

IMPROVING WAYS TO EXERCISE STATE OWNERSHIP REPRESENTATION RIGHTS IN SOES: INTERNATIONAL EXPERIENCE AND POLICY IMPLICATIONS FOR VIETNAM

I. Overview of state ownership representation functions and state administrative functions in SOEs

1. State ownership representation functions toward SOEs

These functions are performed by designated agencies through their exercise of powers and duties as owners of enterprises during their normal operations. Such an exercise of ownership powers covers a wide range of issues ranging from the establishment and management (via setting business targets, formulating development strategy and annual plans, approving investments and making financial and personnel decisions etc.) of SOEs to rewarding, disciplining and overseeing their overall performance...

2. State administration functions toward SOEs

State administration represents the exercise of public powers to provide public services to enterprises in order to ensure a supportive, competitive, and lawful business environment that may in turn result in achieving growth targets and promoting enterprises of all economic sectors and the entire national economy.

State administration of SOEs consists of the following main aspects: issuing and guiding the implementation of legal documents pertaining to business and enterprises; handling and guiding business registration to ensure a strict compliance with the approved socio-economic development strategy and master planning; providing professional training and code-of-conduct courses to corporate managers and state officials, and vocational training to skilled labourers; offering incentives to enterprises subject to the set of objectives of the approved socio-economic development strategy; inspecting business operations of enterprises; handling violations; developing, approving and supervising the implementation of development strategies at all levels, national, industrial and local; designing, issuing and supervising the implementation of technical standards and norms in each industry and all localities.

3. Differences between state administration and state ownership functions toward SOEs

These differences are significant and are identified in the concepts, objectives, duties, organisational structure, and ways to exercise powers to SOEs.

II. International experience in improving the exercise of state ownership powers over SOEs

1. Chinese experience

The SOE reform has long been seen as a major part of Chinese overall economic reforms that were embarked in 1978 and produced positive outcomes. The split of state ownership exercise in China has undergone 3 stages of development (from 1978 - pre 1994, 1994 – 2003 and from 2004 onward).

2. Korean experience

As an ultimate owner, the Korean government refrains from intervening in the day-to-day management of enterprises. Instead, it exercises its ownership rights through a network of state representatives. State ownership rights in SOEs are exercised by a number of key stakeholders including: (i) the President acting on behalf of the cabinet; (ii) line ministers; (iii) the Ministry of Strategy and Finance; (iv) the Cabinet's Audit and Inspection Bureau; and (v) the parliament.

3. Singaporean experience

Temasek of Singapore was established in 1974 with the mission to manage state owned capital. Temasek is empowered to take initiative in fulfilling its duties and tasks and to report to the Ministry of Finance only when investment decision may go beyond its scope of authority. Temasek-linked companies are subjected to the line ministries' oversight only in respect of matters that fall under the jurisdiction of a certain line ministry.

4. Lessons for Vietnam

- It is well justified to split ownership functions from state administrative functions toward SOEs;
- Any attempt to improve the way in which state ownership rights are to be exercised over SOEs must be well contemplated and planned and be made in a step-by-step manner etc.;
- Splitting ownership functions from state administration of SOEs needs to be systematically undertaken parallel to other measures that are aimed at SOE restructuring; and
- Statutes and sets of criteria are also needed to supervise, oversee and evaluate the performance of ownership representatives who are authorised by their designated agencies.

III. Current situation of exercising state ownership in SOEs in Vietnam

1. Current situation of SOEs in Vietnam

SOEs in Vietnam include wholly state owned single member limited liability companies, joint stock companies and limited liability companies with two members and

more where state holdings exceed 50% of the chartered capital. Although there was a dramatic reduction in the number of SOEs in 2000, their production capacity has been maintained and tends to increase. Additionally, state capital invested in enterprises has basically been preserved or grown. According to the General Statistical Office, by early 2012, the total capital of SOEs amounted to VND 4,816,800 billion, making up 34.4% of the capital of the nation-wide business sector. However, statistics also imply that SOEs performed poorly in relation to the significant resources used by the State sector. Over the past 10 years, the profit-to-revenues ratio of SOEs has been relatively low in comparison with their peers in the private and FDI sectors.

2. Overview of the process of improving state ownership in SOEs in Vietnam

During its reform process, Vietnam has experienced 3 models of exercising ownership powers and responsibilities over SOEs, in particular:

- *Pre-1995*¹: State administration and state ownership of state agencies to SOEs have not been clearly defined.

- *During 1995 – 2003*²: From 1995 to January 2000, line ministries, provincial peoples' committees and the Ministry of Finance were all participating in performing state ownership in SOEs under their jurisdiction. Between 2000 and 2003, the Ministry of Finance handed its management of capital and assets in enterprises back to the original owners that had been ministries and provincial peoples' committees. The MOF's authority was scaled down to financial oversight of enterprises and the exercise part of ownership in SOEs was limited to those enterprises that were founded by the Prime Minister.

- *From 2003 to 15 November 2012*³ (before the enactment of Decree No. 99/2012/ND-CP): state ownership rights under the 2003 law on SOEs were determined and classified as follows: (i) Rights to organisational and personnel issues; (ii) Rights to make business decisions; (iii) Rights to manage state capital and assets; and; (iv) Right to oversee and supervise the performance of enterprises.

- *From 15 November 2012*: State ownership rights include: establishing, setting business objectives and determining scope of business activities; approving the business charter and its subsequent amendments; investing chartered capital; adjusting and transferring the entire or part of the chartered capital; deciding on the organisational structure of a company; approving business strategy, plans and investments; issuing

¹ Before the entry into force of the 1995 Law on SOEs

² During the implementation of the 1995 Law on SOEs

³ During the implementation of the 2003 Law on SOEs and 2005 Law on Enterprises

financial and recruitment regulations; making market decisions; inspecting compliance of laws.

3. Current situation of exercising state ownership in SOEs by relevant state agencies

3.1. State ownership representation by line ministries

This regime is applied to independent single member limited liability companies, general corporations and other public utilities, etc. However, this way of exercising state ownership representation has also revealed a number of shortcomings and weaknesses such as: (i) some state administrative agencies are assigned the function of exercising state ownership in SOEs; (ii) lack of mechanisms for overseeing in the administrative management; (iii) organizational arrangements are not appropriate given a lack of capable personnel; (iv) over-intervention of executive agencies in operation of enterprises; and (iv) work overload in management agencies with regard to settlement of affairs of SOEs under their authority.

3.2. State ownership representation by business groups, general corporations or holding companies

After 5 years of pilot formation of state business groups, general corporations and holding companies, numerous problems have arisen and now require proper remedies.

3.3. Exercise of state ownership via SCIC

SCIC was created in 2005 with the mission to bring about a fundamental change to the way in which SOEs are managed. Core objectives included: splitting state administration from state ownership representation in SOEs and meeting growing demands for international economic integration, especially after Vietnam's accession to the WTO. Although SCIC performance could be considered fairly effective, it also faced challenges and difficulties.

4. Evaluation of the exercise of state ownership in SOEs by relevant state agencies

4.1. Positive aspects

- The exercise of state ownership has shifted towards a more suitable model that is more in line with market rules and international practices;
- Reduction of the number of state agencies that are involved in the exercise of state ownership functions and hence reducing overlaps in their implementation;
- Enabling state agencies to be more focused on plain state administration of SOEs;

- Considerable improvements of the personnel statutes and support of organisational changes that facilitate a better decision making process as well as a more rapid handling of problems that may arise in relation to SOEs;

- A more effective oversight of state ownership representatives and relevant stakeholders is also put in place.

4.2. Shortcomings and weaknesses

- A lack of clearly defined objectives, methods, structures and individuals is seen as a factor that adversely affects the efficiency of state ownership;

- In spite of reduced number of the number of state agencies involved in the exercise of state ownership functions , decentralisation of state ownership powers is still assigned to many state agencies, which has caused overlaps, wide stretching of resources and a loose management in exercising state ownership by various state administrative agencies;

- Effectiveness of improving state ownership in SOEs remains moderate; the intended split of state ownership representation from state administration took place at a small scale only;

- The state is widely seen as giving up its oversight responsibility or maintain a nominal and ineffective one only;

- There are also many constraints how state ownership powers and responsibilities are delegated to each state agency concerned;

- There is a lack of incentives for individuals or organisations that are participating in the exercise of state ownership.

4.3. Causes of constraints

- The way of thinking of SOEs and SOE management remains fundamentally unchanged. In particular, SOEs still enjoy privileges and preferential treatment. Discrimination in favour of SOEs rather than non-state enterprises is yet to be removed; SOEs are still being managed subject to the old way of thinking that is based on an “ask-and-give” concept;

- Advisory agencies fail to recommend a comprehensive set of measures and roadmaps that are suitable to the local conditions;

- There remains a lack of consensus among those who are involved in the process as some groups may lose their own benefits;

- There is still a lack of determination and political will at all levels of the transformation.

5. Some policy implications for Vietnam

5.1. Party and State policies

- Differentiating state management functions of administrative agencies from that of not-for-profit organisations with a stronger delegation of powers to the latter;
- Further improving state ownership in such a way that differentiates the role of the State as a powerful regulator and owner of state capital and assets;
- Identifying a single and unified state agency that is solely responsible for all SOEs;
- Establishing professional organisations to effectively manage state capital and assets.

5.2. A number of proposed solutions to improve the way of exercising state ownership to SOEs

- The Government should be the single agency in charge of maintaining a unified management of SOEs. The Government may also authorise the Prime Minister and various ministries, provincial peoples' committees and the Board of Management of state general corporations to exercise state ownership in SOEs;
- Identifying and splitting fundamental functions of the state as an owner and the state as a regulator;
- Bolstering ongoing efforts to reduce multiple layers of state ownership "representatives" so that there will only be one agency that is responsible for a unified and centralised exercise of powers of state ownership;
- Determining the scope of state ownership to ensure a proper exercise of ownership powers in relation to the respective portion of capital;
- Further improving the way in which state intervention could take place so that the state will exercise its ownership rights as any other shareholder subject to advanced and best practices of corporate governance as well as market rules;
- Each enterprise must be treated as a legal entity that is independent from its capital contributors or shareholders. As a result, enterprises must be run by their management only;
- There must be a strong mechanism to supervise, oversee and evaluate the performance of those involved in the exercise of state ownership./.