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THE INDEPENDENCE OF A SECURITIES MARKET REGULATOR: THE CASE OF THE STATE SECURITIES COMMISSION OF VIETNAM

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Abstract

In 2007, the Vietnamese securities market had a total market capitalisation of VND 500 trillion (US$31.25 billion), equal to 43.7 per cent of national GDP, double the figure in 2006 and 15 times higher than in 2005. The number of listed companies increased to 249 (138 on the Ho Chi Minh City Stock Exchange-HOSE and 111 on the Hanoi Stock Exchange-HASTC), compared to 193 in 2006 and 41 in 2005. The stock market proved to be an effective channel for mobilising capital, allowing listed companies to rise more than VND90 trillion. However, in the first seven months of 2009, the situation of the securities market changed dramatically with the VN-Index falling in consecutives sessions. While the number of listed companies increased to 372 (165 on the HOSE and 207 on the HASTC), the VN-Index fell down towards 400 points at the end of July 2009 from a top 1,170 points in March 2007 (losing a total of 60 per cent market capitalisation). These events brought into sharp focus the independent role of the SSC as market regulator for a stable development of the securities market.. This article examines the role of the State Securities Commission (SSC) as Vietnam's principal market regulator under the Securities Law 2006. It investigates whether the Securities Law 2006 makes adequate provisions to ensure the independence of the SSC and the realisation of a fair, efficient and accountable securities market.

Introduction

One of the key objectives of securities regulation is to foster the independence of the market regulator so as to ensure a fair, efficient and transparent securities market. In Vietnam, the market regulator is the State Securities Commission of Vietnam (SSC) which operates under the authority of the Ministry of Finance (MOF). This article examines the role of the SSC as Vietnam's principal market regulator under the *Securities Law 2006*. It investigates whether the *Securities Law 2006* makes adequate provisions to ensure the independence of the SSC and thus the realisation of a fair, efficient and accountable securities market.

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This article comprises in three parts. Part I outlines the evolution of the market regulator from the time of its establishment in 1996. It examines the functions, duties, powers and organisational structure of the SSC as provided for by the *Securities Law 2006* as well as the rationale underpinning the Vietnamese Government's decision to place the market regulator under the authority of the MOF. Parts II and III outline the ways in which current regulation could be improved to enhance the independence of the market regulator. Part II provides an overview of the models of market regulatory bodies as they operate in other countries and highlights the features that may be useful for the reform of Vietnam's securities sector. Part III assesses the *Securities Law 2006* in the light of the principles identified by IOSCO, highlighting the ways in which current regulation as regard the independence of the market regulator could be reformed to meet international standards.

The establishment and development of the market regulator

The establishment and development of the State Securities Commission

The establishment of the SSC has been instrumental to the development of the securities market.[1] To realise the target of establishing a securities market, the Vietnamese Government made a number of decisions in the 1990s. Under the Governor's decision in 1993, the Capital Market Development Board (CMDB) was established by the State Bank of Vietnam (SBV) (Governor's Decision No. 207/QD-TCCB dated 6 November 1993) as a preparatory step to the establishment of Vietnam's securities market. The main mission of the CMDB was to research, design and prepare the necessary conditions for the establishment of the securities market.

Following the establishment of the CMDB, the Prime Minister approved the establishment of the Board for the Preparation of the Securities Market (Decision No. 361/QD-TTg dated 29 June 1995). The goal of constructing a securities market was advanced by *Decree 75* in 1996, when the government officially established the State Securities Commission (SSC). The SSC's principal task was to organise and regulate securities market operations. *Decree 75* states that the SSC's mission was to raise capital for development investment; to ensure the orderly, safe, transparent, equitable and efficient operation of the securities market; and to protect investors' rights and interests.[2]

The evolution of the SSC can be divided into two stages: (i) the period from 1996 to 2004 when it operated principally as a governmental agency; and (ii) the period from

[1] See further, the SSC available at www.ssc.gov.vn, last visited 20 September 2007.
[2] See generally, Decree No 75/CP dated on 28 November 1996 (*Decree 75*).

2004 to the present date, where it operates as a body under the Ministry of Finance. In each stage, the SSC was subject to a series of governmental decrees, decisions and regulations, up to and including the *Securities Law 2006* (see summary in Table 1).

The first stage (from 1996 to February, 2004):

Under *Decree 75*, the SSC became a governmental agency having the full and complete functions, duties and powers of a securities regulator. It had the responsibility of supervising and regulating the securities industry. Its express mission was to develop the securities market and protect investor's rights and interests to meet this end. The SSC was also the regulator of all public services in the securities industry. [3]

Table 1: Evolution of market regulators in Vietnam

Stages	Year	Event	Decision
Stage 1	November, 1993	The Capital Market Development Board under the State Bank of Vietnam (SBV)	Governor's Decision No. 207/QD-TCCB
	September, 1994	The Board of Drafting the Decree of Securities Market	
	June, 1995	The Board for the Preparation of the Securities Market	Prime Minister's Decision No.361/QD-TTg
	November, 1996	The State Securities Commission as a government agency	Decree No. 75
	July, 1998	Decision to set up Securities Trading Centres (STCs) in Hochiminh City (HOSTC) and Hanoi (HASTC)	Prime Minister's Decision No.127/1998/ QD-TTg
	July, 2000	The HOSTC official operation	
	August, 2003	The Strategy for Development of the Securities Market up to 2010	Prime Minister's Decision No.163/2003/ QD-TTg
	August, 2003	The reinforcement of the SSC's duties and powers	Decree No. 90/2003/ ND-CP
	November, 2003	Decree No. 144 on securities and securities markets	Decree No.144/2003/ ND-CP
Stage 2	February, 2004	The transfer of the SSC into the MOF	Decree No. 66/2004/ QD-TTg

[3] Ibid, art 1.

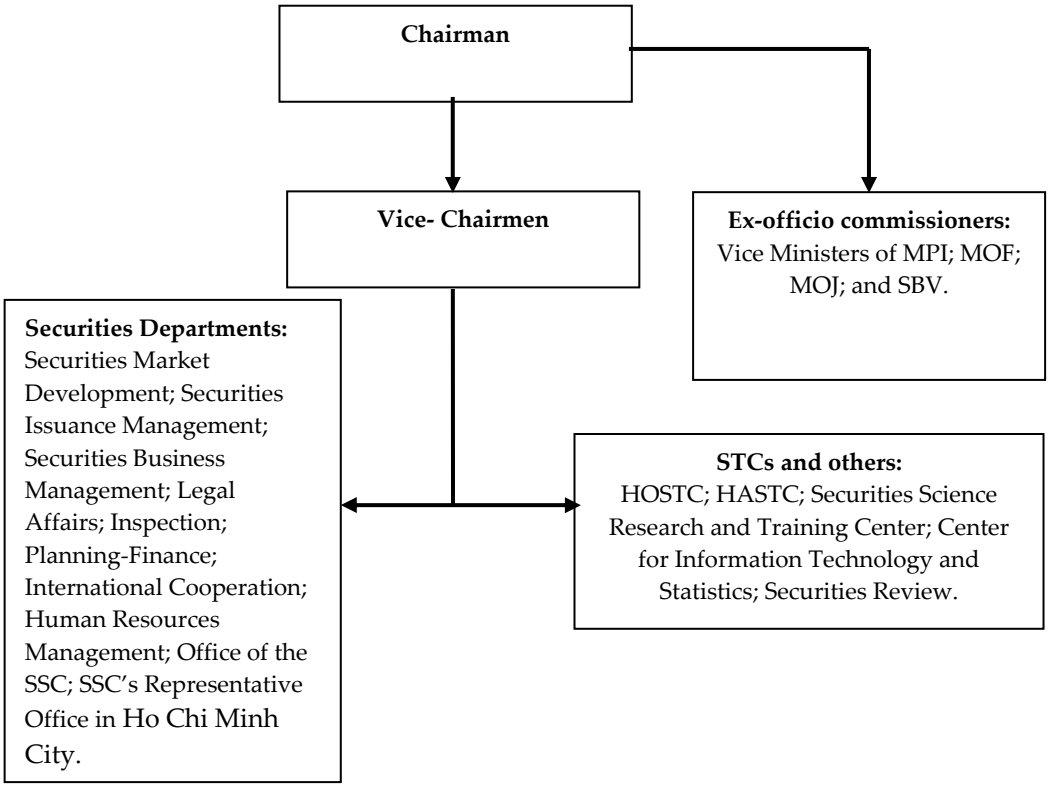
	September, 2004	The reorganisation of the SSC as an organisation under the MOF	Prime Minister's Decision No.161/2004/ QD-TTg
	March, 2005	The HASTC official operation	
	July, 2005	The Securities Depository Centre establishment	Prime Minister's Decision No.198/2005/ QD-TTg
	March - April, 2006	The Draft of *Securities Law 2006* to be submitted to the National Assembly	
	June, 2006	The *Securities Law 2006* passed	Law No. 70/2006/QH11
	January, 2007	The *Securities Law 2006* enforced	
	May, 2007	The reorganisation of the SSC as an organisation under the MOF	Prime Minister's Decision No.63/2007/ QD-TTg
	May, 2007	The HOSTC restructures and changes its name to Ho Chi Minh City Stock Exchange (HOSE)	Prime Minister's Decision No.599/2007/ QD-TTg

Source: The SSC.

Decree 75 specified that the Prime Minister had the power to appoint the Chairman, Vice-Chairmen and other ex-officio commissioners. *Decree 75* stipulated that the organisational apparatus of the SSC was initially to comprise eight units and divisions (see Figure 1). The SSC then strove to work out the first legal framework governing the securities industry and to prepare all of the conditions for the birth of the securities market.[4]

[4] Decree 48/1998, a basic legal framework for the operation of the securities market, and Decision 127/1998, a legal foundation for the establishment of stock trading centres and the planned stock exchanges, were issued on 11 July 1998. Decree 48/1998 regulated public offerings and the trade of listed securities. Private offerings and the trade of non-listed securities were not subject to this Decree (art 1). This Decree was designed to create a favourable environment for the issue and trade of securities; to promote the mobilisation of internal and external long term financial resources; to ensure that the securities market operates in an orderly way, safety, publicly, fairly and effectively; and to protect the lawful interest of investors. See further, the SSC at www.ssc.gov.vn, last visited 10 September 2007.

Figure 1: The organisation structure of the SSC (Decree 75)



Source: The SSC.

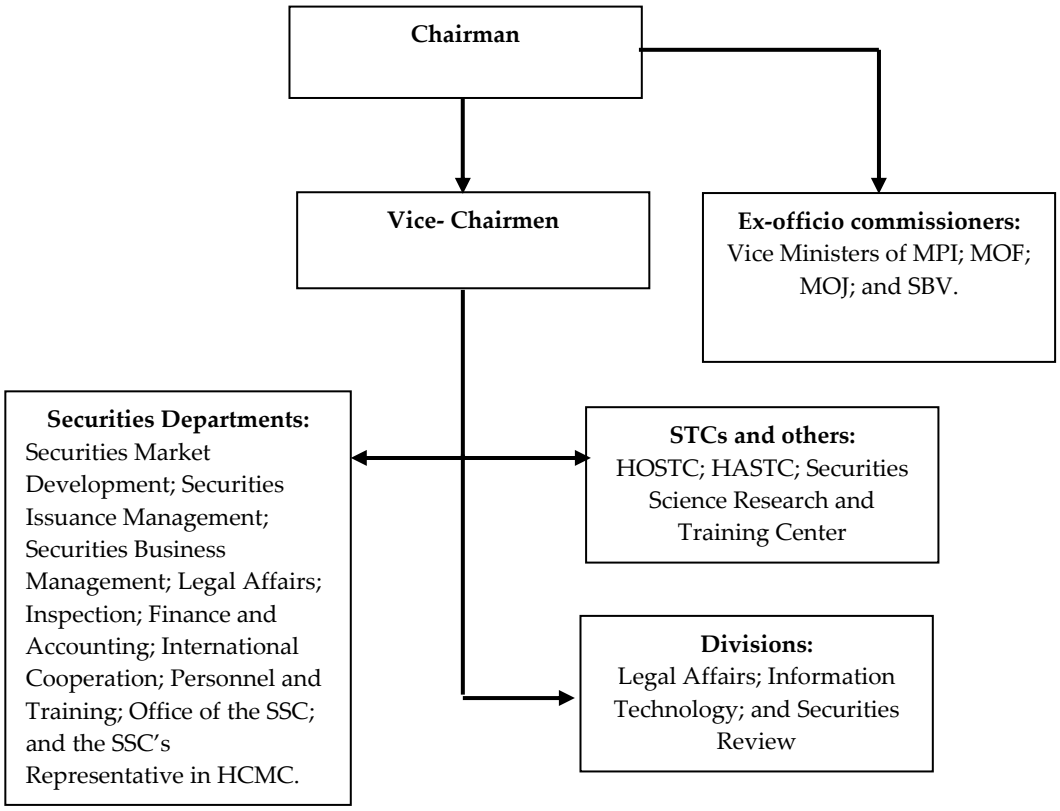
In August 2003, the Government replaced *Decree 75* with *Decree 90*, which consolidated the organisational apparatus of the SSC, outlining its functions, duties, powers and organisational structure.[5] Under *Decree 90*, the SSC was once again designated as the principal governmental agency responsible for the tasks and duties of the securities regulator and the principal service-provider for the securities markets (Art 1).

Decree 90 revised the functions, duties and powers of the SSC so that they were more in alignment with regulations concerning governmental agencies. For example, under *Decree 90* the leadership of the SSC consisted of the Chairman and Vice-

[5] Decree No. 90/2003/ND-CP dated 8 August 2003 (*Decree 90*).

Chairmen who are appointed by the Prime Minister, other ex-officio commissioners, and other departments (see Figure 2).

Figure 2: The organisation structure of the SSC (Decree 90)



Source: The SSC.

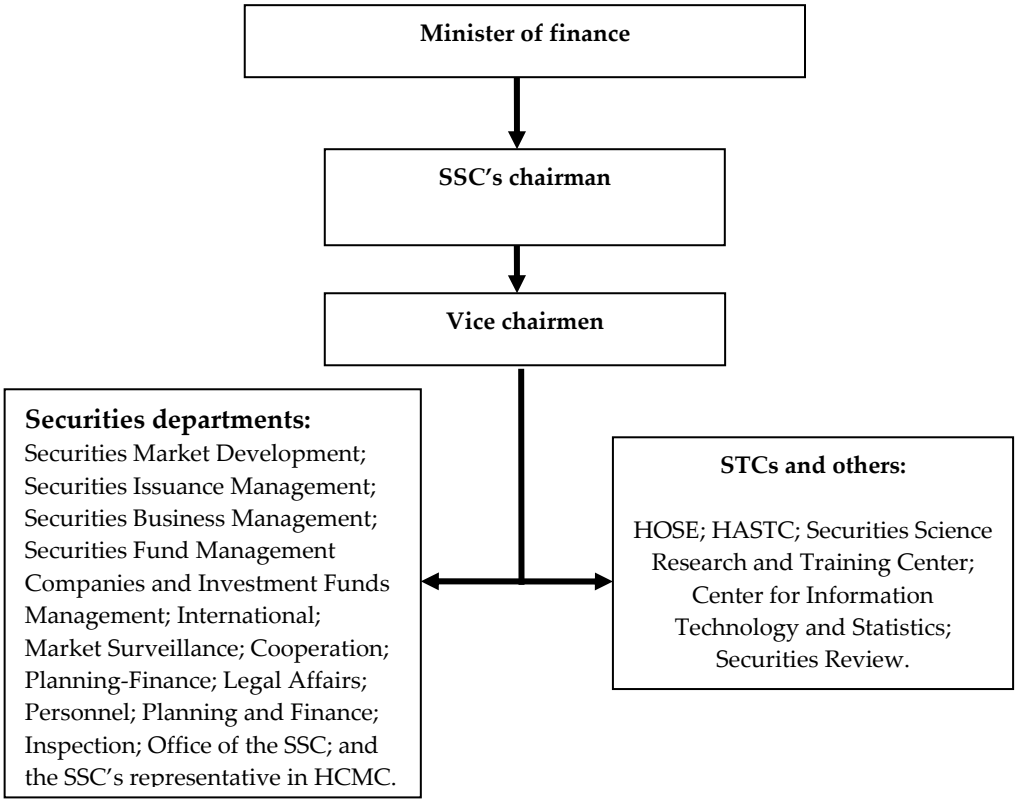
The second stage (from March 2004 to the present date)

In order to improve collaboration between the ministries and industry, the Government promulgated *Decree 66* which provided for the transformation of the SSC into an agency operating under the management of the MOF.[6] Under this Decree

[6] See Decree No. 66/2004/ND-CP dated 19 February 2004. The process of SSC's transfer to Government agency under the management of the MOF was completed on 16 March 2004 in accordance with the '*Government's Master plan of administrative reforms for the period 2001-2010'* (Master plan). The Master plan has the explicit goal of reforming the administrative apparatus and readjusting the functions and duties of the Government, ministries and

and Prime Minister's *Decision 161*, the SSC became an organisation within the MOF, functioning as the regulator and service-provider of the securities market.[7] Under *Decision 161*, the organisational structure of the SSC included Chairman, Vice-Chairmen, and departments (see Figure 3).

Figure 3: The organisation structure of the SSC (*Decision 161*)



Source: The SSC.

At the time, the transfer of the SSC into the MOF appeared to be an appropriate step for developing the securities markets in Vietnam. It was thought it would be advantageous for the MOF, as the macro-financial policy-maker, to work closely with

ministerial-level agencies, governmental agencies and local governments of all levels in consistence with the role of the State in the period 2001-2010. See further, http://www.caicachhanhchinh.gov.vn/Vietnam/, last visited 10 May 2007.

[7] See art 2 Prime Minister's Decision No. 161/2004/QD-TTg dated 7 September 2004 (*Decision 161*).

the SSC as the regulator of the financial markets. It was hoped that the SSC would become more responsive and efficient in formulating and issuing regulatory policies. The immediate results seemed positive. After the implementation of this new arrangement, the securities market began to supply a range of products and instruments, which proved to be pivotal to the development of Vietnam's securities markets. Further, other financial policies initiated by the MOF concerning (for example) bond issuance, fees and charges helped to strengthen the uniformity, consistency and safety of the securities and other financial markets.[8]

Decision 898 recognised that the SSC as the securities regulator needed to be reorganised to undertake its expanded responsibilities under the *Securities Law 2006* and the *Enterprises Law 2005*.[9] *Decision 898* stated that the SSC should have the legal status to act independently as a regulator - or at least be operationally independent, with clear powers, objectives, and accountabilities. *Decision 898* also stated that the government would implement the IOSCO principles of securities regulation so as to improve operational independence, while also clarifying the powers, objectives and accountabilities of the regulatory authority (Principles 1, 2 and 3).[10] Moreover, *Decision 898* recognised that the SSC's mission statement should include the protection of investors in both the official and unofficial markets, thus fostering market integrity and transparency in the investment environment. It also recognised that the SSC should promote disclosure and transparency for both listed and non-listed companies, albeit at varying levels.[11]

According to the *Securities Law 2006*, matters relating to State administration of securities and the securities market are also decentralised to the following agencies:

> (i) The Government exercises uniform State administration of securities and the securities market;
>
> (ii) The Ministry of Finance is responsible to the Government to exercise State administration of securities and the securities market, and has the following duties and powers:
>
> > (a) To submit to the Government draft legislations, strategies, master plans, and policies for the development of the securities market;

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8 Ibid. It is notable that the SSC's leadership did not include the ex-officio commissioners.

9 Decision No. 898/QD-BTC dated 20 February 2006 of the MOF '*On the Promulgation of 2006-2010 Vietnam Securities Market Development Plan*' (*Decision 898*).

10 Ibid See further, International Organization of Securities Commissions (IOSCO), '*Objectives and Principles of Securities Regulation*' (February 2008), available at www.iosco.org, last visited 10 May 2008.

11 See generally, *Decision 898*.

> (b) To submit to the relevant ministries for promulgation or to promulgate in accordance with its own authority, legislations on securities and the securities market;
>
> (c) To direct the SSC in the implementation of its strategies, master plans and policies for development of the securities market, including policies for the administration and supervision of securities and securities market activities.
>
> (iii) Ministries and ministerial equivalent bodies co-ordinate with the Ministry of Finance the administration of the securities market.
>
> (iv) Administrative Committees at all levels exercise State administration of securities and the securities market within their localities.[12]

Under the *Securities Law 2006*, the SSC is a body under the MOF with the following duties and powers:

> (a) To issue, extend and withdraw licences and certificates relating to securities activities and the securities market; to approve changes relating to securities activities and the securities market;
>
> (b) To administer and supervise the operation of the Stock Exchange, Securities Trading Centres, Securities Depository Centres and subsidiary institutions; and to temporarily suspend the trading and depository operations of the Stock Exchange, Securities Trading Centres and Securities Depository Centres when there are indications of an adverse impact on the lawful rights and interests of investors;
>
> (c) To conduct checks and inspections, to deal with administrative breaches and to resolve complaints and denunciations during securities activities and securities market activities;
>
> (d) To keep statistics on, and to make forecasts about securities activities and securities market activities; to modernize information technology in the securities and securities market sector;
>
> (e) To organize, and to co-ordinate with the relevant bodies and organisations to provide, professional training for a team of senior officials and staff in the securities sector; to disseminate to the public information about securities and the securities market;
>
> (f) To provide guidelines on professional procedures for securities and the securities market and to provide guidelines on relevant sample forms;

[12] See art 7, the *Securities Law 2006*.

> (g) To conduct international co-operation in the securities and securities market sector. [13]

According to the *Securities Law 2006*, the Prime Minister, on the proposal of the Minister of Finance, would issue a decision on the establishment, dissolution and conversion of the organisational structure and ownership form of the Stock Exchange and of Securities Trading Centres. [14] To implement these provisions, the Prime Minister's Decision No. 63/2007/QD-TTg dated 10 May 2007 (*Decision 63*) clarified the SSC's structure, functions and rights replacing *Decision 161*. Accordingly, the SSC is now an organisation under the MOF which is responsible to assist the Minister of Finance in undertaking the function of State administration of securities and securities market; which directly manages and supervises securities and securities market activities and which manages services activities in the securities and securities market sector in accordance with law. The SSC has legal entity status, a seal, accounts and its head office in Hanoi.[15]

Decision 63 also provided that the SSC should perform the duties and powers stipulated in the *Securities Law 2006* as well as the following specific duties and powers:

> 1. To submit to the Minister of Finance for promulgation within its own authority or the Minister of Finance shall submit to a competent body for promulgation, legal instruments on securities and the securities market, and strategies, master plan, policies, and long-term, medium term and annual developmental plans on securities and the securities market.
>
> 2. To organize the implementation of the strategies, master plan and policies for development of the securities market after they are issued.
>
> 3. To provide guidelines on professional procedures for securities and the securities market and to provide guidelines on sample forms in accordance with regulations of law and of the Minister of Finance.
>
> 4. To issue, extend, suspend and withdraw licences and certificates relating to securities activities and the securities market; to approve changes relating to securities and the securities market activities.
>
> 5. To administer and supervise the operation of the Stock Exchange, Securities Trading Centres, Securities Depository Centres and subsidiary institutions; and to temporarily suspend trading and depository operations of the Stock

[13] Ibid, art 8.
[14] Ibid, art 34.
[15] Art 1, the Prime Minister's Decision 63/2007/QD-TTg.

Exchange, Securities Trading Centres and Securities Depository Centres when there are indications of an adverse impact on the lawful rights and interests of investors.

6. To conduct inspections and supervision, to deal with administrative breaches and to resolve complaints and denunciations in securities and securities market activities.

7. To keep statistics on, and to make forecasts about securities and securities market activities; to organize the management and application of information technology; and to modernize activities in the securities and securities market sector.

8. To conduct scientific research; to provide and disseminate information on securities and the securities market; to organize, and co-ordinate with the relevant bodies and organizations to provide, professional training for a team of senior officials and staff who manage securities and securities business practitioners; and to disseminate to the public information about securities and the securities market.

9. To conduct international co-operation in the securities and securities market sector in accordance with law.

10. To direct and facilitate securities organizations and associations to implement their purposes, principles and charter on organization; to inspect the performance of regulations of the State, to deal with or recommend that the competent State body deal with breaches of law by securities associations in accordance with law and in accordance with delegation of authority from the Minister of Finance.

11. To implement the regime on reporting securities and the securities market in accordance with law and management delegation from the Minister of Finance.

12. To carry out administrative reform in accordance with the targets and contents of the administrative reform program of the State Securities Commission approved by the Minister of Finance.

13. To manage and organize the apparatus, staffing arrangements, staff and officials and to carry out regimes and policies applicable to staff and officials of the State Securities Commission in accordance with law and management delegation from the Minister of Finance. The State Securities Commission shall formulate a specific mechanism in respect of the recruitment, employment and management of staff and officials working in the securities sector and shall submit same to the competent body for its promulgation.

14. To manage expenditure sourced from the State budget and other sources of expenditure and assets allocated in accordance with law; to be entitled to use

> proceeds from specialized and professional activities of securities and the securities market in order to serve specialized and professional work and to implement regimes and policies on recruitment of and entitlements of experts, staff and officials in accordance with the financial management regime stipulated by the Ministry of Finance.
>
> 15. To perform other duties assigned by the Minister of Finance.[16]

In order to perform the duties and powers described above, the leadership team of the SSC consists of the Chairman and Vice-Chairmen. The Chairman of the SSC is appointed or removed by the Prime Minister at the request of the Minister of Finance and is responsible to the Minister of Finance for the entire operation of the SSC. Vice-Chairmen of the SSC are appointed or removed by the Minister of Finance at the request of the Chairman of the SSC and are responsible to the Chairman of the SSC for their assigned work sectors. Professional and administrative organisations of the SSC also include administrative organisations (12), professional subsidiary organisations (3), and professional organisations to be converted (3) (see Figure 4).[17] It should be noted that the MOF decides (i) functions, duties, powers and organisational structure of divisions and organisations under the SSC, and (ii) the arrangement of staff and officials to the SSC within the total permanent staff of the Ministry of Finance.[18]

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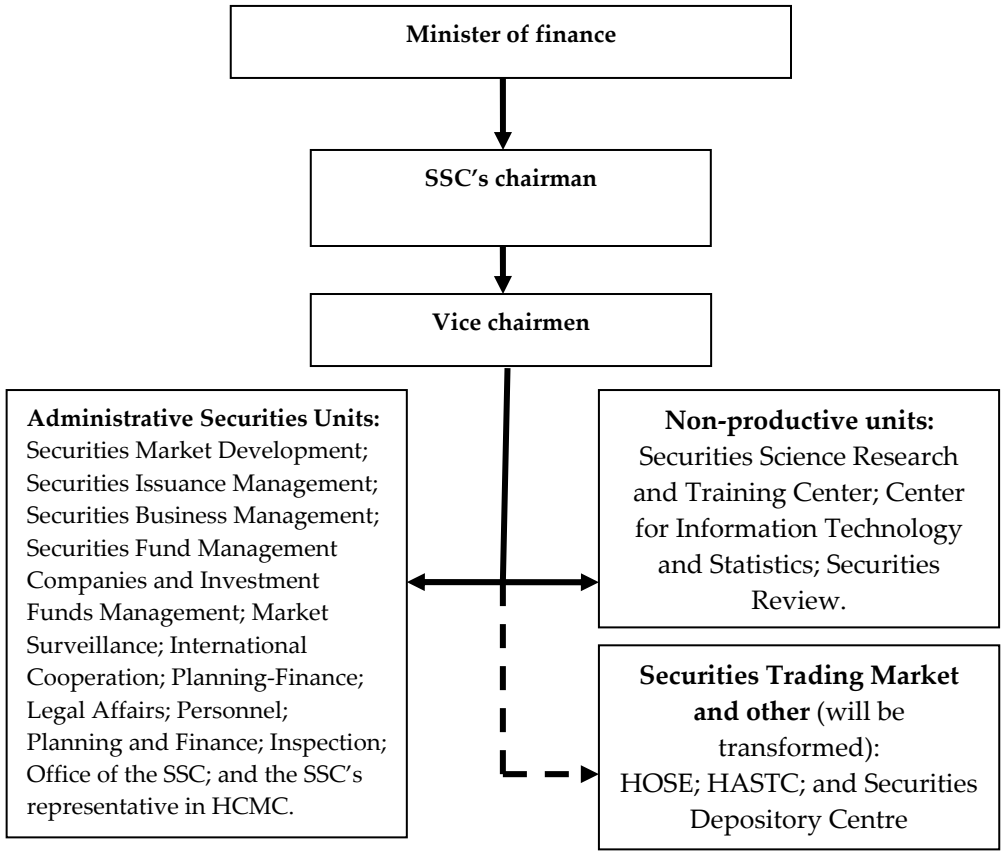
16 Ibid, art 2.

17 Ibid, art 3.

18 Ibid. Appendix 1 summarises and compares the changes regarding the functions, duties, powers and obligations of the SSC from 1996 to the present date.

THE INDEPENDENCE OF A SECURITIES MARKET REGULATOR:
THE CASE OF THE STATE SECURITIES COMMISSION OF VIETNAM

Figure 4: The organisation structure of the SSC (*Securities Law 2006* and *Decision 63*)



Notes: Appointment and removal: ——→ Supervision: - - - - →
Source: The SSC.

The debate about the independence of the SSC

The legal status and independence of SSC was debated at the National Assembly session in June 2006 when the draft *Securities Law 2006* was discussed. As mentioned above, the SSC was under the direction of the Government in the period 1997-2004, before being placed under the MOF. This model - applied since March 2004 - has proven effective in the development of the stock market. There are some reasons for maintaining the SSC as a body under the MOF. These are discussed below.

First, the National Assembly stated that the SSC should be placed under the control of the MOF due to Vietnam's limited experience with stock markets. Accordingly, after more than 5 years of operation, the securities market of Vietnam has gradually stepped into a path of stability and growth. At the end of December 2005 it boasted 50 listed companies with a total charter capital of VND 44,600 billion.[19] The SSC has granted licences for securities business operation to 14 securities companies (with total capital VND 810 billion), 6 fund management companies, 5 depository banks, and 8 independent accounting institutions.[20] However, the capacity of the securities market was still small - total market capitalisation at December 2005 accounted for 6.9 per cent of GDP,[21] of which 1 per cent and 5.9 per cent of GDP was valuable stocks and bonds, respectively.[22] As of May 2006, the Vietnamese securities market had operated for nearly 6 years on a modest scale. The market capitalisation was three times greater in comparison with the end of December 2005. However, about 90 per cent of listed enterprises were equitised SOEs.[23]

Secondly, as mentioned above, the SSC was under the direction of the Government in the period 1997-2004. However, this model showed some weak points such as a lack of close contact between relevant ministries in the SSC; lack of an influence on Government, ministries and State corporations (*Tong Cong ty Nha nuoc*). Meanwhile, under the direction of MOF from March 2004, the SSC had direct support from the MOF and could co-ordinate the development of the stock market together with the process of equitising SOEs (a process overseen by the MOF).

Thirdly, this model helped the government to regulate the stock market in co-ordination with other financial authorities such as the State bank of Vietnam (SBV). While some independent powers were assigned to the SSC, it remained under the MOF until the SSC could operate independently.

In contrast, some advocated a more independent SSC which would report directly to the Government. Reasons for supporting this proposal are discussed below.

First, it was claimed there was not enough evidence to prove that the SSC under the MOF was superior to an otherwise independent body. Moreover, the successes of the securities market since 2004 could be also attributed to objective factors, e.g., improved investor confidence after signing of the Bilateral Trade Agreement with the

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19 See the SSC website available at www.ssc.gov.vn, last visited 5 April 2007.

20 Ibid.

21 Ibid. Compared to 2004 (3.4 per cent), 2003 (1.6 per cent).

22 See the SSC, '*Report to the National Assembly about Draft Securities Law*' (unpublished) dated 14 February 2006, 1-3.

23 Ibid.

US and the prospect of jointing the WTO. As of June 2006, the securities market was still small and it was safe for the Government to allow the SSC developmental independence.[24]

Second, a MOF including the SSC would become a 'super-ministry' (*Sieu Bo*) because the MOF already controlled the General Department of Taxation, General Department of Customs, and Government Pricing Board. [25]

Third, significantly, the MOF also issues bonds to the public, in which capacity it both governs and is governed by the SSC. Such a situation creates a potential conflict of interest. It could cause unequal access to information and potential insider trading. Moreover, the State budget had suffered huge losses in the equitisation process, as a result of poor asset evaluation. If the MOF managed the budget and public assets as well as the stock market, there could be an even higher risk of asset losses.[26]

Fourth, an independent SSC would be better able to monitor and regulate the market flexibly and effectively. It would create a 'three - pillar' system of financial management, with the SBV to govern the short-term capital channel, the SSC to govern the long-term capital channel, and the MOF to govern State budget capital. [27]

Although the independence of the SSC is still debated, the National Assembly decided the SSC be kept as a MOF body in the draft *Securities Law*.[28] However, the *Securities Law 2006* also makes some provision to ensure more independence of the SSC in comparison with the previous securities regulations.

Literature review on the independence of the market regulator

Literature review on the independent of market regulator

The independence of securities regulator differs from country to country and depends on the period of the development of market in each country. These issues

[24] See further discussions about the draft *Securities Law* at the National Assembly's Legislature XI at its 9th Session in June 2006, available at www.na.gov.vn, last visited 12 May 2007.

[25] Ibid.

[26] Ibid. Comments by Mr Nguyen Ngoc Tran at the National Assembly when discussing the draft *Securities Law 2006*. However, Mr Tao Huu Phung argued that the MOF does not make a business out of Government bonds, and it only issues Government bonds according to orders from the National Assembly under the *State Budget Law*. For this reason, there is no contradiction between budget and bond market management.

[27] Ibid.

[28] Ibid The National Assembly's Standing Committee reported that an 88 per cent was approval vote.

have been reviewed by scholars, international organisations and regulators in various countries.

Black showed that *an effective regulator* (emphasis added) was one of the core institutions to ensure a strong securities market which limits information asymmetry and self – dealing.[29] Accordingly, a securities regulator which is honest and has the staff, skill, and budget to pursue complex securities disclosure cases and to untangle complex self-dealing transactions is a key institution to counter information asymmetry.[30]

Ian Tunstall classified market regulator models into those of a single regulator supervising all aspects of capital and financial markets or a multiple regulator supervising aspects of capital and financial market.[31] Regulated financial systems have similarities and differences according to the type of market, the depth and breadth of markets, the number of institutions and intermediaries present in the market and the desired goals of the national government. Tunstall states:

> The single regulator model required effective information flows to monitor the stability of the financial system and identify potential disruptive issues. This is also a requirement of the multiple regulators model but entities are required to produce information that is peculiar to their operations in the multiple model. In the case of single regulator model it is argued that better information flows benefit investors who are able to access what is on offer and compare competing offers. This requires the veil obscuring offers in a with-profits policy to be lifted. It also requires offerors and dealers to focus on the customers' need-to-know policy. Quality information reporting and assessments of with-profit liabilities for capital adequacy purposes are necessary elements of the single regulator model. A single regulator authority has flexibility to modify regulations and adapt them to meet objectives. Regulators under the multiple regulators model can usually amend or modify regulations, but there is the risk that different regulations may apply in the financial system to the same functional activity. A single regulator model

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29 Bernard S Black, 'The Legal and Institutional Preconditions for Strong Securities Markets' (2001) 48(4) *UCLA Law Review* 781, 790-2, 807-8.

30 Ibid, 789-91.

31 Ian Tunstall, *International Securities Regulation* (2005) 193-204. An example of the single regulator model is the Financial Services Authority (FSA) of the United Kingdom. In contrast, the Australian regulator regime is the multiple regulators model where Australia's financial system has separate regulatory authorities for financial markets and prudential supervision.

> would bring together conduct of business regulation and prudential supervision.[32]

The European Central Bank (ECB) categorised regulator models of supervisory structures used in member countries of European Union (EU) as follows:

> (i) supervisory structure relying on "separating competencies along the borderlines of financial sectors";
>
> (ii) supervisory structure relying on the "total consolidation of supervisory responsibilities across financial sectors";
>
> (iii) supervisory structure relying on the "consolidation of supervisory responsibilities by objectives across sectors by assigning supervisory tasks two distinct agencies, with one aiming at safeguarding the soundless of financial institutions and the other focusing on the conduct of business tasks with a view to ensuring transparency".[33]

In 2006, the ECB reviewed recent developments in supervisory structures in EU countries. It found the consolidation of national supervisory systems is still on going and there is a '*common trend towards reducing the number of supervisory authorities'*. However, '*it is not possible to identify a common tendency'* towards one particular type of supervisory system.[34] Three main models of supervisory systems were identified including (i) the sectoral model which each sector (banking, securities and insurance) was supervised by one authority;[35] (ii) the 'twin peaks' model (or model by objectives) in which responsibilities were allocated on the basis of the supervisory objectives, with prudential supervision and conduct of business regulation attributed

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[32] Ibid, 204-5.

[33] European Central Bank (ECB), 'Developments in National Supervisory Structures' (June 2003) 1-2 cited in Ian Tunstall, n 31 above, 193.

[34] European Central Bank (ECB), 'Recent Developments in Supervisory Structures in EU and Acceding Countries' (October 2006) 2.

[35] Ibid. The common tendency, identified in the 2003 review, to depart from this model seems to persist: in the last few years, thirteen countries have moved away from this model (four since the 2003 review). However, the sectoral model is still relatively widespread, being present in six Member States (Greece, Spain, Cyprus, Lithuania, Poland and Slovenia) and with some variations in France, Portugal, Finland and Luxembourg. One of these countries (Poland) is in the process of moving towards a single authority. As a variant of this model, in two countries (Finland, Luxembourg), supervision of both the banking and securities sectors is allocated to the same authority. The sectoral model is also present in the two acceding countries (Bulgaria and Romania).

to two different authorities;[36] and (iii) the single supervisor model which covered both prudential supervision and investor protection.[37] Each country chooses the appropriate institutional structure depending on the specific national situation (see Table 2).

Table 2: Supervisory structures in the EU Member States and acceding countries.

EU Member States/ Acceding countries	Sectoral model	Model by objectives	Single supervisor model	Number of authorities responsible for supervision
Belgium – BE	X		X	1
Czech Republic – CZ	X		X	1
Denmark – DK			X	1
Germany – DE	X		X	1
Estonia – EE	X		X	1
Greece – GR	X			3
Spain – ES	X			3
France – FR	X	X		4
Ireland – IE	X		X	1
Italy – IT	X	X		4
Cyprus – CY	X			4
Latvia – LV	X		X	1
Lithuania – LT	X			3
Luxembourg – LU	X			2
Hungary – HU	X		X	1
Malta – MT	X		X	1
Netherlands – NL	X	X		2
Austria – AT	X		X	1
Poland – PL	X		X	1
Portugal – PT	X	X		3
Slovenia – SI	X			3

[36] Ibid. This model is fully adopted in one country (Netherlands), while in another Member State (Italy) some supervisory responsibilities are assigned according to the sectoral model. Elements of this model are also present in the French and Portuguese supervisory structures.

[37] Ibid. This model has been extensively adopted by the new EU Member States: some of them have created a new single supervisory authority separate from the national central bank (Estonia, Latvia, Hungary, Malta), whereas others have transferred all the financial supervisory functions to the national central bank (Czech Republic, Slovakia). In some cases, the existence of a relatively small financial market seems to have motivated the decision to make a single authority responsible for financial market supervision.

Slovakia – SK	X ⟶		X	1
Finland – FI	X			2
Sweden – SE			X	1
United Kingdom – UK	X ⟶		X	1
Total	**10**	**4**	**10**	
Bulgaria-BG	X			2
Romania-RO	X			4

Notes: ⟶ This arrow indicates changes occurring after June 2003.

⟶ This arrow indicates changes occurring after 2000.

Source: European Central Bank (ECB), '*Recent Developments in Supervisory Structures in EU and Acceding Countries*' (October 2006) 5.

The IOSCO proposes certain principles relating to the securities regulator (Principles 1 to 5). These Principles closely interrelate with Principles 8 to 13 relating to enforcement and cooperation (see key issues in Tables 3 and 4). Therefore, evaluations of these Principles should be consistent. In every case, regulators should be held accountable for issuing and implementing rules and regulations necessary to achieve the key core objectives of securities regulation, monitoring whether the objectives are achieved, and taking enforcement or other appropriate action when there is a violation or lack of compliance with regulatory requirements within the context their own legal and regulatory framework. Regulators also should be required to implement the regulatory responsibly, fairly and effectively.[38]

Table 3: The IOSCO Principles of Securities Regulation relating to the Regulator

Principles	Key Issues
Principle 1: The responsibilities of the regulator should be clear and objectively stated.	1.1. Responsibilities of the regulator should be clear and objectively set out, preferably by law. 1.2. Legislation should be designed to ensure that any division of responsibility among regulators avoids gaps or inequities. Where there is a division of regulatory responsibilities, substantially the same type of conduct generally should not be subject to inconsistent regulatory requirements. 1.3. There should be effective cooperation among responsible authorities, through appropriate channels.
Principle 2: The regulator	**Independence** 2.1. The regulator should be operationally independent from external

[38] See International Organization of Securities Commissions (IOSCO), '*Objectives and Principles of Securities Regulation*' (February 2008) 9-21; International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February 2008) 10-28, 37-62.

should be operationally independent and accountable in the exercise of its functions and powers.	political interference and from commercial, or other sectoral interests, in the exercise of its functions and powers. 2.2. Consultation with or approval by a government minister or other authority should not include decision making on day-to-day technical matters. 2.3. In jurisdictions where particular matters of regulatory policy require consultation with, or even approval by, a government minister or other authority, the circumstances in which such consultation or approval is required or permitted should be clear and the process of consultation and criteria for action sufficiently transparent or subject to review to safeguard its integrity. 2.4. The regulator should have a stable source of funding sufficient to exercise its powers and responsibilities. 2.5. There should be adequate legal protection for regulators and their staff acting in the bona fide discharge of their functions and powers. **Accountability** 2.6. The regulator should be publicly accountable in the use of its powers and resources to ensure that the regulator maintains its integrity and credibility. 2.7. There should be a system permitting judicial review of final decisions of the regulator. 2.8. Where accountability is through the government or some other external agency, the confidential and commercially sensitive nature of information in the possession of the regulator must be respected. Safeguards should be in place to protect such information from inappropriate use or disclosure.
Principle 3: The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.	3.1. The regulator should have powers of licensing, supervision, inspection, investigation and enforcement. 3.2. The regulator should have adequate funding to exercise its powers and responsibilities. 3.3. The level of resources should recognize the difficulty of attracting and retaining experienced staff. 3.4. The regulator should ensure that its staff receives adequate, ongoing training.
Principle 4: The regulator should adopt clear and consistent regulatory processes.	**Clear and Equitable Procedures with Consistent Application** 4.1. In exercising its powers and discharging its functions, the regulator should adopt processes which are: a) Consistently applied. b) Comprehensible. c) Transparent to the public. d) Fair and equitable. 4.2. In the formulation of policy, subject to enforcement and surveillance

	concerns, the regulator should: a) Have a process for consultation with the public, including those who may be affected by the policy. b) Publicly disclose its policies in important operational areas. c) Have regard to the cost of compliance with regulation. 4.3. The regulator should observe standards of procedural fairness. **Transparency and Confidentiality** 4.4. Transparency practices, such as publication of reports on the outcome of investigations or inquiries, where permitted, should be consistent with the rights of an individual to a fair hearing and the protection of personal data, factors that will often preclude publicity when a matter is still the subject of investigation. **Investor Education** 4.5. Regulators should play an active role in the education of investors and other market participants.
Principle 5: The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.	5.1. The staff of the regulator should observe the highest professional standards and be given clear guidance on matters of conduct including: a) The avoidance of conflicts of interest (including the conditions under which staff may trade in securities). b) The appropriate use of information obtained in the course of the exercise of powers and the discharge of duties. c) The proper observance of confidentiality and secrecy provisions and the protection of personal data. d) The observance of procedural fairness. 5.2. Failure to meet standards of professional integrity should be subject to sanctions.

Source: The IOSCO

Table 4: The IOSCO Principles of Securities Regulation relating to Enforcement and Cooperation.

Principles	Key Issues
Principle 8: The regulator should have comprehensive inspection, investigation and surveillance powers.	8.1. The regulator should have the power to require the provision of information in the ordinary course of business, in response to an inquiry or as part of a reporting cycle, or to carry out inspections of regulated market participants' business operations whenever it believes it necessary to ensure compliance with relevant standards. The suspicion of a breach of law should not be necessary to enable the regulator to conduct inspections or require information of regulated entities. 8.2. The regulator should be able to require the provision of all information reasonably needed to ensure compliance with relevant standards, including books, documents, communications, and statements. 8. 3. Where regulatory enforcement responsibilities are delegated to an SRO

	or a third party, these parties should be subject to disclosure and confidentiality requirements that are as stringent as those applicable to the regulator.
Principle 9: The regulator should have comprehensive enforcement powers.	9.1. The regulator or other competent authority should be provided with comprehensive investigative and enforcement powers including the power: to seek orders or to take action to enforce regulatory, administrative or investigative powers; to impose effective sanctions, or to seek them; or to initiate or refer matters to the criminal authorities. 9.2. The regulator or other competent authority should be able to obtain data, information, documents, books and records and statements or testimony from any person involved in relevant conduct or who may have information relevant to a regulatory or enforcement inquiry/investigation. 9.3. As a general matter, these enforcement powers should not compromise private rights of action. Private persons should be able to seek their own remedies (including, for example, for compensation, damages or specific performance of an obligation). 9.4. Where enforcement or other corrective action requires the action of more than one regulator or other competent authority, prompt cooperation, including information sharing between them, should be possible for investigative and enforcement purposes.
Principle 10: The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	10.1. In order to have an effective and credible enforcement system, it is not sufficient for a regulator simply to have the statutory powers set forth in the Principles. The regulator should be able to: a) Detect suspected breaches of the law in an effective and timely manner. b) Gather the relevant information necessary for investigating such potential breaches. c) Be able to use such information to take action where a breach of the law is identified. 10.2. In addition, the regulator should require a compliance system to be in place for regulated entities aimed at detecting and deterring securities law violations, which includes: a) Inspections using instruments and techniques which are adequate, but which may vary from jurisdiction to jurisdiction. b) Other monitoring or surveillance techniques.
Principle 11: The regulator should have the authority to share both public and non-public information	11.1. A regulator should be able to share both public and non-public information with other domestic authorities. 11.2. A regulator should be able to share public and non-public information with its foreign counterparts. 11.3. Domestic laws should not impede international cooperation through sharing of information for regulatory, surveillance, technical assistance, or enforcement purposes.

with domestic and foreign counterparts.	
Principle 12: Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.	12.1. Information sharing mechanisms, whether formal or informal, should have several characteristics: a) Identification of the circumstances under which assistance may be sought. b) Identification of the types of information and assistance that can be provided. c) Safeguards of the confidentiality of information transmitted. d) A description of the permitted uses of the information. 12.2. The design of information-sharing mechanisms should take into account the following factors: a) Which market authority or regulator has access to and is able to provide the information or assistance. b) How such access can be obtained under applicable law. c) Confidentiality and use restrictions under applicable law. d) The form and timing of the assistance or information sharing. e) The applicability of other arrangements, including MOUs, between such authorities for sharing investigative and financial information. 12.3. Where assistance to another authority is provided through the provision of confidential information gathered by the regulator in the exercise of its functions or powers, particular care must be taken to ensure that the information is provided subject to conditions which, to the extent consistent with the purpose of its release, preserve the confidentiality of that information.
Principle 13: The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.	13.1. A *domestic* regulator should be able to provide effective assistance to *foreign* regulators who need to make inquiries under their competence, with respect to securities and derivatives matters, including bank and brokerage records and client identification information, regardless of whether the *domestic* regulator has an independent interest in the matter. 13.2. Assistance, including compulsory assistance, in obtaining records should be provided to *foreign* regulators in securing compliance with securities and derivatives laws. 13.3. Regulators should be able to provide assistance, including obtaining court orders, to the full extent of their powers. 13.4. Regulators should be able to provide information on financial conglomerates subject to their supervision. 13.5. Regulators should be able to provide assistance not only for use in investigations and enforcement matters, but also for other types of inquiries, such as part of a compliance program for the purposes of preventing illicit activities.

Source: The IOSCO

The market regulator: developments in other countries

In sum, there are three market regulator models including the governmental agency model, the Board model and the body under the MOF model. Various country models are now examined.

France

Before 1 August 2003, the Stock Exchange Transactions Commission (COB) and the Stock Exchange Council (CMF) were the two authorities heading of the French financial market regulation and monitoring system. The COB was responsible for protecting investors and monitoring financial markets, the CMF was vested with powers to regulate financial markets and to supervise investment service providers.[39] In an effort to bring some consolidation to the exercise of regulatory oversight of the French financial services sector, the *Financial Securities Act* of 1 August 2003 established a new authority, the Autorité des Marchés Financiers (AMF), created by the merger of the COB, the CMF and the Financial Management Disciplinary Board (Counseil de Discipline de la Financière 'CDGF'). The creation of the AMF reflects today's trend towards an increased coordination of regulatory authorities both at the European and global levels. The AMF comprises a Board with 16 members and a disciplinary commission with 12 members. The AMF is an independent public body with legal personality and financial autonomy. It has four main tasks: (i) safeguarding public savings invested in financial instruments; (ii) informing investors; (iii) monitoring securities markets and ensuring smooth operation of the same; and (iv) facilitating European and international cooperation. The AMF combines the regulatory jurisdictions of the COB, CMF and CDGF. It also has additional responsibilities, such as the supervision of financial investment advisors. [40]

The AMF has the status of an 'independent public authority' which allows it to levy fees and receive revenue directly. A government representative attends and can intervene in all deliberations. In addition to the influencing the AMF, the Ministry of Finance maintains significant direct powers, especially in rule-making: AMF rules require the prior approval of the Ministry of Finance to enter into force. Furthermore, a number of separate Commissions, whose operating infrastructure is provided by

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[39] See generally, Jean Luc Soulier and Marcus Best (eds), *International Securities Law Handbook* (2 ed, 2005) 154-5.

[40] Ibid.

the Banque de France and whose members are appointed by the Minister of Finance, have been entrusted with significant regulatory powers in this area.[41]

Japan

The laws governing the trading of securities in Japan have recently undergone significant changes. The offer and sale of securities to the public is regulated by the *Securities and Exchange Law* of Japan (Law No.25, 13 April 1948, as amended) ('SEL') and the detailed regulations related thereto. The SEL was recently amended to conform to significant changes to the Commercial Code of Japan (Law No.48, 9 March 1899, as amended) ('*Commercial Code*'). The Financial Services Agency (FSA) recently replaced the Ministry of Finance as the agency that oversees the securities industry. In 1992, the Securities and Exchange Surveillance Commission (SESC) was established to closely monitor the markets in Japan and investigate incidents of inside trading, price fixing, market manipulation and other illegal actions related to the markets. The SESC is headed by three commissioners appointed by the Prime Minister who serve three years terms. In order to ensure that the commissioners are independent, they generally cannot be forced to resign before the end of their term. The SESC is separated into two divisions namely the Inspection Division and the Enforcement Division.[42] SESC carries out most of the day-to-day market surveillance and enforcement tasks, and may suggest rulemaking or enforcement actions to FSA. However, enforcement efforts in Japan have been less than rigorous.[43] In some areas, such as broker-dealer supervision, government powers are relatively limited, leaving supervisory efforts largely at private hands and thus voiding any threats of agency intervention in case of material wrongdoing by market participants or substantial SRO failure. However, even in areas where the law provides administrative authorities with all necessary powers, the volume of enforcement actions brought is not impressive.[44]

Germany

The German regulatory structure is characterised by the parallel existence of federal and state powers in the oversight of securities market. State powers are especially pre-eminent in the regulation of the stock exchanges, and marketplaces more

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41 See generally, Howell E Jackson and Stavros Gkantinis, 'Markets as regulators: A survey' (2007) 80 *Southern California Law Review* 1239, 1301-6.

42 See Soulier and Best (eds), above n 39, 288-9.

43 See Jackson and Gkantinis, above n 41, 1306-11.

44 Ibid.

generally.[45] The Exchange Supervisory Authority supervises the Securities Exchange in accordance with the provisions of the *Stock Exchange Act*, covering, *inter alia*, compliance with legal provisions and regulations relating to securities exchange matters and the proper conduct of trading and settlement of securities transaction.[46] The federal government undertook a serious initiative for financial services supervision with the establishment of Federal Financial Supervisory Authority (BaFin), an administrative agency responsible for regulating the banking, insurance and securities industries. BaFin is independent of the federal budget as its revenues consist of fees and charges to the industries it supervises.[47]

United Kingdom

The Financial Services Authority (FSA) has been the single regulator for the financial services industry in the United Kingdom (UK) since 1 December 2001, when the *Financial Services and Markets Act 2000* (FSMA) came into force. The FSA is an independent non-government body, which has statutory powers under FSMA and assumes overall responsibility for regulating the financial services industry in the UK.[48] The FSMA requires the FSA to pursue four statutory objectives in discharging its general functions:

(i) market confidence: maintaining confidence in the UK financial system;

(ii) public awareness: promoting public understanding of the financial system;

(iii) consumer protection: securing the appropriate degree of protection for consumers; and

(iv) reduction of financial crime: reducing the extent to which it is possible for a business carried on by a regulated person to be used for a purpose connected with financial crime. [49]

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45 The federal structure of Germany and, accordingly, the provision of art 74 (1) No. 11 of the Constitution (*Grundgesetz*) of Germany, provide that the establishment and supervision of securities exchanges fall within the remit of the respective federal states such Securities Exchange is located in. Usually the respective exchange supervisory authority (Exchange Supervisory Authority) is part of the ministry of economies in each federal state. See further, Jean Luc Soulier and Marcus Best (eds), above n 39, 174-8.

46 See s1, *Stock Exchange Act*. See further, Soulier and Best (eds), above n 39, 174-8.

47 See further, Jackson and Gkantinis, above n 41, 1312-1315.

48 See further, the *Financial Services and Markets Act 2000*. See more in the FSA website at http://www.fsa.gov.uk/Pages/About/Who/index.shtml, last visited 20 June 2007.

49 See Jean Luc Soulier and Marcus Best (eds), above n 39, 483-4.

The FSA is also required by FSMA to have regard to a number of principles in discharging its renewal functions, including:

(v) the desirability of facilitating innovation in connection with regulated activities; and

(vi) the international character of financial services and markets and the desirability of maintaining the competitive position of the UK.[50]

As part of its duty to maintain market confidence, the FSA has responsibility for overseeing the integrity of the UK investment markets. The FSA recognises and supervises the LSE as well as eight Recognised Investment Exchanges. Under the FSNA, the FSA has a single set of statutory investigation and enforcement powers. The Regulatory Decisions Committee sits as the pinnacle of the FSA's decision-making process and is responsible for all the FSA's fundamental regulatory decisions. The FSA is accountable to Treasury Ministers and, through them, to Parliament.[51] The FSA regulates the activities of 'authorised persons' under a single handbook comprising a number of themed sections, and is responsible for authorising or approving all firms or individuals who satisfy threshold competence conditions, including honesty, competence and financial soundness, are allowed to engage in regulated activities.[52]

Hong Kong

The Securities and Futures Commission (SFC) is the independent statutory authority that regulates markets and market participants in Hong Kong. It was originally established by the repealed *Securities and Futures Commission Ordinance* (Cap.24 of the laws of Hong Kong) (SFCO) and continues to exist under the *Securities and Futures Ordinance (Cap.571)* (SFO).[53] The SFC is responsible for administering the laws governing the securities and future markets in Hong Kong and facilitating and encouraging the development of those markets. Its regulatory objectives include maintaining and promoting the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry, providing protection for members of the public and minimising crimes and misconduct. The SFO confers

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50 Ibid.

51 Ibid.

52 Ibid. See further, Jackson and Gkantinis, above n 41, 1315-20.

53 The SFCO and nine other securities and futures related ordinances were consolidated into the *Securities and Futures Ordinance,* which came into operation on 1 April 2003. See the SFC website available at http://www.sfc.hk/sfc/html/EN/aboutsfc/objectives/objectives.html, last visited 10 June 2007.

upon the SFC extensive investigative and disciplinary powers to enable the SFC to fulfil its objectives.[54] The SFC is divided into four operational divisions: Corporate Finance, Intermediaries and Investment Products, Enforcement, and Supervision of Markets. The Commission is supported by the Legal Services Division and Corporate Affairs Division.[55] The constitution and proceedings of the Board are defined by the SFO. All the Members of the Board are appointed by the Hong Kong Special Administrative Region (HKSAR) Chief Executive for a fixed term and the SFO requires that the majority of the Members must be independent Non-Executive Directors (NEDs). The composition of the Board ensures independent supervision of the Commission's executive functions. The Securities and Futures (Amendment) Ordinance 2006, which amends the SFO to provide for the separation of the role of the Chairman of the Commission from that of the executive arm of the Commission and to create a Chief Executive Officer (CEO) post, has come into effect as from 23 June 2006.[56]

Australia

In Australia, the main government body responsible for the regulatory oversight of these institutions and the markets they operate is the Australian Securities and Investment Commission (ASIC); however, other government entities, such as the Reserve Bank of Australia (RBA) and the Department of Treasury, also enjoy some powers over specialised aspects of the Australian securities markets.[57] ASIC operates more as a market watchdog rather than as rule-setter. As far as rulemaking is concerned, ASIC's role is, at a first glance, extremely limited: the agency possesses few direct rulemaking powers, and its involvement consists in overseeing rules promulgated by market infrastructure institutions. Often, it exercises policymaking through issuing guidance in the form of policy papers, or by issuing class orders, an enforcement tool that whose scope extends simultaneously to a wider number of regulated entities. However, ASIC's monitoring and enforcement powers provide it with undouble leverage in the policymaking arena.[58]

The ASIC is funded by the Commonwealth Government, and contributes funds to the consolidated revenue of the Commonwealth by imposition of fees for lodgement

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54 See Soulier and Best (eds), above n 39, 198.

55 See further, Jackson and Gkantinis, above n 41, 1325-9.

56 Ibid.

57 See further, ASIC at www.asic.gov.au.

58 See Soulier and Best (eds), above n 39, 22; ASIC, *Annual Assessment* (s 794C) Report (2005) 3-5. See further, Jackson and Gkantinis, above n 41, 1320-5; ASIC website at www.asic.gov.au.

of documents and other administrative acts. The ASIC has adjudicative disciplinary powers in relation to holders of an Australian financial services licence and their authorised representatives.[59] Under the *ASIC Act*, ASIC has the function of providing advice to the Minister about any changes to the law that in ASIC's opinion are needed to overcome or any problems that ASIC has encountered in the course of performing or exercising any of its functions or powers and may also make recommendations of the Minister about any matter connected with law reform of the *Corporation Act*.[60] ASIC has power to commence an investigation where it has reason to suspect that there has been a contravention of the law, where the Minister directs ASIC to investigate a matter following formation of the opinion that it is the public interest to do so in relation to matters generally related to corporations and financial services, and where a report of a receiver or liquidator has been received suggesting some corporate impropriety.[61] Under the *Mutual Assistance in Business Regulation Act 1992* ASIC is permitted to exercise its investigative powers to assist foreign laws if the assistance excludes use of the material in criminal or penal proceedings (which are dealt with by the Attorney-General under the *Mutual Assistance in Criminal Matters Act 1987*).[62]

United States

The United States operates under a two-tier (Federal and State) system of securities regulation. Thus, any offering or sale of securities must be analysed to ensure compliance with both federal law and the laws of each State in which the securities are sold or offered for sale. The public offering of securities in the United States must generally be registered with the US Securities and Exchange Commission (SEC) under the *Securities Act* of 1933 (1933 Act) and, unless an exemption is available, must also be registered under the securities laws of each State in which the securities are sold of offered for sale.[63] The SEC is responsible for (i) administering all federal securities laws; (ii) issuing new rules and amending existing rules; (iii) overseeing the inspection of securities firms, brokers, investment advisers, and ratings agencies; (iv) overseeing private regulatory organisations in the securities, accounting, and auditing fields; and coordinating U.S. securities regulation with federal, state, and

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59 See Jackson and Gkantinis, above n 41, 1320-5.

60 Ibid.

61 Ibid.

62 Ibid.

63 See Soulier and Best (eds), above n 39, 504-5. See also, the SEC website available at www.sec.gov.

foreign authorities.[64] Each State also has its own separate department, which regulates the offer and sale of securities in that State.

Analysis

Jackson and Gkantinis examined the regulatory framework for capital markets regulation of eight influential jurisdictions: US, Japan, UK, France, Canada, Germany, Hong Kong and Australia. These jurisdictions include the three largest stock exchanges by market capitalisation in three large regions: North America, Europe and Asia-Pacific, covering 74 per cent of the world's aggregate stock exchange capitalisation.[65] They find there are three distinctive approaches to the divisions of regulatory responsibility: (i) *Government-Led Model*. This model is found in France, Germany, and Japan. These countries seek to create more effective government oversight mechanisms for their financial markets, primarily by reorganising administrative agencies and secondarily by increasing their already strong regulatory powers; (ii) *Flexibility Model*. This model is found in the United Kingdom, Hong Kong and Australia. It seeks to curtail the role of market infrastructure institutions in the post-demutualisation world and enhance the powers of administrative agencies respectively; however, the regulatory approach employed still seeks to maintain flexibility for issuers, investors and other market players; (iii) *Cooperation Model*. This model is found in the United States and Canada. These countries could hardly afford to abolish the regulatory functions historically played in these jurisdictions; thus, they turned to segregation of these functions to an independent subsidiary of the market operator as a viable alternative.[66] An analysis of these three models now follows.

First, the allocation of regulatory powers in the Government-led jurisdictions favours administrative agencies and central government officials over market infrastructure institutions. Laws in these jurisdictions tend to require greater involvement of central governments in certain key actions and regulatory measures than exists under other models. The regulatory powers of market institutions are strictly necessary, such as the regulation of the trading process. Even in these areas, however, the exercise of regulatory powers by market institutions is often subject to approval by

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64 See the SEC website available at www.sec.gov. See also, Jackson and Gkantinis, above n 41, 1329-35.

65 See generally, Jackson and Gkantinis, above n 41, 1267-71.

66 Ibid.

administrative agency. At the enforcement stage, however, these jurisdictions devote substantially less efforts than Flexibility or Cooperation jurisdictions.[67]

Second, in the Flexibility Model, these jurisdictions achieve flexibility by channelling agency rulemaking through the issue of guidance rather than prescriptive rules and by limiting central government involvement in the monitoring and enforcement stages. The Flexibility Model tilts towards allowing market-or industry-lead initiatives to shape regulatory policy and enforcement. The role of central governments has provided more independence to administrative agencies and market infrastructure institutions, maintaining only limited ways to affect their day to day operation and decision-making process. Flexibility jurisdictions seek to extend their non-intrusive approach to securities markets regulation in their enforcement strategy, while also ensuring that market participants do not abuse the freedom allowed by law. Their enforcement efforts often consist in selected investigations of securities laws violations, yet the budgetary and staff resources they devote to enforcement are significant in comparison with Government-lead jurisdictions.[68]

Third, the main characteristic of the Co-operation Model is the pervasiveness of the self-regulatory structure, which provides market institutions with wide powers as well as extensive responsibilities for the fair and efficient operation of securities markets. In the Co-operation Model, market institutions have a role in almost all aspects of securities markets regulation, devote significant resources initiatives. Thus, their role in the securities markets regulatory framework is pervasive. The involvement of market institutions is also strong at the stage of enforcement, to

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[67] Ibid 1271-9. In the Government-led Model, the allocation of areas of regulatory responsibility between administrative agencies and market institutions is issue-specific: statutes direct market institutions' regulatory efforts to precisely delineated areas of activity and regulatory responsibility, assigning specific tasks and granting to them specialised powers. Thus, market institutions derive their regulatory power from a complex set of different provisions, each one aiming to provide regulatory solutions to a particular concern; their regulatory role comes together in a piecemeal fashion, rather than through a general authorisation to uphold securities laws and formulate rules for their implementation. A further consequence of the issue-specific approach to allocation of regulatory power is that, in these jurisdictions, the government agency is the default regulator for the securities markets, in the sense that when a power has not been expressly assigned to a market institution, it rests with the government. The Government-led Model jurisdictions have employed a number of solutions to counter this problem, most of which result in giving precedence to agency powers over stock exchange or clearing house powers. The role of central government has sharpened the securities regulatory framework so as to maintain important channels of influence in the operation of market institutions.

[68] Ibid, 1279-90.

which self-regulatory bodies in these jurisdictions devote significant effort and resources. The administrative agencies operating under the Co-operation Model tend to engage in continuous dialogue with market structure institutions, under which the boundaries of regulatory responsibility and even the content of regulatory requirements remain in a constant state of flux.[69]

Assessments of implementation: the IOSCO principles relating to the market regulator in Vietnam

Assessment of implementation of the IOSCO Principles relating to the market regulator

The IOSCO *Objectives and Principles of Securities Regulation* constitute a valuable tool to evaluate the strengths and weaknesses of a regulator framework. The principles cover all the regulatory issues, which are divided into eight different categories. The principles were originally published in 1998 (updated as of October 2003 and February 2008), and a methodology to assess (*Assessment Methodology*) their implementation was approved in 2003 (up-dated with references to work done by IOSCO from September 1998 to February 2008).[70] In April 2008, IOSCO also published an electronic securities regulation assessment tool (IOSCO *E-Methodology*) for self-assessment for securities regulators. This *E-Methodology* provides securities regulators with an interactive tool to assist them in completion of a self-assessment, preparation for an assisted self-assessment, preparation for a third-party assessment or related developmental work with respect to their securities regulatory regime.[71]

In this methodology, the regulator refers to the authority or authorities responsible for regulating, overseeing and supervising securities markets. IOSCO stressed that there need not be a single regulator. In many jurisdictions, the desirable attributes of the regulator set out in the Principles are in fact the shared responsibility of two or

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69 Ibid, 1290-2.

70 It should be noted that this Methodology is intended to provide guidance on the conduct of a self-assessment or third party assessment of the level of implementation of the International Organization of Securities Commission's *Objectives and Principles of Securities Regulation* ('Principles'). IOSCO intends the Methodology to illustrate IOSCO's interpretation of its Principles. This Methodology does not alter or expand the Principles. See further, International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February, 2008) 1.

71 See further, the IOSCO website available at https://www.iosco.org/webmeth_pub/index.cfm, last visited 30 April 2008.

more government or quasi-government agencies with governmental powers.[72] Furthermore, IOSCO also mentioned that:

> The regulator and the effectiveness of its actions should be assessed in the context of the regulatory framework and the legal system of the jurisdiction being assessed. The regulator should also be assessed taking into account the situation, and stage of development, of the market of the assessed country.[73]

Research by Ana Carvajal and Jennifer Elliott examined principles assessments for 74 countries, completed between 1999 and September 2007 on the strengths and weaknesses of securities regulation systems.[74] Lack of independence from the government and the political process appears to be the greatest challenge to the strength of the regulator, followed by a lack of legal authorities and limited resources.[75] The remarkable findings of their statistics are that full implementation of the IOSCO Principles still remains a challenge for the majority of countries.[76] Furthermore, as regards principles relating to the market regulator, only 3 principles (1, 4 and 5) showed levels of full implementation equal to or above 80 per cent while the levels of implementation fell below 50 per cent for 2 principles (2 and 3, and 10).[77] They also found a high correlation between the level of income of a jurisdiction and the level of implementation of the principles. Accordingly, low-income jurisdictions showed levels of implementation around 50 per cent in compared with around 60 per cent and above 70 per cent in lower-middle and upper-middle income jurisdictions, respectively (see Table 5).[78]

Regarding the quality of the regulatory structure, effectiveness of enforcement, and cooperation, their assessments indicated a number of specific findings. First, the existence of a public entity charged with the regulation and supervision of the market and market participants, is key to the healthy development of markets which is now widely accepted.[79] It is important that the responsibilities of the regulator are clearly

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72 International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February, 2008), 9.

73 Ibid.

74 Ana Carvajal and Jennifer Elliott, 'Strengths and Weaknesses in Securities Market Regulation: A Global Analysis' (2007) 07(259) *IMF Working Paper* 4-16.

75 Ibid.

76 Ibid.

77 Ibid.

78 Ibid, 12.

79 Ibid, 16.

defined and it is given an adequate level of independence, legal authority and resources to enable it to carry out its functions.[80]

Table 5: IOSCO Categories and Countries Grouped by Income (%)

Category	Low-income	Lower Middle-income	Upper Middle-income	High-income OECD	High-income Non-OECD
Regulator	49	66	61	85	73
SROs	47	54	62	91	67
Enforcement	50	49	36	85	77
Cooperation	32	38	48	79	77
Issuers	43	47	56	83	79
CIS	67	57	72	86	75
Market Intermediaries	37	63	42	83	70
Secondary Intermediaries	48	53	59	91	76

Source: Standards and Codes Gateway (MCM). Cited in Ana Carvajal and Jennifer Elliott, 'Strengths and Weaknesses in Securities Market Regulation: A Global Analysis' (2007) 07(259) *IMF Working Paper* 13.

Second, many regulators are not sufficiently independent of government and/or industry, with less than half of countries achieving a fully or broadly implemented grading. The reasons are two-fold: (i) governance structures allow for interference in the regulator's daily activities, with the potential to cause regulatory forbearance; and (ii) funding or staffing mechanisms create avenues for outside control of the regulator actions.[81]

> Shortcomings in independence are regarded as connected to many other weaknesses in the regulatory system such as weak enforcement. On the other hand, many assessments also noted the need to established additional accountability measures, such as annual reporting, financial reporting and greater transparency of decision making processes at the regulator.[82]

[80] Ibid.
[81] Ibid, 16-7.
[82] Ibid, 17.

Third, a shortage of funding and legal authority is a common problem among regulators, with less than half countries meeting or almost meeting the standard set by IOSCO.[83]

> Many regulators still lack a stable and adequate level of funding, in particular in countries where funding stems from the state budget. In many countries, the impact of inadequate and uncertain funding on the skill level at the regulator is compounded by a requirement that the regulator pay staff at the public employee pay scale, thereby limiting the regulator's ability to recruit qualified personnel and thus its capacity to discharge its functions properly. In some jurisdictions, there is also a shortage of personnel with the necessary expertise in the country as a whole (for example, qualified accountants and auditors are in short supply in many places). In addition, in some jurisdictions the regulator still lacks sufficient licensing power, which limits its ability to verify the fitness and propriety of market participants, and also investigative and enforcement power, which hinders its ability to supervise compliance and enforce the securities laws and regulations.[84]

Fourth, the assessments note that in some jurisdictions regulators lack comprehensive investigative and enforcement powers. They also found that many regulators lack the authority to impose administrative sanctions, and therefore had to rely on the criminal authorities for enforcement purposes which hinder their credibility and effectiveness. However, the actual capacity of the regulator to implement adequate supervisory programs and appropriately use its disciplinary powers is the main problem in enforcement. Moreover, the poor quality and ineffectiveness of the judiciary also negatively impacts on enforcement efforts in a number of jurisdictions, primarily in emerging market and developing countries.[85]

Assessing implementation of the IOSCO Principles of Securities Regulation relating to the market regulator in Vietnam

Using the IOSCO's *Assessment Methodology*, this section reviews the implementation of the IOSCO principles of securities regulation relating to the SSC. The assessment of implementation should be consistent because of the close interrelation between principles relating to regulator, enforcement and cooperation.

2.1. Principles relating to the regulator

The IOSCO Principles relating to the regulator include:

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83 Ibid, 18.
84 Ibid.
85 Ibid, 19-20.

1. The responsibilities of the regulator should be clear and objectively stated.
2. The regulator should be operationally independent and accountable in the exercise of its functions and powers.
3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
4. The regulator should adopt clear and consistent regulatory processes.
5. The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.[86]

The Principles above establish the desirable attributes of a regulator. An independent and accountable regulator with appropriate powers and resources is essential to ensure the achievement of the three core objectives of securities regulation. The Principles consider the enforcement and market oversight work of the regulator and the need for close cooperation between regulators essential to achievement of the regulatory function.[87] However, under the provisions of the *Securities Law 2006* the SSC is neither fully independent nor fully accountable. There are a number of reasons for this phenomenon.

First, the SSC is a body under the MOF which is responsible to assist the Minister of Finance in undertaking the function of State administration of securities and securities market; which directly manages and supervises securities and securities market activities; and which manages services activities in the securities and securities market sector in accordance with the *Securities Law 2006*.[88] The SSC responsibilities are organisation, implementation, providing guidelines, overseeing and supervising the securities market. However, lack of independence from the government and the political process appears to be the greatest challenge to the strength of the SSC, followed by a lack of legal authority and limited resources. For example, in decision making on day-to-day technical matters, the SSC must submit these matters to the MOF or Government for promulgation. The *Securities Law 2006*

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86 International Organization of Securities Commissions (IOSCO), '*Objectives and Principles of Securities Regulation*' (February 2008) 9.

87 International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February, 2008) 9-10.

88 See arts 7, 8 of the *Securities Law 2006*; arts 1-3 of *Decision 63*. The SSC performs its powers and duties stipulated in the *Securities Law 2006* and submit to the MOF or Government for promulgation legal instruments on securities and the securities market, and strategies, master plan, policies, and long-term, medium term and annual developmental plans on securities and the securities market.

states that ministries must cooperate with the MOF in the State administration of securities and the securities market.[89] However, this process usually takes a long time when (typically) the securities market needs a quick response by the SSC. In these circumstances, the SSC cannot satisfy key issues of independence and accountability as stipulated in the IOSCO Principles 1 and 2. Case study 4.1 illustrates this situation.

Second, the SSC does not have a stable source of funding sufficient to exercise its powers and responsibilities. The reason is two-fold. The SSC depends on the MOF in respect of the recruitment, employment and management of staff and officials working in the securities sector and submits same to the competent body for its promulgation.[90] Moreover, the SSC manages expenditure sourced from the State budget and other sources of expenditure and assets allocated *in accordance with law* (emphasis added).

Third, inadequate funding to exercise its powers and responsibilities makes it difficult for the SSC attract experienced staff to conduct inspections and supervision, to deal with administrative breaches and to resolve complaints in securities and securities market activities. For example, thin human resources and limited technology in the Supervision and Enforcement Department (SED) directly affect investor protection and market transparency. According to the SSC, 20 staff in the SED were insufficient for supervision and enforcement in the securities market in terms of market capacity and complicated breaches in securities market.[91] In 2007, statistics from the SSC showed that only 400 staff worked in departments of the SSC.[92] Lack of State budget funds resulted in 'brain-drain' and an inability to recruit experienced staff to work in the SSC. Under *Decision 63*, the SSC formulates a specific mechanism in human resources and submits same to the MOF for its promulgation; however, this process usually takes long time.

Fourth, the IOSCO Principles state that the regulator should adopt clear and consistent regulatory processes. In fact, in exercising its powers and discharging its

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89 Section 2, art 7 of the *Securities Law 2006*.

90 *Decision 63* requires that the SSC formulate a specific mechanism in respect of the recruitment, employment and management of staff and officials working in the securities sector and submits same to the competent body for its promulgation. In fact, these issues need to be approved in advance by the Minister of Finance. See s 13, art 2 of *Decision 63*.

91 Dang Long, 'Thanh tra chứng khoán khó theo kịp thị trường (Transl. The Securities Inspectorate was difficult to catch up the securities market)', *Thoi bao Kinh te Vietnam (Vietnam Economy)* (Ha Noi), 17 July 2007, available at http://www.vneconomy.vn/?home=detail&page=category&cat_name=07&id=212f308e12f26d, last visited 2 September 2007.

92 Ibid. See further, the SSC website at www.ssc.gov.vn, last visited 2 September 2007.

functions, the SSC adopts processes which are not comprehensible and transparent to the public. In the formulation of policy, the SSC also suffers from a lack of a process for consultation with the public, including those who may be affected by the policy such as investors, issuers. Furthermore, transparency practices, such as publication of reports on the outcome of investigations or inquiries are not consistent with the rights of an individual to a fair hearing and the protection of personal data. Lastly, the development of human resources in the securities market has not yet met the demands of society because the Securities Research and Training Centre (SRTC) of the SSC is the only organisation which provides investor education and human resources for the securities market.[93]

Fifth, the IOSCO Principles require the staff of the regulator to observe the highest professional standards including appropriate standards of confidentiality. However, the SSC has not promulgated a 'Code of Conduct' or other written guidance to help its staff to avoid conflicts of interest, disclosure of information, and standards of confidentiality. In fact, the SSC staff are public servants (*cong chuc*) who are expected to uphold and follow the provisions in the *Ordinance on Government Officials and Public Servants (Phap lenh Can bo, Cong chuc).* These provisions are different from the standards in a 'Code of Conduct'. In sum, the SSC has not given clear guidance on matters of conduct including the avoidance of conflicts of interest, the appropriate use of information, appropriate standards of confidentiality, and the observance of procedural fairness.[94]

Case study 1: The independence of the SSC

In 2007, the Vietnamese securities market had a total market capitalisation of VND 500 trillion (US$31.25 billion), equal to 43.7 per cent of national GDP, double the figure in 2006 and 15 times higher than in 2005. The number of listed companies increased to 249 (138 on the HOSE and 111 on the HASTC), compared to 193 in 2006, 41 in 2005. The stock market continued to be an effective channel for mobilising

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93 According to the SSC, after 10 year establishment, the SRTC has conducted over 430 training courses and certified more than 52,000 learners. The SRTC has also held over 100 classes with nearly 20,000 attendees to boost public awareness of the securities industry. See further, the SRTC website available at www.srtc.org.vn, last visited 20 November 2007.

94 It should be noted that the Regulations on Securities Business Practice (SBP) issued under Decision 15/2008/QD-BTC of the Minister of Finance dated 27 March 2008 only govern these provisions dealing with the conditions, application files and procedures for issuance of securities practising certificates (SPC) and regulates both securities practitioners and entities employing securities practitioners.

capital, allowing listed companies to rise more than VND90 trillion.[95] However, in the first seven months of 2008, the situation of the securities market changed dramatically with the VN-Index falling in consecutives sessions. The VN-Index fell down towards 400 points at the end of July 2008 from a top 1,170 points in March 2007 (losing a total of 60 per cent market capitalisation).[96] Again, the independent role of the SSC as market regulator for a stable development of the securities market was debated. Some observations are warranted.

First, under the *Securities Law 2006* and *Decision 63/2007*, the SSC is an organisation under the MOF which is responsible to assist the Minister of Finance in undertaking the function of State administration of securities and securities market. Thus, the SSC performs its duties and powers under the *Securities Law 2006* with specific duties and powers to *submit* or to *suggest* (emphasis added) to the MOF or Government various matters for promulgation such as legal instruments on securities and the securities market, and strategies, master plan, policies, and long -term, medium term and annual development plans on securities and the securities market. However, most policies take a long time to be approved by the authorities. In fact, suggestions of the SSC are usually promulgated too late.

Secondly, although the *Securities Law 2006* and *Decision 63/2007* stipulated the duties and powers of the SSC to ensure the independence of market regulator, the SSC has no real powers if the SSC cannot even make policies by *suggestion* (emphasis added) to the MOF or Government.[97] Also, the SSC has no powers to rule on the purchasing shares in foreign currency or to delay the rate of progress of initial public offerings of SOEs without a permit from the Government.

Principles relating to enforcement

The IOSCO Enforcement Principles (Principles 8, 9 and 10) seek to determine a regulator's ability to monitor the entities subject to its supervision, to collect

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95 See: The SSC available at www.ssc.gov.vn; the HOSE available at www.hsx.vn; the HASTC available at www.hse.org.vn, last visited 10 January 2008.

96 See: The SSC available at www.ssc.gov.vn; the HOSE available at www.hsx.vn; the HASTC available at www.hse.org.vn, last visited 2 May 2008.

97 For example, the authorities tried to limit the flow of capital from commercial banks to the stock market by requiring banks to reduce loans made against securities collateral as decided by the State Bank of Viet Nam (SBV). It should be noted that the *Directive 03/2007* issued by the State Bank of Viet Nam (SBV) limited the flow of capital from commercial banks to the stock market by requiring banks to reduce loans made against securities collateral to no more than 3 per cent of their total outstanding loans. This Directive replaced by Decision 03/2008/QD-NHHH by the SBV dated 1 February 2008.

information on a routine and *ad hoc* basis, and to take enforcement action to ensure that persons and entities comply with relevant securities laws. While Principles 8 and 9 are intended to establish the nature and extent of the regulator's powers, Principle 10 is designed to measure how effectively and credibly the regulator exercises these powers. The regulator should be able to demonstrate that an effective and credible use of inspection, surveillance powers has been made and will be made in the future.[98]

> 8. The regulator should have comprehensive inspection, investigation and surveillance powers.
>
> 9. The regulator should have comprehensive enforcement powers.
>
> 10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.[99]

As discussed above, the IOSCO Principles relating to the regulator closely interrelate with enforcement principles. The assessment of implementation of the enforcement principles of the SSC shows that the SSC has insufficient powers enforcement.

First, both the *Securities Law 2006* and *Decision 63* stipulated that the SSC has powers to conduct inspections (*thanh tra*) and supervision (*giam sat*), to deal with administrative breaches and to resolve complaints and denunciations in securities and securities market activities.[100] However, the SSC has no investigation powers with regards to securities breaches because these powers belong to Investigation Offices (*Co quan dieu tra*) of the Ministry of Public Police (*Bo Cong An*) or the People's Prosecution Office (*Vien Kiem sat nhan dan*) as stated in the *Criminal Prosecutor*

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98 International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February 2008) 37-49. Reflecting a broad definition of enforcement, Principle 8 deals with the ability of the regulator to perform ongoing supervision and to implement supervisory programs as preventative measures and with the circumstances in, and methods by which, the regulator may obtain information in the course of executing its responsibilities. Principle 9 deals with the courses of action available to the regulator where a breach of relevant securities laws is identified. Principle 10 requires the regulator to demonstrate how the regulatory system in place, and its own organisation, provides for an effective and credible use of its supervisory and enforcement powers.

99 See International Organization of Securities Commissions (IOSCO), '*Objectives and Principles of Securities Regulation*' (February 2008) 9-21; International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February 2008) 10-28, 37-62.

100 See art 6 of the *Decision 63*; art 8, 108-130 of the *Securities Law 2006*.

Procedures Law. Further, the SSC cannot inspect a regulated entity's business operations without giving prior notice.[101] Inspections are held pursuant to programs and plans approved by the Chairman of the SSC. Extraordinary inspections are carried out on discovery that there are indications that any organisation or individual participating in investment and in securities market activities is in breach of the *Securities Law 2006* or pursuant to a request to resolve a complaint or denunciation or pursuant to a direction from the Chairman of the SSC.[102] In fact, due to a lack of staff, technology and funding resources, the SSC cannot fully carry out its inspection and surveillance powers. In some cases, suspected breaches of the securities market were referred to MOF's professional staff.[103]

Second, enforcement principles require that the regulator should have comprehensive enforcement powers.[104] However, without investigation powers, the SSC has had to rely on the criminal authorities for enforcement purposes and this hinders the SSC's credibility and effectiveness.[105] Moreover, the SSC does not have an

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[101] Ibid, art 109. The following entities shall be subject to inspection: (a) Organizations which make public offers of securities; (b) Public companies; (c) Organizations which list securities; (d) The Stock Exchange and Securities Trading Centres; (e) Securities Depository Centres and depository members; (f) Securities companies, fund management companies, securities investment companies, custodian banks; branches and representative offices of foreign securities companies and of foreign fund management companies in Vietnam; (g) Securities business practitioners; (h) Organizations and individuals participating in investment and activities on the securities market; (i) Other organizations and individuals involved in securities activities and securities market activities. The scope of inspection shall comprise: (a) Activities being public offers of securities; (b) Activities being securities listing; (c) Activities being securities trading; (d) Securities and securities market business activities, investment in securities, and services; (e) Activities being disclosure of information; (f) Other activities related to securities and the securities market.

[102] Ibid, art 110.

[103] See further, Phong Lan, 'Thanh tra CK sẽ mạnh mẽ hơn (Transl. The Securities Inspectorate will be stronger)', *Dau Tu Chung Khoan (Securities Investment)* (Hanoi), 07 August 2007, available at http://www.tinnhanhchungkhoan.vn/tintuc.php?nid=3412, last visited 26 February 2008.

[104] See further, Ana Carvajal and Jennifer Elliott, 'Strengths and Weaknesses in Securities Market Regulation: A Global Analysis' (2007) 07(259) *IMF Working Paper* 19.

[105] Under the *Securities Law 2006*, any organisation or individual who breaches the provisions of the law and other provisions of laws relating to the securities and the securities market shall, depending on the nature and seriousness of the breach, be disciplined, be subject to an administrative penalty, or be criminally prosecuted; and any offender who cause loss and damage must pay compensation in accordance with law (s 1, art 118). It should be noted that the *Securities Law 2006* only stipulates that some breaches securities may be

automatic system which identifies unusual transactions on authorised exchanges and regulated trading systems. The SSC also cannot demonstrate adequate mechanisms and procedures to detect and inspect quickly market and/or price manipulation, inside trading and compliance with other regulatory requirements such as conduct of business, capital adequacy, disclosure or segregation of client assets.

Principles relating to co-operation

Co-operation between regulators and their domestic and foreign counterparts for investigation and for other regulatory purposes is vital in ensuring that investigations and enforcement actions are not impeded by jurisdictional boundaries. As commented by IOSCO:

> Fraud, market manipulation, insider trading and other illegal conduct, such as the unauthorized provision of financial services, that crosses jurisdictional boundaries can and does occur more and more frequently in a global market aided by modern telecommunications.
>
> The inability to provide full and timely regulatory assistance can adversely affect efforts towards effective securities regulation. Domestic laws should not impede international cooperation. Effective regulation can be compromised when necessary information is located in another jurisdiction and is not available or accessible.[106]

The IOSCO Principles relating to co-operation deal with co-operation among regulators and their domestic and foreign counterparts for investigation and for other regulatory purposes including:

> 11. The regulator should have the authority to share both public and non-public information with domestic and foreign counterparts.
>
> 12. Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.

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subjected to criminal prosecution under the *Criminal Code 1999*. However, as discussed in Chapter 3 above, the *Criminal Code 1999* has no provisions about breaches securities and the securities market.

[106] International Organization of Securities Commissions (IOSCO), '*Objectives and Principles of Securities Regulation*' (February 2008)18; International Organization of Securities Commission (IOSCO), '*Methodology For Assessing Implementation Of The IOSCO Objectives And Principles Of Securities Regulation*' (February 2008) 50.

> 13. The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers. [107]

In fact, securities market abuses such as fraud, market manipulation, inside trading and cases of fraud or money laundering have occurred more and more frequently in the Vietnamese stock market. However, the *Securities Law 2006* does not provide for domestic regulatory cooperation. Nonetheless, according to Mr. Hoang Duc Long, the Head of Securities Inspectorate Department, his department cooperated with Economic Police Department of the Ministry of Police to solve breaches securities and the securities market. However, neither office has the right legal power to prosecute securities offences.[108]

International co-operation in investigation and inquiries into possible breaches is also required. Some of the common characteristics of breaches of securities law, such as shifting the proceeds of crime to foreign jurisdictions; wrongdoers fleeing to a foreign country; routing transactions through foreign jurisdictions to disguise the identity of parties or flow of funds; the use of foreign accounts to hide beneficial ownership of securities; and the facilitation of cross-border breaches through the use of international communications media, including the Internet have a cross - border dimension. However, the *Securities Law 2006* and securities regulations only make general provisions about international cooperation with the SSC.[109] The SSC has only signed Memoranda of Understanding (MoU) with foreign stock exchanges or market regulators relating to offering or listing securities on foreign stock exchanges.[110] The sharing of information for regulatory, surveillance, technical assistance, or enforcement purposes are still not provided for in the *Securities Law 2006*. The *Securities Law 2006* has not addressed the ability of the SSC to compel information or to provide other assistance to a foreign regulator to obtain information that is not contained in the requested regulator's files. In short, the SSC encounters problems in its ability to share public and non-public information with domestic and foreign

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[107] Ibid, 50. Of which, Principle 11 measures the extent of a regulator's ability to share information. Principle 12 deals with whether the regulator has mechanisms in place to establish when and how the regulator will share information with its counterparts. Principle 13 relates to the types of assistance that a regulator may provide to a counterpart.

[108] Phong Lan, above n 103.

[109] See s 1(g) of art 8 of the *Securities Law 2006*; s 9 of art 2 of the *Decision 63*.

[110] Such as Singapore Stock Exchange, Thailand Stock Exchange, Malaysia Stock Exchange, London Stock Exchange, New York Stock Exchange, Hong Kong Stock Exchange, etc. See further, the SSC website available at www.ssc.gov.vn, last visited 15 May 2008.

counterparts. Table 6 below shows assessments of implementation of the IOSCO Principles relating to the SSC.

Table 6: Assessing implementation of the IOSCO Principles relating to the SSC

Principles and Key Issues	Assessment		Benchmarks				
	Yes	No	FI	BI	PI	NI	NA
Principle 1: The responsibilities of the regulator should be clear and objectively stated.						**X**	
1. Responsibilities of the regulator should be clear and objectively set out, preferably by law.	X						
2. Legislation should be designed to ensure that any division of responsibility among regulators avoids gaps or inequities. Where there is a division of regulatory responsibilities, substantially the same type of conduct generally should not be subject to inconsistent regulatory requirements.	X						
3. There should be effective cooperation among responsible authorities, through appropriate channels.	X						
Principle 2: The regulator should be operationally independent and accountable in the exercise of its functions and powers.						**X**	
Independence							
1. The regulator should be operationally independent from external political interference and from commercial, or other sectoral interests, in the exercise of its functions and powers.	X						
2. Consultation with or approval by a government minister or other authority should not include decision making on day-to-day technical matters.		X					
3. In jurisdictions where particular matters of regulatory policy require consultation with, or even approval by, a government minister or other authority, the circumstances in which such consultation or approval is required or permitted should be clear and the process of consultation and criteria for action sufficiently transparent or subject to review to safeguard its integrity.		X					
4. The regulator should have a stable source of funding sufficient to exercise its powers and responsibilities.		X					
5. There should be adequate legal protection for regulators and their staff acting in the bona fide		X					

discharge of their functions and powers. *Accountability* 6. The regulator should be publicly accountable in the use of its powers and resources to ensure that the regulator maintains its integrity and credibility. 7. There should be a system permitting judicial review of final decisions of the regulator. 8. Where accountability is through the government or some other external agency, the confidential and commercially sensitive nature of information in the possession of the regulator must be respected. Safeguards should be in place to protect such information from inappropriate use or disclosure.		X X X					
Principle 3: The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers. 1. The regulator should have powers of licensing, supervision, inspection, investigation and enforcement. 2. The regulator should have adequate funding to exercise its powers and responsibilities. 3. The level of resources should recognize the difficulty of attracting and retaining experienced staff. 4. The regulator should ensure that its staff receives adequate, ongoing training.	X	X X X				**X**	
Principle 4: The regulator should adopt clear and consistent regulatory processes. *Clear and Equitable Procedures with Consistent Application* 1. In exercising its powers and discharging its functions, the regulator should adopt processes which are: a) Consistently applied. b) Comprehensible. c) Transparent to the public. d) Fair and equitable. 2. In the formulation of policy, subject to enforcement and surveillance concerns, the regulator should: a) Have a process for consultation with the public, including those who may be affected by the	X	X				**X**	

policy. b) Publicly disclose its policies in important operational areas. c) Have regard to the cost of compliance with regulation. 3. The regulator should observe standards of procedural fairness. *Transparency and Confidentiality* 4. Transparency practices, such as publication of reports on the outcome of investigations or inquiries, where permitted, should be consistent with the rights of an individual to a fair hearing and the protection of personal data, factors that will often preclude publicity when a matter is still the subject of investigation. *Investor Education* 5. Regulators should play an active role in the education of investors and other market participants.		X X X					
Principle 5: The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality. 1. The staff of the regulator should observe the highest professional standards and be given clear guidance on matters of conduct including: a) The avoidance of conflicts of interest (including the conditions under which staff may trade in securities). b) The appropriate use of information obtained in the course of the exercise of powers and the discharge of duties. c) The proper observance of confidentiality and secrecy provisions and the protection of personal data. d) The observance of procedural fairness. 2. Failure to meet standards of professional integrity should be subject to sanctions.		X X				**X**	
Principle 8: The regulator should have comprehensive inspection, investigation and surveillance powers. 1. The regulator should have the power to require the provision of information in the ordinary course of business, in response to an inquiry or as	X					X	

part of a reporting cycle, or to carry out inspections of regulated market participants' business operations whenever it believes it necessary to ensure compliance with relevant standards. The suspicion of a breach of law should not be necessary to enable the regulator to conduct inspections or require information of regulated entities.							
2. The regulator should be able to require the provision of all information reasonably needed to ensure compliance with relevant standards, including books, documents, communications, and statements.		X					
3. Where regulatory enforcement responsibilities are delegated to an SRO or a third party, these parties should be subject to disclosure and confidentiality requirements that are as stringent as those applicable to the regulator.	X						
Principle 9: The regulator should have comprehensive enforcement powers.						X	
1. The regulator or other competent authority should be provided with comprehensive investigative and enforcement powers including the power: to seek orders or to take action to enforce regulatory, administrative or investigative powers; to impose effective sanctions, or to seek them; or to initiate or refer matters to the criminal authorities.	X						
2. The regulator or other competent authority should be able to obtain data, information, documents, books and records and statements or testimony from any person involved in relevant conduct or who may have information relevant to a regulatory or enforcement inquiry/ investigation.	X						
3. As a general matter, these enforcement powers should not compromise private rights of action. Private persons should be able to seek their own remedies (including, for example, for compensation, damages or specific performance of an obligation).		X					
4. Where enforcement or other corrective action requires the action of more than one regulator or other competent authority, prompt cooperation,		X					

including information sharing between them, should be possible for investigative and enforcement purposes.							
Principle 10: The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program. 1. In order to have an effective and credible enforcement system, it is not sufficient for a regulator simply to have the statutory powers set forth in the Principles. The regulator should be able to: a) Detect suspected breaches of the law in an effective and timely manner. b) Gather the relevant information necessary for investigating such potential breaches. c) Be able to use such information to take action where a breach of the law is identified. 2. In addition, the regulator should require a compliance system to be in place for regulated entities aimed at detecting and deterring securities law violations, which includes: a) Inspections using instruments and techniques which are adequate, but which may vary from jurisdiction to jurisdiction. b) Other monitoring or surveillance techniques.		X X				X	
Principle 11: The regulator should have the authority to share both public and non-public information with domestic and foreign counterparts. 1. A regulator should be able to share both public and non-public information with other domestic authorities. 2. A regulator should be able to share public and non-public information with its foreign counterparts. 3. Domestic laws should not impede international cooperation through sharing of information for regulatory, surveillance, technical assistance, or enforcement purposes.		X X X				X	
Principle 12: Regulators should establish information sharing mechanisms that set out when and how they will share both public and						X	

non-public information with their domestic and foreign counterparts. 1. Information sharing mechanisms, whether formal or informal, should have several characteristics: a) Identification of the circumstances under which assistance may be sought. b) Identification of the types of information and assistance that can be provided. c) Safeguards of the confidentiality of information transmitted. d) A description of the permitted uses of the information. 2. The design of information-sharing mechanisms should take into account the following factors: a) Which market authority or regulator has access to and is able to provide the information or assistance. b) How such access can be obtained under applicable law. c) Confidentiality and use restrictions under applicable law. d) The form and timing of the assistance or information sharing. e) The applicability of other arrangements, including MOUs, between such authorities for sharing investigative and financial information. 3. Where assistance to another authority is provided through the provision of confidential information gathered by the regulator in the exercise of its functions or powers, particular care must be taken to ensure that the information is provided subject to conditions which, to the extent consistent with the purpose of its release, preserve the confidentiality of that information.		X X X					
Principle 13: The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers. 1. A *domestic* regulator should be able to provide effective assistance to *foreign* regulators who need to make inquiries under their competence, with respect to securities and derivatives matters,		X				X	

including bank and brokerage records and client identification information, regardless of whether the *domestic* regulator has an independent interest in the matter.							
2. Assistance, including compulsory assistance, in obtaining records should be provided to *foreign* regulators in securing compliance with securities and derivatives laws.		X					
3. Regulators should be able to provide assistance, including obtaining court orders, to the full extent of their powers.		X					
4. Regulators should be able to provide information on financial conglomerates subject to their supervision.		X					
5. Regulators should be able to provide assistance not only for use in investigations and enforcement matters, but also for other types of inquiries, such as part of a compliance program for the purposes of preventing illicit activities.		X					
Notes: FI: *Fully Implemented* BI: *Broadly Implemented* PI: *Partly Implemented* NI: *Not Implemented* NA: *Not Applicable*							

Recommendations to ensure the independence of the SSC

First, the role of SSC as the securities regulator needs to be strengthened and its operations need to be reorganised in line with its expanded responsibilities under the *Securities Law 2006* and *Enterprise Law 2005*. We suggest that the SSC should have the legal status to act independently as a regulator, or at least be operationally independent, with clear powers, objectives, and accountabilities.[111] Accordingly, the Government should implement the IOSCO *Objectives and Principles of Securities Regulation*, which includes operational independence and clarity of powers, objectives and accountabilities of the SSC (Principles 1, 2, 3). As an independent market regulator, SSC should not be subordinated to the MOF, in order to avoid political intervention, particularly due to the fact that MOF is the authority in charge of supervising the financial status of large SOEs and other state-run conglomerates.

[111] This is reported to be under consideration under the next five year strategy. See further, Decision No. 898/QD-BTC of Ministry of Finance dated 20 February 2006 on the Promulgation of 2006-2010 Vietnam Securities Market Development Plan.

We suggest that the Vietnamese Government can learn from the experiences of Japan and South Korea in changing the roles of market regulator after the financial crisis in Asia (1997), and the UK (2001). Starting from 1998, market regulators such as the Financial Services Agency in Japan (FSA) or the Financial Services Commission in South Korea (FSC) separated from Ministry of Finance and merged with the banking and insurance agencies to take form as an independent Government agency which regulated financial services markets.[112] Similarly, in the UK, the Financial Services Authority (FSA) has been the single regulator for the financial services industry since 1 December 2001, when *Financial Services and Markets Act 2000* (FSMS 2000) came into force. It is an independent non-governmental body with statutory power under FSMA 2000 and assumes overall responsibilities for regulating the financial services industry in the UK.[113]

The independence of the SSC is under consideration in the coming five-year strategy (2006-2010). At this early stage of market development, the Government feels it is appropriate to have the backing of the MOF for the SSC to bolster its authority to promulgate and enforce regulations. However, we suggest that the U.S. Securities and Exchange Commission (SEC) which is independent agency with the mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation is a good model for the SSC in the next stage.[114]

Second, it is suggested that the knowledge and skills of SSC staff need to be enhanced in the line with IOSCO's *Objectives and Principles of Securities Regulation*. Accordingly, the SSC staff should observe the highest professional standards and be given clear guidance on conduct matters including: the avoidance of conflicts on interest; the appropriate use of information obtained in the course of exercise of powers and the discharge of duty; the proper observance of confidentiality and secrecy provisions and the protection of personal data; and the observance of procedural fairness.[115]

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[112] See the Financial Services Agency (FSA) of Japan at www.fsa.go.jp; the Financial Services Commission (FSC) in South Korea at www.fsc.go.kr. See further, Jean Luc Soulier and Marcus Best (eds), *International Securities Law Handbook* (2 ed, 2005).

[113] See the Financial Services Authority (FSA) at http://www.fsa.gov.uk.

[114] See the U S Securities and Exchange Commission (SEC) at http://www.sec.gov/. The SEC has five Commissioners who are appointed by the President of the U.S. with the advice and consent of the Senate. See further assessments about strengths and weaknesses in securities market regulation in Ana Carvajal and Jennifer Elliott, 'Strengths and Weaknesses in Securities Market Regulation: A Global Analysis' (2007) 07(259) *IMF Working Paper* 11-8.

[115] International Organization of Securities Commissions (IOSCO), 'Objectives and Principles of Securities Regulation' (February 2008) 11.

Third, inconsistencies and conflicts in laws and regulations that impede the effectiveness of the SSC need to be removed and revised. In addition, the SSC should disclose information about its operation in the SSC's annual or quarterly reports.

This article examined the independence of the SSC together with related issues. As mentioned, the independence of the SSC is one of the objectives and principles of the *Securities Law 2006* and its desire to ensure a fair, efficient and transparent securities market, investor protection and risk reduction. Assessment of the IOSCO Principles in relation to Vietnam, however, shows that the SSC has not implemented principles relating the independence of regulator, enforcement and cooperation. The securities market needs an independent market regulator that can offer comprehensive solutions for the stable development of the securities market.

THE INDEPENDENCE OF A SECURITIES MARKET REGULATOR:
THE CASE OF THE STATE SECURITIES COMMISSION OF VIETNAM

Appendix 1: The comparative powers and duties of the SSC from 1996 to present date

The first stage (from 1996 to February 2004)		**The second stage (from March 2004 to the present date)**	
Decree 75 (November 1996)	**Decree 90** (August 2003)	**Prime Minister's Decision 161** (September 2004)	***The Securities Law 2006;*** **Prime Minister's Decision 63/2007** (10 May 2007)
The SSC became a governmental agency having the full and complete functions, duties and powers of a securities regulator. It had the responsibilities of supervising and regulating the securities industry; its express mission was to develop the securities market, and protect investor's rights and interests to meet this end.	The SSC was stipulated as the principal governmental agency responsible for the tasks and duties of the securities regulator and the principal service-provider of the securities markets.	The SSC became an organisation within the MOF, functioning as the regulator and service-provider of the securities market.	The State Securities Commission is an organisation under the Ministry of Finance which is responsible to assist the Minister of Finance in undertaking the function of State administration of securities and securities market; which directly manages and supervises securities and securities market activities; and which manages services activities in the securities and securities market sector in accordance with law. The State Securities Commission shall enjoy legal entity status, may use a seal with the national emblem and open accounts at the State Treasury in accordance with law; it shall have its head office in Hanoi.
- Drafting legal documents on securities and securities markets and submitting	- Submitting to the Government, the Prime Minister or the Minister authorised by the	- Designing and submitting to the Minister of Finance legal documents of securities and	The SSC shall perform the duties and powers stipulated in the *Law on Securities* and the following specific

them to the competent authorities for ratification, and organising the implementation of these documents once passed; - Collaborating with other ministries and industries to plan the building and development of the securities markets; - Granting, suspending or revoking various kinds of licenses of such market participants as securities houses, securities advisory companies, securities investment funds, fund management companies, issuing and listed organisations, and other securities-related organisations; - Permitting the establishment of service-providing and ancillary organisations and regulating them in compliance with applicable laws and regulations; - Submitting to the	Prime Minister the legal documents of securities and securities market for approval and then organising the implementation of those documents; - Submitting to the Government, the Prime Minister the strategy, orientation, programs, long-term, 5-year and annual plans, and other important projects of the SSC, and organising the implementation of those after approval; - Issuing, giving guidelines to, examining and organising the application of standards, processes, procedures, and economic and technical requirements applicable to units and organisations within the SSC as stipulated by applicable laws of securities and securities market; - Granting, extending, suspending or revoking licenses of securities issuance, securities listing or securities business	securities market, the strategies, matrixes, long-term, 5-year, and annual plans on securities and securities market; - Proposing the Minister of Finance to set up, suspend the operation of, or disperse the Securities Trading Center, the Stock Exchange, the Securities Central Depository and other organisations related to securities activities and securities trading in his authorisation, or proposing the Minister of Finance to consider and submit to the Prime Minister the plans to set up, suspend the operation of or disperse the above-mentioned entities; - Implementing the legal documents, strategies, matrixes, and plans on securities and securities market after their ratification; - Setting specialised standards, procedures and processes, economic and technical specifications to be applied in organisations and units under its	duties and powers: 1. To submit to the Minister of Finance for promulgation within its own authority or the Minister of Finance shall submit to a competent body for promulgation, legal instruments on securities and the securities market, and strategies, master plan, policies, and long-term, medium term and annual developmental plans on securities and the securities market. 2. To organise the implementation of the strategies, master plan and policies for development of the securities market after they are issued. 3. To provide guidelines on professional procedures for securities and the securities market and to provide guidelines on sample forms in accordance with regulations of law and of the Minister of Finance. 4. To issue, extend, suspend and withdraw licences and certificates relating to securities activities and the securities market; to approve changes

Prime Minister for the establishment, suspension or dissolution of the Stock Exchange; - Examining and supervising the operations of the Stock Exchange and other organisations related to securities issuance, trading and services; - Promulgating regulations and requirements on issuance and listing of securities and on information of securities transactions; discussing with the Ministry of Finance on fees and charges related to securities issuance and trading; - Providing specialised training and retaining to securities regulatory staff and practitioners; - Cooperating with international organisations and other countries in the field of securities and	and services, or licenses of securities business practitioners as stipulated by applicable laws; - Submitting to the Prime Minister for decision to establish, suspend the operation of, or disperse the Securities Trading Center, the Stock Exchange, and other organised securities market; - Organising and managing the Securities Trading Center, the Stock Exchange and other organised securities market, and the centers for securities depository, registration, clearing and settlement; - Regulating all operations related to the securities market by securities issuers, listing organisations, securities business organisations and other ancillary institutions as stipulated by applicable laws; - Inspecting, examining and supervising all market participants and imposing	management, as stipulated by applicable laws and decided by the Minister of Finance; - Issuing, extending, suspending or revoking certificates of registration of securities issuance, registration of securities trading, certificates of securities listing, certificates of securities business, certificates of securities practices and services, as stipulated by applicable laws; - Organising and managing the Securities Trading Center, the Stock Exchange, other regulated securities markets, and the Center for Securities Depository, Registration, Clearing and Settlement; - Supervising the compliance of regulations of securities and securities market by organisations offering their securities to the public, organisations having their securities listed, securities business organisations and	relating to securities and the securities market activities. 5. To administer and supervise the operation of the Stock Exchange, Securities Trading Centres, Securities Depository Centres and subsidiary institutions; and to temporarily suspend trading and depository operations of the Stock Exchange, Securities Trading Centres and Securities Depository Centres when there are indications of an adverse impact on the lawful rights and interests of investors. 6. To conduct inspections and supervision, to deal with administrative breaches and to resolve complaints and denunciations in securities and securities market activities. 7. To keep statistics on, and to make forecasts about securities and securities market activities; to organise the management and application of information technology; and to modernise activities in the securities and securities market sector.

securities markets in compliance with applicable laws and the Governments guidelines; - Collaborating with other competent authorities in applying necessary measures to ensure the efficient and lawful operations of the securities markets; - Managing its human resources and infrastructure in compliance with the Governments regulations; and - Exercising other duties as assigned by the Prime Minister.	sanctions to violations of securities and securities market laws as stipulated by applicable laws; - Managing all investment and construction projects under its authority as stipulated by applicable laws; participating in the process of evaluating important projects in the field of securities and securities market as requested by the Government or Prime Minister; - Giving guidelines to and creating favourable conditions for securities associations in pursuing their goals, missions and charters; examining the enforcement of regulations by these associations; imposing sanctions or proposing to other authorised governmental agencies the sanctions to violations committed by these securities associations as stipulated by applicable laws; - Conducting	other ancillary organisations, as stipulated by applicable laws; - Implementing the inspection, examination and supervision of organisations and individuals participating in the securities market and applying sanctions for violations of regulations of securities and securities market, as stipulated by applicable laws; - Giving guidelines and creating favourable conditions for securities associations to abide by their objectives, missions and charters; supervising the compliance of regulations of securities and securities market of these associations; applying sanctions or proposing authorised agencies to apply sanctions for violations of laws by these associations, as stipulated by applicable laws and assigned by the Minister of Finance; - Implementing the reporting regime on	8. To conduct scientific research; to provide and disseminate information on securities and the securities market; to organise, and co-ordinate with the relevant bodies and organisations to provide, professional training for a team of senior officials and staff who manage securities and securities business practitioners; and to disseminate to the public information about securities and the securities market. 9. To conduct international co-operation in the securities and securities market sector in accordance with law. 10. To direct and facilitate securities organisations and associations to implement their purposes, principles and charter on organisation; to inspect the performance of regulations of the State, to deal with or recommend that the competent State body deal with breaches of law by securities associations in accordance with law and in accordance with

	scientific researches in the field of securities and securities market; providing specialised training to officials and public servants of the SSC and its units, to securities practitioners and other market participants; - Providing information, propaganda and training in the field of securities and securities market to organisations and the public; - Conducting international cooperation in the field of securities and securities market as stipulated by applicable laws; - Giving decisions and guidelines for the implementation of the administrative reform program of the SSC, with the goals and contents approved by the Prime Minister; - Managing its organisational apparatus and personnel; implementing the salary policies as well as other policies	securities and securities market, as stipulated by applicable laws and assigned by the Minister of Finance; - Carrying out international cooperation programs in the fields of securities and securities market, as stipulated by applicable laws and assigned by the Minister of Finance; - Implementing the SSCs administrative reforms in accordance with the objectives and contents as approved by the Minister of Finance; - Carrying out forecasting and analytical work, communication, propaganda, dissemination and training in the fields of securities and securities market for institutions and individuals participating in the securities market; - Organising scientific research works in securities and securities market; - Introducing, managing and applying information technologies;	delegation of authority from the Minister of Finance. 11. To implement the regime on reporting securities and the securities market in accordance with law and management delegation from the Minister of Finance. 12. To carry out administrative reform in accordance with the targets and contents of the administrative reform program of the State Securities Commission approved by the Minister of Finance. 13. To manage and organise the apparatus, staffing arrangements, staff and officials and to carry out regimes and policies applicable to staff and officials of the State Securities Commission in accordance with law and management delegation from the Minister of Finance. The State Securities Commission shall formulate a specific mechanism in respect of the recruitment, employment and management of staff and officials working in the securities sector and shall submit same

	of valence, rewards and punishment for its officials and public servants within its scope of authority; - Managing its assigned financial resources and assets and organising the implementation of fiscal appropriations as stipulated by applicable laws; - Observing the reporting regime to the Government, the Prime Minister and other authorised agencies as stipulated by applicable laws.	modernising the management of securities and securities market as stipulated by applicable laws and assigned by the Minister of Finance; - Managing the organisational apparatus and human resources; organising training and retraining programs and applying appropriate policies for the SSCs human resources as stipulated by applicable laws and assigned by the Minister of Finance; - Managing its budget and assets as stipulated by applicable laws and assigned by the Minister of Finance; - Accomplishing other duties assigned by the Minister of Finance	to the competent body for its promulgation. 14. To manage expenditure sourced from the State budget and other sources of expenditure and assets allocated in accordance with law; to be entitled to use proceeds from specialised and professional activities of securities and the securities market in order to serve specialised and professional work and to implement regimes and policies on recruitment of and entitlements of experts, staff and officials in accordance with the financial management regime stipulated by the Ministry of Finance. 15. To perform other duties assigned by the Minister of Finance.

Source: The SSC