A.

4. *See Blue Flag: Vietnam Glossary Module* (visited Oct. 10, 1998) <http://www.blueflag.com/vn/glossary/equit.htm> [hereinafter *Glossary*]. "Equitisation" is defined as the process of selling shares in state-owned enterprises. Twenty to thirty percent of the shares are usually sold to the public, thirty to fifty percent of the shares are sold or given to the managers and employees of the enterprise, and the state retains the remaining twenty to thirty percent. Officials prefer to use equitisation instead of privatization to emphasize that the State still maintains a significant shareholding in the newly equitised companies. For further explanation of "equitisation," see Thoai Linh, *Stock Market - When and How?*, VIETNAM NEWS, Apr. 15, 1998, at 15.

I. BACKGROUND

A. Vietnam's Proposal: Ordinance on Securities

Hoping to be a key player in Southeast Asia, Vietnam, the "paper tiger,"[5] initiated the *doi moi* (renovation) program.[6] One of the key goals of this program was to encourage foreign investment.[7] When the United States lifted its trade embargo against Vietnam in 1994, it opened the floodgates for loan programs from the World Bank and other multilateral lenders.[8] These loan programs were designed to help Vietnam regain its economic footing in Southeast Asia.[9]

The Vietnamese Government wants to continue to raise capital domestically by opening its own stock market.[10] The government has three main goals in opening the new securities market: (1) supporting the equitisation of state firms; (2) acting as a vehicle for improved mobilization of "hoarded"[11] domestic

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5. Pacific Rim countries such as China, Thailand, Malaysia, Singapore, and Indonesia are referred to as the industrial "tigers" because of their largely export-driven economies. *See* James Taylor, Jr., *Vietnam: The Current Legal Environment for U.S. Investors*, 25 LAW & POL'Y INT'L BUS. 469, 470 (1994).

6. *Doi moi* is an ambitious program of economic reform initiated in 1986. *See* Luke Aloysius Mcgrath, Note, *Vietnam's Struggle to Balance Sovereignty, Centralization, and Foreign Investment Under Doi Moi*, 18 FORDHAM INT'L L.J. 2095, 2096 (1995). As the author explains, the Vietnamese Government initiated this program of economic, political, and social renewal *doi moi* in an effort to transform Vietnam from a centralized economy into a market economy. *See id.*

7. *See* Taylor, *supra* note 5, at 469.

8. *See IFC Official Affirms Assistance to Vietnam's Development*, ASIA PULSE, Sept. 24, 1997, at 19 (The International Finance Corporation (IFC), a finance institution of high prestige and an affiliate of the World Bank, "mobilized foreign investors and bankers to provide long and medium-term credits to Vietnamese businesses, and consultancy services to government agencies in building legal frameworks that relate to foreign investment in Vietnam." The IFC approved programs and projects with a combined capital of "nearly $1.33 billion U.S. dollars.").

9. *See* Taylor, *supra* note 5, at 470.

10. Many see establishing Vietnam's first stock market as a crucial step in the country's economic development, and it has been the main topic of conversation among policy makers, experts, and economists in recent years. *See* Nguyen Duc Hoan, *Bourse Makes Big Topic for Conversation*, VIETNAM INVESTMENT REV., Aug. 25–31, 1997, at 23.

11. The Vietnamese Government hopes that a stock market will encourage the Vietnamese people to invest because recent economic growth has allowed them to save. *See* Fuminori Murata, *Little Stock in Exchange in Vietnam: Observers Doubt Market Will Open Before End of Century*, THE NIKKEI WKLY. (New York) Feb. 10, 1997, at 17. The Vietnamese people, however, generally distrust banks. *See id.* Consequently, in the past

capital; and (3) providing a means by which local firms can raise long-term funding.[12]

Following a decade of economic renovation, Vietnam progressed from the old, Soviet-style system[13] and struggled to establish a stable economic and legal environment.[14] Laws and decrees flow out of Hanoi but their national acceptance and common interpretation are in question. Vietnam lags behind in reforms, and remains noncompetitive in material potential, technology, and business management.[15] Yet these three areas are crucial to economic stability. Deputy Premier, Phan Van Khai, emphasized that a sound economy in Vietnam is "the most important guarantee for socialist orientation."[16]

While the Vietnamese Government has planned to open a securities market since 1991, the government only recently made significant moves towards the creation of such a market.[17] Decree Number 75-CP, signed by Prime Minister, Vo Van Kiet on November 28, 1996, established a commission as part of the government's plan to accelerate the establishment of an orderly and efficient securities market.[18] This commission became the State Securities Commission (SSC) in 1996.[19] This government body is responsible for the creation and operation of a securities market in Vietnam.[20] The SSC is composed of fourteen members,

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few years, the Vietnamese population has stashed away an estimated ten billion or more dollars in gold and foreign currency. *See id.*

12. *See* Nick J. Freeman, *On Course for a Bourse*, BUS. TIMES (Sing.), Aug. 29, 1998, at 13.

13. *See VN is "Underbanked?,"* BUS. VIETNAM, Sept. 1996, at 37.

14. *See Stock Market Struggles to Take Off*, BUS. VIETNAM, Sept. 1996, at 12 (trying to move from the state sector approach to one that promotes the private sector).

15. *See "Catch-up" is Hanoi's Theme*, BUS. VIETNAM, May 1995, at 24.

16. *Id.*

17. In June 1995, Prime Minister, Vo Van Kiet, created the Commission on the Preparation of the Stock Market. *See* Decision No. 361-TTg of June 20, 1995 of the Prime Minister to Establish the Commission on Preparation for the Organization of the Stock Market in Vietnam, OFFICIAL GAZETTE No. 17, at 30 (15-9-1995) (Vietnam) (deciding to assist the government in conducting the preparation of necessary conditions for organizing of the stock market in Vietnam).

18. *See* Decree No. 75-CP of November 28, 1996 of the Government on Establishing the State Stock Committee, OFFICIAL GAZETTE No. 2 (31-1-1997) (Vietnam) [hereinafter Decree No. 75-CP].

19. *See id.*

20. Article 2(1) of the Decree Establishing the State Stock Committee states: "The State Stock Committee has the following main tasks and powers: [t]o compile legal

including the Deputy Governor of the State Bank and Deputy Ministers of Finance, Justice and Planning, and Investment.[21] A chairman and vice-chairman preside over the Office of the SSC and the securities developmental departments. The Commission will be responsible for the management and regulation of Vietnam's stock market once it is operational.[22] In the past, the SSC's most important task was to draft the Ordinance on Securities[23] for submission to the National Assembly, but this is no longer clear given the enactment of Decree Number 48-CP, which already sets out many of the rules for the operation of the stock market.[24] The planned sites for the "trading centers"[25] are Ho Chi Minh City and Hanoi. The centers will trade bonds and shares, both directly in over-the-counter trades, and indirectly through approved securities companies.[26] According to U.S. officials in Hanoi, the draft document includes the following minimum

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documents on stocks and the stock market and submit them to the competent level for consideration and decision, and to organize and guide the implementation of those documents." *Id.*

21. *See Glossary, supra* note 4 (defining "state securities commission").

22. Article 1 of the Decree Establishing the State Stock Committee establishes "the State Stock Committee as an agency attached to the Government performing the function of State organization and management over stocks and the stock market." Decree No. 75-CP.

23. The draft legislation would regulate the securities business in Vietnam; as a prerequisite to the opening of a formal securities market. *See Securities Commission Appointed,* VIETNAM NEWS, Aug. 26, 1997, at 1.

24. *See Governmental Decree on Stocks and the Stock Market,* VIETNAM ECON. NEWS, No. 32, 1998, at 38–42 (containing a translated copy of Decree No. 48/1998/ND-CP). *See also Security Blanket,* VIETNAM ECON. TIMES, Sept. 1998, at 20–21. This law was issued on July 11, 1998, and became effective fifteen days later. Not all of the issues concerning a stock market are addressed in Decree No. 48, which, by and large, provides only a very general framework for securities trading and investment in Vietnam. *See id.*

25. Transactions will be conducted during fixed hours, two or three days a week. Buyers and sellers will take their orders directly to the exchange. Because these restrictions set Vietnam's proposed stock exchange apart from ordinary exchanges, the local news media refers to it as a "trading center." *See* Ryuichi Ushiyama, *Vietnam Closer to Having a Stock Market: Government Hopes Bourse Will Generate Funds Needed to Carry Out Reforms,* THE NIKKEI WKLY. (New York), Jun. 1, 1998, at 19. *See also* Thuc Doan, *VN's Bourse Will Proceed as Scheduled,* SAIGON TIMES, Oct. 29, 1998, at 4.

26. Under the proposed draft for a stock exchange, article 1.29 defines "[a] securities company [a]s a juridical person who is granted license by State Securities Commission to do business in securities." ORDINANCE ON SECURITIES AND STOCK EXCHANGE (Proposed Draft 1998), art. 1.29 (Infotra trans. (Hanoi)) (Vietnam) [hereinafter DRAFT ORDINANCE].

capital[27] requirements for the establishment of stock companies: almost one million Vietnamese dong for brokerage firms; three million Vietnamese dong for firms dealing with stocks; and approximately one million Vietnamese dong for asset management and securities custody firms.[28] Additionally, the stock companies have to trade at a profit for at least two years. The minimum capital for a stock guarantee enterprise is nearly twenty-two million dong.[29]

The equity shares to be traded will come from state-owned enterprises[30] (SOEs) that have been equitised.[31] The Vietnamese Government plans to increase equitisation[32] of SOEs by fifty percent[33] and adopt new policies to allow large state businesses, as well as small and medium-size SOEs, to be equitised.[34] "The SSC has proposed that the government equitise profit-making SOEs, including lucrative ventures in aviation, oil and gas, telecommunications, power supply, and steel and cement."[35] Thus, the high-quality shares generated would give a strong boost to the operations of a new stock transaction center.[36]

A foreign securities company that wants to participate in the stock market must form a joint venture with a Vietnamese counterpart.[37] The company must obtain a license from the SSC

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27. As of August 1, 1999, one U.S. dollar equaled $13,872.00 Vietnamese dong (VND), the standard unit of currency in the Socialist Republic of Vietnam. *See The Universal Currency Converter* (visited Aug. 1, 1999) <http://www.xe.net/currency/full>.

28. *See Stock Exchange Proposed for Ho Chi Minh City*, E. ASIAN EXECUTIVE REP., Jan. 15, 1998, at 6.

29. *See id.*

30. *See generally Investors Purchasing Only Company Shares*, VIETNAM NEWS, July 23, 1997, at 11 (SOEs are owned and controlled by the Vietnamese Government. They are legal entities with limited liability).

31. The exchange will open with between five and fifteen listed companies drawn from among the twenty-one SOEs that are authorized to equitise. *See Trial Bourse on Track for End of 1998*, VIETNAM INVESTMENT REV., Feb. 16–22, 1998, at 25.

32. While the Vietnamese Government started the equitisation process in 1991, and generally encourages enterprises to equitise, only about twenty such entities have completed the process with another 150 registered companies for equitisation. *See Glossary, supra* note 4. *See also* Thanh Nien, *On-Going Equitisation*, VIETNAM ECON. NEWS, No. 40, 1998, at 16 (discussing that a total of thirty-eight SOEs have so far completed equitisation from 1996 to October 1998).

33. *See Stock Exchange Proposed for Ho Chi Minh City, supra* note 28, at 6.

34. *See id.*

35. *Id.*

36. *See id.*

37. *See Stock Exchange Center Likely in September*, SAIGON TIMES WKLY., Feb. 21,

and obtain approval from the Prime Minister regarding capital contributions. These participants may act in one or more functions, such as brokering, trading, investment managing, underwriting, or consulting for investments in stocks.[38] To attract foreign investors; foreigners and Vietnamese people living abroad are now allowed to join domestic enterprises as shareholders or business partners, but their total stake is restricted to thirty percent of the prescribed capital of an enterprise.[39] To attract foreign investors, Savimex, a state trading and import-export company, has been authorized to sell equities to foreign buyers.[40] There is no law governing the listing of Vietnamese securities outside of Vietnam. The Vietnamese Government, however, is eager for foreign entities to invest in Vietnam and hopes to expand Vietnam's access to international capital markets.[41] Investment in Vietnamese stocks is yet another way for foreign entities to invest, supplementing the foreign direct investments. Domestically, the state corporations plan to issue stocks to increase their working capital and enhance their competitiveness.[42]

The first securities to be traded when the securities trading center opens will be stocks and bonds issued by equitised SOEs and commercial banks.[43] Several types of bills will be traded. These types include bills that mature in one year or more; fixed-maturity bills or debt certificates from SOEs (corporate bills) and commercial banks (credit or bank notes); treasury bills issued by the Ministry of Finance that mature in over two years; and

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1998, at 10 (explaining that the Vietnamese partner must account for over 75% of the total capital of the partnership).

38. The foreign company must be a creditable and well known company that has a representative office in Vietnam. The company assists Vietnam in training personnel and other issues related to the stock market. *See id* at 11.

39. The National Assembly passed the amendment on May 7, 1998 to clarify that the State will not nationalize or expropriate legal property and capital of investors by means of administrative measures, and will safeguard their legitimate interests in the country. *See* Cao Cuong, *Foreigners Permitted to Hold Thirty Percent of Local Firms*, SAIGON TIMES, May 11, 1998, at 1.

40. *See Stock Exchange Center Likely in September, supra* note 37, at 10.

41. *See generally* Interview with Le Van Chau, Chairman of the State Securities Committee, in *Security First*, VIETNAM ECON. TIMES, March 1997, at 16.

42. *See* Nick Freeman, *Vietnam Unveils Its Securities Decree*, ING BARINGS (Indochina Research: Global and Emerging Markets Research, Bangkok, Thail.), July 30, 1998, at 2.

43. *See VN's Securities Trading Centre to Open in HCM City*, VIETNAM NEWS, April 2, 1998, at 1.

medium and long-term bills issued by the State for development of major public works.[44]

To ensure efficient operation of the securities exchange, the SSC focuses on staff training in brokering, consulting and transacting deals.[45] The SSC has submitted a draft proposal to the government. The proposal authorizes five to fifteen securities trading companies with capital investments ranging from one billion to more than twenty-two billion Vietnamese dong.[46]

B. Stock Exchange of Singapore

Singapore, one of the Southeast Asian "tigers," is a success story. Singapore has grown from an underdeveloped trading port to one of the world's most developed economies.[47] Singapore's government is the dominant player in the country's economic success.[48] The government maintains the primary role in economic policy-making and, for the most part, has not incorporated the private sector into the process.[49]

The Singapore economy thrives on its appeal to international investors.[50] The initial attraction to Singapore is the country's willingness to offer tax benefits and a low-wage work force.[51] Singapore's rapid economic development stems from the large number of multinational corporations that have established manufacturing facilities and regional headquarters on the island.[52] "[T]he direct influence of foreign interests on the economic policy process, however, is very limited."[53]

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44. *See id.*
45. *See id.*
46. *See id.*
47. *See Singapore and the Problems of Success*, ECONOMIST, Aug. 22, 1992, at 25 (explaining that for the past two decades, Singapore's annual growth rate has averaged eight percent).
48. *See* Michael S. Bennett, *Securities Regulation in Singapore: The City-State as an International Financial Center,* 12 UCLA PAC. BASIN L.J. 1, 2 (1993). Some commentators consider Singapore's economy to be the most heavily state-planned economy outside the Communist world. *See id.*
49. *See id.*
50. *See id.*
51. *See id.*
52. *See* David Sanger, *In Singapore, A Search for a Second Act,* N.Y. TIMES, Oct. 13, 1991, § 3, at 1. More than 3,000 foreign companies have operations in Singapore. *See* Kieran Cooke, *Victim of Its Own Success,* FIN. TIMES (London), June 1, 1992, § 4, at 1.
53. Bennett, *supra* note 48, at 1.

The Stock Exchange of Singapore (SES) opened in May 1973.[54] Before the enactment of the Securities Industry Act (SIA) in 1986, the SES was basically self-regulated.[55] The SIA was a response to the stock market crash that followed the collapse of the Pan-Electric group.[56] The SIA regulates all aspects of the securities industry such as the issuance and public offering of securities. This includes the disclosure requirements of public companies and licensing and supervision of securities brokers, dealers, and advisors.[57] The SIA is regulated through the Monetary Authority of Singapore (MAS), which is Singapore's *de facto* central bank and the highest tier of regulation.[58]

The SES is a public company[59] limited by shares incorporated under the Companies Act.[60] Control of the SES is vested in the Committee of the Stock Exchange (CSE), which supervises the activities of listed companies by listing requirements and establishing a corporate disclosure policy.[61] The general listing rules for companies are not statutory in nature. Under SIA section 20, the SES may request that the courts enforce the rules.[62]

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54. *See* Neill T. MacPherson, *ASEAN Stock Exchanges: A Brief Overview*, E. ASIAN EXECUTIVE REP., Feb. 15, 1988, at 10.

55. *See* Walter Woon, *Regulation of the Securities Industry in Singapore*, 4 PAC. RIM L. & POL'Y J. 731, 732, 733 (1995).

56. Pan-Electric Industries Limited was a marine salvage, hotel, and property company. The company was a popular investment on the SES until a group of people began using its funds to manipulate the market through forward contracts in shares. The collapse of Pan-Electric prompted an unprecedented closure of the stock markets in Singapore and Kuala Lumpur. *See id.* at 733. *See also Singapore to Regulate Stock Market*, E. ASIAN EXECUTIVE REP., Jan. 15, 1986, at 24–25.

57. *See* Bennett, *supra* note 48, at 11.

58. "Specifically, MAS has powers of intervention and inspection to ensure that the market is well-run. It has the power to require production of books and information from the SES, a dealer, an investment adviser, and any person who is or has been a party to any securities dealing." Woon, *supra* note 55, at 733.

59. The SES is not a governmental agency and is licensed to run a securities exchange under the SIA. It is a public company whose members are the stock brokerage firms. *See id.* at 735.

60. *See* Companies Act (Cap. 50, 1990 Ed.) (Sing.). This is administered by the Ministry of Finance through the Registrar of Companies and Businesses. The Ministry of Finance also governs certain aspects of the securities industry such as prospectus requirements and other provisions governing the timing and method of public settings. *See* Bennett, *supra* note 48, at 11.

61. *See* Woon, *supra* note 55, at 735.

62. *See* Securities Industries Act, Republic of Singapore § 20 (1985) (Sing.) [hereinafter SIA]. These rules are made by the SES itself and are subject to the approval of the MAS, as required by the SIA. *See id.*

Securities trading in Singapore takes place on the Main Board of the SES. The Main Board is a two-tiered market, consisting of a primary and secondary listing.[63] Admission to both markets is determined by quantitative and qualitative[64] requirements such as capitalization, number of shareholders, and turnover ratios and dividends.[65] When a company issues securities to the public, it must issue a prospectus.[66] A company need not issue a prospectus if the company's securities are not issued to the public.[67]

Once a company is listed, it is subject to the jurisdiction of the SES.[68] The cornerstone of the SES's regulatory policy is the timely disclosure of price-sensitive information;[69] "[t]o ensure that such information is released to the market, listed companies have to comply with the SES's Corporate Disclosure Policy . . . ."[70]

In 1987, a second board, the Stock Exchange of Singapore Dealing and Automated Quotation (SESDAQ), was established.[71] This board enabled smaller domestic companies with good growth prospects, but without long track records, to qualify for Main Board listing.[72] The listing requirements include local incorporation and operation for at least three years. In addition, an original issuing of at least 500,000 shares or fifteen percent of issued and paid-up capital, whichever is greater,[73] is required.

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63. *See* MacPherson, *supra* note 54, at 14.

64. The qualitative requirements for primary listing include: companies must have been operating for at least five years and twenty-five percent of the issued and paid-up capital should be held by the shareholders. *See* Ashish Lall & Ming-Hua Liu, *Liberalization of Financial and Capital Markets-Singapore is Almost There!*, 28 L. & POL'Y INT'L BUS. 619, 631 (1997). The requirements for secondary listings are: market capitalization of at least fifty million Singapore dollars, cumulative pre-tax profits of at least fifteen million Singapore dollars for the previous three years, current listing or plans for concurrent listing on another stock exchange, and at least 2,000 shareholders worldwide. *See id.*

65. *See* MacPherson, *supra* note 54, at 14.

66. "A prospectus is a document designed to inform the investing public of the business, assets, and nature of the company, in order to enable . . ." the investor to decide to buy shares or not. Woon, *supra* note 55, at 735–6.

67. *See id.*

68. *See id.* at 738.

69. *See id.*

70. *Id.* (referring to the SES Corporate Disclosure Policy, as listed in chapter 12 of the SES Listing Manual).

71. *See* Lall & Liu, *supra* note 64, at 631.

72. *See id.*

73. *See id.*

Two years following the inception of the SESDAQ, the SES became one of the first major stock exchanges to have a floorless and fully computerized order-matching system, the Central Limit Order Book (CLOB), for brokers and dealers.[74] The CLOB system matches sell and buy orders automatically through a continuous-call trading system.[75] This increased trading efficiency on the Main Board. By August 1997, "the Main Board of the SES listed 289 ordinary stocks and 15 preference stocks with a total capitalization of $347 billion [Singapore dollars]."[76]

To ensure its status as an international financial center, Singapore formed the Singapore International Money Exchange (SIMEX) in December 1983. SIMEX provides a market for investors to hedge against interest rate and foreign exchange risk.[77] Modeled after the Chicago Mercantile Exchange, Singapore's trading in futures markets began in 1984.[78] "To help this new market grow, the Singapore Government granted SIMEX and its members a ten-year tax exemption from [sic] March 1984, for income derived from financial futures activities."[79]

II. PROBLEMS WITH BOTH STOCK MARKETS

A. *Governmental Regulation*

The problems facing both the Vietnamese and the Singapore markets are traceable to the political structures of these countries.[80] The extreme cautiousness of Singapore's regulators is illustrated by their restrictive approach toward permitting new

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74. *See id.* at 632.
75. *See id.*
76. *Id.*
77. *See id.* at 633.
78. *See id.*
79. *Id.* at 634.
80. "In theory, Singapore maintains a parliamentary form of democratic government. In fact, though, the People's Action Party - the most powerful political party in Singapore controls who is elected to Parliament." David J. Thorpe, Comment, *Some Practical Points About Starting a Business in Singapore "Give Me Liberty or Give Me Wealth,"* 27 CREIGHTON L. REV. 1039, 1042 (1994). In comparison, "the [Vietnamese] [G]overnment first announced its intention to set up a stock market more than five years ago. But the slow progress of state-enterprise reform, and the Communist Government's distrust of the private sector, have led to growing doubts about its commitment." Jonathan Birchall, *Hanoi Decree on Exchange,* FIN. TIMES (London), July 15, 1998, at 3.

financial products to be traded on the SES.[81] Vietnam is not as established as Singapore, and is reluctant to give total control to foreign investors.[82] Both countries know that their legitimacy and strength is derived from the state sector and thus understand the need to maintain economic control.[83] Additionally, both countries have slow privatization programs.[84] For Singapore, "[t]he primary goal of the privatization would be to add much-needed breadth and depth to ... [its] ... equity markets."[85] While for Vietnam, equitisation of SOEs is the foundation for trading in the stock market.[86]

Both countries have similar levels of government regulation at different points in their economic development. The strictness of Singapore's regulatory regime may limit the country's opportunity to become a truly world-class financial center.[87] Critics maintain that Singapore's securities regulation is significantly more restrictive than that of any other Asian securities market.[88] They further criticize Singapore authorities for being overly cautious and hampering the free flow of financial

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81. *See* Bennett, *supra* note 48, at 15.

82. There was a proposal to the SSC that the stock market be limited to only joint stock companies and SOEs and completely closed off to one hundred-percent foreign-invested companies. *See* Ha Thang, *Proposal Puts Stock Market Off Limits to Private Companies*, VIETNAM INVESTMENT REV., Aug. 25–31, 1997, at 12.

83. "While the 8th Congress [National Assembly] is unlikely to return [Vietnam] to a command economy, it will reassert the importance of the state sector . . . ." *Hanoi Refuses to Let Go,* BUS. VIETNAM, June 1996, at 42. Likewise, Singapore's tight governmental control over all aspects of the economy is often cited as one of the primary reasons for the city-state's remarkable economic development. *See* Bennett, *supra* note 48, at 26.

84. *See* Bennett, *supra* note 48, at 17 (discussing that the slow pace of Singapore's privatization program is due to extreme cautiousness). *See also Progress of Implementation of Equitisation is Still Slow*, SAIGON LIBERATION, Aug. 25, 1997, at 4 (attributing the slow progress of Vietnam's equitisation program to three factors: 1) late implementation of Decree No. 28/CP; 2) disarray of certain enterprises' infrastructure; and 3) lack of sufficient legal title documents concerning the fixed assets of some SOEs, which effect the determination of the value of the enterprise).

85. Bennett, *supra* note 48, at 17.

86. "The point of having a stock market is to facilitate equitisation, so the focus will be on [SOEs] selling their shares," said Dominic Scriven, Managing Director of Dragon Capital (which manages an overseas direct investment fund in Ho Chi Minh City). *Trial Bourse on Track for End of 1998, supra* note 31, at 25.

87. *See* Bennett, *supra* note 48, at 15.

88. *See id.*

information.[89] The Vietnamese Government also sees its role as one of helping to form the securities market in an orderly manner and ensuring its sound and efficient operation.[90] This strict scrutiny has hindered the development of Vietnam's securities exchange since 1991. The main issue for both countries is the hindrance of growth due to government regulation.[91]

Clearly, the restrictive government regulation is evident in both countries. Since the mid-1980s, Singapore's government has discussed the possibility of privatizing some of the republic's largest state-owned enterprises.[92] This deliberate slow pace did not accelerate until the exchange lost most of its previous market capitalization at the end of 1989.[93] The pace of privatization rose after the Malaysian Government announced it wanted all stocks of Malaysian companies delisted from the SES, which accounted for thirty-seven percent of Singapore's market capitalization.[94] In response, Singapore's government was optimistic that privatization would add substance to the depleted stock market.[95]

In Vietnam, when the Communist Party's powerful central committee first aimed to establish the securities exchange, it ruled out the privatization of SOEs.[96] Instead, the Party wanted to increase the economic output contributions of co-operative and state sectors from forty-five percent to sixty percent.[97] The state sector's dominance over private enterprises and foreign joint ventures worried many prospective shareholders. In addition, these companies were not involved in the industries that foreign

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89. *See id.*

90. At the SSC's opening ceremony, Deputy Prime Minister, Phan Van Khieu, affirmed that "the Government will back the SSC to take shape in a well-organized way and guarantee healthy, safe and efficient operations of the stock market." *Establish Stock Market to Boost All Sectors: Khai*, SAIGON TIMES DAILY, Aug. 26, 1997, at 1.

91. *See* Tran Cao Nguyen, *Thai Lessons*, VIETNAM ECON. TIMES, Sept. 1997, at 41. The financial crisis in Thailand has shown that for long-term economic growth to continue, what should be left to market forces and what should be controlled by the government should be thoroughly researched. *Cf.* Bennett, *supra* note 48, at 14 (discussing the limiting economic effects of Singapore's regulatory regime).

92. For a discussion of Singapore's privatization plans, see generally G. Pierre Goad, *After Careful Study, Singapore Appears Ready to Restart Privatization Program*, ASIAN WALL ST. J. WKLY, Dec. 7, 1992, at 24.

93. *See* Bennett, *supra* note 48, at 18.

94. *See id.*

95. *See id.*

96. *See Stock Market Struggles to Take Off*, *supra* note 14, at 12.

97. *See id.*

investors find most attractive, such as the posts or aviation.[98]

The Vietnamese Government, however, is not the only reason for the delays in equitisation. The SOE members, themselves, contribute to the problem as well.[99] These individuals view equitisation as a risk, rather than a stepping stone in improving the economy. "Neither executives nor workers are enthusiastic about having their companies incorporate. Top managers are afraid of losing their positions and related earnings while workers are concerned with losing their jobs."[100]

Unlike Singapore, whose stock market is established and is the most advanced in the region, Vietnam lacks proper financial market laws and is deficient in accounting methods.[101] These factors are crucial in developing a stock market.[102] For example, to lure foreign investments, it is necessary to establish support for and confidence in an exchange that is based on international practices.[103] One of those practices is the adaptation of international accounting standards for companies that want to list on Vietnam's stock exchange.[104] In general, foreigners are familiar with the international accounting standards; adoption of Vietnamese standards would be tedious. Additionally, joint ventures would have to adopt local rules and maintain two sets of

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98. *See* Nguyen Minh Duc, *"Goods" for the Securities Market*, VIETNAM ECON. NEWS, May 1998, at 20.

99. The directors of the SOEs worry that without the state acting as an umbrella, they will be held accountable to the shareholders' whims. Employees, on the other hand, worry that they will not do as well as shareholders. *See* Jonathan Birchall, *Making Haste Slowly*, VIETNAM ECON. TIMES, Aug. 1997, at 14–15.

100. Murata, *supra* note 11, at 19.

101. *See Vietnam Shoots Itself in the Foot: Left and Right*, BUS. VIETNAM, Apr. 1997, at 17.

102. The SSC Chairman, Le Van Chau, stated that "[t]he opening up of an economy, a financial and banking system, and increasing foreign investment, are all material conditions for a securities market." *Commission Faces Race Against Economic Clock*, VIETNAM NEWS, Sept. 16, 1997, at 5.

103. The absence of a clearly agreeable legal framework for currency swaps in Vietnam is a major obstacle. This is due to the fact that Vietnam is a relatively new marketplace. *See* Mark Brady, *Learning Curve: Vietnamese Swaps*, DERIVATIVES WK., Nov. 24, 1997, at 8.

104. The Vietnamese Government proclaims that all joint ventures must use local accounting standards. *See Vietnam Shoots Itself in the Foot: Left and Right*, *supra* note 101, at 17. In the draft of the Ordinance on Securities, Article 80 specifies that "[a]ll activities in foreign currency must comply with provisions stated in charter on foreign currency management and laws on foreign currency of the Socialist Republic of Vietnam." DRAFT ORDINANCE, art. 80.

books, one to report to Vietnamese authorities under local standards, and another to report to their parent companies under the international standards.[105] The legal dilemma is that foreigners do not understand, and are not trained in, Socialist accounting, and thus do not know what it does and does not permit.[106] Vietnamese business practices do not address many accounting issues discussed under the international standard.[107] Therefore, it makes it difficult for joint ventures to transform themselves into shareholding companies, since no one is able to evaluate the financial soundness of a company under Socialist accounting rules. In addition, for foreign investors to buy local shares, international auditing firms should be invited to audit equitised enterprises before their shares are sold.[108]

B. Vietnamese Legal Framework Missing

In comparison to Singapore's Security Stock Exchange, the absence of a comprehensive and clear legal system is another factor that jeopardizes the future of a stock market for Vietnam. "While Vietnam has introduced some regulations in recent years to encourage a more open legal system, most experts still believe that contradictions between the existing laws and the stock market regulations are unavoidable."[109]

After ten years of pursuing an open-door policy, Vietnam's economy is now at a crossroads.[110] As a result, there is a surplus of local commodities without a market competing with foreign goods. The stock market may provide a resolution; according to Deputy Prime Minister, Phan Van Khai, "[i]t is an objective need for forming the stock market because [the stock market] will mark a significant advance in developing the country's multi-sector commodity economy under market rules and State regulations."[111]

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105. *See Vietnam Shoots Itself in the Foot: Left and Right*, *supra* note 101, at 17.

106. *See id.*

107. Foreigners are familiar with generally accepted accounting standards, but not Vietnamese accounting standards. *See id.*

108. *See* Hai Ly, *Foreigners to Have Access to Local Shares*, SAIGON TIMES DAILY, Mar. 11, 1998, at 4.

109. *Vietnam's Wall Street Shuffle*, VIETNAM INVESTMENT REV., Sept. 1-7, 1997, at 11.

110. *See* Nguyen, *supra* note 91, at 41 (discussing the fundamental question as to what should be left to market forces and what should be controlled by the government).

111. *Establish Stock Market to Boost All Sectors: Khai*, *supra* note 90, at 1.

To do this, the SSC needs to supply investors with adequate information and guidelines. Like Singapore's listing requirements, Vietnamese enterprises participating in the stock market must be publicized and trustworthy.[112]

C. Steps to Remedy the Problems

The importance of privatization for Singapore and Vietnam is apparent in both countries. Unlike Vietnam, Singapore's need to privatize is not urgent. In contrast to most countries that have launched mass privatization efforts, Singapore does not need to raise funds to balance its budget.[113] Furthermore, Singapore's government-owned companies are generally well managed and profitable[114] and the delay in the privatization program does not appear to be indefinite.[115]

An advantage Singapore has over its regional rivals is the existence of its two specialized financial markets, a foreign exchange market and a financial and energy futures market;[116] the maturity of Singapore's financial markets and legal system allow it to maintain this advantage.[117] These well developed specialized financial markets add considerably to the depth of Singapore's appeal to the international financial market.[118]

To increase its credibility on the international market, the Vietnamese Government is optimistic that its stock market will attract long-term capital investment for its commerce, particularly for enterprises in important economic sectors,[119] which have development potential. In July 1998, Deputy Prime Minister, Phan Van Khai, passed a revised equitisation decree,[120] which is supposed to accelerate the slow pace of privatization of SOEs.[121]

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112. *See id.*
113. *See The Singapore Strategy*, BUS. TIMES (Sing.), Feb. 16, 1993, at 27.
114. *See id.*
115. *See* Bennett, *supra* note 48, at 20.
116. *See id.* at 29.
117. *See id.*
118. *See id.*
119. *See generally Prime Minister Orders Equitisation Shake-up*, VIETNAM NEWS, Aug. 23, 1997, at 1 (explaining the emphasis on the equitisation of SOEs under the umbrella of the Ministries of Communications, Transport, Industry, Agriculture, and Rural Development).
120. *See* Freeman, *supra* note 12, at 14.
121. *See id.*

Companies are "instructed" to equitise[122] and the Vietnamese Government establishes quotas for the relevant line ministries and provincial authorities to use in deciding how many SOEs under their remit to divest.[123]

In prior efforts to promote privatization, the Vietnamese Government offered low-interest loans to employees of state-run companies that employees could use to invest in those companies.[124] As of August 1998, only twenty-nine SOEs of 5,800 companies had been equitised.[125] Almost all the equitised enterprises are small-scale and do not play a major economic role in foreign markets.[126] The Vietnamese Government planned to equitise a total of 150 SOEs by the end of 1998[127] and create a breakthrough in equitisation as well as a basis for the rapid increase in trading of shares.[128]

In regards to the accounting standard for trading, foreign businesses may utilize either Vietnamese or international standards; nearly all choose the latter.[129] Conversely, Vietnamese businesses must comply with the Vietnamese standard. To avoid collapse of the stock markets, the SSC must further ensure that shareholders are provided with the international accounting standards.[130] Otherwise, the economy could be seriously damaged or controlled by foreign companies.[131]

Following the euphoria and high expectations that accompanied the opening of the Vietnamese economy in the late 1980s and early 1990s, investors were disappointed because their expectations remain unfulfilled.[132] Because of Vietnam's inability

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122. *See id.*

123. *See Phase-by-Phase Equitisation*, SAIGON TIMES WKLY., May 9, 1998, at 21.

124. *See* Birchall, *supra* note 99, at 15.

125. *See* Phan Ngoc, *Outstanding Issues of Equitization*, SAIGON TIMES WKLY., Aug. 8, 1998, at 24.

126. *See Vietnam Prepares to Develop Stock Market* (BBC broadcast, Feb. 18, 1998) *available in* BBC Summary of World Broadcasts, LEXIS, World Library, Bbcmir File.

127. *See Stock Exchange Center Set to Open in October*, SAIGON TIMES, May 4, 1998, at 2.

128. *See Vietnam Prepares to Develop Stock Market*, *supra* note 126.

129. *See Vietnam Shoots Itself in the Foot: Left and Right*, *supra* note 101, at 17.

130. *See Stock Markets Play a Crucial Role in the Economy*, VIETNAM NEWS, Sept. 14, 1997, at 15 (referring to international accounting standards as generally accepted guidelines for accounting).

131. *See id.*

132. *See* Freeman, *supra* note 12, at 14.

to enact legislation, investors viewed the Vietnamese Government's assurances as empty promises. Thus, because of the excessive hyperbole surrounding the initial period of foreign investment, the SSC now downplays recent developments in the securities market to prevent increased expectations.[133] Vietnam investors' initial disappointment is further exacerbated by the downturn in the economic fortune of Southeast Asia as a whole.[134]

III. ASIAN ECONOMIC CRISIS

A. Background

The economic crisis enveloping many Southeast Asian nations is traceable to the devaluation of the Thai baht in the summer of 1997.[135] Even the Singapore dollar was affected by the devaluation of the Thai currency, although considerably less than other currencies in the region.[136] The pressure on currency values spread to Northeast Asia; its effects culminated in South Korea in December 1997.[137] In addition, credit cut-offs by domestic banks (which were themselves in trouble), and declines in domestic consumption, affected Southeast Asian companies. These financial difficulties also created credit problems for foreign investors.[138]

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133. *See id.*

134. *See* Stephen Parker, *Out of the Ashes? Southeast Asia's Struggle Through Crisis,* 16 BROOKINGS REV. 10 (1998).

135. "On July 2 [1997] Thailand floated its baht after months of trying to defend it against market pressures. The baht sank immediately about a third, followed with surprising speed by similar devaluations by the Philippines, Malaysia, and Indonesia." *Id.*

136. Singapore's Senior Minister, Lee Kuan Yew, stated, " Singapore will recover with the least damage from the Asian economic crisis . . . ." Loi Hui Yin, *SM Against Government Action to Shore Up Singapore Dollar, Property, Stock Markets,* BUS. TIMES (Sing.), Sept. 15, 1998, at 2. *See also* Kwan Weng Kin, *Singapore Stands Out Amid Turmoil,* THE STRAITS TIMES (Sing.), Mar. 16, 1998, at 7 (commenting on the fact that Singapore's economic situation is different from its neighbors).

137. "Korea was in some ways the hardest hit of all . . . [t]he won fell in value seventy percent between mid-October and mid-December 1997, and Korea's stock market lost two-thirds of its value from August to December." John W. Head, *Lessons from the Asian Financial Crisis: The Role of the IMF and the United States,* 7 KAN. J.L. & PUB. POL'Y 70 (1998).

138. *See* Ronald J. Silverman & Timothy B. DeSieno, *The "Asian Contagion:"*

The steep depreciation of the baht naturally posed a threat to Thailand's trade competitors because the value of Thai exports decreased. This led to the decline of other Asian currencies, making it more expensive for borrowers in those countries to service their debts, many of which were short-term foreign currency debts.[139] Ultimately, this created waves of economic recession, unprecedented unemployment, surging inflation, and collapsing imports throughout Southeast Asia.[140] The problems in the Thai economy prompted foreign markets to scrutinize other Asian economies to determine if they, too, exhibited similar problems.[141]

An initial balance-of-payments problem generated into a full-scale economic, political, and social crisis for all of Asia. Thailand reacted by changing government leadership and rewriting its constitution to increase government accountability and transparency.[142] In June 1998, Indonesia faced both the resignation of President Suharto (after thirty-two years of leadership of the New Order Regime) and declines in trade output of twenty to thirty percent.[143] This crisis "made Vietnam less competitive than the other regional countries in both attracting foreign direct investment and winning markets for its exports."[144]

B. Lessons to Learn

In assessing the Asian economic crisis, it is evident that the region was fighting a tendency to "overheat" since 1993.[145] In the past, Southeast Asians and the international community trumpeted the region's strong economic fundamentals and stable

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Understanding Cultural and Legal Differences, 17 AM. BANKR. INST. J. 12 (1998) (foreign entities are lenders to, bondholders of, and suppliers of goods and services to, Southeast Asian companies).

139. *See* Head, *supra* note 137, at 72.

140. *See* Parker, *supra* note 134, at 10.

141. *See* Head, *supra* note 137, at 71–72.

142. *See* Parker, *supra* note 134, at 10.

143. *See id.*

144. *Germany, Korea Warn Vietnam Over Stalled Investment*, DEUTSCHE PRESSE-AGENTUR (Hamburg), Oct. 3, 1998, at 15.

145. *See* Parker, *supra* note 134, at 12 (explaining that bubble economies became increasingly apparent; prices on assets such as real estate and stock skyrocketed; imports grew rapidly and export growth lagged, all of which resulted in substantial current account deficits).

political systems, as the region's economies grew en masse, by close to eight percent, for decades.[146] This sense of security, however, did not last long, as reflected in the effects of the subsequent economic crisis. As a result, both strengths and weaknesses (economic and political), of the region are now subject to scrutiny. Each country is different from the others in many ways, but all face the challenge of adapting their distinct domestic political and economic systems to the homogenizing forces of globalization. The economic crisis demonstrated the inability of international and regional mechanisms to monitor and contain the effects of mistakes by both governments and the private sectors.

There are several lessons that can be drawn from the Asian economic crisis. Some of these lessons are that countries with developing economies must pay more attention to their economic policies, and establish strong financial systems and disciplined corporate governance, as well as require financial regulation, risk management, and greater regional surveillance.[147]

C. Effects on Vietnam

The Asian economic crisis made it difficult to raise foreign capital in Vietnam.[148] Commodities within the region became more competitive as each country tried to regain economic stability. Despite these conditions and as the region's financial crisis became evident, the Vietnamese Government was still optimistic. At the SSC's August 1997 opening, Deputy Prime Minister, Phan Van Khai said, "The stock market helps efficiently mobilize capital and prompts its flow to enterprises working for profits."[149] Yet, the slow development of the securities exchange received lukewarm response,[150] especially because the initial

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146. *See id.*

147. *See ADB: Crisis Caused by Inability to Manage Huge Capital Inflows*, E. ASIAN EXECUTIVE REP., Jan. 15, 1998, at 8.

148. *See* Tran Mang Hung, *Conditions Not Ripe for Bourse Debut*, VIETNAM INVESTMENT REV., Nov. 16–22, 1998, at 19.

149. *Vietnam Plans to Set Up Share Market Despite Crisis in Asia*, AAP Information Services, Feb. 13, 1998, at 11 *available in* LEXIS, Aust Library, Aapnew File.

150. *See* Freeman, *supra* note 12, at 14 (discussing investors' disappointment following the opening of Vietnam's economy in the late 1980s and early 1990s).

expectation that Vietnam would form a stock market in 1991 was not accomplished.[151]

The challenges facing Vietnam after the Asian economic crisis are the result of a combination of internal and external factors: maintaining recent growth rates in export earnings; limiting the current account deficit; bolstering foreign exchange reserves; ending the recent hiatus in foreign investment inflows; and managing the relative value of the non-convertible currency.[152] In response to these challenges, the Vietnamese leadership released numerous pro-business reform measures to mitigate the adverse consequences of the regional downturn.

IV. VIETNAM'S POTENTIAL FOR SUCCESS

A. Lessons from the Asian Economic Crisis

Vietnam's success depends on the lessons learned from the Asian economic crisis. An operational securities exchange will be the culmination of the Vietnamese Government's efforts to deflect the impact of the crisis. In order to deflect this impact, the Vietnamese Government liberalized its financial sector through its equitisation program, but it lacks adequate regulatory and supervisory systems to sustain economic growth. The framework for a viable market has been proposed. There is a need, however, for greater disclosure and transparency in order to reduce market overreaction and foster market discipline. This is the single most important factor for a developing economy, such as Vietnam's, if it is to have clear and enforceable securities laws.

B. Legal Transparency

The highest legislative body, the National Assembly, passes Vietnam's laws. The Vietnamese Government or a governmental body passes decrees and decisions to implement the laws and ordinances passed by the National Assembly. Decrees are often

151. *See id.*
152. *See id* at 15.

accompanied by more detailed "regulations."[153] Individual ministries issue circulars that provide guidance on how the particular ministries administer laws, ordinances, decrees or decisions. These guidelines do not have binding legal effect; they are policy outlines that the Prime Minister issues to establish governmental committees.[154]

Market discipline cannot operate effectively without legal transparency.[155] "Vietnam has now reached the point where the establishment of a stock market is viable, but still efforts need to be made to create a well regulated environment for the operation of stock markets."[156] This requires that the laws be precise enough and detailed enough to cover most situations dealing with securities. These laws must also be consistently enforced by the appropriate governmental agencies and the courts. Finally, the result should allow entities to determine beforehand, and with reasonable certainty, whether they may engage in particular activities without violating the laws.

The legal framework controlling the Vietnamese securities exchange is tailored for Vietnam's particular situation. The Draft of the Ordinance on Securities (Draft Ordinance)[157] contains fourteen chapters with ninety-three articles that relate to topics such as: the SSC; offering and issuing of securities to the public; granting and withdrawing securities licenses; requirements for stock exchange membership; procedures for the participation of foreign partners; and procedures for handling breaches with entities.[158]

Decree 48/1998/ND-CP, which followed the Draft Ordinance, stipulated the creation of a stock market in Vietnam in July 1998.[159] According to the Decree, only securities issued to the public shall be subject to the Decree's regulations. The term, "securities," is defined as "certificates or book-entry records that

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153. For a discussion on the legislative process focusing on Decree 48/1998/ND-CP, see Freeman, *supra* note 42, at 2–3.

154. *See generally id.*

155. *See* Ravi Velloor, *Step-by-Step Reforms for Singapore,* THE STRAITS TIMES (Sing.), May 13, 1998, at 51 (discussing the causes of the Asian economic crisis).

156. *Stock Markets Play a Crucial Role in the Economy, supra* note 130, at 15.

157. *See generally* DRAFT ORDINANCE (providing guidelines of the organization and activities on securities and stock market in Vietnam).

158. *Id.*

159. *See Governmental Decree on Stocks and the Stock Market, supra* note 24, at 38.

certify the lawful rights and interests of securities owners over the assets or capital of securities issuing organizations."[160] The conditions for issuing shares are as follows: 1) having a minimum legal capital of 10 billion Vietnamese dong; 2) operating profitably for the last two years; and 3) at least twenty percent of their equity must be sold to 100 or more investors who are not already shareholders.[161] In addition, entities that issue shares must be licensed by the SSC, except for entities that issue Government bonds. Until they are fully implemented, Vietnam's laws and legal transparency are merely speculation.

C. Developing an Economic Environment

An operational securities exchange depends on a stable economic environment; this is also necessary to gain both domestic and foreign capital. As a result of the Asian economic crisis, foreign investors demand greater corporate and government transparency and a more reliable legal system. In order to accomplish this, the Vietnamese Government must reconsider its methods of conducting business, so that economic development comes before political development. In Vietnam, this focus on politics occurs when business interactions "tend to be personalized rather than supported by strong commercial law institutions, [and] where business and the state operate in close quarters with limited independent regulatory oversight."[162] Unfortunately, the desired development of effective regulatory and commercial law systems is "fundamentally a political decision," because certain independent institutions have effectively limited executive and preferential control the over allocation of funds and power.[163]

A securities exchange will necessitate that Vietnam undertake a comprehensive approach to the country's financial sector. Vietnam has taken steps towards this goal by providing more independence to its central bank; thereby consolidating and toughening banking supervision along international standards[164]

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160. *Securities: Decree No. 48/1998/ND-CP: On Securities and Securities Market*, VIETNAM LAW & LEGAL FORUM, July 1998, at 29.

161. *See Governmental Decree on Stocks and the Stock Market*, *supra* note 24, at 39 (referring to articles 6 and 8, respectively).

162. Parker, *supra* note 134, at 17.

163. *See id.*

164. *See generally* Hai Ly, *State Bank Drafts Rules on Joint-Stock Bank Control*,

and allowing foreign entry into the domestic financial sector.

The Vietnamese Government must learn from the Asian economic crisis and pay close attention to its foreign exchange policy. It is appealing to peg the Vietnamese exchange to the fluctuation of the United States dollar, but this will be difficult to maintain considering the large swings in the international exchange rates and the weaknesses in Vietnam's financial institutions. Thus, an operational securities exchange depends on Vietnam's economic policies and institution-building that should be designed to stimulate private capital markets that will support basic infrastructure development.

D. Global Appeal

Vietnam's success depends on whether it builds up a global portfolio that includes an established securities exchange and encourages the flow of money in both domestic and foreign directions. This is attainable if the government continues to promote domestic investment through its equitisation program. Laws regulating the establishment of companies must be less restrictive and offer foreign investors more protection, thus easing the effects of the regional crisis.[165]

In order to keep foreign investors interested, their Vietnamese counterparts must establish an international standard to determine the true financial situation of their companies. Stock markets have great influence on economic development models, especially on long-term investment. This trend creates unnatural pressure, not only on the company, but also on the strategy of the entire economy.[166] "These pressures, traumatic in nature for Asian economies, are likely to modernize economic and corporate governance and market institutions in Southeast Asia in ways that will strengthen their capacities in the future."[167]

SAIGON TIMES DAILY, Apr. 30, 1998, at 1 (discussing a provisional statute, which provides for special controls on domestic commercial joint-stock banks).

165. *See generally* Phan Ngoc, *For Smooth Business*, SAIGON TIMES WKLY., Mar. 14, 1998, at 22 (discussing arbitration as an efficient way to solve business disputes with foreign investors).

166. *See Stock Markets Play a Crucial Role in the Economy*, *supra* note 130, at 15.

167. Parker, *supra* note 134, at 14–15.

V. CONCLUSION

The Vietnamese stock market's global appeal and viability in Southeast Asia depend upon the fundamental tension that exists between how the government deals with the commercial windfall of globalism and the manner in which it manages the domestic, economic, political, and social stresses from influences abroad. As Vietnam moves toward a more modern, liberalized financial system and an open international capital market, its domestic, political, and economic environment remains characterized by government preferences that are tempered by the impact of the Asian economic crisis.

Vietnam's stock market reflects high economic goals in order to fulfill expectations and assure foreign confidence. To meet these goals, the laws and regulations must be clear and reflect the current market situation. Legal transparency is a key factor for Vietnam's success in the new market environment. Domestically, this success, and the operation of a securities exchange, depend on whether the public trusts the government and whether it decides to invest. The government must find a balance between the state and private sectors and try to compromise in order to achieve its economic goals. Realistically, Vietnam's securities exchange will not immediately mirror Singapore's stock market because the Vietnamese Government first needs to establish a stable legal and economic environment. The question remaining is whether, under these conditions, the Vietnamese will have a platform for a sound financial institution.

*Cindy Nguyen**

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* J.D. Candidate, Loyola Law School, 2000; B.A., University of California, Los Angeles, 1997. I dedicate this Comment to my parents and sister, Kim, for their love and belief in me. I also would like to thank Nhan T. Vu for his assistance and guidance.