Dealing with Weak Commercial Banks in Restructuring the System of Credit Institutions in Vietnam using Consolidation, Merger, and Acquisition: The Change from Administrative Orders to Market Mechanisms

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Abstract: - The analysis and description of the legal framework combined with the assessment of impacts in economic and social aspects show that dealing with a weak bank, whatever the cause is, is an expensive and unpleasant situation, with potential negative impacts on the financial system. Depending on the severity of the weakness, the State takes appropriate intervention measures. Vietnam's economy is characterized by a small scale; commercial banks account for a large number, and have a small scale; these banks' financial potentials are not strong enough to compete with large-scale commercial banks (are usually state-owned or have a control stock) or foreign-invested commercial banks which have both strong financial potential and modern management skills from their parent banks abroad. This is the cause leading to the increase of weak commercial banks that need to be handled to make the market healthy as well as to secure the capital for economic development. Based on the coordinated approach between economics and law, the paper points out limitations when handling weak commercial banks through consolidation, merger, acquisition, or compulsory transfer. To meet the safety requirements and not to cause a breakdown in the restructuring and handling of weak banks, administrative intervention measures through compulsory consolidation, merger, compulsory acquisition, or compulsory transfer are used quite effectively. In the current period, we have solved the weaknesses that need to be handled quickly and decisively. Therefore, organizational restructuring according to criteria of sustainability and market mechanisms should be quickly implemented, especially forming a legal framework allowing foreign investors to participate in mergers and acquisitions transactions in a clear, specific, and highly feasible way as well as research to realize the bankruptcy of commercial banks effectively.

Key-words: - weak commercial banks, restructuring the system of credit, State Bank of Vietnam, Vietnamese laws and regulations

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1 Introduction

The weakness of the banking system becomes an obstacle in achieving the goals of sustainable growth of the financial system. A strong financial system must be based on a banking system with healthy financial potential, meeting the criteria for the sustainable development of financial institutions. This requires financial institutions, especially commercial banks, to be restructured according to the characteristics of sustainable development. It means that countries, in the process of operating the banking market, must identify and deal with factors that threaten sustainable development goals, from financial factors to non-financial factors (such as environment, society, and management). Incorporating the factors of environment, society, and governance into the decision-making process of financial institutions will make the financial system more sustainable, [33].

Having experience in stabilizing the British banking system since the First World War, policymakers believe that stabilizing the banking system must be a combination of structural reform and credit growth regulation. To ensure the stability and soundness of commercial banks, the State will apply necessary measures to control the quality of credit transactions and ensure the independence of the money market from the capital market, thereby reducing the difficulties in loan recovery issued by institutions and sectors that cause an increase in debt-financed for long-term investments, [22]. The responses of the central bank in handling the weak banks vary in each period, especially with unusual events such as the case of an economic crisis or an epidemic. For example, during the recent Covid-19 pandemic, central banks adopted and implemented a loose monetary policy, helping to provide large liquidity and targeted credit support to the economy. This has played an important role in stabilizing financial and credit conditions. This intervention can only indirectly address the core economic policy challenges of the pandemic, [12]. However, the borrower's ability to repay loans as committed in the credit contract has been reduced due to the application of measures to prevent the spread of Covid-19, which has halted business activities as well as disrupted the bank's operations in credit management. This potentially increases the safety risk of each credit institution, [5]. Regulatory uncertainties after the crisis that have not been thoroughly resolved may be the cause of the increase in bad debt, and it takes time for economic entities to recover from the pandemic. This is a big challenge for credit institutions' ability to endure overdue debt. To successfully restructure the banking system, countries need to rely on a clear legal system that is carefully implemented to avoid repeating the instability in the past. Thus, the process of building and reforming financial markets is not the result of a prior strategic plan, but rather a choice of treatment based on experience with internal and external crises as well as political opportunities that can be created as the case with the restructuring of the national financial system in Brazil, [24]. In Spain, a large number of credit institutions were restructured through consolidation and integration in the period 2009-2013, [11].

After the Asian financial crisis, Malaysia's banking restructuring was characterized by the consolidation of the conventional banking sector and Islamic banking penetration and emphasized that policymakers should consider both competition policy and capital regulation to promote the resilience of the dual banking system, [23]. Debates related to the choice of restructuring measures were also focused on clarifying, including the choice of bankruptcy and financial institution restructuring, [4] with voluntary consolidation, merger, or acquisition among credit institutions or according to the "orientation" of the State. Each choice of banking resolution through restructuring is different between countries and depends on the selected target. However, the restructuring is intended to encourage mergers between banks and especially among small banks to create a large bank that can offer a wide range of banking services, [2].

In Vietnam, the process of restructuring the weak banking system associated with handling bad debts was set out after the growth and the impact of the global financial crisis that took place in 2007. This process has been deployed through three periods 2011 - 2015, 2016 - 2020, and has been from 2021 through 2025. The legal framework for dealing with weak banks has also been gradually built and completed. Notably, the National Assembly promulgated Law No. 17/2017/QH14 dated November 20, 2017, of the National Assembly, amending and supplementing several articles of the Law on Credit Institutions, effective from 15 January 2018. The practice of restructuring the banking system in association with handling bad debts has been implemented on the principle of prudence, combining the resolution of key issues with building and completing a unified legal framework for the effective restructuring of the credit institution system. The weak bank handling results show that, although certain results have been achieved, there are still many special limitations that need to be overcome, especially to minimize direct interventions by administrative measures, such as compulsory acquisition, and forced transfer of weak commercial banks to find partners, on the principle of equality and mutual benefit to carry out the consolidation, merger, and acquisition. Therefore, the 3rd session, the XV Term of the National Assembly passed the Resolution on the afternoon of June 16, 2022, with 95.58% of the participants voting in favor of extending the application deadline for the entire

Resolution No.42/2017/QH14 on piloting the handling of bad debts of credit institutions until the end of December 31, 2023, and assigned the Government to study and propose legislation on the handling of bad debts and collateral for bad debts together with the review, amendment, and supplementation of the Law on Credit Institutions; it is submitted to the National Assembly for consideration at the 5th session (May 2023). These are necessary steps to continue implementing the results achieved in the process of restructuring credit institutions, and at the same time, give the Government more time to continue studying and building a legal framework for the restructuring of credit institutions, the system of credit institutions in a unified manner, including measures of consolidation, merger, acquisition and compulsory transfer.

2 Research Methods

To clarify the research purpose set out above, the author uses a descriptive legal research method, [15], in which the law is understood as the rules and standards existing in society, regulating social relations arising in the process of restructuring credit institutions. The source of data is collected for the analysis of the law on restructuring the system of credit institutions, which has been carried out since the Vietnamese banking market opened completely according to the commitment to join the World Trade Organization in 2011. In addition, the jurisprudence comparative method is also used to clarify the change in legal regulations and the way to use the restructuring measures during the response to the financial crisis taking place in Asia in 1997.

In terms of approach, the study is developed based on the statutory approach through the interpretation of the concept, the actual implementation of weak banking handling, and comparison to describe and clarify the considerations, choosing between bankruptcy and consolidation and merger in handling weak commercial banks in the process of restructuring the system of credit institutions in Vietnam.

In addition, the article uses a system of general research methods of the social sciences, including system, structure-function, history, and logic, [1], to clarify the research problem carried out through secondary data collection. It is through library research or study of documents published in specialized scientific journals to clarify scientific arguments and practical implementation of regulations when handling the weak banks in the process of restructuring the system of credit institutions in Vietnam. Data collection also helps to examine a wide variety of legal documents and other available documents. The legal approach will help to provide an overview of the choice of measures to handle weak commercial banks in the process of restructuring the credit institution system to draw accurate conclusions.

3 Research Results

3.1 The Nature and Objectives of Handling Weak Banks in Restructuring the System of Credit Institutions

A weak bank is a term commonly used in the banking market to reflect the situation in which a commercial bank falls into a state of business loss, capital loss, and or poor management ability of its executives. It is a reflection of the loss state, which is shown in that the revenue from banking activities including lending interest, investment profit, and fees collected... is not enough to cover loans costs, management costs, investment costs, provision costs, and other costs, [13], and it is necessary to be dealt with to restore normal operation. When dealing with a weak bank, depending on the severity of the weakness, the restructuring objective as well as the authority of the central bank of each country, the appropriate measures are decided. For example, the weak banking situation caused by poor liquidity management and led to the failure of banks occurred not only in the 1990s but also for the strong banks in 2011. This forced the Central Bank of Nigeria to spend more than US$6.8 billion to buy bad loans from weak banks due to insolvency, [27].

Commercial bank restructuring is a concept referring to the content of overcoming weaknesses to improve efficiency, or rebuilding or designing (a certain problem) based on science and practice, associated with the characteristics of the object of restructuring as well as the tradition and level of development of each country. Restructuring focuses on qualitative change at management levels and focuses on more radical solutions for comprehensive and in-depth change. The content of the main restructuring is to give the option to close organizations that cannot continue to operate (bankruptcy) or develop a legal framework for debt liquidation or merger to form commercial banks with real capacity. As such, the restructuring process focuses on selecting and applying solutions to address the causes of weakness or instability. This leads to failure, liquidation, or merger with other organizations. Commercial bank restructuring focuses on choosing solutions to improve and enhance the quality of commercial banks' operations with the main content which is restoring solvency and performing well the financial intermediary function, [2].

Thus, dealing with weak banks in restructuring the credit institution system is a decision-making process to choose measures to deal with the weak situation of commercial banks to restore the normal operating state. Decisions on choosing measures to handle weak banks in restructuring the credit institution system directly or indirectly affect the stability of the banking market both in the short term as well as in the long term. This requires that when dealing with weak banks in the restructuring of the credit institution system, the following objectives must be ensured at the same time:

i) Keeping the banking system stable - a necessary condition to maintain the efficient supply of capital for the economy;

ii) Accurately identify the weak status of commercial banks to take appropriate and timely handling measures;

iii) Minimizing losses to the state budget as well as to weak commercial banks that must be handled;

iv) Thoroughly handle the causes of weakness, do not let the weakness “spread” or be transferred to other credit institutions;

v) The active participation of not only state management agencies but also designated commercial banks or active participation commercial banks is based on the principle of harmoniously combining principles and rules of the market with weak banking regulations.

3.2 Dealing with Weak Banks in Restructuring the Credit Institution System Utilizing Consolidation, Merger, and Acquisition

In Vietnam, dealing with bad debts and restructuring the system of Vietnamese credit institutions is one of the major policies related to restructuring the economy and reforming the growth model, [19], [20], [21], because many risks of the banking system which are accumulated from many years ago began to harm macroeconomic stability. This is the reason why many credit institutions have liquidity difficulties, and high bad debts which pose a threat to the safety of the banking system, and it needs to be handled quickly and promptly. Different handling measures are applied flexibly, depending on the status of each weak commercial bank such as special control, the State acquires credit institutions as well as compulsory consolidation, merger, and acquisition at the request of the State Bank. The principle when dealing with weak banks in restructuring the credit institution system is prudence, a close combination of management and administration through administrative orders with the development and implementation of the legal framework for dealing with weak banks associated with handling bad debts. At the same time, the choice of measures to handle weak banks in restructuring the credit institution system has also changed over time, namely:

Firstly, in the period after the Asian financial crisis (1997-2004), banking mergers and acquisitions in Vietnam took place very little and were more mandatory than voluntary, mainly carried out under the direction of the State Bank intending to improve the competitiveness of the commercial banking system in Vietnam under the Project "Restructuring and rearranging joint-stock commercial banks in Vietnam" approved by the Prime Minister in Decision No. 212/1999/QD-TTg dated October 29, 1999, and Decision No. 241/QD-NHNN dated July 15, 1998, of the State Bank on mergers, consolidation, and acquisitions of Vietnamese credit institutions to ensure the interests of depositors, ensure the stability of the economy and the safety of the banking system, and create a legal basis for joint-stock credit institutions to implement during consolidation and rearrangement. During this period, many commercial banks were merged, helping to increase the size and reducing the number of commercial banks in the economy, [32].

Secondly, in the period (2011 - 2015), restructuring the system of credit institutions and each credit institution, including weak banks, on the one hand, overcome the disadvantages arising after a long period of growth based on credit capital and the impact of the global financial crisis. Therefore, restructuring and dealing with weak banks are seen as a regular and continuous process to overcome difficulties and weaknesses and proactively deal with challenges so that credit institutions can constantly develop safely, effectively, firmly, and better meet the requirements of socio-economic development in the new period. The State encourages the merger, consolidation, and acquisition of credit institutions voluntarily, ensuring the interests of depositors and the economic rights and obligations of related parties under the provisions of law. To ensure the safety and stability of the system, several credit institutions with a high level of risk and insecurity will be applied special handling measures by the law, and at the same time, do not allow failure and unsafety of banking operations beyond the control of the State. The process of rectification, consolidation, and restructuring of the system of credit institutions minimizes losses and costs of the state budget for dealing with problems of the system of credit institutions, [16]. During this period, due to a lack of experience in restructuring the system of credit institutions associated with bad debt handling, administrative interventions at the request of the Government were actively and flexibly used by the State Bank of Vietnam according to the effectiveness of the restructuring process as well as the severity of weaknesses and bad debts of credit institutions. In addition to the measure of forced transfer or merger (Table 1), the measure of acquiring the weak credit institutions for 0 dongs has also been applied (Table 2).

Table 1. Some commercial bank merger transactions in the period 2011 - 2015

Ordinal number	**Commercial banks participating in the merger**	**Name of commercial bank after merger**	**Causes**	**Implementation time**
1	1. Saigon Commercial Joint Stock Bank 2. First Joint Stock Commercial Bank 3. VietNam Tin Nghia Commercial Joint Stock Bank	Saigon Commercial Joint Stock Bank	These commercial banks use short-term capital for medium- and long-term loans (mainly in the real estate sector). When the market fluctuates, especially when short-term mobilized capital is no longer as abundant as before, liquidity risk occurs.	January 1, 2012
2	Hanoi Building Commercial Joint Stock Bank is merged with Saigon - Hanoi Commercial Joint Stock Bank	Saigon - Hanoi Commercial Joint Stock Bank	Hanoi Building Commercial Joint Stock Bank has loans and bond investments associated with Vietnam Shipbuilding Industry Group (Vinashin) which is identified as the biggest burden leading to difficulties in mergers and acquisitions. Habubank's bad debt ratio before the merger was 23.66% (equivalent to VND3,729 billion).	August 28, 2012
3	Western Bank has also merged with PetroVietnam Finance Corporation (PVFC).	Vietnam Public Joint Stock Commercial Bank	Voluntary	September 8, 2013
4	Dai A Commercial Joint Stock Bank (DaiABank) has merged with Ho Chi Minh City Development Bank (HDBank).	Ho Chi Minh City Development Joint Stock Commercial Bank	Voluntary by both parties to enhance financial capacity and governance capacity.	The second quarter of 2015
5	Mekong Delta Housing	Joint Stock	Voluntary	The second

	Development Bank (MHB) merged into Joint Stock Commercial Bank for Investment & Development of Vietnam (BIDV)	Commercial Bank for Investment & Development of Vietnam (BIDV)		quarter of 2015
6	Mekong Bank (MDB) merged into Vietnam Maritime Commercial Joint Stock Bank (Maritime Bank)	Vietnam Maritime Commercial Joint Stock Bank (Maritime Bank)	Voluntary	The second quarter of 2015

Source: Author's summary

It can be affirmed that these administrative interventions have both immediate effects on preventing existing weaknesses as well as the risk of generating more bad debts for commercial banks subject to restructuring. Dong A Commercial Joint Stock Bank has been still under special control from the end of 2015 until now. The reason leading to the fact that Dong-A Commercial Joint Stock Bank was put under control, especially in 2012 and earlier, the management of this bank has violated the law when it comes to financial management as well as credit granting and business activities, which seriously affected the financial situation as well as the banking operation, resulting in negative equity.

Table 2. List of commercial banks acquired by the State Bank for 0 dong

Ordinal number	**The name of the acquired bank**	**Bank name after being acquired**	**Causes**
1	Vietnam Construction Joint Stock Commercial Bank	Construction Commercial One Member Limited Liability Bank under License No. 250/QD-NHNN dated March 5, 2015, of the Governor of the State Bank of Vietnam	This is the first bank in Vietnam to be compulsorily acquired by the State Bank of all shares at the price of 0 dongs since February 2, 2015. According to the State Bank, at this time, there is not a single investor who intends to buy the Construction bank and according to the valuation basis, the redemption level is 0 dong with a negative real value of more than 80,000 dong/ share.
2	Ocean Commercial Joint Stock Bank	Ocean Commercial One Member Limited Liability Bank under License No. 663/QD-NHNN dated May 6, 2015, of the Governor of the State Bank of Vietnam	Ocean Commercial Joint Stock Bank is the precursor of Hai Hung Rural Bank. In 2007, this bank changed to an urban joint-stock commercial bank and developed very rapidly until 2010. Ocean Commercial Joint Stock Bank is the second bank purchased by the State Bank at the price of 0 dongs since April 25, 2015. Since the end of 2010, the State Bank has discovered many violations at this bank. With a negative charter capital and the bank itself was no longer able to compensate for this capital.
3	Global Petro Sole Joint Stock Commercial Bank	Global Petro Sole Member Limited Commercial Bank According to License 1304/QD-NHNN dated 7/7/2015 of the	Global Petro Sole Joint Stock Commercial Bank is the third bank to be compulsorily acquired by the State Bank of all shares at the price of 0 dongs from July 7, 2015. According to the 2014 financial statements, as of April 2, 2015, GP Bank's total accumulated loss has reached VND 12,280 billion,

		Governor of the State Bank of Vietnam	and the loan balance sharply decreased to VND 6,669 billion.

Source: Author's summary.

Thirdly, in the period 2016-2020, the handling of weak banks in restructuring the system of credit institutions is associated with the focus on fundamentally and thoroughly dealing with bad debts and weak credit institutions by suitable forms to the market mechanism on the principle of prudence, ensuring the interests of depositors and maintaining system stability and safety; It needs to reduce the number of weak credit institutions to have a suitable number of credit institutions, of size and reputation, with the healthy operation and ensuring liquidity. The State encourages and creates favorable conditions for domestic and foreign investors and foreign financial institutions to acquire and merge weak credit institutions in Vietnam. Possible restructuring measures include: putting under special control as prescribed by law; merger, consolidation, and acquisition voluntarily. In case, a joint-stock commercial bank is unable to recover, and cannot continue to operate, there is a risk of insolvency, thus greatly affecting the safety and stability of the system of credit institutions, the State Bank of Vietnam shall submit to the Prime Minister for guidelines and approved 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, cannot be sold to qualified investors, or cannot be forced to transfer, or cannot declare bankruptcy, it needs gradually narrows down activities to handling, dissolving, terminating activities, [17].

Fourthly, from 2021 to 2025, the general goal of restructuring the system of credit institutions associated with dealing with bad debts of credit institutions is to deal with weak banks, prevent new weak banks, a healthy system of credit institutions, and sustainable development to meet the goal of restructuring the commercial banking system in depth towards forming healthy commercial banks "towards the development level of the Group of 4 leading countries in ASEAN", [18]. In this period, study, review, amend and supplement regulations on debt trading market development and management and supervision of debt trading market, encouraging parties to participate in debt trading market to perfecting the legal framework for buying, selling and dealing with bad debts, creating conditions for the debt trading market to develop is a solution to create a legal framework to support the restructuring and handling of bad debts. Weak credit institutions may consider applying early intervention measures, special control, and other measures by the provisions of law, ensuring the stability of the system of credit institutions, political security, and social order and safety, [18].

3.3 Legislation of Measures to Handle Weak Banks

The content of the legalization of measures to handle weak banks is reflected in the National Assembly's passage of Law No. 17/2017/QH14 dated November 20, 2017, of the National Assembly, amending and supplementing several articles of the Law on Credit institutions, effective from January 15, 2018. Accordingly, the handling of weak banks is carried out methodically, with a strict process, in which, the regulation of many handling measures helps to choose a feasible and suitable option for the specific characteristics of each credit institution, including measures:

3.3.1 Early Intervention

Early intervention is the State Bank's request for credit institutions, and foreign bank branches to remedy the situation, [8, Article 130a.(1)]: i) failure to maintain the solvency ratio for 3 consecutive months; ii) failure to maintain capital adequacy ratio for 6 consecutive months; iii) rated below the average according to the regulations of the State Bank. In the early intervention stage, credit institutions must report to the State Bank on the situation, causes, and remedial plans and organize the implementation within 01 years. During the implementation of the remedial plan, the State Bank may request the credit institution to adjust the remedial plan if it deems it necessary. The remedial plan includes one or more of the following measures, [8, Article 130a.(4)]:

- Narrow content, the scope of activities, limit large transactions;

- Increase charter capital and allocated capital; increase the holding of highly liquid assets; sell, transfer assets and implement other solutions to meet safety requirements in banking activities;
- Limit dividend payment, and profit distribution;
- Cut operating costs, and management costs; Restrictions on remuneration, salary, and bonus for managers and executives;
- Strengthen risk management; reorganize the management apparatus, reduce personnel;
- Other measures as prescribed by law.

Although early intervention is a measure officially recognized in Law No. 17/2017/QH14 dated November 20, 2017, of the National Assembly, amending and supplementing several articles of the Law on Credit Institutions, in practice market management, this measure has been widely used and relatively effective. In the early stages of changing the banking model from a one-tier bank to a two-tier bank model, due to a lack of experience in operating the banking market, administrative interventions were commonly used. The State Bank applies many direct intervention measures when credit institutions show signs of violations or pose a threat to system safety.

3.3.2 Plan to Restructure Credit Institutions under Special Control

This is a new regulation added in Law No. 17/2017/QH14 dated November 20, 2017, of the National Assembly, amending and supplementing several articles of the Law on Credit Institutions. There are five recognized credit institution restructuring options as follows:

First, the recovery plan

This is a plan to apply measures for a specially controlled credit institution to overcome the situation that led to that credit institution being placed under special control related to the increase of charter capital and the time limit for implementing the plan to increase charter capital in the following cases: the actual value of the charter capital is lower than the legal capital; capital adequacy ratio below the level prescribed by the State Bank; at the request of the State Bank to ensure the safety of the credit institution's operations. In addition, there must be a business operation plan in the recovery period; organizational structure, management, and administration plan; a plan to deal with financial deficiencies, weaknesses, bad debts, security assets and measures to remedy violations of the law; payment plan according to the schedule for deposits of customers who are legal entities, deposits, and loans of other credit institutions; the plan for handling special loans borrowed, including special loans and the roadmap and time limit for implementing the recovery plan [8, Article 148a.(1)].

Second, the plan for merger, consolidation, and transfer of all shares and the contributed capital. This is the plan applied when there is a credit institution that receives a merger or consolidation, and an investor receives the transfer of all shares and contributed capital of a specially controlled credit institution. This plan is implemented when it is decided on the policy of merger, consolidation, transfer of all shares and contributed capital; there is a credit institution that receives the merger or consolidation, and the investor receives the transfer of all shares and contributed capital that meets the conditions as prescribed by law, and the credit institution after the merger or consolidation ensures the actual value of the charter capital is at least equal to the legal capital and meets the safety ratios.

Third, the plan to dissolve the specially controlled credit institution. This option is decided by the Government at the request of the State Bank of Vietnam [8, Article 150. (1)]. After the Government decides on the dissolution policy, the State Bank shall direct, inspect and supervise the implementation of dissolution of the specially controlled credit institution and supervise the liquidation of assets [8, Article 150a.(1)].

Fourth, the compulsory transfer plan. A compulsory transfer plan means a plan where the owner, capital contributor, and shareholder of a specially controlled commercial bank must transfer all shares and contributed capital to the transferee. Accordingly, the State Bank shall submit to the Government for a decision on the policy of compulsory transfer of a specially controlled credit institution, which is a commercial bank, to the transferee when satisfying the following conditions: i) the net value of charter capital and negative reserve funds; ii) at the request of the transferee [7, Article 151. (1)]. The State Bank requires the specially controlled commercial banks to hire an independent auditing organization to review and assess the financial situation and determine the real value of charter capital and reserve funds, except for the following cases: there has been a report of an independent auditing organization and such audit report is issued within 06 months before the date the Government decides on the policy of compulsory transfer [8, Article 151a.(1)]. The State Bank shall issue a decision on compulsory transfer after the compulsory transfer plan is approved. From the time the State Bank issues a decision on compulsory transfer, all rights and interests of owners, capital contributors, and shareholders of the commercial bank that are transferred must be terminated [8, Article 151d.(1)].

Fifth, the bankruptcy plan for the specially controlled credit institutions. The State Bank considered this plan and submitted it to the Government for a decision on the bankruptcy policy of specially controlled credit institutions, [7, Article 152. (1)]. Within 30 days after the Government decides on the bankruptcy policy of the specially controlled credit institution, the Special Control Board is responsible for presiding over and coordinating with the specially controlled credit institution, Vietnam Deposit Insurance to develop a bankruptcy plan for a specially controlled credit institution, and submit it to the State Bank for consideration. In case of formulating a plan for bankruptcy of a people's credit fund, the Special Supervisory Board shall assume the prime responsibility for, and coordinate with the specially controlled people's credit fund, Deposit Insurance of Vietnam, and Cooperative Bank of Vietnam to implement, [8, Article 152a.(1)]. The State Bank shall direct, inspect and supervise the implementation of the approved bankruptcy plan, including requesting the specially controlled credit institution to file a request for the Court to open the bankruptcy procedure under the bankruptcy law. In case of necessity, the State Bank shall submit to the Government for a decision on amendment and supplementation of the bankruptcy plan. The bankruptcy of a specially controlled credit institution shall be applied according to the provisions of the law on bankruptcy of credit institutions [8, Article 152c].

Surveying the content of regulations on measures to restructure credit institutions in current Vietnamese law shows that the handling of weak credit institutions, and credit institutions placed under special control are still carried out in a cautious spirit and emphasized the management and executive role of the State Bank of Vietnam in deciding the restructuring plans to submit to the Government for consideration and decision. Emphasizing the role of the State Bank and the Government in deciding to apply measures to deal with weak commercial banks directly is necessary, but only suitable for the initial stage of restructuring. In the current period, the weaknesses of each commercial bank as well as the whole system of credit institutions have been clearly shown. At the same time, according to the orientation for the period 2021 - 2025, which emphasized the handling of weak commercial banks based on market principles, it is necessary to minimize administrative interventions as in the current law.

3.3.3 The Order and Procedures for Implementing the Restructuring Plan at the Controlled Credit Institution

According to current regulations, when a credit institution is in danger of insolvency, it must promptly report to the State Bank the situation, its causes and the applied measures, the proposed measures to overcome, suggestions, and recommendations to the State Bank. The State Bank considers putting in special control when falling into one of the following cases: i) loss, at risk of insolvency or loss or risk of insolvency by regulations of the State Bank; ii) the accumulated loss of the credit institution is greater than 50% of the value of the charter capital and reserve funds recorded in the most recent audited financial statement; iii) fail to maintain the capital adequacy ratio specified at point b, clause 1, Article 130 of the Law on Credit Institutions for 12 consecutive months or the capital adequacy ratio is lower than 4% for 06 consecutive months; iv) weak rating for 02 consecutive years according to the regulations of the State Bank, [7, Article 45. (1)].

3.4 Effectiveness of Handling Weak Commercial Banks through Consolidation, Merger, Acquisition

Dealing with weak commercial banks in the restructuring of Vietnam's banking system took place in the context of a small and transitioning economy, so the privatization of state-owned commercial banks does not affect improving efficiency because the government still holds the majority, even state intervention is the cause of the inefficiency of the state-owned banks. Therefore, to thoroughly handle weak commercial banks, it is necessary to take a master approach and pose the problem of restructuring the banking system with the restructuring of the economy. However, this requirement was not fulfilled in the process of restructuring the system of credit institutions in the past period [25]. This explains why the compulsory merger and consolidation measure in the restructuring of the credit institutions system has the purpose of system consolidation and is arranged by the State Bank of Vietnam as well as other relevant government agencies to achieve a secure financial system, [28], [31], is always preferred. Therefore, applying measures of consolidation, merger, acquisition, and forced transfer to deal with weak commercial banks has reduced the number of weak commercial banks, and also increased the size of commercial banks through consolidation and merger transactions, thereby helping to ensure the safety of the banking system and improve competitiveness, [6],[10].

However, reality has proven that the effectiveness of bank consolidation and mergers can only be achieved if it is based on the needs of the parties. Therefore, when using consolidation and merger as a method to restructure the system of credit institutions, credit institutions need to move towards more market-oriented solutions, [14], because, if the actual consolidation and merger activities not only have no support banks to reduce risks, but also increase risks for banks being acquired, [26], this results in the risk of bad debt, and the liquidity of banks having difficulties leads to a decrease in bank consolidation efficiency, [29], [3]. This is the biggest challenge posed in handling weak commercial banks in Vietnam through consolidation, merger, and acquisition.

3.5 Consolidation, Merger, and Acquisition Become Effective Measures to Deal with Weak Commercial Banks and Improve Competitiveness under the Market Mechanism

The biggest obstacle to consolidating, merging, and acquiring banks, including weak commercial banks, is that Vietnam has not yet formed a market for bank mergers and acquisitions and a debt trading market according to the market mechanism. This fact makes the goal of developing a system of multi-purpose credit institutions in the direction of modernity, safe operation, and solid efficiency with a diversified structure of ownership, size, and type, which have greater competitiveness and based on technology, advanced banking management in line with international practices and standards on banking activities, to better meet the demand for financial and banking services of the economy. It becomes very difficult.

For the banking system to develop safely, sustainably, and effectively, before and after restructuring and handling weak banks, it is necessary to have research solutions and establish a legal basis for expanding the subjects who are eligible to participate in the restructuring and handling of weak banks. Moreover, it needs also complete the legal framework for the debt trading market. This is explained by:

Firstly, in the previous period, state-owned commercial banks and healthy joint stock commercial banks were the "key forces" involved with the appropriate support of the Government and the State Bank of Vietnam in terms of mechanisms, policies, and resources to handle weak commercial banks. This approach leads to unsustainability due to the mentality of being "sponsored", and "subsidized" by the state, and at the same time, it discourages investors from actively participating in consolidation, merger, and acquisition transactions of credit institutions. However, most commercial banks after consolidation, merger, and acquisition have lower profits and high credit risk. In other words, most commercial banks face more difficulties [30], [9], so they may not create incentives for commercial banks to actively participate in consolidation, merger, and acquisition transactions.

Secondly, currently, the project "Restructuring the system of credit institutions associated with handling bad debt for the period 2021-2025" identifies viewpoints and solutions: encourage and create conditions for credit institutions with sufficient financial and governance capacity to participate in consolidation, merger or acquisition of credit institutions with small scale or potential risks in their operations, and encourage participation in the purchase, sale, consolidation, and merger of credit institutions voluntarily to increase the scale, scope of operation and competitiveness. This is a very difficult solution to implement in the context that Vietnam still lacks a real debt trading market when credit institutions still mainly sell the debt to one member limited liability company - Vietnam Asset

Management Company for credit institutions[1] and Vietnam Debt Trading One Member Limited Liability Company[2]. These are two state-owned companies. These companies are considered special tools of the State to contribute to the quick settlement of bad debts, and financial health, minimizing risks for credit institutions and businesses and promoting legitimate credit growth for the economy. It also means that, in addition to business functions as enterprises in the economy, these enterprises must also perform the assigned "political tasks" in ensuring the healthy development of the market economy in general and the banking market, in particular, Meanwhile, Resolution 42/2017/QH14 stipulates that credit institutions are allowed to sell bad debts and related collateral in a public and transparent manner, by the law and at an appropriate selling price at market value, above or below the principal balance of the debt. Debt trading between credit institutions and between investors, especially foreign investors, and credit institutions has not yet taken place.

[1] Article 3(2) Decree No. 53/2013/ND-CP dated May 18, 2013, of the Government on the establishment, organization, and operation of Vietnam Asset Management Company for credit institutions stipulates: Vietnam Asset Management Company for Credit Institutions is a special enterprise, organized in the form of a one-member limited liability company, 100% of charter capital owned by the State and under the management, inspection, and supervision of the State Bank.

[2] Vietnam Debt and Asset Trading One-member limited liability Company with 100% of charter capital held by the State, performs the function of supporting the restructuring, arranging the transformation of enterprise ownership in which 100% of charter capital is held by the State through activities of receiving, purchasing, handling debts and assets, and purchasing and handling debt and assets (Article 5 of Decree No. 129/2020/ND-CP dated October 27, 2020, of the Government on functions, tasks and operation mechanism of Vietnam Debt and Asset Trading One-member limited liability Company).

The purchase and handling of debts and assets of organizations and individuals do not coincide with the objectives and political tasks of the Vietnam Asset Management one-member limited liability company for credit institutions (Article 6.1(b) Decree No. 129/2020/ND-CP dated October 27, 2020, of the Government on the functions, tasks and operation mechanism of Vietnam Debt and Asset Trading One-member limited liability Company).

4 Conclusion

Based on the principle of prudence and avoiding failure in the process of handling weak banks, it can be confirmed that dealing with weak banks through consolidation, merger, compulsory acquisition, and compulsory transfer of administrative orders in Vietnam proved to be an appropriate choice to immediately solve hot spots of weakness, reduce the number of commercial banks, as well as ensure uninterrupted capital flow for economic development goals. The choice of measures for consolidation, merger, compulsory acquisition, or compulsory transfer based on administrative orders will help state agencies have conditions to observe the market and identify legal issues arising in the process of restructuring to have a roadmap to build and perfect the legal framework for systematically dealing with weak banks. However, the choice of measures for consolidation, merger, forced acquisition, or compulsory transfer based on administrative orders can only deal with "clinical" manifestations without going into the most fundamental causes. Consequently, the weak state of commercial banks occurs. It means that the weak state of the banking system cannot be completely dealt with. The practical analysis of business results before and after the consolidation, merger, forced acquisition, and compulsory transfer is proof of shaping perception. The shift of measures to handle weak banks and restructuring of the banking system from 2021 to 2025 through consolidation, merger, and acquisition according to the market mechanism, that is, based on the proactive agreement of the parties involved in the transaction, based on the considerations of benefits obtained, will create motivation for the process of restructuring the system of credit institutions quickly and effectively. Establishing a legal framework for consolidation, merger, and acquisition of credit institutions according to the market mechanism is an important condition and premise for the formation of a market for buying and selling credit institutions according to the needs of the parties based on the law of the current market economy in Vietnam, in which:

- Healthy commercial banks should not be used as a tool to handle weak commercial banks as implemented in the previous period to avoid bad debts running around from one commercial bank to another. Therefore, it will not completely address the existing weaknesses, but only be transferred to "a new state of existence". In other words, the effectiveness of handling weak commercial banks through consolidation, merger, acquisition, or compulsory transfer based on administrative decisions and direct intervention from the State Bank of Vietnam has only immediately solved serious weaknesses but has not completely solved the causes of weakness.

- It is necessary to focus on building a legal mechanism to ensure the attraction of investors, especially foreign investors to participate in handling the weak commercial banks to make banks healthy from the inside, by attracting potential investors, and strategic investors. To attract investors to participate in handling weak commercial banks, it is necessary to limit administrative interventions from the State Bank to create confidence for investors.
- In the long term, the option of dealing with a weak commercial bank through bankruptcy proceedings should be quickly reached. Due to its sensitive nature and great impact on socio-economic life, the bankruptcy of commercial banks needs to be quickly resolved through bankruptcy proceedings with the active participation of the Deposit Insurance and the State Bank of Vietnam.

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