

**University Doctoral (PhD) Dissertation Abstract**

**Legal Aspects of Privatization of State-owned Enterprises:  
A Comparative Study of Vietnam and Hungary**

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## Research questions

The research questions are as follows: (i) What are the rationales justifying the privatization of SOEs?; (ii) How do Vietnamese law and Hungarian law regulate SOE privatization?; and (iii) What lessons from the Hungarian experience can be learned so as to improve the current Vietnamese law on SOE privatization?. Underlying these questions is an assumption that the formulation and development of the legal framework play a critical role in achieving the objectives of SOE privatization.

The first question concerns the concept of privatization and why governments carry out privatization of state-owned enterprises (SOEs). The term ‘privatization’ has a ‘cluster of overlapping meanings’<sup>1</sup> and has been defined in several ways within the existing literature. The second concept that needs to be defined is ‘state-owned enterprise’. SOEs are referred to by different designations, including government business enterprises, public enterprises, government corporations, and government-linked companies. The definition of SOEs differs by country, in addition to its naming. Defining an SOE however is critical to determining which enterprise is an SOE that is subject to privatization. Understanding the concept of SOE privatization from the perspectives of Vietnam and Hungary will be the starting point for a thorough comparison and assessment of the two regulatory systems on the subject at hand.

Answering to the second question is a comparative study of the legal framework for SOE privatization in Vietnam and Hungary. Both Hungary and Vietnam, prior the SOE privatization movement of the late 1980s, adopted the socialist economic model with the leading role of SOEs in the national economy. The two countries shared a similar starting point at the first SOE privatization stage, however pursued different political economy ideologies aftermath the fall of the Soviet Union in 1991. Such change may imply differences in how each country regulates the process of SOE privatization. For example, what is the structure of the SOE privatization legislation in the countries in question? Is SOE privatization given in a single law, or does it depend on a range of laws, regulations, and practices? How are the legal issues arising in the course of SOE privatization addressed according to Vietnamese law and Hungarian law?

The final question is to find feasible solutions to better the Vietnamese law on SOE privatization. Hungary and Vietnam initiated the economic transition around the same period. With some significant advantages over other Central European countries, Hungary was among the region’s most successful transition economies and acceded to the EU in 2004. Notably, Hungary chose to privatize large SOEs in some strategic sectors and hastened the privatization process so that the percentage of the private sector in the economy rose to 80% after a decade. On the contrary, Vietnam took a rather more methodical and gradual approach to the privatization of SOEs. Since 2016, the Vietnamese Government has once again

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<sup>1</sup> Ernst Ulrich von Weizsacker, Oran R Young and Matthias Finger, ‘Limits to Privatization’ in Ernst Ulrich von Weizsacker and others (eds), *Limits to Privatization: How to Avoid Too Much of a Good Thing* (Taylor & Francis Group 2005) 4.

fostered the privatization process so as to improve the efficiency of SOEs by using market mechanisms. However the practice of SOE privatization in Hungary suggests that the fast privatization and changes in the public services that were privatized without proper regulation mechanisms impose several negative impacts, which are evident by the fact that the Hungarian Government has increasingly reinvested in certain key sectors in recent years. The experience of Hungary, with both pros and cons, in regulating the privatization process of SOEs may draw significant implications for Vietnam in improving the legal framework on the accelerating phase of SOE privatization at present.

### **Aims of the Dissertation**

The aims of the dissertation are as follows:

(i) To present a comprehensive analysis of the concept of SOE privatization.

So far, there has not been a universal concept of either privatization or SOE. For the starting point, the dissertation will examine and analyze the definition, origin, scope, structure, rationales, and goals of privatization in general and SOE privatization in particular. Thereby, the approach within the study scope of the dissertation will be provided.

(ii) To define and analyze how Vietnam and Hungary have dealt with the particular legal issues of SOE privatization.

The success of SOE privatization critically depends on the regulatory framework, which consists of various legal instruments. In general, there are three categories: (i) laws providing fundamental foundations for SOE privatization such as constitutional law and property law; (ii) laws governing the privatization process, which can be a single law or a set of laws, regulations, and practices; and (iii) and other laws supporting an SOE privatization program, such as competition law, investment law, and company law. The dissertation will define major legal issues of SOE privatization and analyze how they are addressed under Vietnamese law and Hungarian law.

(iii) To draw implications for the development of Vietnamese law on SOE privatization from the comparative synthesis with the Hungarian experience.

After encountering a slow pace of SOE privatization during the 2011-2015 period, Vietnam faces the challenge of accelerating privatization of the remaining SOEs due to the pressures from further integration into the global economy and the state budget deficit. The in-depth analysis and comparison with Hungarian laws, which illustrates the varying legislative approaches to address the concerned issue, will help to draw implications for the improvement of the law on SOE privatization in Vietnam.

### **Delimitation**

The dissertation focuses on the legal aspects of the privatization of SOEs. However, due to the multifaceted concept of 'privatization', a comprehensive understanding of its legal dimensions necessitates an in-depth examination of the wider concept of privatization. In

light of the ambiguous characteristics of its concept, privatization can be defined in either a broad or narrow sense. The dissertation however puts privatization in the context of SOE reform, thus within the research scope, privatization is limited to the divestiture and transfer of SOEs or their assets from governments or their agencies to private entities. Accordingly, public-private partnership arrangements, such as build-own-operate (BOO) and build-operate-transfer (BOT) agreements are not covered within the scope of this dissertation. Since privatization is characterized by the transfer of enterprise ownership from the public sector to the private sector, it is essential to adopt a restrictive definition of privatization that includes instances involving the transfer of shares or assets of an SOE to private shareholders.

The framework for SOE privatization consists of various laws, however the dissertation focuses on the discussion of the following categories of privatization laws:

(i) Foundational legal norms for SOE privatization.

Constitutions of some countries stipulate certain requirements regarding the privatization of SOEs; for example, provisions mandate state ownership over specific sectors of the economy. Such constitutional provisions inherently constrain the extent of privatization initiatives within these jurisdictions.<sup>2</sup> In addition, the constitution generally declares the economic regime of a country. Provided Vietnam and pre-transitional Hungary are both shaped by socialist ideology with state dominance in the economy, it is crucial to examine whether their constitutions explicitly permit private investment or impose restrictions on the types of SOEs eligible for privatization.

Property law is also an essential foundation for SOE privatization. Well-delineated property rights are a prerequisite for the formation of a market economy and serve as an incentive for both local and foreign investment in privatized enterprises.<sup>3</sup> Property law is also critical for the privatization itself, because it necessitates the precise definition of the bundle of property rights connected with the SOEs to facilitate their sale. Especially, the establishment of appropriate property rights to real estate is necessary for the implementation of any type of transaction involving land during the process of SOE privatization.<sup>4</sup>

(ii) Laws governing the privatization process.

The decision to implement a specific law regulating the privatization process is contingent upon the legal system as well as the particular conditions of the country concerned. Regardless of the legal structure, laws governing the process of SOE privatization should serve a variety of purposes. A primary function of laws on the privatization process is to clarify the objectives and scope of the privatization program as

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<sup>2</sup> Carlos E Martinez, 'Early Lessons of Latin American Privatizations Lead Articles' (1991) 15 Suffolk Transnational Law Journal 468, 497.

<sup>3</sup> Michele Balfour and Cameron Crise, 'A Privatization Test: The Czech Republic, Slovakia and Poland' (1993) 17 Fordham International Law Journal 84, 84.

<sup>4</sup> Cheryl W Gray, 'Evolving Legal Frameworks for Private Sector Development in Central and Eastern Europe' (World Bank 1993) 209 <<https://ideas.repec.org/p/ftth/wobadi/209.html>> accessed 20 April 2025.

well as the types of SOEs eligible for privatization. The laws may explicitly provide for a list of SOEs subjected to privatization, but such an approach is inflexible due to difficulties in either removing or adding SOEs to the list as the program evolves. Other main contents of privatization law are to define privatization methods and any restrictions on prospective bidders and to specify the procedures by which privatization can take place.<sup>5</sup>

(iii) Laws supporting an SOE privatization program.

SOE privatization is underpinned by a wider legal framework in two respects:<sup>6</sup> (i) laws govern the procedural aspects of preparing SOEs for privatization and executing the associated transactions; and (ii) laws facilitate the overall environment conducive to the functioning of the newly privatized entities, such as access to land, market, and credit, and fair competition among privatized enterprises and the remaining state sector. In this sense, various laws are expected to be involved in supporting SOE privatization. The dissertation however does not aim to address all of the legal issues arising in the course of SOE privatization. For an in-depth comparative analysis of legal aspects of SOE privatization in the concerned countries, the focus of the dissertation is on the following issues:

- The conversion of SOEs into companies under a modern company law serves as a crucial precursor to privatization because it facilitates the establishment of company structures that are anticipated to emerge from the privatization process. Company law should provide for the business governance in the context of privatization, such as provisions enabling employees to participate in the privatization by granting them voting rights or positions on the board of directors, provisions on special shares granting veto rights to the governance, and provisions defining the governance regime after the SOE is transferred to the private sector. It is also important to stipulate the separation of ownership and management in publicly held corporations, the allocation of power among shareholders and directors, and other corporate governance rules regarding post-privatized SOEs.

- Investment law is another important pillar of a successful SOE privatization since it encourages private investment in SOEs subject to privatization. In this sense, privatization programs should be accessible to both domestic and foreign investors, especially due to the commitments under international investment agreements to promote and protect foreign investment. In the event that foreign investors are anticipated to engage in the privatization initiative, it is imperative that national legislation ensure fair and equitable treatment of these investments, aligning with widely recognized international standards. In certain instances, the government may opt, as a deviation from the norm, to allocate a portion of shares exclusively for domestic investors. Such restrictions should be explicitly prescribed in investment legislation.

## **Research Methodology**

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<sup>5</sup> World Bank, 'Privatization Laws' (*World Bank*, 25 November 2020) <<https://ppp.worldbank.org/public-private-partnership/legislation-regulation/laws/privatization>> accessed 20 April 2025.

<sup>6</sup> *ibid.*

The ultimate goal of the dissertation is to assess the Vietnamese legislative control of SOE privatization and to find a feasible solution to improve the current framework. Therefore, given that many jurisdictions have dealt with the challenges of SOE privatization for a long while, it is a plausible choice to follow a comparative law perspective to achieve the research objective.

#### (i) Selection of jurisdictions

The selection of Vietnamese and Hungarian jurisdictions to conduct a comparative analysis of SOE privatization is based on a number of considerations. Both Hungary and Vietnam used to form their national economies based on socialist thoughts, which claim the state as the owner of property and resources. However the two countries have pursued different political economy ideologies after the breakdown of the Soviet Union in 1991. Such change may imply differences in how each country regulates the process of SOE privatization. In fact, Vietnam and Hungary have had rather different approaches to the issue in question. The process of SOE privatization in Hungary was carried out at a rapid pace, and the government chose to privatize the large SOEs in certain strategic sectors. On the other hand, Vietnam took a rather cautious approach to the privatization of SOEs, which has been widely criticized as being too slow.<sup>7</sup> The hastened privatization of the SOE program did contribute to the success of transforming the Hungarian economy so that the country became a member state of the European Union in 2004. However, the Hungarian Government has increasingly reinvested in certain key sectors recently due to the national economy's vulnerability to external shocks after the Global Financial Crisis of 2008-2009. Hungary is ahead of Vietnam in terms of the privatization process and transition of the economy, therefore Vietnam can learn from Hungarian experience in regulating the privatization of SOEs, especially for its current accelerating phase of SOE privatization.

In addition, Hungary is a more compatible jurisdiction to be compared to than other jurisdictions of the developed countries, such as the United States, the United Kingdom, or France. This is because the underlying significance of SOE privatization in transitional economies like Hungary and Vietnam conveys changes in the mode of economic organization and a reconsideration of the state's role in the national economy, which are not apparent in developed countries. Moreover, comparative law is a highly productive domain for the exploration of interdisciplinary research incorporating other sciences, as comparative law is interdisciplinary by its very nature.<sup>8</sup> Therefore, the comparison of the legal systems of Vietnam and Hungary with the specific unfolding of events and the variation in political and economic development after the collapse of the Soviet Union will provide an interesting insight into the evolution of the legal framework for SOE privatization of the two countries.

#### (ii) Methods of collecting data

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<sup>7</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam* (OECD Publishing 2022).

<sup>8</sup> Giorgia Guerra, 'An Interdisciplinary Approach for Comparative Lawyers: Insights from the Fast-Moving Field of Law and Technology' (2018) 19 *German Law Journal* 579, 585.

The dissertation is primarily conducted through desk research. Desk research involves conducting research by examining the primary sources, including pertinent legislation and judicial cases. Official Hungarian legislation is accessed through the National Legislation Database (<http://njt.hu>). While certain English translations of laws are provided, the majority of older legislation is available only in Hungarian. In such cases, translation tools are used to understand the legal text, with a double-check by the academic supervisor. Regarding Vietnamese jurisdiction, legislation and regulations in Vietnam are published online and can be accessed in the Vietnamese language at <https://vbpl.vn>. Several important pieces of legislation and regulations have been translated into English and can be accessed at the mentioned website or at <https://vietnamlawmagazine.vn>. There is limited access to Vietnamese case law because judgments have only been made available online since July 2017 upon enforcement of Resolution No. 03/2017/NQ-HDTP of the Judicial Council of the Supreme People's Court of Vietnam. The dissertation also incorporates secondary sources, such as textbooks, journal articles, newspapers, reports, and national and international policy documents that address privatization policy, economic reforms, and the involvement of the private sector in economic development. The utilization of secondary sources helps broaden the range and depth of understanding that can be derived from the primary sources. Library research is mainly conducted at the University and National Library (University of Debrecen) and its online database. Meanwhile, the resources related to Vietnam's jurisdiction are accessed at the library of the Vietnam Academy of Social Sciences. The qualitative analysis is employed to offer insights into the issue of the SOE privatization across the examined jurisdictions.

### **Structure of the Dissertation**

The dissertation contains six main chapters.

**Chapter 1** is the Introductory chapter, in which the author discusses the background of the research, research questions, aims and delimitation of the research, methodology, and dissertation structure.

**Chapter 2** offers a comprehensive presentation on the theoretical issues surrounding the privatization of SOEs, a topic that has gained prominence in global economic discourse since the late twentieth century. The chapter begins with an exploration of the conceptual foundations of privatization, contextualizing it within broader philosophical, economic, and legal frameworks. The chapter then discusses the origins and definitions of SOE, highlighting the definitional complexities that arise from both international standards and national variations. Given the diverse interpretations of privatization and SOEs, the chapter establishes a working understanding of SOE privatization within this research. A significant portion of the chapter is devoted to the legal framework for privatizing SOEs. The legal dimension of SOE privatization encompasses several interrelated aspects, including foundational legal norms, laws governing the privatization process, and supportive legislation. The constitutional provisions and property rights serve as the legal bedrock for privatization initiatives. The statutory and regulatory frameworks are analyzed as they have

operational effect to the privatization programs, including issues such as institutional actors, privatization methods, and valuation of SOEs. Additionally, company law and investment law are discussed as critical legal components that facilitate the privatization process of SOEs. The theoretical issues examined in this chapter lay the analytical framework for comparing the experiences of SOE privatization in Hungary and Vietnam in the subsequent chapters, particularly in terms of legal design, implementation challenges, and policy outcomes.

**Chapter 3** presents a comparative analysis of the initial conditions and practice of SOE privatization in Vietnam and Hungary, two transitional economies that began reforming their state economic sector in the post-communist era. The objective is to explore how these countries, despite sharing a common legacy of centrally planned economies, took different paths in embracing market-oriented reforms. The chapter discusses the initial economic, political, and legal conditions that shaped the reform agendas in Vietnam and Hungary, respectively. This analysis will provide insights into the design, development, and implementation of legal frameworks for privatizing SOEs in the two countries in subsequent chapters. The chapter follows a chronological structure to track the evolution of SOE privatization practices from the early reform periods to the most recent developments.

**Chapter 4** provides an in-depth analysis of the legal framework for privatization of SOEs in Vietnam, exploring the interplay between socialist-oriented governance and market-oriented legal reforms. The chapter begins with an examination of the foundational legal norms for privatization, with particular focus on constitutional dimensions. The developments of constitutional provisions on the status of the state economic sector underscore a dual commitment to uphold socialist principles while gradually incorporating market mechanisms in Vietnam. The chapter also addresses the legal institutions of property rights as a foundational component of Vietnam's privatization regime. The subsequent section discusses the legislative framework governing the privatization process, which has largely been shaped by executive instruments instead of comprehensive legislation passed by the National Assembly. Finally, the chapter analyzes how company law and foreign investment facilitate or hinder the process of privatizing SOEs in Vietnam.

**Chapter 5** continues to look at how the legal framework for privatizing SOEs in Hungary has changed over time, using the same analytical structure. Hungary presents a markedly different case from Vietnam due to significant variations in its political transition, economic policy trajectory, and legal tradition. By detailing the development of the Hungarian legal framework for SOE privatization, the analysis not only contributes to a more profound understanding of the Hungarian case but also establishes a critical reference point for a comparative study with Vietnam. Chapters 4 and 5 attempt to address the research question of how Vietnam and Hungary regulate SOE privatization, thereby adding to the broader discourse on post-socialist legal and economic reform.

**Chapter 6** offers a comparative examination of Vietnam and Hungary, building upon the analysis of their legal frameworks governing the privatization of SOEs presented in

Chapters 4 and 5, respectively. The primary objective is to identify both the convergences and divergences in their approaches, taking into account the distinct historical, economic, political, and legal contexts that have shaped each country's path toward privatization. The chapter begins by comparing the initial conditions and motivations that triggered SOE privatization initiatives in Vietnam and Hungary. This contextual foundation is essential for understanding how each country's unique circumstances influenced the development and implementation of their respective legal frameworks. Following this, the chapter presents a comparative synthesis of the two legal systems as they pertain to SOE privatization, focusing on foundational legal norms, the regulatory frameworks governing the privatization process, and laws supporting or complementing the process. A central focus of this chapter is to address the research question: What lessons can be drawn from the Hungarian experience to improve the current Vietnamese legal framework on SOE privatization? While recognizing that legal and institutional reforms must be tailored to each country's specific jurisdictional realities, the Hungarian case offers valuable insights that can inform potential improvements in Vietnam's ongoing reform efforts. Accordingly, this chapter evaluates relevant aspects of the Hungarian experience that may serve as reference points for enhancing the Vietnamese laws on the issue in question. These comparative insights aim to move beyond an inward-looking, system-specific analysis by incorporating a broader, practice-informed perspective. The chapter concludes by summarizing key findings and presenting final remarks that encapsulate the overarching arguments of the dissertation.

### **Comparative Synthesis**

The comparative analysis of the initial conditions for the privatization of SOEs in Vietnam and Hungary reveals that the two countries share certain similarities but also exhibit significant differences due to their unique historical, economic, political, and legal contexts.

The most notable similarity between the two countries is their historical background of centrally planned economies influenced by Soviet models. Under the centrally planned economic systems, both Vietnam and Hungary established SOEs as the dominant form of economic organization, characterized by state control, nationalization of enterprises, and forced industrialization, which significantly shaped their economic landscapes. The inefficiencies and stagnation inherent in these command economies led to economic crises that served as a catalyst for reforms in the two countries. Vietnam grappled with hyperinflation, food shortages, and external debt crises, while Hungary faced high foreign debt and inflation. These economic hardships ultimately compelled both governments to pursue market-oriented reforms. In contrast to the shock therapy approach adopted by some post-Soviet states, both Vietnam and Hungary embraced a gradualist approach to economic transition. Vietnam's Doi Moi reforms initiated in 1986 introduced market-oriented policies while retaining socialist principles. Meanwhile, Hungary's New Economic Mechanism of 1968 had already begun decentralizing and implementing limited market reforms. The political context reveals a similar initial condition. Both countries functioned under single-party systems that resisted privatization. However, as economic pressures mounted, both

parties recognized the necessity for reforms. Regarding the legal and institutional frameworks, both countries inherited legal systems deeply intertwined with socialist ideology, where laws served as instruments of party control rather than independent regulatory mechanisms. The legal legacies of socialism presented major difficulties for the privatization of SOEs, requiring extensive legal reforms.

On the other hand, several key differences in the initial conditions significantly influenced approaches to the privatization of SOEs in the two countries. Hungary initiated its reform process earlier than Vietnam, with significant steps taken in the 1960s and 1970s, such as the New Economic Mechanism, which granted greater autonomy to SOEs. Meanwhile, Vietnam's transition was characterized by a prolonged reliance on Soviet support and a delayed acknowledgment of the failures of its command economy. Vietnam's reforms began in earnest only in the mid-1980s with the Doi Moi policy. Therefore, regarding the timing and nature of economic reforms, Hungary had a more developed mixed economic model by the time privatization was formally implemented. The most critical difference lies in the political reforms accompanying the economic transitions. The Communist Party of Vietnam initiated the privatization process, retaining control over the transition and upholding a socialist-oriented market economy. As a result, political reforms remained limited, with the communist party continuing to dominate governance. In contrast, Hungary underwent a political transformation alongside economic reform, culminating with the collapse of the communist party-state and the establishment of a multi-party democracy in 1990. This political shift allowed new political actors to influence economic policies and strategies regarding privatization. In addition, the legal traditions and adaptability of the two countries differ markedly. Hungary's legal system, despite its socialist period, retained elements of its pre-communist legal traditions, including a strong legalistic culture and an independent judiciary. The establishment of a constitutional court in the late 1980s, reflecting a move towards the rule of law. These provided a better foundation for adapting to a capitalist legal framework in Hungary. Vietnam, however, had a weaker legal tradition due to its prolonged period of socialist legality, where law was subordinate to party directives, thus complicating the legal adaptation necessary for the privatization of SOEs in the long run. These differences in initial conditions placed Hungary in an advanced position in terms of economic liberalization, financial and legal infrastructure, openness to foreign investment, and political transition, giving it a significant edge over Vietnam in the initial conditions for privatizing SOEs.

A comparative analysis of the initial conditions and practice of SOE privatization in Vietnam and Hungary must move beyond a simple comparison of similarities and differences. The divergence is not only policy preferences but also legally mediated results. The nature of the political transformation in each country defined the purpose of privatization, which in turn determined the legal and institutional frameworks that emerged. This process led to two distinct varieties of post-communist capitalism: Hungary's

‘capitalism from without,’<sup>9</sup> and Vietnam’s state-centric ‘capital from below’ with a neoliberal orientation.<sup>10</sup> Hungary’s political shift from socialism used privatization as a political instrument to ‘shrink the state’, redistribute economic power, and attract foreign capital.<sup>11</sup> Meanwhile, the Communist Party led Vietnam’s reforms, using privatization as a practical way to stabilize the economy, improve efficiency, and sustain the socialist order. As a result, the two countries established different legal-institutional architectures that shaped their respective economic outcomes. Their different approaches to foreign investment in the early stage of the SOE privatization process are evident. Hungary built on its more developed and market-oriented system of economic law, strong legal culture, and establishment of the Constitutional Court. This legal predictability served as a reliable commitment designed to attract massive foreign investment. By contrast, Vietnam, lacking an independent legal tradition, developed a legal framework that functions primarily as an instrument of state control. The framework, which is characterized by deliberate legal ambiguity, ensures the state remains the ultimate arbiter. The country’s cautious approach is thus the direct result of a legal system designed to manage and direct foreign capital rather than relinquish control over it.

The in-depth analysis of the legal frameworks for privatization of SOEs in Vietnam and Hungary is presented in Chapter 4 and Chapter 5, respectively. The major findings from the comparison of the two countries are as follows:

*(i) Foundational legal norms*

The foundational legal norms for the privatization of SOEs in Vietnam and Hungary share several similarities, primarily in their gradual recognition of market principles and property rights as essential components of economic transformation. Both Vietnam and Hungary have undergone significant constitutional reforms aimed at facilitating their transition from centrally planned economies to market-oriented systems. The 1992 Constitution of Vietnam marked a shift away from the Soviet-style economic model by acknowledging the role of private property, allowing individuals and businesses to engage in production and trade, and granting SOEs autonomy in their operation. Similarly, Hungary’s 1989 Constitution explicitly established the country as a market economy, removing the socialist principle of state dominance and ensuring legal protections of private property. However, a crucial distinction lies in the degree of commitment to privatization embedded in the constitutional frameworks. Vietnam’s constitution retains provisions asserting the dominant role of the state economic sector, ensuring continued state intervention in critical industries. In contrast, Hungary’s constitutional reforms aim to reduce state involvement by facilitating a comprehensive and structured privatization process. One

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<sup>9</sup> Lawrence P King and Iván Szelényi, ‘The New Capitalism in Eastern Europe: Towards a Comparative Political Economy of Post-Communism’ in Neil Smelser and Richard Swedberg (eds), *Handbook of Economic Sociology* (Princeton University Press 2005) 6.

<sup>10</sup> *ibid* 18; Iván Szelényi and Péter Mihályi, ‘Varieties of Post-Communist Capitalism: A Comparative Analysis of Russia, Eastern Europe and China’, *Varieties of Post-communist Capitalism* (Brill 2019) 126.

<sup>11</sup> Harvey Feigenbaum, Jeffrey Henig and Chris Hamnett, *Shrinking the State: The Political Underpinnings of Privatization* (Cambridge University Press 1998).

of the most striking differences is the procedural requirements for privatization. Hungary established a clearer and more concrete legal foundation for privatization through legislative acts. For example, Act XXXIX of 1995 on the Sale of State-Owned Entrepreneurial Assets (Act XXXIX of 1995) outlined specific conditions under which SOEs could be privatized and which sectors were to be retained under state control. The legislative acts created a more transparent and rule-based approach to privatization, specifying the methods, conditions, and oversight mechanisms for transferring state assets into private hands. The constitutional basis serving rationales for state ownership is institutionalized by the Fundamental Law of 2011, which introduces stricter controls over privatization by defining national assets and restricting their transfer through cardinal law. This legislative safeguard is designed to prevent the rapid sale of strategic industries and protect essential public services from foreign or private monopolization. In contrast, Vietnam's privatization process has been guided largely by executive decrees and sub-legislative documents rather than formal acts passed by the National Assembly. As a result, privatization strategies have been primarily dictated by the Communist Party of Vietnam (CPV) and government agencies, leading to inconsistencies in implementation and a lack of transparency. The absence of legislative oversight has contributed to a slow and uneven privatization process, as different sectors and enterprises faced varying degrees of state involvement and intervention. The constitutional requirements for judicial oversight represent another critical area of divergence. Hungary's Constitutional Court played an active role in reviewing privatization laws and ensuring their alignment with constitutional principles. For example, in the 1990s, the Court ruled against privatization measures that compromised environmental conservation areas and challenged the legality of certain corporate governance structures in privatized enterprises. In contrast, Vietnam lacks an independent judicial review mechanism for privatization legislation. The absence of a constitutional court means that the legal challenges to privatization decisions are rarely heard, and the interpretation of privatization laws remains under the control of the executive branch. This lack of judicial oversight has contributed to legal uncertainty, as privatization policies can be modified or reversed without due process, making it difficult for private investors to operate with confidence.

Property rights protection also differs significantly between the two countries. Hungary's constitutional amendments and legal reforms, particularly the 1991 revision of the Civil Code, provided strong guarantees for private ownership, ensuring equal treatment between state and private ownerships, as well as ensuring that expropriation could only occur under exceptional circumstances with full, unconditional, and immediate compensation. This legal clarity fostered investor confidence and facilitated the privatization of SOEs, as private enterprises could operate with the assurance that their property rights were legally protected. In contrast, Vietnam's legal framework, while formally recognizing private property, retains substantial limitations on land ownership and emphasis on the leading role of the state economic sector. The Vietnamese Constitution does not allow private ownership of land, instead granting land-use rights that are subject to state allocation and revocation. This distinction has created legal ambiguities in the privatization process, particularly

regarding the valuation of land assets when transferring SOEs to private ownership. The preferential treatment of SOEs in terms of land use, coupled with the lack of clear legal protections for private enterprises, has resulted in an uneven playing field where privatized firms, with full or majority ownership transferred to private entities, often struggle to compete with state-backed enterprises that continue to enjoy government support and resource advantages.

These fundamental differences can be explained largely by the political context in which privatization occurred in the two countries. Hungary's transition from a communist regime to a multi-party democracy in 1989-1990 created an environment where privatization was driven by new political actors committed to reducing state control over the economy. This shift allowed for a more comprehensive and market-driven approach to privatization, where SOEs were transferred to private ownership with minimal government interference. In Vietnam, however, privatization has occurred within the framework of a one-party socialist state, where economic reforms have to align with political stability and party control. As a result, privatization has been implemented cautiously, with the CPV maintaining direct oversight over the whole process. This fundamental political difference has shaped the pace and scope of privatization of SOEs in Vietnam, making it a more controlled and incremental process compared to Hungary's rapid transition. Unlike Hungary, where privatization aimed at full transfer to private ownership, Vietnam's privatization process has been characterized by 'equitization' or 'partial privatization', where the state retains a controlling stake in privatized enterprises in most cases, thus limiting the extent of market competition and private sector expansion.

In summary, while both Vietnam and Hungary have established foundational legal norms for privatization of SOEs through constitutional and property rights reforms, Hungary's approach has been more structured and market-oriented. The presence of a strong legal framework, judicial oversight, and a clear commitment to private property rights facilitated Hungary's transition to a market economy, whereas Vietnam's privatization process has been constrained by political considerations, state intervention, and legal ambiguities.

*(ii) Law governing the privatization process*

Vietnam and Hungary have made great efforts to establish legal frameworks governing the process of SOE privatization, ensuring that the process adheres to state policies and economic objectives. Both countries have progressively developed privatization laws, reflecting changes in economic priorities and external influences. The Vietnamese Government has issued various executive decrees and regulations to classify SOEs eligible for privatization, define procedures for privatization, and outline the roles of government agencies. Similarly, Hungary has enacted a series of legislative acts beginning with Act XIII of 1989 on the Transformation of Economic Organizations and Economic Associations (Act XIII of 1989 on Transformation), and later Act XXXIX of 1995, which formalized the structured privatization approach. Another similarity is the evolving role of state agencies in

overseeing the privatization process. Hungary set up the State Property Agency (SPA) in 1990, which was later replaced by the Hungarian Privatization and State Holding Company (HPSHC) in 1995 and eventually the Hungarian National Asset Management Inc. (HNAM) in 2008, consolidating state ownership functions. Vietnam also made an effort to centralize the institutional arrangements regarding the privatized SOEs by establishing the State Capital and Investment Corporation (SCIC in 2005) and the Management of State Capital at Enterprises (CMSC) in 2018. Regarding privatization methods, both Vietnam and Hungary have implemented public offerings, direct sales, and auctions as the prevailing methods to privatize SOEs. Additionally, SOE valuation was a big regulatory issue in both countries, with concerns over undervaluation, lack of transparency, and inconsistencies in pricing mechanisms. Hungary faced valuation challenges in its early privatization phase due to inconsistencies in valuation methodologies and the lack of standardized accounting practices. Over time, Hungary introduced more structured valuation principles under Act XXXIX of 1995 and subsequent laws, emphasizing fair market value and professional appraisal standards. Similarly, Vietnam has improved regulations on SOE valuation to provide clear guidelines and enhance the flexibility in the valuation process, allowing consultancy organizations to select appropriate methods for determining enterprise value.

However, the two countries have much divergence in terms of their legislative approaches to the privatization of SOEs. Vietnam's privatization law is primarily executive-driven, relying on government decrees, prime ministerial decisions, and ministerial circulars, which are subject to frequent modifications, without overarching privatization objectives. For example, since the enactment of Decision No. 58/2002/QĐ-TTg of 2002, Vietnam has continuously redefined the scope of SOEs eligible for privatization. The reliance on executive instruments introduces risks of legal uncertainty and discretionary interpretation, as privatization can be revised periodically based on shifting economic and political priorities. In contrast, Hungary's privatization laws have been structured through comprehensive parliamentary acts, providing a higher level of consistency and stability. The pivotal moment occurred in 1995 with the enactment of Act XXXIX, which provided a structural framework consolidating various privatization regulations into a single, stable law. This Act also reinforced the government's commitment to privatization as a long-term economic strategy.

Another difference can be seen in the model of institutional arrangements in charge of executing privatization programs. Hungary's privatization institutions evolved from decentralization to centralization, marked by the creation of the SPA in 1990. The SPA was initially responsible for overseeing privatization, but it then operated in parallel with the State Holding Company (SHC), which managed long-term SOEs. To reduce bureaucratic inefficiencies, these two entities were merged in 1995 into the HPSHC, centralizing privatization and management of state assets. Since 2008, Hungary has further consolidated its state asset management under the HNAM, which oversees the privatization process and long-term state asset management, with more emphasis on the latter function. In contrast, Vietnam's institutional framework for privatization remains a decentralized model, with the

involvement of multiple entities (e.g., provincial people’s committees, ministries, and relevant government agencies) in decision-making, which slows the process and introduces bureaucratic hurdles. The effort to centralize state ownership functions in privatization enterprises began in 2005 with the establishment of the SCIC, aiming to speed up the divestment of state ownership from SOEs. A further attempt to consolidate state ownership functions was the creation of CMSC, which took over 19 of the largest SOEs. However, the dissolution of CMSC at the end of 2024 again highlights Vietnam’s inconsistent approach to institutional oversight of the SOE privatization process.

While both countries provide for legal provisions on the use of standard methods for privatization, Hungary adopted a more market-driven approach, which prioritized competitive bidding and strategic investor engagement. Act XXXIX of 1995 facilitated large-scale offerings on the Budapest Stock Exchange, which significantly contributed to the stock market’s development in Hungary. Moreover, Hungary employed additional mechanisms such as management and employee buyouts and a weak form of mass privatization (Small Investors’ Share Ownership Program) to accelerate ownership transfer. In contrast, Vietnam has not implemented such non-standard methods to privatize SOEs. The adaptable and pragmatic approach to privatization methods in Hungary, despite a certain lack of transparency, provided greater chances for different social groups to contend for ownership positions, thus contributing to the relatively swift and considerable expansion of SOE privatization in the country.

In comparison with Hungary, the valuation process of SOEs undergoing privatization remains a contentious legal issue due to the ambiguities surrounding property rights of state assets, especially land. Land use rights, which are not privately owned in Vietnam, create difficulties in accurately valuing privatized enterprises. The valuation process is further complicated by state-determined land prices, which are often lower than market rates, leading to concerns about undervaluation and loss of state assets.

In summary, the comparative study on the law governing the privatization process of SOEs in Vietnam and Hungary suggests that while the two countries share a commitment to structured SOE privatization and have developed institutional mechanisms to oversee the process, their legal approaches differ: Vietnam’s privatization remains state-driven with frequent regulatory adjustments, whereas Hungary’s approach has been more legally codified and investor-friendly.

### *(iii) Supporting laws*

In respect of company law, both Vietnam and Hungary implemented corporatization as a prerequisite for privatization. Vietnam’s Law on Enterprises of 2005 mandated that SOEs transition into joint-stock or limited liability companies, formally aligning them with private-sector corporate governance structures. Similarly, Hungary’s Transformation Act of 1989 facilitated SOEs’ conversion to corporate entities, clarifying their governance structures. However, a key difference between Vietnam and Hungary is that Vietnam focused more on organizational restructuring, whereas Hungary’s transformation ensured a cleaner

break between SOEs and the state. As a result, Vietnam's SOEs often retained close financial and administrative ties to government agencies post-corporatization. Regarding post-privatization control devices, Vietnam and Hungary introduced golden shares and retained control interest in the company law so as to ensure state control in privatized enterprises, however the application of these control devices differs significantly in the two countries. Hungary actively applied golden shares under its Act XXXIX of 1995, ensuring state control in strategic sectors. The country then abolished its golden share system in 2007 following pressure from the European Commission, as it was deemed incompatible with EU laws on capital movement and competition. Vietnam, on the other hand, does not have a clear enforcement mechanism for golden shares, and there is a lack of transparency, as no public records detail the application of golden shares. Vietnam favors exercising control through direct majority ownership in privatized enterprises, frequently adjusting its privatization strategy to maintain state influence over key industries.

The legislative approach to foreign investment in SOE privatization further highlights the contrast between the two countries. Vietnam has historically taken a cautious approach, gradually opening SOE privatization to foreign investors but maintaining significant restrictions. Early regulations, such as Decision No. 145/1999/QĐ-TTg, capped foreign ownership at 30% in select sectors. Although later reforms have reduced these restrictions, foreign investors still face uncertainty due to discretionary approval processes and unclear sector-specific limits. Hungary, in contrast, adopted a liberal foreign investment policy from the outset, allowing full foreign ownership of privatized SOEs under the Foreign Investment Act of 1988. This approach was driven by the need to attract capital, modern management, and technology, as domestic investors lacked the financial capacity to acquire large SOEs. However, Hungary's stance shifted in recent years, with Act LVII of 2018 on the Control of Foreign Investment Offending the National Security and Act LVIII of 2020 on Intermediary measures and pandemic preparedness in connection with the termination of the state of emergency introducing foreign investment screening procedures, restricting ownership in critical sectors such as energy, finance, and telecommunications. This change represents a reversal of Hungary's previously open-door investment policy, whereas Vietnam has gradually liberalized foreign participation, albeit at a cautious pace. Investment incentives and legal protections for investors also differ. Vietnam provides tax breaks, land-use exemptions, and customs duty reductions to encourage greenfield investments but does not offer comparable incentives for acquiring shares in privatized SOEs, reducing their attractiveness to foreign investors. Additionally, significant risks for investors arise from legal uncertainties surrounding transaction cancellations—such as cases where SOE privatizations were overturned due to government mismanagement. Hungary, by contrast, historically provided strong legal protections, including compensation guarantees against expropriation, full profit repatriation rights, and customized incentives for strategic foreign investors. However, following the renationalization policies under the Orbán government, the legal environment has become more restrictive, particularly in strategic industries.

Overall, Vietnam and Hungary share certain commonalities in corporatization requirements and post-privatization control mechanisms but differ significantly in foreign investment openness and investor protections. The disparities in company law and investment law, which serve as the legal framework supporting the privatization process, have partly contributed to the varying outcomes of SOE privatization in the two countries.

## **Recommendations**

The comparative findings indicate that while Hungary has successfully completed its broad-scale privatization of SOEs and now emphasizes the management of state assets, Vietnam's privatization efforts are ongoing and continue to face significant challenges in achieving the targets. Drawing on Hungary's experience, the dissertation proposes several critical recommendations for enhancing Vietnam's legal framework for SOE privatization. First, Vietnam should prioritize the codification of its legal framework for SOE privatization through high-level parliamentary legislation, helping resolve inter-law conflicts and address procedural ambiguities and weak enforcement that currently obstruct the privatization process. A preferred option is to incorporate a dedicated chapter on privatization in the revised version of the Law on Management and Use of State Capital by a comprehensive amendment, given that the National Assembly is considering amending this law. Second, institutional reform must accompany legal change. Vietnam should strengthen the autonomy, accountability, and coordination mechanisms of the authorities charged with implementing privatization policies. Vietnam must overcome the disconnect between law in books and law in action. The solution entails establishing more transparent, centralized decision-making processes and robust oversight bodies that can ensure the integrity and efficiency of the privatization agenda. Third, constitutional interpretation mechanisms should be developed to clarify the legal boundaries of state ownership in a socialist-oriented market economy. An independent institution capable of interpreting constitutional provisions would provide a more stable foundation for long-term policy consistency. Fourth, the legal framework governing foreign investment in SOE privatization must be made more transparent, predictable, and investor-friendly. Vietnam should further align its regulations with international standards, providing strong investor protections, simplified participation procedures, and tailored incentives for strategic investments. Finally, clarifying property rights and implementing robust corporate governance reforms are critical. Vietnam needs to ensure a clear separation between the state's role as an owner and the operational autonomy of SOEs. This includes limiting undue political influence, safeguarding minority shareholder rights, and mandating disclosure obligations when the state retains significant ownership stakes. Such reforms will build investor confidence and enable SOEs to operate more efficiently under market principles.



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### List of publications related to the dissertation

#### Articles, studies (4)

1. **Chu, T. T. A.**: A Critical Analysis of Recent Developments in The Regulation of Equitizing State-owned Enterprises in Vietnam.  
*Vietnamese Journal of Legal Sciences*. "Accepted by Publisher", 1-15, 2025. EISSN: 2719-3004.
2. **Chu, T. T. A.**: The Equitization of State-owned Enterprises in Vietnam: A Legal Analysis of Foreign Investment.  
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By the directives of HAS Committee on Legal and Political Sciences: C
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5. **Chu, T. T. A.**, Nguyen, T. D.: The participation of business associations in legislative process in Vietnam.  
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### List of other publications

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9. **Chu, T. T. A.**: The Regulation of Intra-EU Mobility of Workers from Private International Law Perspective and Implications for ASEAN Integration.  
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10. Nguyen, T. D., **Chu, T. T. A.**: Legal and Policy Framework on Green Energy in Vietnam: with a focus on Electric and Hydrogen Vehicles.  
In: Legal and Policy Framework on Future Green Energy in Asia: with a Focus on Hydrogen and Electronic Vehicles, Kye-Hong Kim, Seoul, 261-296, 2022. ISBN: 97992875330

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