

The Companies Law, passed on June 12, 1999 and effective from Jan. 1, 2000, has produced good effects along with controversies between governmental bodies and businesspersons. Most companies welcomed it while many governmental officials worried about possibly bad consequences and difficulties in supervising operation of the business world because of loopholes in the Law.

1. Active role of the Companies Law in encouraging the business development

The number of over 12,800 companies established under the Companies Law in 2000 (2.5 times higher than the number of companies established in 1999 under the Private Companies Law) and some 6,000 others registered in the first half of 2001 shows the positive response by the business circle to the Law along with open and reasonable procedures and mechanisms it introduced. In HCMC, 3,331 new companies were registered in the first half of 2001 (increasing by 132% as compared with the same period last year, not to mention 6,029 companies that registered for new activities and 2,176 others for new branches or rep offices.

The Companies Law also helps mobilize idle money: total capital registered and added in 2000 amounted to VND21,000 billion; this figure in HCMC in the first half of 2001 was VND3,903.6 billion increasing by 126% as compared with the corresponding period last year. These newly established companies created some 500,000 new jobs. New forms of company came into being, such as one-man company, partnership company, etc. Many businesspersons become ready to put their savings in business. Generally, the Companies Law arouses the entrepreneurship and encourages everybody to take risk and make rich for oneself and one's family, thereby contributing to the economic development and enhancing competition against foreign rivals. The Companies Law, because of its positive and far-reaching effects, is compared with the Directive 100 on piece-work for peasants in the past.

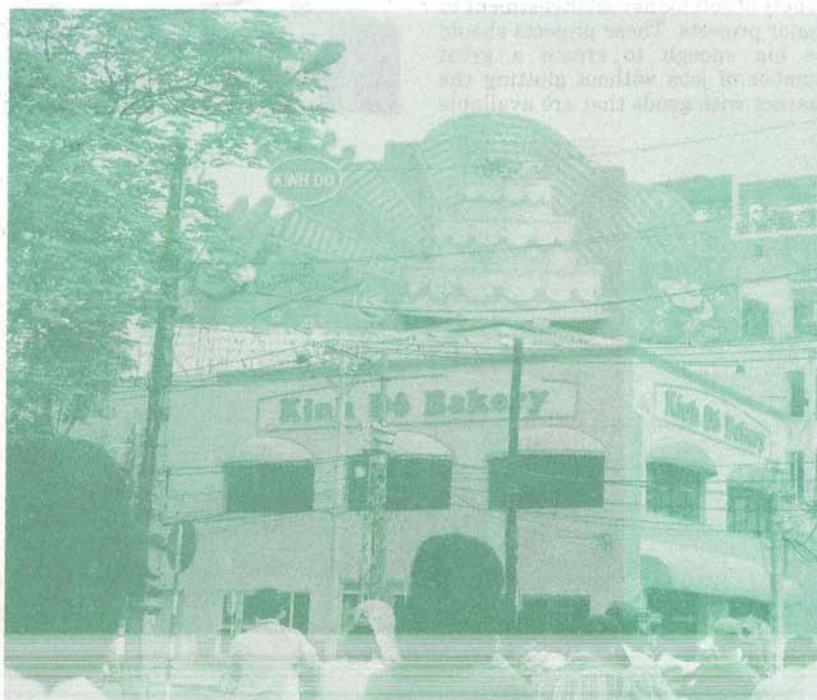
It's worth noting that the Companies Law was promulgated when Vietnam and other ASEAN countries were busy dealing with bad consequences of the Asian financial crisis, so we must appreciate positive effects of the Law on the economic recovery this year.

2. Defects to deal with

Twenty-one documents at ministerial level were issued to provide guidelines on implementation of the

COMPANIES LAW AND ITS EFFECTS ON THE BUSINESS WORLD

by NGUYỄN ĐĂNG TRÙNG



Law, not to mention Directive 22/CT-UB-CNN issued by the HCMC government on Sep. 14, 2000 on state management of companies after registration. The PM also gave Directive 29/2000/CT-TTg on Dec. 31, 2000 on the "Implementation of the Companies Law" urging ministries to issue necessary documents needed for consistent implementation of the Law. In spite of these efforts, the gap between law and reality still exists and causes difficulties for both companies and the administrative machinery. The following are some problems:

- There is no guideline on the issue of business license according to Decree 03/2000/NĐ-CP for many occupations, such as stockbroker, acupuncturist, passenger transport, veterinarian services, building plan design, etc.; on qualifications for some new occupations (marriage bureau and marriage guidance services, private detective; and on capital requirement and certificates of legal capital for many others.

- Article 6 of the Decree 03/2000/NĐ-CP allows professional associations to grant business licenses to qualified professionals but it doesn't specify what associations are allowed to do it.

- Limited and joint stock companies are allowed to change their form or separate from and merged into another, but no procedure is provided for changes in ownership of state companies and companies run by civic organizations. Procedures and conditions for changing private businesses and partnership companies to limited or joint stock companies, and vice versa, are also lacking.

- The most troublesome problems are procedures for company registration and after-registration supervision. When making registration, the registrar has no résumé of the person who has his company registered because the document includes only a form, a register of members, name of person who is bears legal responsibility and address of the head office. There is no regulation about violations of the required registered capital, notice of the company establishment, tax declaration or failure to start business within one year after the registration. Moreover, no regulation about after-registration supervision is provided for in the Companies Law while old supervision regulations are obsolete.

These problems have caused a lot of troubles for governmental bodies. Up to April 13 2001, 525 companies have vanished into thin air, many others didn't give notice of their establishment or send tax dec-



larations as required, some companies have been established by persons with no capacity to contract or criminals. According to a report by the Ministry of Finance in 2000, investigation showed that 70% of registered companies committed one violation or another, and tax evasion by companies amounted to some VND1,000 billion, equaling the budget income from the land tax in a year. Certain persons even used the juristic entity of their companies to commit frauds.

3. How to improve the state control over business world

The HCMC Service of Planning and Investment has recently held a workshop on "Six Months of Implementation of the Companies Law" and it was an animated discussion. Representatives from some governmental agencies wanted to beef up the control over companies after registration. But on *Thời báo Kinh tế Saigon* (Aug. 8, 2001) Dr. Lê Đăng Doanh said that, some 5% of companies in the world stopped operation after registration because of many reasons; from 20% to 25% of companies went bankrupt within two years after registration, and after five years 50% of bankrupt companies were re-established. Dr. Doanh also said that the percentage of 5% of companies that vanished after registration as compared with the world average and with the percentage of 10% or 12% under the old Private Companies

Law, wasn't worth worrying.

Thus, the existence of dummy or vaporized companies is common in many countries. In Germany, three years after the registration, some 30% of companies vanish, and 50% of companies vanish within their first five years (*Pháp Luật TP.HCM*, July 31, 2001). The problem is not how strict the state management should be, but how to improve system and methods of the state management to ensure a two-edged effect: allowing normal companies to operate effectively within the framework of the Law, and preventing criminals or dishonest businesspersons from using dummy companies as covers for their evil deeds.

The reform in the state management mechanism should aim at ensuring two-way exchange of information between companies and governmental agencies and between agencies themselves with a view to intervening when necessary and helping companies deal with obstacles or difficulties caused by administrative procedures or unfair competition. The reform will be easier when computers and Internet are available. It's worth noting that in the market economy, operation of all companies can't escape observation of many parties (competitors, trading partners, customers, the press, industrial and commercial chambers, etc.), the governmental agencies can make the best use of information supplied by these parties.

To assist governmental agencies responsible for controlling the business world, relevant ministries should issue guidelines on procedures for granting certificates of legal capital, business licenses, supplying information, handling violations, etc. Necessary measures should be taken to encourage companies to frequently use auditing service in order to allow governmental agencies to keep a closer watch on their operation and make intervention if need be.

At present, governments in developed countries tend to control the business world indirectly through the system of laws and various instruments and let companies do their business and adjust themselves to market laws and competition. This is also a way to force companies to bear full responsibility before law for their activities. The Vietnam's Companies Law is a step towards this trend and it has introduced an open controlling mechanism. This tendency must be supported in order to develop inner resources and facilitate the international economic integration of Vietnam ■