

The Foreign Investment Law allows three forms of FDI projects in Vietnam: foreign-owned companies, joint ventures between local and foreign parties and business cooperation contracts. Forms of FDI projects relate to the mechanism for running the projects and affect business performance and interests of the host country. Developments of the foreign sector in Vietnam in recent years show that besides increases in number of projects and size of investment, FDI forms also develop and interchange.

According to the MPI, the proportion of joint ventures to licensed FDI projects reduced from 72.5% in 1990 to 20.6% in 1999 while the proportion of foreign-owned projects rose

a new provision: "Foreign-invested companies, parties taking part in business cooperation contracts are allowed to change their investment forms, divide or merge their companies into others. The Government makes regulations and procedures for changes in investment forms, merger or division of companies."

Decree 24/2000/NĐ-CP issued on July 31, 2000 providing guidelines on implementation of the Foreign Investment Law also reduces fields that allow only joint ventures between local and foreign parties (these fields were set by the Decree 10/1998/NĐ-CP dated Jan. 23, 1998). According to this new decree, the following fields are taken away from

of investment, business partner, location and duration of investment project, target market for their goods or services, and size of legal capital as allowed by the Foreign Investment Law.

As for business cooperation contracts, Decree 24/2000/NĐ-CP, in an effort to facilitate implementation of FDI projects rules that contracting parties could form a coordination board to implement the contract if necessary. This board isn't the governing body of the contracting parties. Functions, rights and responsibility of this board are determined by contracting parties.

Foreign parties taking part in business cooperation contracts can

# DEVELOPMENT OF FDI FORMS IN VIETNAM

by NGÔ CÔNG THÀNH

from 10% to 73% and the business cooperation contracts remained almost unchanged. In this period, 94 FDI projects worth US\$866 million were allowed to change their investment forms: 73 projects, worth US\$810 million, changed from joint ventures to foreign-owned companies; 1 project, worth US\$1.7 million changes from business cooperation contract to foreign-owned company; 13 joint ventures worth US\$36 million changed into local-owned companies; 5 foreign-owned projects, worth US\$15 million, changed into joint ventures and 2 business cooperation contracts, worth US\$3 million changed into joint ventures.

## 1. Legal framework for changes in investment forms

Realizing the role of FDI in the economic development, the Vietnamese government made certain adjustments to policies on foreign investment with a view to satisfying better requirements posed by foreign investors and facilitating the operation of FDI projects in Vietnam.

The Law on Adjustment to Some Clauses of the Foreign Investment Law passed in June 2000 introduces

the list of fields that allow only joint ventures, that is, these fields will be open to foreign-owned companies:

- Building and operating infrastructure of industrial parks, export processing zones and hi-tech parks.

- Construction service.

- Producing steel and cement.

- Growing perennials used for industrial purposes.

- Entertainment and sport business.

In other words, foreign-owned companies are barred from only eight fields. They are:

- International and local telecommunications (business cooperation contracts allowed).

- Extracting and processing oil and rare minerals.

- Advisory services (except for technical advisory service).

- Air, railroad, road, and sea transport; and building of ports and airports (only BOT, BTO and BT projects allowed).

- Production of industrial explosives.

- Afforestation.

- Travel and tourism.

- Cultural activities.

Apart from these fields, foreign investors are free to decide on form

open representative office in Vietnam to implement the contract and have to bear responsibility for operation of this office. The rep office is allowed to have its own seal and bank account in Vietnam, recruit laborers and carry out operations according to rights and duties stated in investment license or business cooperation contract. The foreign party should register its rep office with the license granting authority.

Company income tax and other financial obligations binding on contracting parties (including land rent, severance tax, etc.) could be converted into part of output given to local parties who then pay them to the government.

A clearer definition of a *new joint venture* as compared with the one stated in Decree 12/CP dated Feb. 17, 1997 is also given by Decree 24/2000/NĐ-CP which considers a new joint venture as a partnership formed by an existing joint venture and:

- a foreign investor,

- a Vietnamese company,

- a concern supplying health care and education service or carrying out scientific researches qualified by law,

- a Vietnamese expatriate, or
- a joint venture or foreign-owned company established in Vietnam.

One of obstacles facing foreign parties in joint ventures is the fact that the law intervenes in their decision-making process. According to the Foreign Investment Law of 1996, decisions to appoint or dismiss director-general, deputy director-general and chief accountant; amend articles of incorporation; approve the annual financial statement and balance of financial revenue and expenditure; and increase loan capital should be considered and approved by consensus by the board of directors. This regulation makes the decision-making process more time-consuming with the result that many business opportunities are missed and business performance is poorer.

The Law on Adjustment to Some Clauses of the Foreign Investment Law deals with this problem by removing the regulations affecting the decision-making process. A consensus, from now on, isn't required when making decisions to appoint and dismiss chief accountant; approve the annual financial statement and balance of financial revenue and expenditure; and increase loan capital. These adjustments help smooth the decision-making process but in fact this process is still facing many other obstacles.

Other changes taking place in FDI projects, such as reorganization of company, transfer of capital and change in investment forms, are also regulated by Decree 24/2000/NĐ-CP. According to this decree, investment license granting authorities, within 30 days after receiving official requests from the foreign-invested companies, should approve merger, division and changes in investment forms. When transferring its capital, the foreign-invested company need only inform investment license granting authorities and has its investment license adjusted within 15 days after its request is received. Thus, foreign-invested companies and contracting parties in projects not included in conditional fields of investment can change their forms of investment easier.

## 2. Trend of development of FDI forms in Vietnam

We can realize the trend of development of FDI forms by studying adjustments made to the Foreign Investment Law and changes in the foreign sector in recent years.

a. Joint ventures between foreign and local parties: In most joint ventures, there are differences in financial strength and managerial skills between those two parties. Decreases in the number and size of investment of joint ventures reflect weaknesses of Vietnamese parties. They fail to play their role in joint ventures and become more of a hindrance than a help to foreign partners. That is why foreign investors want to be free from participation of local parties as soon as possible. When changes in the law system take place and competition for foreign investment becomes keener between developing countries, the form of joint venture will be less attractive and limited to certain fields.

- Joint ventures will keep increasing in some key industries, such as cement, steel, auto and motorbike assembling, real estate and transport because in these fields Vietnamese parties control large market shares and enjoy comparative advantages. Main local partners in joint ventures are big Vietnamese corporations with great potentials.

- Joint ventures of small scale in fields where joint venture isn't the only form allowed will tend to change into foreign-owned companies.

Many joint ventures, especially ones that have suffered losses for years will tend to develop into joint stock companies with a view to taking chances to transfer stocks and mobilize capital from the public.

b. Foreign-owned companies: This form of investment has a bright future in the coming years because of the following reasons:

- The political and socioeconomic situations in Vietnam are rather stable. The Government is determined to attract and encourage foreign investment, and create conditions for companies of all sectors to develop their businesses.

- New amendments to the law system have limited the number of conditional fields of investment (fields in which foreign companies should enter a partnership with local ones). Apart from these fields, foreign investors can decide on form of investment and changes in the form when carrying out their projects in Vietnam.

- The form of foreign-owned companies has proved to be more convenient than the joint venture: a foreign-owned company could be formed quickly, attract many skilled laborers, export the best part of output

and meet with less obstacles caused by the red tape.

- Development of industrial parks in recent years allows foreign investors to carry out their projects quicker and saves them from a lot of troubles (land clearance, compensation, building license, etc.). That is why many foreign-owned companies have had their factories built in these parks.

The number of foreign-owned companies tends to increase and their scope of activities expands. They constitute the main part in such industries as engineering, electronics, processing goods for export, consumer goods, construction and building materials, and many services (education, medical care, finance and banking).

c. Business cooperation contracts: These contracts, in fact are a form of cooperation according to a contract, not a joint venture in which parties share the costs and profits, so they make it difficult to determine rights and duties of each partner. This is only a period during which parties fathom each other before changing into other forms of investment.

In the coming years, this form should be perfected in order to become more attractive to foreign investors. In oil business, these contracts could be developed into joint ventures (when the oil reserves are good enough) before starting extracting oil.

In telecommunications and postal service, the Vietnamese party still lacks experience of marketing and developing its products because foreign investors are reluctant to disclose their skills and trade secrets when entering business cooperation contracts.

The Government had better study and introduce a new model for combining those two forms of investment (joint venture and business cooperation contract) for the telecommunications service. In the new model, the telecommunications network is owned and controlled by the local party, while the foreign one undertakes the task of running it. The joint venture will develop new products or services, market them to potential customers. The aims are to develop the network, supply more services and increase the income.

This model can make the cooperation contracts in telecommunications service more attractive and profitable, help attract more foreign investment and technology transfer and at the same time, ensure national sovereignty.■