

# ENSURING INDEPENDENCE, EFFICIENCY, AND OPERATION EFFECTIVENESS OF MONITORING AGENCY TOGETHER WITH SUSTAINABLE DEVELOPMENT OF THE FINANCIAL SYSTEM FROM A PERSPECTIVE OF VIETNAMESE LAW ENFORCEMENT AND INTERNATIONAL INTEGRATION

## ASSEGURAR A INDEPENDÊNCIA, EFICIÊNCIA E EFICÁCIA OPERACIONAL DA AGÊNCIA DE CONTROLO, JUNTAMENTE COM O DESENVOLVIMENTO SUSTENTÁVEL DO SISTEMA FINANCEIRO, NUMA PERSPECTIVA DE APLICAÇÃO DA LEI VIETNAMITA E DE INTEGRAÇÃO INTERNACIONAL

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establishment of the National Financial Supervisory Commission. Up to now, when Vietnam's financial market has undergone a period of development, it has carried out a synchronous restructuring of parts of the financial market, which requires further research to perfect the legal framework for financial supervision in the new situation.

**Keywords:** Financial system. Financial monitoring model. Supervision. Law.

**Resumo:** Garantir a segurança para cada instituição, bem como para o sistema financeiro, e as transações de ativos financeiros são sempre a principal preocupação de cada país. Dependendo das condições de desenvolvimento, cada país terá a escolha e organização de diferentes sistemas de controlo financeiro. A selecção de um modelo apropriado de supervisão financeira é um pré-requisito para o desenvolvimento de um mercado financeiro estável. Esse modelo pode prevenir riscos, e previsibilidade e prevenir os maus riscos decorrentes dos desenvolvimentos do mercado financeiro, especialmente no contexto da crise financeira. O actual modelo de supervisão financeira no Vietname foi concebido de forma dispersa, com base nas funções e abordagens institucionais, ou seja, a monitorização das componentes do mercado financeiro atribuídas às agências de gestão do Estado com cada domínio de monitorização da implementação. Este modelo de monitorização financeira revelou muitas deficiências e é ultrapassado pela criação da Comissão Nacional de Supervisão Financeira. Até à data, quando o mercado financeiro do Vietname passou por um período de desenvolvimento, tem levado a cabo uma reestruturação síncrona de partes do mercado financeiro, o que requer mais investigação para aperfeiçoar o quadro jurídico da supervisão financeira na nova situação.

**Palavras-chave:** Sistema financeiro. Modelo de supervisão financeira. Supervisão. Direito.

## 1. Introduction

Ensuring the stable and sustainable development of the financial system to meet the requirements of capital provision for the economy as well as the interests of depositors is the driving force behind shaping the financial supervisory models. Depending on the level of development of the financial market, political institutions, and characteristics of the economy, each country can choose and build an appropriate financial supervisory model.

The formation and operation of the financial market are one of the successes of the reform process in Vietnam since 1986, resulting in the formation of a system of financial institutions, and a model of financial market supervision has also gradually formed and has made important contributions to the stable development of the financial market. With the characteristics of a socialist-oriented market economy, and with many economic sectors, Vietnam's financial supervision institutions are built and operated under an independent supervisory model, which means that there will be the corresponding supervisory institutions for each part of the financial market (Vien The Giang, 2011). This model of financial supervision has the advantage of ensuring intensive supervision and being able to intervene promptly when parts of the financial markets have problems that need to be addressed.

However, with the development of the trend of multi-industry and multi-sector business of financial institutions, there have been gaps in supervision practice. In addition, the process of opening up the financial service market according to international

commitments also poses a requirement to ensure safety for international financial service provision, such as the provision of new banking services as committed in the CPTPP (Vien The Giang, 2018), thus attracting the international investment through the offering of securities on foreign stock markets by Vietnamese companies or attracting the foreign investment into the financial market with controlling the market abuses to commit crimes such as money laundering, securities prices manipulating... In the current context, it is very necessary to improve the independence, validity, and effectiveness of the financial supervisory system in Vietnam based on a clear and transparent financial supervisory legal system.

## 2. Literature review and method

The research by Trinh Hong Hanh (2017) suggests that Vietnam's financial market had rapidly developed and contributed to the growth of Vietnam's economy positively. However, some potential risks to Vietnam's financial system also occurred. If the macroeconomics of a country is unstable, risks related to the nation's financial system will occur and have adverse impacts on the nation's growth. One of the main culprits of this situation is a weak monitoring system for the financial market. According to Tran Kim Chung (2013), the separation and independence of the supervisory agencies make the coordination not close and effective, this is the cause of the limitations in coordination between the current financial supervisory agencies on the following aspects:

- Lack of specific legal documents which work as a legal corridor for coordination between supervisory agencies in the financial market.
- Supervisory coordination is often slow, formal, and irresponsible among supervisory agencies.
- Reducing the ability to supervise the multi-industry and multi-sector financial groups that are increasingly participating in all three economic sectors: banking, insurance, and securities.
- The supervisory agencies are unable to fulfill their duties well due to a lack of information.
- Inability to react quickly to sharp and unusual fluctuations in the financial market.

In the context that Vietnam's financial market is growing in the size and the number of financial institutions, the trend of multi-sectoral business of the financial

institutions is showing more and more clearly. In addition, the increasing participation in the New-Generation Free Trade Agreements requires Vietnam to continue to improve the position and role of the financial market to better meet the demand of mobilization, and capital turnover in the economy as well as international trade. In this condition, the financial system supervision needs to be adjusted in the direction of enhancing the effectiveness and validity of specialized supervision, and at the same time, improving the macro-financial supervision of the entire financial system as well as activities of financial groups by strengthening the legal position, supplementing resources for the inspection agency to supervise the financial system. Besides, improving the supervisory capacity of the supervisory technology infrastructure system and the capacity of the supervisory human-resources apparatus through building a complete and consistent database and applying modern supervisory technology to update information from the supervised facilities to the supervisory agencies quickly and promptly; making timely and accurate forecasts; improving the capacity of policy analysis and the macro-financial forecasting of supervisors (Tran Nguyen Khai, 2019).

According to the research by Nguyen Thi Hoa, from the 1980s to before the financial crisis of 2007 - 2008, countries around the world tended to strongly reform their supervisory structure towards centralizing the financial market supervisory function (banking, securities, insurance) into a single unit - the Financial Supervision Agency (FSA) without attaching importance to the central bank's role in financial supervision. This comes from the perception that the central bank should only focus on using the tools of monetary policy to curb inflation because low inflation is seen as the main factor contributing to financial stability. However, the financial crisis of 2007 - 2008 showed that a policy focusing only on price stability is not enough, but it is also necessary to maintain an effective supervising system and a prudent supervision framework to stabilize the financial system, and the macroeconomics. Accordingly, there should be requirements on capital, liquidity, timely intervention, the strict risk management process of each institution as well as supervising the legal compliance of institutions in the system; harmonious combination between monetary policy and macroprudential policy. Therefore, it is very important to consider choices to achieve compatibility and effective operation of the financial system supervision model. An appropriate financial supervisory model will promote the validity and effectiveness of the financial system supervision, create a favorable environment for close coordination, and mutual support and promote the effect of macroeconomic policies.

Thus, ensuring the safety and stability of a financial system, macroeconomic stability, and sustainable economic growth - are the top goals of each country.

Dijkstra, R. (2010) examines, using the insights from Law and Economics, to what degree accountability contributes to adequate financial supervision by examining the impact of the consequences of being held accountable on the behaviour of financial supervisors. In this article shows that, from a Law and Economics perspective, it is unlikely that the existing accountability arrangements give the Dutch financial supervisors sufficient incentives for performing their supervisory role with adequate care. Zeranski, S., Sancak, I.E., (2020) discuss and analyse the main components of a digital financial supervisory system with supervisory technology (SupTech). In this work, they offer a new SupTech definition and configures the digital pillars of a financial supervisory system. We contribute to the TECHs in Finance (FinTech, RegTech, SupTech) literature with two new concepts: “prudential supervisory disclosure” and “sustainable finance technology”, or SuFTech.

From a legal perspective, studies on the operation of the financial supervision model in Vietnam depend on the content of the law governing banking activities, securities activities, and insurance business activities, and not many studies have mentioned these, even in the context that the laws governing banking, securities, and insurance activities are constantly being amended and supplemented to meet the requirements of Vietnam's financial market development practice. One of the issues that attract the attention of researchers from a legal perspective is the need to quickly establish a consolidated financial supervision model instead of a supervisory model based on functional institutional characteristics – the supervisory model is not capable of supervising the multi-sectoral financial activities of Vietnamese financial institutions.

To clarify legal issues related to ensuring the independence, validity, and effectiveness of the law on financial supervision in Vietnam, the article is developed, based on the method of describing the content of the law on financial supervision. Based on the collected legal content, the author draws out the limitations and inadequacies of the financial supervisory legal system by comparing and contrasting the laws on the supervision of parts of the financial market. Sources of financial supervision law have been collected since 2011 for the law on banking supervision; since 2006 for the law on the securities market supervision; and since 2000 for the law on insurance business supervision, including:

- Laws regulating banking, securities, and insurance activities are promulgated by the National Assembly.
- Detailed instructions for the implementation of laws by the Government, the Ministry of Finance, and the State Bank.
- Decisions of the Prime Minister in establishing and adjusting the organizational model, functions, tasks, and powers of the State Securities Commission under the Ministry of Finance, the Banking Inspection and Supervision Agency under the State Bank of Vietnam.

### 3. Analyzing the Vietnam financial monitoring model

#### ***3.1. Vietnam financial monitoring model: independent, multi-story but still impaired and having no coordination mechanism to implement supervision***

The financial monitoring model selected by Vietnam is independent, meaning that corresponding to each sector/part of the financial market will have corresponding specialized supervisory agencies to implement. Vietnamese law also allows some other entities to participate in financial supervision. Therefore, it can be generalized that the model of financial supervision in Vietnam includes a system of competent agencies *directly implementing* the supervision and the agency which is *indirectly involved* in the implementation of financial supervision. The division of the competent authority performing the financial supervision is based on the duties and powers prescribed in the legal documents.

***Firstly***, the authorized entity that directly conducts the monitoring of the financial market components is the agency designated in the state management agencies of banking operations, stock exchange activities, and insurance business.

*For banking activities*, the Banking Inspection and Supervision Agency shall directly supervise the banking operations of credit institutions. Accordingly, the Banking Inspection and Supervision Agency has the function of advising and assisting the Governor of the State Bank in state management of credit institutions, foreign bank branches, and state management of public inspection, settlement of complaints and denunciations, prevention of corruption, prevention of money laundering, deposit insurance; conducting administrative inspections, specialized inspections and banking supervision in the fields under the State management scope of the State Bank; implementing prevention and combating against money laundering, preventing and combating terrorist financing according to the provisions of law and assignment of the Governor of the State Bank

(Clause 1, Article 1, Decision No. 20/2019/QĐ-TTg of the Prime Minister dated June 12, 2019). Regarding the organizational structure, the Banking Inspection and Supervision Agency is the equivalent unit of the General Department, directly under the State Bank of Vietnam, including the institutions needed to carry out monitoring of banking operations from monitoring market entry procedures; to remote monitoring and on-site inspection. In operation, the Banking Inspection and Supervision Agency is actively taking initiative in the use of monitoring tools for banking operations and the system of credit institutions. Thus, in essence, banking supervision is an activity based on state power and is a specialized surveillance activity carried out by the Banking Inspection and Supervision Agency. The law on banking supervision in Vietnam has concretized specific requirements for monitoring banking operations, especially the maintenance and enhancement of public trust in the system of credit institutions; ensuring the observance of monetary and banking policies and laws; contributing to improving efficiency and effectiveness of state management in the field of currency and banking.

*For securities and securities markets*, the State Securities Commission is the body with direct supervision, although the current Securities Law does not have regulations on securities market supervision. The regulations on this activity are scattered in the regulations on state management of securities and securities market. Accordingly, the Ministry of Finance directs the State Securities Commission to implement the strategy, planning, and policies on securities market development and policies and regimes to manage and monitor securities and marketing activities. securities market (Point c, Clause 2, Article 9 of Law on Securities, 2019). The State Securities Commission shall manage, inspect, and supervise operations of the Vietnam Stock Exchange, its subsidiaries, and Vietnam Securities Depository; consider approving regulations of the Vietnam Stock Exchange, its subsidiaries, and Vietnam Securities Depository; request Vietnam Stock Exchange, its subsidiaries and Vietnam Securities Depository to revise their regulations; revise, suspend and revoke decisions relevant to operations of Vietnam Stock Exchange, its subsidiaries and Vietnam Securities Depository; direct Vietnam Stock Exchange, its subsidiaries and Vietnam Securities Depository to fulfill duties to protect the lawful rights and interests of investors (Point d, Clause 2, Article 9 of Law on Securities, 2019). The Decision No. 48/2015/ QĐ-TTg dated October 08, 2015, of the Prime Minister, stressed that the State Securities Commission directly manages and monitors securities and securities market activities, including supervising the compliance of regulations of securities

and securities market by organizations offering their securities to the public, organizations having their securities listed, securities business organizations and other ancillary organizations, as stipulated by applicable laws and implementing the inspection, examination, and supervision of organizations and individuals participating in the securities market and applying sanctions for violations of regulations of securities and securities market, as stipulated by applicable laws. From the provisions of the current law on the supervision of securities and securities market activities, the securities market supervision of the State Securities Commission is a state power activity, because of the Commission. The State Securities Commission is an agency under the Ministry of Finance.

Oversight of the insurance market is also a state-owned activity and is assigned to Insurance Management and Supervision Department. The Department of Insurance Management and Supervision is a unit of the State management apparatus of the Ministry of Finance, with the function of assisting the Minister of Finance in performing the state management of the insurance business in the whole scope. country; directly manage and supervise insurance business activities and service activities in the field of insurance business by law. Within the scope of their functions, duties, and powers, the Department of Insurance Management and Supervision has continuously strengthened inspection and supervision to ensure that enterprises comply with the provisions of the Business Law. insurance and related legal regulations; create a level playing field for businesses and a healthy business environment, helping businesses make the most efficient use of development opportunities following the prescribed principles (Decision No. 1799/QD-BTC, dated September 11, 2017, of the Minister of Finance, defining tasks, powers and organizational structure of the Department of Insurance Management and Supervision)

**Secondly**, entities indirectly participate in financial supervision. Subjects indirectly involved in financial monitoring activities including the National Financial Supervisory Commission and the Deposit Insurance Organization.

For the National Financial Supervisory Committee, the function of advising, advising, and assisting the Prime Minister in coordinating activities of general supervision of the national financial market (banking, securities, insurance) is the responsibility. Implementing the assigned functions, the National Financial Supervisory Commission is responsible for setting up the database system, synthesizing, processing and providing information on the national financial market; analyze, forecast and warn the level of safety of the financial system, risk to the national financial market and propose timely solutions,



report to the Prime Minister periodically or suddenly export; proposing and proposing to the Prime Minister, concerned ministries and branches, specialized inspection and supervision agencies and competent authorities to handle violations committed by violating organizations and individuals; or fail to fully comply with the regulations and conditions in banking, securities, insurance and regulations on provision of periodical and extraordinary information in service of the national financial market supervision; chairing meetings, seminars, seminars and forums to discuss and discuss issues within the scope of assigned tasks and powers; may hold press conferences and publish information under the scope of management according to the provisions of law.

Regarding specialized supervision coordination, the National Financial Supervisory Committee proposed and proposed to the Prime Minister to promulgate regulations on coordination of national financial market monitoring (banks, securities, insurance); coordinating specialized surveillance activities; to propose agencies strictly follow the supervision process and mechanism, the application of international practices and standards on financial market supervision; is responsible for commenting with the State Bank of Vietnam, the Ministry of Finance and other relevant agencies in developing mechanisms, policies, and regulations on the management, inspection, and supervision of banking activities, securities, insurance; strategies, development orientation of banking, securities market, insurance market; to propose competent agencies to study, amend and promulgate legal documents related to banking, securities, and insurance activities.

From the position of a state financial institution, operating for non-profit purposes, implementing the deposit insurance policy, contributing to maintaining the stability of the system of credit institutions, ensuring the development safe and healthy of banking operations, the Deposit Insurance Organization is responsible for supervising activities of deposit insurance participating organizations including two contents: (i) Monitor and inspect the observance of deposit insurance regulations; propose to the State Bank of Vietnam to handle violations of the law on deposit insurance; (ii) To synthesize, analyze and process information on deposit insurance participating organizations in order to detect and recommend the State Bank of Vietnam to promptly handle violations of banking safety regulations, the risk of insecurity in the banking system is actually the supervision of the insured organization to the insured to avoid deposit insurance participating organizations taking advantage of participating in deposits insurance, for profit purposes can make business plans at risk of business disruption (Clause 9, 10 Article 13 of the Law on Deposit

Insurance). In other words, the monitoring of the deposit insurance organization for deposit insurance is to control the psychological dependence of the insured, and also brings positive effects for Deposit Insurance Organization to perform deposit insurance operations (Vien The Giang, 2012):

- Maintain a regular relationship between the deposit insurance organization and the deposit insurance participating organization to create a basis for effective detection, warning, and prevention of risks affecting operations of each deposit receiving organization as well as ensuring the safety of the system of credit institutions.

- Helping the deposit insurance organization to have accurate and reliable information sources to analyze, evaluate and propose to the State Bank to take appropriate measures to handle the actual situation of the receiving organization deposits.

- As a basis to distinguish the nature of banking supervision activities of the State Bank of Vietnam and supervision activities of deposit insurance organizations.

### ***3.2. Implementation of the monitoring function of financial supervisory agencies in Vietnam: Not meeting the requirements of ensuring the sustainable development of the financial system***

***Firstly***, the financial supervisory agency in Vietnam has not yet ensured the independence needed to perform the financial market monitoring function.

The competent authorities directly implementing financial supervision activities are defined that a "*unit*" under the State Bank of Vietnam and the Ministry of Finance. The financial supervisory agency is defined as an *assisting body* for state management agencies. Specifically, the Banking Inspection and Supervision Agency perform the function of advising and assisting the Governor of the State Bank in state management of credit institutions, foreign bank branches and state management of inspection work, settlement of complaints, denunciations, prevention of corruption, prevention of money laundering, deposit insurance; conducting administrative inspections, specialized inspections and banking supervision in the fields under the State management scope of the State Bank; to prevent and fight money laundering, preventing terrorism financing according to the provisions of law and assignment of the State Bank Governor. For securities and insurance sectors assigned to the Securities Market Supervision Department under the State Securities Commission, the Department of Insurance Management and Supervision is under the Ministry of Finance. Thus, all activities of the Inspection Agency, Banking Supervisor, the Securities Market Supervision Department, and the Department of Insurance Management,

and Supervision are in the "*direction*" of the State Bank and The Ministry of Finance should lack independence in the monitoring process. Monitoring activities are therefore "*weakness*", and ineffective by administrative orders of state management agencies.

**Secondly**, there is no clear separation of monitoring, inspection, and inspection concepts in the legal regulations, which leads to overlapping functions and tasks of supervision and inspection of state management agencies. With the current legal regulations, the distinction between inspection and financial supervision is only carried out in the banking and insurance sectors. However, the contents of functions, duties, and powers of the Banking Inspection and Supervision Agency, and the insurance supervisory agency are not clearly defined between inspection activities and supervision activities.

**Thirdly**, the financial monitoring activities of state agencies have not yet been ensured continuity and are "*limited*" within the scope of tasks and powers specified in the legal documents. corresponds to each part of the financial market. It is this "*limit*" that has led, in practice to carry out the monitoring task, the monitoring agencies will follow the direction of "do at one's discretion and preference", a lack of coordination and information sharing mechanism This has led to "gaps", uncontrollable "hidden corners" or unwillingness to control because those content do not clearly show which agency is overseen. The reality has proved that the parts of the financial market are intertwined and have a mutual interaction, therefore, the monitoring of the financial market needs close coordination. between supervisory agencies to ensure the market operates safely and effectively, avoiding chain effects. In the context of the transition economy and the continuous fluctuation of the financial intermediation system and the financial market in Vietnam as well as the impact of the integration process of Vietnam's finance in the financial market. Gender requires the financial monitoring system needs to be comprehensively renewed on all aspects from structure, and organization to functions, tasks, powers, methods, and content of monitoring in line with practice Vietnam and international standards for financial market monitoring.

**Fourthly**, if the purpose of establishing the National Financial Supervisory Committee is the "*preparation step*" for the development of the capital market by 2010 and the vision for 2020 is to strengthen the apparatus and improve the management capacity. State management and supervision of the capital market; step by step separate the management function with the function of monitoring market activities; soon studying to establish a National Financial Supervision Agency, helping the Prime Minister to

coordinate policies and tools for warning, administration, and monitoring of financial and monetary activities at the macro level with the legal position, the current operational function of the National Financial Supervisory Commission has not promoted the expectation of the State when setting up this agency. This is reflected in the following aspects:

*Firstly*, although it is defined as an entity with legal status, has its headquarters and seal; may open accounts at the State Treasury and commercial banks; be assigned a full-time administrative payroll; operational expenses of the Committee are guaranteed by the state budget and arranged in the regular operating budget of the Government Office (Clause 3, Article 1 Decision No. 34/2008/ QD-TTg dated 3/3/2008 of the Prime Minister on the establishment of the National Financial Supervisory Commission) is unclear about the legal position of the National Financial Supervisory Commission. *The ambiguity about this legal position is expressed in both human resources and financial resources for operation.* Accordingly, the Chairman of the Committee is the head of the Committee, *entitled to the regime equivalent to the Minister*, appointed and dismissed by the Prime Minister, and responsible to the Prime Minister and the law for the implementation of the assigned tasks and powers. The Vice Chairmen of the Committee are appointed and dismissed by the Prime Minister based on the proposal of the Chairman of the Committee; subject to the assignment and direction of the Chairman of the Committee; be responsible before the law and the Chairman of the Committee for the implementation of assigned tasks. So, the National Financial Supervisory Commission is an agency to assist the Prime Minister, the arrangement of the regular operating budget of the Government Office will be a significant difficulty for the Committee when implementing their functions and tasks.

*Secondly*, one of the operational principles of the National Financial Supervisory Committee is not to replace the functions and tasks of specialized state management agencies (Item 4, Article 3 Decision No. 79/2009/QD-TTg on May 18, 2009 by the Prime Minister promulgating the organization and operation regulations of the National Financial Supervisory Commission), so effectively functioning as adviser and adviser to the Prime Minister Government in coordinating national financial market monitoring (banking, securities, insurance); assisting the Prime Minister in general monitoring of the national financial market has been secured, because, the content of the activities of the National Financial Supervisory Commission is mainly proposals, recommendations and recommendations; analyzing, forecasting and warning of the safety level of the financial-

banking system and the risks to the national financial market; set up a database, synthesize, process and provide information on the national financial market to report to the Prime Minister; to propose specialized inspection and supervision agencies and competent authorities to handle violations committed by organizations and individuals that fail to comply with or fail to fully meet the conditions in banking, insurance and securities activities, in other words, the National Financial Supervisory Commission does not have the necessary tools to carry out the task of coordinating specialized financial monitoring activities; Whether or not the recommendations of the National Financial Supervisory Commission are "*rights*" of specialized financial supervisory agencies, the National Financial Supervisory Commission does not have the authority to demand the authority Specialized financial supervisors must follow their recommendations and if specialized financial supervisory agencies do not implement or improperly implement these recommendations, there are no sanctions for handling. In other words, the proposals, recommendations, and recommendations of the National Financial Supervisory Commission do not have a strong impact, just "*reference*" to the financial supervisory agency when they perform the monitoring task close.

#### **4. Linking between ensuring the independence, effectiveness, and performance of financial supervisory agencies and the requirements of sustainable development of the financial system in Vietnam**

##### ***4.1. Separating the financial monitoring function from the state management function to minimize the dependence of financial monitoring activities on state management activities***

Researching regulations on the legal position, tasks, and powers of state management agencies in monetary, banking, securities, and insurance show that:

- The State Bank of Vietnam has a legal position at the Government level, being the central bank of the Socialist Republic of Vietnam, performing the function of state management of monetary, banking, and foreign exchange operations (hereinafter referred to as currency and bank); performing the function of the Central Bank on the issuance of money and banks of credit institutions and provide monetary services to the Government (Clause 1, Clause 2, Article 2 of the Law on State Bank of Vietnam 2010). Banking supervision is one of the tasks and powers of the State Bank (Clause 11 Article 4 Law on

State Bank of Vietnam) but is a very "small" task compared to the overall tasks and powers that the State Bank has to perform.

According to Decree No. 26/2014/NĐ-CP issued by the Government on April 7, 2014, on the organization and operation of the banking inspection and supervision, the Banking Supervision agency is a state supervision body having the organization structure as follows: i) The Banking Supervision Agency under the State Bank of Vietnam; ii) the Supervision units under municipal and provincial branches of the SBV established in provinces and municipalities where supervision departments under the State Bank of Vietnam Banking Supervision Agency do not exist. The State Bank of Vietnam Banking Supervision Agency is a unit having the same rank as general departments subordinated to the State Bank of Vietnam, which advises and assists the State Bank of Vietnam governor in the state management of credit institutions, foreign bank branches, the state management in supervising, working on claims and accusations, preventing corruptions and money laundering, monitoring deposit insurance; conducts inspections, and supervises banks in the fields under the management of the State Bank of Vietnam; prevents money laundering and terrorist financing by the laws and as assigned by the State Bank of Vietnam governor.

- The Ministry of Finance is defined as an agency of the Government, assigned the function of state management of securities; insurance. The tasks of supervising the activities of organizations related to the issuance, business, and provision of securities services (Point d Clause 13 Article 2 of the Decree No. 87/2017/ND-CP dated July 26 2017 by The Government); supervise the activities of foreign insurance enterprises, branches of foreign non-life insurance enterprises in Vietnam, insurance brokerage enterprises and related organizations and individuals (Point c Clause 14 Article 2 of the Decree No. 87/2017/ND-CP dated July 26, 2017, by The Government) is one of the contents of state management on securities and insurance. The uniform task of supervising banking activities, securities business activities, and insurance business in the state management function will change the nature of financial supervision activities compared to house management activities because, most scientists agree that financial monitoring is the regular monitoring and checking of the financial and monetary situation to prevent the collapse of the financial system through detect and prevent financial problems before it goes out of control (To Ngoc Hung, 2010).

Financial supervision aims to check the level of compliance with the law, evaluate the results and effectiveness of the use of the state budget, and at the same time alert, detect and handle violations in the forming and using state budget revenues (Mukhadin Abdurakhmanovic Eskindarov, 2010) with the ultimate goal is to maintain the stability of the financial market (National Financial Supervisory Commission). For financial monitoring to be effective, it is an effective tool to warn of potential risks arising from market transaction practices, the financial supervisory agency must be independent of the state management agency. Therefore, for financial monitoring activities to be in the right nature as a way for the state, the financial market, and investors to identify potential risks arising from the market transaction, this activity must be separated from state management activities. Financial monitoring then acts as an alerting body for market participants to minimize system risks. For state management, financial monitoring activities will provide practical evidence that requires state management agencies in banking, securities, and insurance to have necessary interventions to ensure the safety. operation of financial institutions in the market, at the same time maximizing the role of the financial market in attracting and effectively allocating social investment resources to serve economic growth targets.

#### ***4.2. Establishment of a competent national financial supervisory agency that directly oversees the operation of financial markets***

The advantages of the independent financial monitoring model have been shown in the specialization aspect so that the watchdogs can capture the characteristics of the financial institution's operations on the market in the most profound way; also in regular financial monitoring activities, qualified human resources; infrastructure, database, the legal framework for monitoring activities have been adjusted and improved aftershocks affecting financial stability. However, this model is inconsistent with the important changes in the financial services business model, which is the creation of multi-functional financial corporations operating in many areas of the market. When dealing with issues related to the integration of financial product characteristics of financial institutions in the market, the independent financial watchdog is not able to afford due to limited professional qualifications service as well as the ability to share and coordinate among agencies in market monitoring (To Ngoc Hung, 2010).

The development of the financial market at the end of the twentieth century is the birth of large financial corporations, and multi-sector and multi-sector interlacing

businesses which is an important practical basis requiring the establishment of supervisory agencies consolidated finance has enough tools and capabilities to comprehensively monitor the performance of multi-purpose financial corporations. The consolidated financial monitoring model is understood to be the model that the supervisory agency is only an agency, separate from the central bank, responsible for overseeing all intermediaries and markets in the banking sector, finance, and insurance. This agency performs monitoring functions to ensure stability, transparency, and fair competition as well as protect investors in the banking, finance, and insurance sectors (To Ngoc Hung, 2010). For an integrated Supervision Agency, the objective of careful monitoring is the most important goal in financial sector monitoring and management and it includes macro stability monitoring: ensuring safety for the financial system; micro stability monitoring: ensuring stability for each market participant; consumer protection and competition policy to prevent market failures (Trinh Thanh Huyen, 2010). According to the 2006 IMF report, there are still 41% of countries and territories that choose the Sectoral Monitoring Agency model, including the US; 26% select a unified model, ie the Supervision Agency only monitors two of the three areas, and 33% have integrated monitoring models. This shows that the Integrated Supervision Agency model has many advantages but also many limitations (Trinh Thanh Huyen, 2010). In Vietnam, legislation regarding the financial stability function of the Central Bank of Vietnam is necessary (Nguyen Thi Hoa, 2018).

In our country, the financial market after a period of development has appeared with many financial corporations operating in all three markets of banking, securities, and insurance, and now, the trend of establishing financial and banking corporations is still the development target of many financial institutions. On the other hand, the potential risks, the risk of passing on the financial market should be warned that there is a big gap, threatening the sustainable development of the financial market. In the capital market development orientation by 2020, it is also required to build an independent financial supervisory agency and implement capital market monitoring activities. This is the legal premise for the establishment and operation of the National Financial Supervisory Committee. After a period of working as a consultant and coordinator for the Prime Minister in implementing the function of financial market supervision, the National Financial Supervisory Commission also had enough time to accumulate experience and raise high monitoring capacity. All of these factors have met the necessary and sufficient conditions for operating the consolidated financial monitoring model in Vietnam.



Currently, the issue of the organizational model and the scope of authority of the consolidated financial monitoring agency still has some arguments:

- It is most appropriate for the financial supervisory body to be an agency of the Government, which is the most reasonable because its functions, duties, and powers are given by the law, the agency will currently oversee the national financial market function to at least help the Government to have a more comprehensive, more accurate and up-to-date view of the activities that have been and will take place in the financial market. This is an important premise for the Government - as the highest state management agency in the Socialist Republic of Vietnam - to make policy decisions or handle financial market abnormalities, thereby ensuring the normal operation of this market. In addition, because the Government is an agency with regular operating regimes, the reporting of financial supervision will also be made easier and of course, the specific situation of the national financial market will also be updated more often. This view also argues that it is difficult for financial supervisory agencies under the National Assembly to ensure continuity in the operation of financial supervisory agencies (Nguyen Thai Ha, 2011).

- The financial supervision agency under the Government, but the head of this agency must be elected or approved by the National Assembly based on the proposal of the Prime Minister; the financial supervisory body is responsible to the National Assembly for the performance of its duties and periodic reporting to the National Assembly and the Standing Committee of the National Assembly; The head of the financial supervision agency is entitled to attend sessions of the Standing Committee of the National Assembly. The basis of this petition is that financial supervision is related to all aspects of people's lives; hence the national voters need to know about the activities of this Committee. Because the National Assembly operates according to the session, it is necessary to let the Government manage to ensure continuity in financial supervision activities, but to reduce the influence of the Government, avoiding the situation of "playing football and blowing a whistle at the same time", because, financial supervision will have a direct impact on the promulgation of Government policies in the implementation of monetary policy and fiscal policy. With this petition, we will ensure that the financial supervisory agency has the right, independence, and objectivity in the implementation of financial supervision, not under the control of state management agencies. For example, when a phenomenon like Vinashin occurs, the financial supervisory agency will investigate to assess the impact of Vinashin's

debt status on the financial market to propose appropriate solutions to avoid negative impacts on the financial market (Vien The Giang, 2012).

- The third point of view is that the focus of the current argument on the issue of inspection and supervision models is not that the approach is integrated or institutionalized, but that this agency should be independent or directly under the control of the Central Bank. Evidence from the 2008 crisis seems to support the view that this consolidated financial watchdog should be under the Central Bank for several reasons: Firstly, the model-based Central Bank is responsible for overseeing commercial banks and this can be seen as a key component of the entire financial system, especially in countries that capital market is not yet developed; Secondly, the Central Bank operates the inter-bank payment system, which is the first place to get information on liquidity issues of the members participating in the system, and there has been the ability to recognize potential risks that threaten system stability; Thirdly, as a final lender, the Central Bank can make timely intervention before the problem becomes too late (Anh Duy, 2011)

We believe that the focus of determining the financial monitoring model is how to make this agency have real independence and authority to carry out its monitoring function.

#### ***4.3. Develop a legal framework for the establishment and operation of a consolidated financial monitoring model***

This is the task that needs to be carried out during the construction, operation, and consolidation of the national financial supervisory agency. The legal framework on financial supervision in our country is now designed in the direction of:

- Regulations on financial supervision are stipulated in the laws on the organization and operation of financial institutions such as the Law on the State Bank of Vietnam, the Law on Credit Institutions; Law on insurance business, Securities Law;
- General inspection regulations such as Inspection Laws;
- System of sub-law documents guiding financial monitoring processes and operations.

With the current system of legal regulations on financial supervision, it is easy to overlap, having many gaps, and difficult to ensure efficiency and consistency. In the context of renewing the financial monitoring system, the State should have a specific plan to develop a unified financial supervision law. To well implement this solution, we recommend the following measures:

- First and foremost, it is necessary to strengthen the system of specialized supervision legislation. During this period, attention should be paid to the creation of a legal framework for coordination mechanisms and information exchange between specialized supervisory agencies such as the State Bank of Vietnam, the Ministry of Finance, and the National Finance Supervisory Committee, because this is a gap in the current law on financial supervision.

- Transition period, step by step transferring supervision tasks from specialized supervisory agencies to national financial supervisory agencies. The basic task of this period is to establish a legal framework for the organization and operation of the national financial supervisory body, with a focus on:

(i) Clearly define the finance supervising organization model;

(ii) Principles of finance monitoring activities;

(iii) Content of financial supervision, in particular, separate financial supervision functions with state management functions in banking, insurance, and securities;

(iv) Financial monitoring process;

(v) Authority of financial watchdog.

- The final stage, promulgating the law on uniform financial supervision. The essence of this period is to assess the legal framework for the organization and operation of the National Financial Supervisory Agency to clarify the advantages, disadvantages, relevance, and ability to meet of The national financial supervision agency with the task of financial supervision, which has been identified as a basis for adjusting, amending, supplementing and perfecting the law on financial supervision.

## 5. Conclusion

Innovating the financial monitoring system is a central task in creating a safe legal environment for the operation of financial markets. The appropriate financial monitoring system will make an important contribution to ensuring the healthy and safe operation of the financial market, avoiding the risk of crisis, or at least creating an effective coping mechanism when an economic crisis occurs. The financial monitoring model and activities must be consistent with the development of the financial system to avoid "gaps" in monitoring. The greater the distance, the longer the monitoring process is; thus will not be able to manage the financial system sufficiently and effectively. To do this, the Vietnamese

financial monitoring system needs to be substantially reformed based on establishing a financial supervisory body that has real power and supervision capacity in the context of Vietnam's young financial market which has just experienced shocks and is under the impact of international economic integration on opening up the financial services market. This is great pressure on our economy when the stock market is not deep enough, the monetary and bond markets are too thin, and the capacity to administer, manage and monitor the market still not obeying economic rules and administrative interventions is still not practical.

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