

**Vietnam Company Law Seminar
and Study Tour:
Summary of the Proceedings**

Final Report

U.S. Agency for International Development

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**Coopers
& Lybrand**

VIETNAM COMPANY LAW SEMINAR AND STUDY TOUR SUMMARY OF THE PROCEEDINGS

INTRODUCTION

The Government of Vietnam is in the process of formulating a new Company Law which will govern the formation, operation and dissolution of partnerships, limited liability partnerships, limited liability companies, and joint stock companies. The team charged with drafting the new law is comprised of members of several key government agencies and led by the Central Institute of Economic Management (CIEM), a prestigious government economic policy think tank under the Ministry of Planning and Investment.

In an effort to support and strengthen the drafting of Vietnam's new Company Law, the U.S. Agency for International Development agreed to fund a two-week seminar and study tour in the United States for key members of the drafting team. The seminar and study tour was the first U.S. government activity in Vietnam funded by the USAID since 1975 and, hence, represented a critical first step in the process toward re-establishing bilateral ties with Vietnam.

The members of the Vietnamese delegation included the following individuals:

Dang Duc Dam	Vice President Central Institute for Economic Management (CIEM)
Nguyen Dinh Cung	Vice Director, Macroeconomic Policy Department Central Institute for Economic Management CIEM
Tran Huu Huynh	Legal Department Director Chamber of Commerce and Industry of Vietnam
Cao Ba Khoat	Department of Enterprise Registrations Ministry of Planning and Investment
Duong Dang Hue	Vice Director, Department for Economic & Civil Law Ministry of Justice
Dinh Cong Ruat	Economic & Legal Expert Office of the National Assembly
Nguyen Thi Bich Van	Vice Director Ministry of Justice

Chu Duc Nhuan	Legal Expert Office of Government Affairs
Tran Thi Hanh	Interpreter Ministry of Planning and Investment
Nguyen Hong Duong	Interpreter Ministry of Trade

The Company Law Seminar and Study Tour took place from August 16 through August 30, 1997 and, as described in detail below, involved travel to New York, Washington, DC and Sacramento, California. The Seminar and Study Tour was organized by Coopers & Lybrand under the aegis of USAID's Private Enterprise Development Support Project. This report provides a summary of the proceedings of the Seminar and Study Tour.

THE COMPANY LAW SEMINAR

The Vietnamese delegation spent six of their ten working days in a seminar at the New York University School of Law. The seminar was led by Professor Reinier Kraakman, Professor of Law at Harvard University and Visiting Professor at New York University School of Law. The two other key instructors were Professor Bernard Black, Professor of Law at Colombia University, and Professor Viet Dinh, Assistant Professor of Law at Georgetown University.

The primary purpose of the seminar was to focus on the fifth draft of the proposed Company Law (which is actually a single package of statutes covering partnerships, limited liability partnerships, limited liability companies and joint stock companies). The seminar followed a discussion format where the Vietnamese raised questions and the professors made comments. Professors Kraackman, Black and Dinh discussed the law provision by provision, suggesting different approaches or alternative phrasing where appropriate. As part of this discussion, the instructors addressed broader issues of legal policy, as well as the institutions of corporate governance and securities trading. The discussion format proved to be a very effective mechanism for addressing the questions of the Vietnamese delegation and communicating drafting suggestions.

The seminar began on Monday morning, August 18th at New York University's School of Law. After brief introductions by each individual, the group began the discussion by sharing information regarding the current legal environment in Vietnam and by laying the groundwork for the legal terminology that would be used throughout the visit. This was a critical first step in that legal terms and concepts that are commonly used in the U.S. are sometimes difficult for translators to comprehend and even more difficult to translate into Vietnamese.

By the end of the first day, the group began going through the General Provisions of the Vietnamese Company Law. From the 18th to the 25th, the group proceeded to discuss each of the other sections of the law in the following order: Partnerships, Limited Liability Partnerships, Joint Stock Companies, and Limited Liability Companies. The discussions were intense and clearly very useful to the Vietnamese. The Vietnamese would occasionally respond to a suggestion or comment given by one of the professors by heatedly debating among themselves for a few minutes. They could have continued for much longer, but they realized that they could debate the issues more fully at their leisure upon returning to Vietnam. During this trip the delegation only had a few days of the professors' time and wanted to take full advantage of it.

The seminar included presentations by two notable speakers: William Allen, the former Chancellor of the Delaware Court of Chancery and Bill Williams of Sullivan and Cromwell. Chancellor Allen discussed corporate law and the role of the judicial branch in enforcing it. As one of the most influential corporate law judges of the last 10 years, Chancellor Allen served as an excellent role model for the Vietnamese delegation. Bill Williams discussed the relationship between company law and securities law. His experience with securities law in emerging markets helped to highlight the role of the company law as a foundation for the development of

securities markets. Both of these presentations gave the Vietnamese delegation a different perspective of the issues that should be considered when drafting a company law.

By all accounts, the seminar proved to be effective in helping the Vietnamese to strengthen and improve the quality of the draft Company Law. The instructors estimate that as many as half of the provisions in the next draft of the Company Law will have been modified as a result of the discussions held during the seminar. One area of specific focus included the legal rules that could be safely altered in company charters (or partnership agreements) and rules that must be mandatory if core investor protections are to be preserved. The instructors also devoted considerable attention to assuring the internal consistency of the draft statutes, as well as their consistency with the Civil Code. Finally, the instructors suggested the inclusion of a number of new provisions to govern fundamental company transactions (such as separation, division, and transformation) as well as critical transactions.

THE COMPANY LAW STUDY TOUR

Coopers & Lybrand also organized a series of orientation visits to institutions related to the development and implementation of Company Law in the United States. The delegation visited the following institutions:

1. *Goldman Sachs & Company, New York*

Goldman Sachs provided a series of presentations from the perspective of the potential investor and focused specifically on the type of protections investors seek as part of a country's Company Law. The delegation had an opportunity to meet and hear presentations from several departments of the company. The Legal and Operations Department discussed legal and transactional issues from Goldman Sachs' perspective as a company owner and investor in foreign markets, including Vietnam. The Credit Department discussed how Goldman Sachs evaluates foreign companies and their national regulatory and policy environments. The foreign exchange desk discussed how the firms' traders look at foreign markets and currencies, and specifically, the Vietnamese currency management system. Finally, the firm provided a brief tour of its facilities, including the makeup of the various departments in the central trading room.

2. *New York Stock Exchange, New York*

Goldman Sachs further organized a personalized tour of the New York Stock Exchange. Due to the large size of the group, the delegation broke into two units upon entering the trading floor. The space was limited and the environment was understandably loud as the group entered the floor; therefore, questions and answers were given primarily on a one to one basis. This format allowed each individual to learn what was most important to him/her.

3. *Coopers & Lybrand, Washington, DC.*

Coopers & Lybrand provided a presentation on the purposes and functions of an audit. Each part of the definition of an "audit" was discussed in detail as well as the typical role and responsibilities of an auditor on a hypothetical engagement. Additionally, certain audit techniques were discussed. This presentation was important because the auditing profession is still very underdeveloped in Vietnam and most of the delegation had little experience with it. Through this presentation, the Vietnamese gained a better understanding of auditing and the impact of an auditor's opinion on the financial statements.

4. *Securities and Exchange Commission, Washington, DC.*

The presentation at the Securities and Exchange Commission focused on the role it plays in the registration process and in the regulation of the securities markets. Of particular interest to the delegation was the relationship between the functions of the staff and the responsibilities of the commissioners. The presenter, Mr. Strahota, drew extensively from his experience in the Corporate Finance Division of the SEC in order to explain to the delegation the importance of the interaction between the state laws governing corporate structure and organization and the federal laws and regulations governing the offering and trading of corporate securities. Members of the delegation were especially interested in this relationship because Vietnam is attempting to develop a securities market and one of the goals of the revision of the Company Law is to facilitate such a development.

5. Office of the Secretary of State, Sacramento, California

The last stop on the Seminar and Study Tour was Sacramento, California, where the delegation had the opportunity to witness how the State of California processes an application to register a company. Each step in the process, from receipt of the application to steps in the termination of the business entity, was clearly explained, in most cases by the individual that performs the particular function being discussed. The delegation also learned about how California handles a variety of communications and actions and the fees assessed to prospective and active stock companies and partnerships. While touring the office, the delegation had ample opportunity to raise questions and left with a booklet of rules and forms on how to establish a company in California.

CONCLUSIONS AND NEXT STEPS

As was mentioned repeatedly in the briefing meeting with USAID, the Vietnamese delegation learned a great deal about its Company Law through the Seminar and Study Tour. As a result, Vietnam will have a much more effective law governing the establishment and creation of new companies in the future. Upon returning to Vietnam, the team will draft another version of the Company Law. They intend to send the revised draft to Professors Kraakman, Black and Dinh for additional comments. The delegation stated that they would welcome further assistance before presenting a completed draft to the National Assembly. In the near term, the Vietnamese need two types of assistance:

- Additional discussion and revision of the next draft of law.
- Presentations on effective company law to a wider audience as part of the effort to explain the draft law and ensure its integration with the efforts of other teams charged with drafting securities law and other related legal structures.

The Vietnamese have expressed interest in having Professors Kraakman, Black and Dinh visit Hanoi in early 1998 for another round of comments on the Company Law. This would provide an opportunity for all of the other legal specialists in Vietnam to participate in the discussion of the new Company Law. It would provide USAID with an ideal opportunity to follow-up on a successful start toward assisting the Vietnamese Government in improving the environment for private sector development and economic growth.

APPENDICES

- A. Agenda for the Seminar and Study Tour
- B. The Vietnamese Delegation: Contact Information
- C. The Seminar Instructors: Background and Contact Information
- D. Seminar Organizers and Presenters: Contact Information

ANNEX A

**VIETNAMESE COMPANIES LAW
SEMINAR AND STUDY TOUR**

**Planned Agenda and Travel Plans
August 16 - August 30**

Saturday, August 16

Depart Hanoi, Vietnam at 7:35 pm via Air France Flight 171 for Paris, France.

Sunday, August 17

Arrive Paris, France at 6:00 am.

Depart Paris, France at 10:40 am via Delta Flight 119 for New York.

Arrive New York (Kennedy Airport) at 12:40 pm.

Delegation will be met at Kennedy Airport by Andrew Nguyen, Coopers & Lybrand.

Delegation will be transported from Kennedy Airport to the hotel via mini-bus.

Hotel in New York:

Chelcea Savoy, 204 West 23rd Street, New York, NY 10011

Located at intersection of 23rd Street and 7th Avenue

Telephone: 212-929-9353

Fax: 212-741-6309

The primary focus of the seminar is an intensive review and discussion of Vietnam's draft Companies Law. Throughout the first seven days in New York, the seminar instructors shall work closely with the Vietnamese delegation to examine in detail each of the four major components of the Companies Law: (i) Partnerships; (ii) Limited Partnerships; (iii) Limited Liability Companies; and (iv) Joint Stock Companies.

On Monday, August 18 through Tuesday, August 26, the seminar will begin at 9:00 am and close at 5:00 pm. The only exception is Friday, August 22 when the seminar will begin at 8:30 am. The seminar will be held at:

New York University School of Law
40 Washington Square South
Vanderbilt Hall -- Room 311 (August 18 - August 22)
Fuchsberg Hall -- Room 205 (August 25)

Located at the intersection of West 4th Street and MacDougal Street
F Train -- West 4th Street Stop

Monday, August 18

Welcome and Introduction:

Lance Downing, U.S. Agency for International Development

Professor Reinier Kraakman, Professor at Harvard Law School and Visiting Professor at
New York University School of Law

Professor Bernard Black, Professor at Columbia University School of Law

Professor Viet Dinh, Associate Professor at Georgetown University Law Center

Andrew Nguyen, Coopers & Lybrand Facilitator

12:30 pm Lunch at the Snow Dining Room, New York University

Partnerships:

Intensive Review and Discussion of First Component of the New Companies Law.

Limited Partnerships:

Intensive Review and Discussion of Second Component of the New Companies Law.

Tuesday, August 19

Joint Stock Companies:

Intensive Review and Discussion of Fourth Component of the New Companies Law.

2:00 pm Presentation by William T. Allen: Corporate Law and the Judiciary
Former Chancellor, Delaware Court of Chancery

Wednesday, August 20

Joint Stock Companies:

Continued Review and Discussion of Fourth Component of the New Companies Law.

Thursday, August 21

Joint Stock Companies:

Continued Review and Discussion of Fourth Component of the New Companies Law.

Limited Liability Companies:

Intensive Review and Discussion of Third Component of the New Companies Law.

Friday, August 22

8:30 am to 10:30 am

Presentation by William J. Williams, Partner, Sullivan and Cromwell
Relationship between Company Law and Securities Law in Vietnam

Limited Liability Companies:

Continued Review and Discussion of Third Component of the New Companies Law.

Saturday, August 23

Tour of New York City

Dinner

Sunday, August 24

Free Day

Monday, August 25

Limited Liability Companies:

Continued Review and Discussion of Third Component of the New Companies Law.

Closing Discussion on the New Companies Law

Tuesday, August 26

Goldman Sachs

Host: Robert Mancini, Senior International Lawyer
Telephone: 212-902-0903

Tour of the New York Stock Exchange

Tuesday, August 26

Late Afternoon: Travel from New York to Washington, DC

Depart from LaGuardia Airport on Delta or USAIR Shuttle to National Airport

Hotel in Washington, DC:

St. James Hotel, 950 24th Street, NW, Washington, DC 20037

Located at intersection of 24th Street and K Street

Telephone: 202-457-0500

Fax: 202-650-4492

Wednesday, August 27

9:30 am to 11:30 am

Coopers & Lybrand LLP, 1900 K Street, Suite 900, Executive Conference Room

Presentation on the Purpose and Functions of an Audit

Presenters: Dee Mirando-Gould

Rob Vallejo

2:00 pm to 5:00 pm

Securities and Exchange Commission

450 5th Street, NW, Washington, DC

Telephone: 202-942-2770

Organizers: Marissa Lago, Director, Technical Assistance

Robert Strahota, Assistant Director, Technical Assistance

Thursday, August 28

10:30 am to 12:00 pm

U.S. Agency for International Development

Ronald Reagan Building

Intersection of Pennsylvania Avenue and 14th Street

Entrance on 14th Street

Presentations: Kelly Kamerer, Assistant Administrator for Asia and the Near East

Dirk Dijkerman, Deputy Assistant Administrator for Asia and the Near East

Travel from Washington, DC to Sacramento, California

- Depart hotel at 12:15 pm.
- Depart Washington National at 2:00 pm via United Flight 623 departing for Chicago
- Depart Chicago at 4:00 pm via United Flight 683 departing for Sacramento
- Arrive Sacramento at 6:04 pm

Hotel in Sacramento:

Holiday Inn Capitol Plaza
300 J Street, Sacramento, California 95814
Telephone: 916-446-0100
Fax: 916-446-0117

Friday, August 29

**Office of the Secretary of State
9:00 am - 12:00 pm Office of the Secretary of State**

Keris Feldcamp, Director of Corporate Filings
1500 11th Street, Third Floor, Record and Filing Center
Sacramento, CA

12:30 pm Minibus will pick up delegation at the hotel for transportation to San Francisco.

Hotel in San Francisco

Hotel Vintage Court
650 Bush Street, San Francisco, CA
Telephone: 415-392-4666
Fax: 415-433-4065

Saturday, August 30

Minibus will pick up the delegation at the Hotel Vintage Court.

Travel from San Francisco to Vietnam

Depart San Francisco at 1:35 pm via United Airlines Flight 805 for Hong Kong

Sunday, August 31

Depart Hong Kong at 9:05 pm via Cathay Pacific Airways Flight 793 for Hanoi.
Arrive Hanoi at 9:55 pm.

APPENDIX B: VIETNAMESE PARTICIPANTS

Name	Organization	Position	Work Phone (844)	Fax	Address (Hanoi, Vietnam)
Dang Duc Dam	Central Institute for Economic Management	Vice President	845-3196	823-7476 or 68	68 Phan Dinh Phung
Nguyen Dinh Cung	Central Institute for Economic Management	Vice Director, Macroeconomic Policy Dept.	804-4929	823-7476 or 68	68 Phan Dinh Phung
Tran Huu Huynh	Chamber of Commerce and Industry of Vietnam	Director Legal Dept.	825-0875		33 Ba Trieu
Cao Ba Khoat	Ministry of Planning and Investment	Dept. of Enterprise Registrations	804-4502		02 Hoang Van Thu
Duong Dang Hue	Ministry of Justice	Vice Director, Dept. for Econ. and Civil Laws	834-7972		25A Cat Linh
Dinh Cong Ruat	Office of the National Assembly	Economic & Legal Expert, Econ. & Budgetary Committee	804-6504		35 Ngo Quyen
Nguyen Thi Bich Van	Ministry of Justice	Vice Director			25A Cat Linh
Chu Duc Nhuan	Office of Government Affairs	Legal Expert	804-4537		1 Bach Thao
Tran Thi Hanh	Ministry of Planning and Investment	Interpreter, Prg. Officer, Foreign Econ. Relations Dept.	845-8241	823-0161	2 Hoang Van Thu
Nguyen Hong Duong	Ministry of Trade	Interpreter, Dept. of Multilateral Trade Policies	826-2545	826-2552	21 Ngo Quyen

APPENDIX C: INSTRUCTORS

Name	Organization	Position	Phone	Fax	Address	E-Mail
Reineir Kraakman	Harvard University	Professor of Law	212-998- 6260	212-995- 4763	NYU Law, 40 Washington Sq. South NY, NY 10012	Kraakman@hulaw1.harvard.e du
Bernard Black	Columbia Univeristy	Professor of Law	212 854- 8079	212-854- 7946	School of Law, 435 West 116th St. NY, NY 10027	Bblack@law.columbia.edu
Viet D. Dinh	Georgetown University	Asst. Professor of Law	202 662- 9234	202-662- 9410	600 New Jersey Ave. NW, Washington DC 20001	dinhv@law.georgetown.edu

15

Professor Reinier Kraakman

Reinier Kraakman is a Professor of Law at Harvard Law School and a Visiting Professor of Law at New York University School of Law. His teaching fields include: corporate law, corporate finance, corporate mergers and acquisitions, and the economic analysis of corporate law. Professor Kraakman also has taught at the University of Toronto Law School, Georgetown Law Center, and Yale Law School. As a consultant to the Harvard Institute for International Development's Project on Economic Reform, Professor Kraakman worked on the drafting of a new Russian company law.

Professor Kraakman earned his J.D. from Yale Law School. In addition, he holds a B.A. from Harvard College and was a Fulbright Fellow at the University of Frankfurt. Professor Kraakman is the author of numerous articles and teaching materials related to corporate law. He is the co-author of a forthcoming book entitled Guide to the Russian Law on Joint Stock Companies.

Professor Bernard Black

Bernard Black is a Professor of Law at Columbia University School of Law. He teaches courses in Corporate Finance, Corporate Acquisitions, Securities and Capital Markets Regulation, and Foundations of the Regulatory State. Professor Black has served as an advisor to the Russian Government on corporate and securities law, and as Counsel to Commissioner Joseph A. Grundfest of the U.S. Securities and Exchange Commission. Prior to joining the faculty of Columbia University, Professor Black was in private practice with the law firm of Skadden, Arps, Slate, Meagher & Flom in New York, specializing in mergers and acquisitions, securities law, and corporate law.

Professor Black earned his J.D. from Stanford Law School. In addition, he holds a M.A. degree in physics from the University of California at Berkeley, and an A.B. degree in physics from Princeton University. Professor Black is the author of numerous books, articles, and papers related to corporate law including the forthcoming Guide to the Russian Law on Joint Stock Companies (with Reinier Kraakman).

Professor Viet Dinh

Viet Dinh is an Associate Professor of Law and the Associate Director of the Asian Law and Policy Studies Program at Georgetown University Law Center. He teaches courses in Law and Economics, International Investments and Business Transactions, Corporations, and Constitutional Law. Professor Dinh has served as Associate Special Counsel to the U.S. Congressional Special Committee to Investigate Whitewater Development Corporation and Related Matters. He has also clerked for the Honorable Sandra Day O'Connor, U.S. Supreme Court, and the Honorable Laurence H. Silberman, U.S. Court of Appeals, D.C. Circuit.

Professor Dinh earned his J.D. from Harvard Law School. In addition, he holds an A.B. degree in Government and Economics and Harvard College, and he was a visiting student in Economics and Politics at the London School of Economics. Professor Dinh is the author of several articles for scholarly journals, including a forthcoming article entitled "Financial Sector Reform and Economic Development in Vietnam".

APPENDIX D: HOSTS & GUEST SPEAKERS

Name	Organization	Position	Phone	Fax	Address	E-Mail
William Allen	Delaware Court of Chancery	Former Chancellor				
William Williams	Sullivan and Cromwell	Partner				
J. William McMahon	Goldman, Sachs & Co.	VP, FX Trading	212-902-7800		85 Broad St. NY, NY 10004	
Clark Anderson	Goldman, Sachs & Co.	VP, Credit Dept.	212-357-5734	212-357-8680	85 Broad St. NY, NY 10004	Clark.Anderson@gs.com
Anthony Leitner	Goldman, Sachs & Co.	VP, Assoc Gen'l Counsel	212-902-5730		85 Broad St. NY, NY 10004	
John Heanue	Goldman, Sachs & Co.	VP, Credit Dept.	212-902-5784	212-346-2799	85 Broad St. NY, NY 10004	John.Heanue@gs.com
John Hausman	Goldman, Sachs & Co.	Associate, Credit Department	212-357-2509	212-357-8680	85 Broad St. NY, NY 10004	Jonathon.Hausman@gs.com
Michael Lee	Goldman, Sachs & Co.	Associate, FX Trading	212-902-0451		85 Broad St. NY, NY 10004	
Stanley Khoo	Goldman, Sachs & Co.	Associate, FX Trading			85 Broad St. NY, NY 10004	
John Park	Goldman, Sachs & Co.	Investment Banking Division	212-902-6193	212-902-3000	85 Broad St. NY, NY 10004	
Sydney Lewis	Coopers & Lybrand	Manager, Government Consulting	703-908-1645	703-908-1877	1530 Wilson Blvd., Arlington, VA 22209	Sydney.Lewis@us.coopers.com
Andy Nguyen	Coopers & Lybrand	Associate, Government Consulting	703-918-3765	703-918-3764	1751 Pinnacle Dr., McLean, VA 22102	Andy.Nguyen@us.coopers.com
Dee Mirando-Gould	Coopers & Lybrand	Manager, Business Assurance Services	(703) 918-3320	703-918-3416	1751 Pinnacle Dr., McLean, VA 22102	Dee.Mirando-Gould@us.coopers.c
Rob Vallejo	Coopers & Lybrand	Manager, Business Assurance Services			1751 Pinnacle Dr., McLean, VA 22102	Robert.Vallejo@us.coopers.com
Robert Strahota	SEC	Asst. Director, Office of Int'l Affairs	202-942-2770	202-942-9524	450 5th St., NW Washington DC 20549	Secoia2@capcon.net
Thomas Pierce	SEC	Program Analyst, Office of Int'l Affairs	202-942-2760	202-942-9524	450 5th St., NW Washington DC 20549	
Dirk Dijkerman	USAID	Deputy Asst. Admin., Asia and Near East	202-712-0300	202-216-3386	1300 Pennsylvania Ave., NW, DC 20523	Ddijkerman@usaid.gov
Sidney Chernenkoff	USAID	Director, East and South Asia Affairs	202-712-1564	202-216-3386	1300 Pennsylvania Ave., NW, DC 20523	Schernenkoff@usaid.gov
Lance Downing	USAID	Deputy Director, East and South Asia	202-712-1278	202-216-3386	1300 Pennsylvania Ave., NW, DC 20523	Ldowning@usaid.gov
Gregg Baker	USAID	Chief Economist, Asia and Near East	202-712-1861	202-216-3171	1300 Pennsylvania Ave., NW, DC 20523	Gbaker@usaid.gov
Kelly Kammerer	USAID	Counselor	202-712-0200	202-736-4296	1300 Pennsylvania Ave., NW, DC 20523	Kkammerer@usaid.gov
Biane Works	State of California	Corporate Document Examiner	916-653-8574		1500 11th St. Sacramento, CA 95814	
Joseph Johnson	State of California	Corporation Assistant	916-653-5983		1500 11th St. Sacramento, CA 95814	
Bradley Norris	State of California	Staff Counsel	916-657-5448		1500 11th St. Sacramento, CA 95814	