

# DEALING WITH WEAK COMMERCIAL BANKS IN RESTRUCTURING THE SYSTEM OF CREDIT INSTITUTIONS: BANKRUPTCY PROCEEDINGS SHOULD BE PREFERRED

## LIDAR COM BANCOS COMERCIAIS FRACOS NA REESTRUTURAÇÃO DO SISTEMA DE INSTITUIÇÕES DE CRÉDITO: DEVE SER DADA PREFERÊNCIA AOS PROCESSOS DE FALÊNCIA\*

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**Abstract:** The paper is developed on the basis of the traditional legal analysis method combined with the comparative method to explain and clarify the advantages of handling weak commercial banks by bankruptcy proceedings compared to measures of consolidation, merger, acquisition or compulsory transfer. The research results show that the handling of weak commercial banks, that cannot be restored or compulsory transfer by bankruptcy proceedings, will completely solve the intrinsic weakness of the commercial banking system. In the legal framework on bankruptcy of credit institutions, including commercial banks, which is stipulated in the Law on Bankruptcy and the Law on Credit Institutions, prioritizing the treatment of weak commercial banks based on the method of consolidation, merger, acquisition or compulsory transfer is not the optimal solution, because weaknesses existing in the banking system are not completely handled, but only a transfer from one commercial bank to another. For the healthy development of banking activities under the market mechanism, the handling of weak commercial banks through bankruptcy proceedings should be applied in practice as a necessary factor in ensuring the stable and sustainable development of current banking operations.

**Keywords:** Bankruptcy declaration. The stability of banking systems. Weak commercial banks. State Bank of Vietnam.

**Resumo:** O artigo é desenvolvido com base no método tradicional de análise jurídica combinado com o método comparativo para explicar e esclarecer as vantagens de lidar com bancos comerciais fracos por meio de processos de falência em comparação com medidas de consolidação, fusão, aquisição ou transferência compulsória. Os resultados da pesquisa mostram que o manuseio de bancos comerciais fracos, que não podem ser restaurados ou transferidos compulsivamente por meio de processos de falência, resolverá completamente a fragilidade intrínseca do sistema bancário comercial. No marco legal sobre falência de instituições de crédito, incluindo bancos comerciais, que está estipulado na Lei de Falências e na Lei de Instituições de Crédito, priorizar o tratamento de bancos comerciais fracos com base no método de consolidação, fusão, aquisição ou transferência compulsória não é a solução ótima, pois as fraquezas existentes no sistema bancário não são completamente tratadas, mas apenas uma transferência de um banco comercial para outro. Para o desenvolvimento saudável das atividades bancárias sob o mecanismo do mercado, o tratamento dos bancos comerciais fracos através de processos de falência deve ser aplicado na prática como um fator necessário para garantir o desenvolvimento estável e sustentável das operações bancárias atuais.

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Palavras-chave: Declaração de falência. A estabilidade dos sistemas bancários. Bancos comerciais fracos. Banco do Estado do Vietnã.

## 1. INTRODUCTION

Dealing with a weak bank, whatever the cause may be, is an expensive and unpleasant situation with the potential to have negative effects on the financial system of not only an individual country but also the whole region, and it even affects the global system (Gavril ă Simona Petrina, 2011:465-470), especially the risk of cross-border bank bankruptcy (Garcia, GGH, Lastra, RM, and. Nietto, MJ, 2009:240 276). This is the reason leading to the consideration of choosing measures to deal with weak commercial banks through consolidation, merger, compulsory acquisition, compulsory transfer or bankruptcy declaration. Dealing with weak commercial banks, no matter how it is done, is related to many subjects and requires a harmonious settlement between completely getting rid of the shortcomings of credit institutions, ensuring the maintenance of the national payment system and the economy's access to credit services. Therefore, when deciding to declare bankruptcy of a credit institution, countries often consider very carefully, including the economic aspect of this decision (Marinč, M., Vlahu, R., 2011), because it is related to the ability to access credit services, ensuring the stability of the banking system, protecting depositors and users of banking services. That means when deciding to deal with a weak commercial bank through bankruptcy procedure, it is crucial to ensure minimizing interruptions in the financial system and costs (Marinc, Matej and Vlahu, Razvan, 2011) that is conducted through bankruptcy procedure to avoid conflicts of laws (Badriyah, Siti Malikhatun and Suharto, R. and Mahmudah, Siti and Turisno, Bambang Eko and Wafi, Muhammad Shafiyuddin, 2019). Besides, searching for optimal measures to limit the damage caused by the bankruptcy declaration of commercial banks is also mentioned in the bankruptcy risk prediction model of commercial banks through using neural network (Lopez-Iturriaga, 2010) to be able to identify early signs of bankruptcy of commercial banks. Because the failure of commercial banks is often the consequence of imprudent business strategies, it is necessary to find a connection between the potential weakness and the business strategy of credit institutions. Moral consequences of a delay in the bankruptcy procedure violate not only legal obligations but also moral obligations (Olabarrieta, U., Araujo, A., San-Jose, L., 2020). Any act of concealing or delaying a bankruptcy declaration of a weak credit institution will bring negative consequences to the economy and banking

service users. This is the basis for the relative application of the Bankruptcy Law to some economic areas or businesses in the economy, including the bankruptcy declaration of credit institutions (Stijn Claessens, LeoraF. Klapper, 2002).

Like in other countries, in Vietnam, bankruptcy of credit institutions is a content of the law on banking organization and activities of credit institutions and is governed by the Bankruptcy Law because a credit institution is an enterprise performing one or several banking activities. The application of bankruptcy procedures to credit institutions is often specifically formulated by legislators in order to concretize the characteristics of credit institutions compared with other enterprises in the economy. Vietnam's bankruptcy laws have been gradually developed from a separate regulation following the guidance of the Government to a regulation in the Bankruptcy Law. This is an important step for creating a legal framework for declaring a credit institution bankrupt. The problem is that although Vietnamese law has issued bankruptcy of credit institutions (in the Law on Credit Institutions) and bankruptcy procedures (in the Bankruptcy Laws), there have been no cases of bankruptcy.

In the recent restructuring credit institution projects, bankruptcy of credit institutions in Vietnam has changed a lot from not allowing any breakdown during the restructuring process to allowing bankruptcy of people's credit funds or small-scale non-bank credit institutions, which shows that Vietnam has an approach to declaring credit institutions bankrupt based on the conservatism principle and ensures the safety of banking activities and the system of credit institutions. This option is considered appropriate in the early stage of the restructuring process when the weaknesses of the banking system and that of each credit institution are not clearly seen and the consequences are not determined if declaring a credit institution bankrupt. In the current period, in order to ensure the healthy banking system, the termination of a legal status of a weak and irrecoverable commercial bank is considered the optimal measure to completely solve the unsolved problems and limitations in the whole system and aim for the banking activities of credit institutions under the market mechanism.

## 2. METHODOLOGY

This research is based on a descriptive statutory approach through legal research (Pham, Duy Nghia, 2014), in which law means the rules and standards existing in society, and regulates social relations arising when dealing with the bankruptcy of credit

institutions. The law on bankruptcy of credit institutions is defined as: i) a part of the law on functions and operations of credit institutions; ii) measures to deal with weak commercial banks in restructuring credit institution system projects; iii) a legal procedure to terminate the legal status of a credit institution which does not meet market requirements.

To ensure inheritance, the historical method is used to clarify the development of regulations on bankruptcy of credit institutions. The sources of law collected include bankruptcy laws issued by the National Assembly and implementation guidance documents in relation to restructuring the system of credit institutions to meet the requirements of developing a healthy and sustainable banking market, including:

- Law No. 07/1997/QH10 dated December 12, 1997 and Law No. 47/2010/QH12 dated June 16, 2010 of the National Assembly on credit institutions.

- Law No. 17/2017/QH14 dated November 20, 2017 of the National Assembly amending and supplementing a number of articles of Law No. 47/2010/QH12 dated June 16, 2010 of the National Assembly.

- Law No. 30 L/CTN dated December 30, 1993 of the National Assembly, Law No. 21/2004/QH11 dated June 15, 2004 and Law No. 51/2014/QH13 dated June 19, 2014 of the National Assembly on bankruptcy.

- Decisions of the Prime Minister on the approval of the project “Restructuring credit institution” in the 2011-2015, 2016-2020 and 2021-2025.

The comparative jurisprudence method is used in this study to clarify the advantages of declaring a credit institution bankrupt compared with the consolidation, merger, compulsory acquisition with compulsory transfer when handling weak banks. In addition, this method is also used to clarify the approach to selecting regulations on bankruptcy of credit institutions in other countries to implement appropriate choices for Vietnam's conditions.

Besides, to identify flaws in the study, the author uses general research methods of social sciences, including the system, structure - function, logic (Anol Bhattacharjee, 2012) through studying research work that has been published. Secondary data sources are collected through library research or literature review published in professional scientific journals to clarify scientific points associated with the use of bankruptcy procedures when dealing with weak commercial banks that cannot be transferred or compulsorily acquired in relation to the goal of stabilizing and revitalizing the banking system in Vietnam.

### 3. RESULTS AND DISCUSSION

### ***3.1. Bankruptcy of credit institutions in the Law on Credit Institutions***

In business activities in general and banking business in particular, bankruptcy is undesirable for both enterprises, creditors, and the State. For credit institutions, the decision to bankruptcy affects not only the credit institution declared bankrupt but also other credit institutions in the market and the depositors, and the stability of the banking system in the supply of capital to the economy. This is the main reason why it is vital to make cautious decisions when declaring the credit institution bankrupt, because the bankruptcy of a credit institution is directly related to the stability of banking activities and the financial system as well. Credit institutions, when building development strategies, need to identify measures to prevent bankruptcy and enhance financial sustainability while the central bank will supervise the financial stability of the banking sector and identify risky banks (Dilyara F. Zakirova., Dmitry S. Pantelev., and Elvira F. Zakirova, 2018: 307-315). This is also the main reason why regulations on bankruptcy of credit institutions are designed specifically and are very different from the bankruptcy of ordinary commercial entities (Nasiri, Danial & Ezzatollah Nasiri, 2021:139-168) in which deposit insurance organizations participate in bankruptcy procedures to perform the function of a bankruptcy trustee according to the law and have an obligation to protect public interests (Gabov, Andrey V, Shitkina, Irina S, 2020,76-86), especially the interests of depositors is an issue that needs to be considered in order to improve the position and authority of the deposit insurance organization in the bankruptcy procedure of the credit institution. Saving, safety and minimizing social costs, especially the disruption in the provision of banking services to society, need to be considered when implementing the bankruptcy procedure of a credit institution from a business perspective and the potential cross-border bankruptcy (Marinc, Matej and Vlahu, Razvan, 2011). The above views show that a prudent approach and reducing systematic risk when implementing bankruptcy of credit institutions is a common trend. In order to achieve bankruptcy and reduce risks, it is essential to establish a separate legal framework for bankruptcy of credit institutions.

In Vietnam, the law on bankruptcy of credit institutions has been developed in parallel with the process of transforming banking operations in accordance with the market mechanism. Bankruptcy of credit institutions is specified in the Law on Credit Institutions - The Law provides for the establishment, organization, operation, special control, reorganization and dissolution of credit institutions. In particular:

- Article 98 of Law No. 07/1997/QH10 dated December 12, 1997 of the National Assembly on credit institutions providing for bankruptcy of credit institutions as follows:

After the State Bank has issued a document on not applying or terminating the application of measures to restore the solvency of a credit institution but that credit institution is still unable to pay its due debts. It may be subject to court action. Open procedures for settlement of bankruptcy declaration according to the provisions of the Enterprise Bankruptcy Law.

- Article 155 of Law No. 47/2010/QH12 dated June 16, 2010 of the 12th National Assembly on credit institutions provides for bankruptcy of credit institutions as follows: After the State Bank has issued a written termination special control or written termination or non-application of solvency recovery measures, but the credit institution still falls into bankruptcy, such credit institution must file a petition with the Court. The court shall open procedures for settlement of the bankruptcy declaration request in accordance with the bankruptcy law. When receiving a request to open bankruptcy procedures for a credit institution, the Court shall open procedures for settlement of the request for bankruptcy declaration and immediately apply procedures for liquidation of the credit institution's assets in accordance with the law on bankruptcy

- According to Law No. 17/2017/QH14 dated November 20, 2017 of the National Assembly amending and supplementing a number of articles of Law No. 47/2010/QH12 dated June 16, 2010 of the National Assembly, the credit institution is bankrupt in this Law is a plan to restructure a credit institution that is considered by the State Bank and submitted to the Government for decision on bankruptcy policy of a specially controlled credit institution. Formulating and approving the bankruptcy plan and contents; ii) organization implementing bankruptcy of credit institutions. The bankruptcy process of a credit institution is specified in Article 155 of Law No. 47/2010/QH12 dated June 16, 2010 of the 12th National Assembly on credit institutions, with the addition of the content " After the judge only appointing an asset management officer or an asset management and liquidation enterprise, the State Bank shall revoke the license of the credit institution".

A survey of the legal content of credit institutions shows that:

**First**, bankruptcy of a credit institution is a constituent part of the law on the organization and operation of a credit institution, which is a condition for establishing a banking market according to an established, competitive market mechanism. competition and also bankruptcy when credit institutions no longer meet the requirements of the market. Vietnam's point of view considers credit institutions as an enterprise in the economy. Having autonomy in business activities and self-responsibility for their business results. At the same time cooperating with others and competing in banking and other

business activities as prescribed by law. In that sense, when a credit institution no longer meets the rules of the market, it will fall into a state of bankruptcy or irrecoverably weak operation and cannot carry out procedures for termination of its status. Through dissolution, it must be declared bankrupt according to the law. However, in Vietnam, it is concerned that although there are regulations allowing bankruptcy in both the substantive law and the bankruptcy procedure law, no credit institution has been declared bankrupt. In other words, although bankruptcy of credit institutions has existed and been considered as an effective tool to build banking business under the market mechanism, it still remains "on paper".

**Second**, the State Bank has a decisive role in whether to apply bankruptcy procedures for those who are in a state of bankruptcy or irrecoverably weak and unable to carry out the procedures for termination of their legal status. through dissolution. This is shown that if the State Bank does not have a written termination of special control or a written termination of application or a document not to apply solvency recovery measures but the credit institution still falls into bankruptcy, such credit institution unable to make a petition to request the Court to open the procedure for settling the request for bankruptcy declaration according to the provisions of the bankruptcy law. This is an administrative barrier for a credit institution to fulfill its obligation to file a bankruptcy declaration in a timely manner, in order to avoid losses due to the delay in filing a request for opening the bankruptcy declaration procedure.

**Third**, the Law on Credit Institutions of Vietnam does not include the right to request open bankruptcy procedures for people who have the right to file a petition for opening bankruptcy procedures. This is a reasonable provision to ensure the consistency of the Law on Credit Institutions and the Law on Bankruptcy because the Law on Credit Institutions provides for the establishment, organization, operation, special control, reorganization, dissolution of credit institutions; the establishment, organization and operation of foreign bank branches, representative offices of foreign credit institutions, and other foreign organizations engaged in banking activities (Law No. 47/2010/QH12, Article 1) and shall be applicable to all organizations and individuals related to the establishment, organization, operation, special control, reorganization, dissolution of credit institutions (Law No. 47/2010/QH12, Article 2.(4)).

**3.2. Bankruptcy of credit institutions in accordance with the Bankruptcy Law**

*3.2.1. Law No. 30-L/CTN dated December 30, 1993 of the National Assembly on enterprise bankruptcy: There is no regulation on bankruptcy of credit institutions*

Law No. 30-L/CTN dated December 30, 1993 of the National Assembly on enterprise bankruptcy was issued when Vietnam officially “developed a multi-component commodity economy under the market mechanism under management of the government, following the socialist orientation” (Article 15 of the 1992 Constitution of the Socialist Republic of Vietnam) after conducting renovation for nearly 10 years. The 1993 Law on Enterprise Bankruptcy has the role of “protecting the legitimate rights and interests of creditors, debtor enterprises and related persons and determining the liability of indebted enterprises when settling bankruptcy. Enterprising and contributing to promoting enterprises to conduct business effectively. Making sure social order and discipline” (Preamble to Law No. 30 - L /CTN dated December 30, 1993), applicable to enterprises of all forms of ownership established and operating under the laws of the Republic of China. Socialist Republic of Vietnam when falling into bankruptcy. The bankruptcy of business directly serving national defense, security and important public services shall comply with specific regulations of the Government. Although Law No. 30-L/CTN dated December 30, 1993 of the National Assembly on bankruptcy of enterprises has no provisions on, but in Article 10.(6) Ordinance No. 38-LCTN/HĐNN8 dated May 23, 1990 on banks, credit cooperatives and financial companies with regulations on cases where banks, credit cooperatives and financial companies are declared bankrupt. Then the State Bank will revoke the license for banking operations. In the context, there is no law on bankruptcy of credit institutions. There have been studies to suggest that there should be separated regulations for bankruptcy of credit institutions (Nguyen, Van Van, 2002;17-24) in order to gradually bring banking activities to operate under the market mechanism.

*3.2.2. Law No. 21/2004/QH11 dated June 15, 2004 of the National Assembly on bankruptcy: assigning the Government to guide in detail bankruptcy of credit institutions*

After more than 10 years of implementation, Law No. 30 - L /CTN dated December 30, 1993 of the National Assembly on corporate bankruptcy was replaced by Law No. 21/2004/QH11 of June 15, 2004 of the National Assembly on bankruptcy. This Law “stipulates the conditions for and the filing of a petition for initiation of bankruptcy procedures; determining property obligations and measures to preserve assets in bankruptcy procedures; conditions and procedures for business resumption, asset liquidation and bankruptcy declaration; rights, obligations and responsibilities of the petitioner to file a request for initiation of bankruptcy procedures of the enterprise or



cooperative being requested to declare bankruptcy, and of the participant in the settlement of the request for bankruptcy declaration” (Law No. 21/2004/QH11, Article 1).

In essence, Law No. 21/2004/QH11 dated June 15, 2004 of the National Assembly on bankruptcy is a procedural law, applied to enterprises and cooperatives falling into bankruptcy. It is unable to pay due debts at the request of creditors. For special businesses directly serving national defense and security; enterprises and cooperatives operating in the fields of finance, banking, insurance and other fields regularly, directly providing essential public products and services, bankruptcy procedures shall comply with regulations. Decree No. 05/2010/ND-CP dated January 18, 2010 stipulating the application of bankruptcy law to credit institutions. The promulgation of Decree No 05/2010/ND-CP dated January 18, 2010 stipulates that the application of bankruptcy law to credit institutions is a necessary preparation step to identify the peculiarities of declaring bankruptcy of credit institutions (Vien, The Giang, 2005:55-58), especially regulations on identification of signs of credit institutions falling into bankruptcy, the right to file a petition for bankruptcy declaration, the participation of the deposit insurance organization in bankruptcy procedures and liquidation. assets of credit institutions.

*3.2.3. Law No. 51/2014/QH13 dated June 19, 2014 of the National Assembly on bankruptcy: unifying procedures for bankruptcy of credit institutions*

The biggest disadvantage when implementing Law No. 21/2004/QH11 dated June 15, 2004 of the National Assembly on bankruptcy is not ensuring equality in applying bankruptcy procedures to credit institutions. Moreover, the content of Decree No. 05/2010/ND-CP dated January 18, 2010 stipulating the application of bankruptcy law to credit institutions does not contain many new regulations but only cites. Recall the contents specified in Law No. 21/2004/QH11 dated June 15, 2004 of the National Assembly on bankruptcy, which means that the Government has only completed the tasks assigned by the National Assembly without many possible provisions. Exam to apply when bankrupt credit institutions (Vien, The Giang, 2013:24-28).

To overcome this shortcoming, Law No. 51/2014/QH13 dated June 19, 2014 of the National Assembly on Bankruptcy dedicates Chapter VIII from Article 97 to Article 104 on bankruptcy of credit institutions, in which rights and obligations. The bankruptcy filing of a credit institution is carried out after the State Bank of Vietnam issues a document on termination of special control, a written termination of application or non-application of solvency restoration measures that the credit institution has not applied

Credit institutions are still insolvent. Subjects who have the right to file a request for opening bankruptcy procedures of a credit institution include:

- An unsecured creditor or a partially secured creditor has the right to file a request for initiation of bankruptcy procedures upon the expiration of 03 months from the date of maturity of the debt, but the enterprise or cooperative fails to perform its obligations. payment service.

- Employees, grassroots trade unions and grassroots trade unions in places where grassroots trade unions have not yet established who have the right to file a request for initiation of bankruptcy procedures upon the expiration of 03 months from the date of execution. Performing the obligation to pay salaries and other debts due to employees but enterprises or cooperatives fail to fulfill their payment obligations.

- Shareholders or groups of shareholders owning 20% or more of the ordinary shares for a consecutive period of at least 06 months have the right to file a petition to open bankruptcy procedures when the joint stock company is insolvent. A shareholder or a group of shareholders holding less than 20% of the ordinary shares for a consecutive period of at least 06 months has the right to file a petition to open bankruptcy procedures when the joint-stock company becomes insolvent in the case of Article 2 prescribed by the company.

- Member co-operate the commune or the legal representative of the member cooperatives of the union of cooperatives has the right to file a petition for initiation of bankruptcy procedures when the cooperative and union co-operate commune is insolvent.

- Credit institutions are obliged to file a request to open bankruptcy procedures; in case a credit institution fails to file a request for initiation of bankruptcy procedures. The State Bank of Vietnam shall file a request for initiation of bankruptcy procedures against such credit institutions.

Competent People's Courts shall only accept applications for opening bankruptcy procedures of credit institutions when there are documents on termination of special control or documents on termination of application or failure to apply measures to restore capacity. Payments made by the State Bank of Vietnam, but credit institutions are still insolvent. Therefore, the application of bankruptcy procedures for credit institutions depends greatly on the decision of the State Bank. In other words, the time when the State Bank of Vietnam issues a document on termination of special control or a document on termination of application or non-application of solvency restoration measures by the State

Bank of Vietnam will determine the timeliness of the decision which carried out bankruptcy procedures.

From the content of Vietnam's Bankruptcy Laws, it is shown that the issue of bankruptcy of credit institutions has also been paid attention. If Law No. 30 - L /CTN dated December 30, 1993 of the National Assembly on bankruptcy of enterprises and Law No. 21/2004/QH11 of June 15, 2004 of the National Assembly on bankruptcy consider credit institutions as Especially enterprises operating in the banking sector that need to follow separate instructions. Law No. 51/2014/QH13 dated June 19, 2014 of the National Assembly on bankruptcy only stipulates a number of different contents in procedures. Bankruptcy procedures of credit institutions related to:

- Reimbursement of a special loan from the State Bank of Vietnam, whereby other credit institutions in accordance with the Law on Credit Institutions may be refunded prior to the division of assets (Law No. 51/2014/QH13, Article 100).

- The method of returning the entrusted assets, taking custody on behalf of the credit institution when the credit institution is declared bankrupt and liquidating the bankrupt property. Accordingly, the property owner entrusts the credit institution to the credit institution. A credit institution that holds or assigns a credit institution to manage through an entrustment, custody or asset management contract must present papers proving ownership and related documents and records to the enforcement agency. civil court to get their property back (Law No. 51/2014/QH13, Article 102).

- Recognition of the legal value of transactions performed by credit institutions during the period when the State Bank of Vietnam applied special control measures or applied measures to restore solvency under control of the State Bank of Vietnam Law No. 51/2014/QH13, Article 103).

- The time limit for the people's court to issue a decision declaring a credit institution bankrupt is 30 days from the date on which the asset management officer or asset management and liquidation enterprise completes the list of creditors, the list of debtors, the list of assets of the credit institution (Law No. 51/2014/QH13, Article 104).

### ***3.3. Bankruptcy of credit institutions in dealing with weak banks and restructuring the system of credit institutions: limited and prudent use***

As mentioned above, bankruptcy in general and bankruptcy of credit institutions in particular will bring unpleasant consequences for business partners, especially creditors and society such as unemployment, loss of assets... (Julija Kiršienė; Gabrielė Misevičiūtė, 2017: 85-99). For the banking system, when a credit institution is declared bankrupt, it will affect

the banking market, especially the ability to provide credit capital for the economy as well as the interests of depositors. Decisions on declaring a credit institution bankrupt needs to be evaluated carefully, in both macro and micro aspects. Therefore, in the process of restructuring credit institutions in Vietnam, the consistent point of view is not to allow the breakdown (i.e. bankruptcy) of weak credit institutions. It means that measures to solve absolutely the weaknesses of each credit institution by declaring the credit institution bankrupt is still a matter of argument. The essence of this argument is the choice between accepting the loss of time in dealing with weak banks associated with handling bad debts to ensure the stability of the banking system and settling quickly and decisively the irrecoverable weaknesses of credit institutions through bankruptcy procedures. In fact, the hesitation in applying bankruptcy measures to credit institutions shows the caution in managing the economy, especially in Vietnam, the proportion of credit capital for the economy is still dominating. While dealing with the weak banks in the process of restructuring the system of credit institutions, bankruptcy of credit institutions has changed remarkably:

*Firstly*, in the 2011 - 2015, not allowing any breakdown and unsafety of banking activities to happen out of control of the government are the principles in restructuring. Therefore, in this period, the Government encourages the merger, consolidation and acquisition of credit institutions based on a voluntary basis and makes sure the interests of depositors, the economic rights and obligations of related parties are in accordance with the provisions of the law. In case a number of credit institutions have a high level of risk, the risk of insecurity will be applied special measures according to the provisions of the law (Prime Minister, 2012).

*Secondly*, entering the 2016-2020, if a joint stock commercial bank is unable to recover, cannot continue to operate, gets a risk of insolvency and solvency greatly affecting the safety and stability of the system of credit institutions, the State Bank of Vietnam will send the policy to the Prime Minister and approves the plan for compulsory transfer of weak joint-stock commercial banks to newly appointed credit institutions and investors. In case a joint-stock commercial bank cannot be merged or consolidated with a healthy credit institution, or cannot be sold to qualified investors, forced to transfer or made bankrupt, activities will be scaled down to handle, dissolve and terminate its operation. Therefore, in this period, bankruptcy of commercial banks is not mentioned. Bankruptcy of some types of credit institutions can be applied but it does not greatly affect the safety and stability of the system of credit institutions, including (Prime Minister, 2017):

- Weak non-bank credit institutions belonging to economic groups or state-owned corporations.

- Weak non-bank credit institutions belonging to commercial banks where the State holds more than 50% of charter capital.

- Apply appropriate measures, dissolve or make weak people's credit funds bankrupt, fail to restructure or have no feasible restructuring plan; the people's credit fund is weak, cannot to meet safety standards, has no feasible restructuring plan and is not able to recover, bankruptcy has no effect on the safety and security of the people's credit fund in the area and/ or the people's credit fund system will have their licenses revoked and go bankrupt in accordance with law after the State Bank reviews, evaluates and classifies people's credit funds and identifies weak people's credit funds .

*Thirdly*, in the 2021 - 2025, the viewpoint of restructuring credit institutions is to maintain the stability and safety and to prevent the system of credit institutions from falling into crisis which leads to failure; make sure the legitimate interests of depositors, aim for basically dealing with weak banks, not allowing new weak banks to arise. Besides, the government also allows to study and supplement functions and tasks of The Deposit Insurance of Vietnam to participate in restructuring weak credit institutions.

For weak credit institutions, applying measures in accordance with the law to ensure the stability of the credit institutions system, political security, social order and safety. During this period, early intervention measures, special control and other measures as prescribed by law are considered and applied to weak credit institutions to ensure the stability of the banking and credit institution system, political security and social order and safety. In other words, at this stage, the consistent viewpoint is not to apply bankruptcy measures to banking credit institutions and non-banking ones and to possibly consider allowing pilot measures to deal with legal entities, weak people's credit funds and small-scale people's credit funds that are specially controlled (low volume of deposits and depositors), or people's credit funds that have no deposits or have it within the payment limits of deposit insurance through bankruptcy after fully assessing the impact and risk on political security and system safety (Prime Minister, 2022).

In fact, compulsory consolidation and merger in restructuring the credit institution system over the past time has been for the purpose of system consolidation and being arranged by the State Bank of Vietnam as well as other financial institutions. Other relevant government agencies are in order to achieve a secure financial system (Vo, Xuan Vinh, 2018; Vien, The Giang, 2016:45-50). This approach helps to reduce the number of weak

commercial banks and increase the size of commercial banks, which helps to ensure the safety of the banking system and improve competitiveness (Hoang, Thi Thanh Hang; Phan, Dien Vy; Jay Bandaralage, 2016:57; Le, Tu, 2017:61-70). However, if the consolidation and merger activities are not based on the needs of the parties, it will increase the risks for the acquired banks (Iran, Thi Thanh Tu., Nguyen, Thi Yen, 2021) and not help the bank reduce risks, leading to higher risks, bad debt risk and banks having difficulty in liquidity, therefore, the efficiency of bank consolidation is reduced (Vo, Xuan Vinh & Nguyen, Huu Huan, 2018; Doan, Thi Lien, 2022:35-46). That means the weaknesses and irrecoverable condition which still exist in the banking system and shift from weak commercial banks to commercial banks (compulsory acquirers or compulsory transferees) would weaken the banking system from within. This is the biggest challenge when dealing with weak commercial banks in Vietnam through consolidation, merger and acquisition. Therefore, the option of dealing with a weak commercial bank that cannot be recovered by bankruptcy procedures should be considered a parallel option with the measures of consolidation, merger, acquisition or compulsory transfer.

#### ***3.4. Using bankruptcy procedures to effectively and thoroughly deal with weak commercial banks and make the market healthy***

Practice shows that the limitations in declaring credit institutions bankrupt are only suitable in normal conditions, but when the system of credit institutions has problems, accepting bankruptcy of credit institutions is the optimal measure for ensuring the safety of banking activities and the financial system (Stephen J. Lubben, 2011: 1259-1278). Finding the optimal measure for bankruptcy of specific businesses, such as the case of credit institutions in particular, has posed many challenges to the reform of bankruptcy law though there have been many progressive steps compared to the past (Richard Levin, 2022).

The concrete provisions on some contents of bankruptcy for credit institutions in Law No. 51/2014/QH13 dated June 19, 2014 of the National Assembly on bankruptcy represent efforts to eliminate the idea that credit institutions and banking activities are the fields where bankruptcy cannot be applied. Concerns about ensuring system safety, social safety, capacity to supply capital for the economy... have been partly ensured when the development of the stock market becomes a medium and large capital mobilization channel for the long-term capital needs of enterprises in the market economy. Current regulations of Vietnam have emphasized the role of the State Bank of Vietnam in bankruptcy procedures of weak credit institutions. Decisions of the State Bank is

significant to decide whether to open or not to open bankruptcy procedures for credit institutions. The authority that decides to allow bankruptcy of credit institutions of the Government is also based on the proposal of the State Bank of Vietnam. This approach is similar to Romania when it emphasizes the role of the National Bank in bankruptcy procedures of credit institutions (Rares-Sebastian Puiu-Nan, 2013:381-389).

In order to effectively make the decision on declaring a credit institution bankrupt, the State Bank of Vietnam needs to improve its independence, not only in performing central bank functions but also in management activities and regulating the banking market (Vien, The Giang, 2018: 16-27), including handling weak banks by deciding to allow weak credit institutions that cannot be restored to open bankruptcy procedures. The State Bank of Vietnam should be given more power and play a more substantive role in the bankruptcy declaration procedure of credit institutions. The State Bank may have the right to file a petition to open bankruptcy procedures, to participate in bankruptcy procedures as a creditor; supervise the implementation of court decisions in bankruptcy procedures of credit institutions related to asset liquidation and protection of depositors' interests. In addition, in order to ensure effective enforcement of the law on bankruptcy of credit institutions and control the risk of abuse in declaring credit institutions bankrupt, the study of the measures to protect the legal relationship of bankruptcy by criminal law and it means studying the legalization of dangerous acts for society that may arise in the process of settling bankruptcy of credit institutions is very necessary (Ngo, Huy Cuong, 2014: 25-38).

In order to ensure that the bankruptcy procedure is conducted smoothly and to avoid the chain breaking due to the sudden withdrawal of deposits by depositors. It is necessary to ensure the participation of the Deposit Insurance organization in the bankruptcy procedures. In the United States, the Federal Deposit Insurance Corporation has been given special powers by the US Congress to deal with bank failures (even if otherwise provided by law) such as: being authorized to receive and liquidate the assets of the bankrupt depository institution without the control of shareholders, courts at all levels or other controlling agencies. The Federal Deposit Insurance Corporation may establish a bridge bank to resolve the bankruptcy of other banks when it is necessary to maintain the operations of the bank in bankruptcy. In order to ensure depositors to be confident in the banking system and related creditors. This bank can accept deposits, other debts, and make purchases of assets of the insolvent bank. In the condition that Vietnam chooses to allow only the Court which have the right to handle the bankruptcy declaration, Vietnam Deposit Insurance will participate in the bankruptcy procedure of the credit institution as the

representative of the depositor for the purpose of protecting the interests of depositors (Le, Thi Thu Thuy, 2014:79-89). This is a good psychological solution to maintain the normal state of the market when the court accepts to solve a bankruptcy case of a credit institution.

#### 4. CONCLUSION

Selecting measures to deal with weak banks in restructuring the system of credit institutions is the process of evaluating and deciding to maintain or terminate the operation of one or several financial intermediaries in the market. Every decision to deal, whether through consolidation, merger, acquisition, compulsory transfer or bankruptcy declaration, has an impact on the market, first of all reducing the number of entities providing banking services on the Internet market. However, the main and final purpose of dealing with a weak bank is to thoroughly solve the causes leading to the credit institution's weakness. The goal is to take appropriate remedial measures. The State should only allow the existence or handling of compulsory consolidation, merger, acquisition or transfer for commercial banks that can be restored or do not become a burden on credit institutions. Participating in the consolidation, merger, acquisition, or compulsory transfer, especially the bad debt situation. Because with the way of "attempting" to merge, merge, request acquisition, force transfer of credit institutions involved in handling weak banks, not only cannot solve the root cause of the situation. The weak state of the credit institution's operation, but also the bad debt as well as the causes of the credit institution's weakness, were not completely resolved. But only transferred from the weak commercial bank, forces must be processed to a commercial bank that is healthy. This practice may reduce the operational capacity of credit institutions involved in handling weak commercial banks. Therefore, using combination and parallel measures of consolidation, merger, acquisition, compulsory transfer and bankruptcy declaration of commercial banks are the optimal measures, but making a decision to declare bankruptcy of credit institutions is very difficult. It should be considered carefully when bankruptcy is placed in the context of weak banking handling and has a strong impact on market performance. However, a decisive decision, on the principle of prudence, with a clear legal framework and independent authority of the State Bank of Vietnam in bankruptcy procedures will certainly be the factors that ensure to minimize the risk of bankruptcy and maximum negative



impact when deciding to declare bankruptcy of commercial banks as a measure to handle weak banks and to restructure the system of credit institutions in Vietnam.

## REFERENCES

- Anol Bhattacharjee. (2012). *Social Science Research: Principles, Methods, and Practices*. (University of South Florida, ISBN 13: 9781475146127)
- Badriyah, Siti Malikhatun and Suharto, R. and Mahmudah, Siti and Turisno, Bambang Eko and Wafi, Muhammad Shafiyuddin. (2019). *Conflict of Legal Nors Regarding Regulation of Creditors of Encumbrance Rights Holders in the Debtor's Bankruptcy in Indonesia*. Print: ICIDS 2019, (Bandar Lampung, Indonesia, 10 September 2019). <https://eudl.eu/doi/10.4108/eai.10-9-2019.2289383>
- Constitution of the Socialist Republic of Vietnam, 1992.
- Dilyara F. Zakirova., Dmitry S. Panteleev., and Elvira F. Zakirova. (2018). Estimating bankruptcy probability of credit organizations. *International Transaction Journal of Engineering, Management, & Applied Sciences & Technologies*. Volume 9 no. 4 (2018):307-315.
- Doan, Thi Lien. (2022). "The Evaluation of Effectiveness of Commercial Banks Participating In M&A In Vietnam." *Eurasian Scientific Herald*, 4: 35–46. Retrieved from: <https://www.geniusjournals.org/index.php/esh/article/view/419>
- Julija Kiršienė; Gabrielė Misevičiūtė. (2017). Comparative analysis of liability cases for collapses of financial institutions. *Montenegrin Journal of Economics*, Vol. 13, No. 3: 85-99.
- Garcia, GGH, Lastra, RM, and Nietto, MJ. (2009). "Bankruptcy and reorganization procedures for cross-border banks in the EU: Towards an integrated approach to the reform of the EU safety net." *Journal of Financial Regulation and Compliance*, Vol. 17 no. 3: 240-276. <https://doi.org/10.1108/13581980910972223>
- Gavril ă Simona Petrina. (2011). International and Community Issues on Bankruptcy Regulation of Credit Institutions. *Ovidius University Annals, Economic Sciences Series*, Vol. XI, Issue 2: 465-470.
- Gabov, Andrey V, Shitkina, Irina S. (2020). Disputed issues of competence of the bankruptcy trustee in bankruptcy of credit organizations. *Gosudarstvo i pravo* 4:76-86. DOI: 10.31857/S013207690009237-2.
- Hoang, Thi Thanh Hang; Phan, Dien Vy; Jay Bandarlage. (2016). Mergers, Acquisitions and Market Concentration in the Banking Sector: The Case of Vietnam. *Asian Journal of Economics and Empirical Research*, 3(1): 57.
- Law No. 30 - L/CTN dated December 30, 1993 of the National Assembly on corporate bankruptcy.
- Law No. 21/2004/QH11 dated June 15, 2004 of the National Assembly on bankruptcy.
- Law No. 51/2014/QH13 dated June 19, 2014 of the National Assembly on bankruptcy.
- Law No. 47/2010/QH12 dated June 16, 2010 of the 12th National Assembly on credit institutions.
- Le, Thi Thu Thuy. (2014) "Completing the law on bankruptcy settlement of commercial banks and securities companies." *Journal of Legislative Studies*, No. 2+3 (258+259): 79-89.
- Le, Tu. (2017). The Efficiency Effects of Bank Mergers: An Analysis of Case Studies in Vietnam. *Risk Governance & Control: Financial Markets & Institutions*, Vol.7, No.1, (Winter 2017): 61-70. Available at <http://dx.doi.org/10.2139/ssrn.2822944>
- Lopez-Iturriaga, Felix Javier and Lopez de Foronda, Oscar and Pastor-Sanz, Iván. (2010). Predicting Bankruptcy Using Neural Networks in the Current Financial Crisis: A Study of US Commercial Banks. (November 28, 2010). Available at: <http://dx.doi.org/10.2139/ssrn.1716204>

- Marinč, M., Vlahu, R. (2011). Current Bank Bankruptcy Regimes and Recent Developments. In: *The Economics of Bank Bankruptcy Law*. First Online, dated 10 August, 2011 (Springer, Berlin, Heidelberg, 2011), 97-131. [https://doi.org/10.1007/978-3-642-21807-1\\_6](https://doi.org/10.1007/978-3-642-21807-1_6).
- Marinc, Matej and Vlahu, Razvan. (2011). The Economic Perspective of Bank Bankruptcy Law. *Fed Cleveland Conference on Resolving Insolvent Large and Complex Financial Institutions*, Available at: <http://dx.doi.org/10.2139/ssrn.1822682>
- Nasiri, Danial & Ezzatollah Nasiri. (2021). Bankruptcy of Bank and Financial and Credit Institutions by Looking at bank bail. *Journal of Legal Research*. Vol. 20, no. 46: 139- 168.
- Ngo, Huy Cuong. (2014). Protecting bankruptcy legal relations by criminal law. *Journal of Legislative Studies*, No. 2+3 (258+259): 25-38.
- Nguyen, Van Van. (2002). Orientation to build the law on bankruptcy of credit institutions. *Journal of Legal Science* No. 8(15): 17-24.
- Olabarrieta, U., Araujo, A., San-Jose, L. (2020). Ethics of Bankruptcy Creditor." Print: San-Jose, L., Retolaza, JL, van Liedekerke, L. (eds) *Handbook on Ethics in Finance*. International Handbooks in Business Ethics. (Springer, Cham, First online: October 22, 2020) [https://doi.org/10.1007/978-3-030-00001-1\\_16-1](https://doi.org/10.1007/978-3-030-00001-1_16-1)
- Pham, Duy Nghia. (2014). *Methods of studying jurisprudence*. Public Security Publishing House, Hanoi, Vietnam.
- Prime Minister. (2012). Decision 254/QĐ-TTg dated March 1, 2012 approved "Project on restructuring the system of credit institutions for the period 2011-2015".
- Prime Minister. (2017). Decision 1058/QĐ-TTg dated July 19, 2017 approving the Project "Restructuring the system of credit institutions associated with bad debt settlement for the period 2016 - 2020".
- Prime Minister. (2022). Decision 689/QĐ-TTg dated June 8, 2022 approving the project "Restructuring the system of credit institutions associated with bad debt settlement for the period 2021-2025".
- Rares-Sebastian Puiu-Nan. (2013). The role of the Romanian National Bank in applying the bankruptcy procedure of the banking credit institutions. *Challenges of the Knowledge Society: Private Law*, No.046: 381-389.
- Richard Levin. (2022). *Compilation of Recent Developments in Bankruptcy Law*. © 2021 Jenner & Block LLP - an Illinois Limited Liability Partnership including professional corporations. Available at: <https://jenner.com/system/assets/assets/10814/original/Compilation%20of%20Recent%20Developments%20in%20Bankruptcy%20Law.pdf>.
- Stephen J. Lubben. (2011). Financial Institutions in Bankruptcy. *Seattle University Law Review*, Vol.34: 1259-1278.
- Stijn Claessens, LeoraF. Klapper. (2002). Bankruptcy Around the World Explanations of its Relative Use. *The World Bank Development Research Group Policy Research Working Paper*, No.2865, Finance, 34 pages).
- Tran, Thi Thanh Tu., Nguyen, Thi Yen. (2021). Restructuring Measurements Impact on Bank Risk After the Global Financial Crisis — Empirical Evidence from Vietnam. *Review of Pacific Basin Financial markets and Policies*, Vol. 24, no. 03: 2150019.
- Vo, Xuan Vinh. (2018). M&As in the Process of Banking Consolidation – Preliminary Evidence from Vietnam. *Asian Journal of Law and Economics*, Vol. 9, no. 2: 20170032. <https://doi.org/10.1515/ajle-2017-0032>.
- Vo, Xuan Vinh & Nguyen, Huu Huan. (2018). Bank restructuring and bank efficiency—The case of Vietnam. *Cogent Economics & Finance*, 6:1, 1520423, DOI: 10.1080/23322039.2018.1520423.

- Vien, The Giang. (2016). The involvement of the State Bank in credit institutions merger today. *Journal of Legislative Studies*, No. 21(325): 45-50.
- Vien, The Giang. (2005). Some issues on the application of the Bankruptcy Law 2004 on the credit institutions. *Banking Review*, No. 2: 55-58.
- Vien, The Giang. (2013). Inadequacies in Vietnamese legal regulations on bankruptcy of credit institutions. *Banking Review* No. 7: 24-28.
- Vien, The Giang. (2018). Independence of the State Bank of Vietnam in performing central bank function. *Jurisprudence Journal*, No.08: 16-27.