

At present, the Government is making adjustments to Decree 59/CP on the financial management of state-owned companies (SOCs). We want to present here some opinions with a view to helping with perfecting this management mechanism.

1. First of all, full attention should be paid to terminologies because the financial management requires exact and consistent terms needed for describe the financial situation of a company. At present, many aspects of the financial situation of SOCs aren't well presented, so the financial situation will be vaguer if terms in use aren't consistent and clear.

For example, the term "*capital actually owned by SOCs*" (vốn thực có của DNNN) should be replaced by "*capital owned*" or "*capital employed*" because this term is used in new accounting regulations set recently by the Ministry of Finance. Moreover, the term "*capital actually owned by SOCs*" couldn't be found in foreign dictionaries of finance and could cause trouble for translators and foreigners who want to study financial situation of SOCs.

Another example is the term "*capital mobilized by SOCs*" (vốn huy động của DNNN) could be replaced by "*other sources of finance of SOCs*" if we want to mean "*borrowed*" by using "*mobilized*". Thus, the "*capital mobilized*" is "*loan capital*" which is considered as a debt owed by a company or accounts payable (such as capital received from investors, or benevolent fund). However, "*mobilized*" could be perceived as "*paid-in*", that is, capital paid up by stockholders. In short, SOCs should distinguish between "*assets*" and "*liabilities*".

2. As for the limited liability of company's members, it should be also made clear. Many directors of SOCs haven't realized that their companies had changed from unlimited to limited liability companies while companies' members and creditors (especially banks) are much interested in this feature.

The draft of amendmend to Decree 59/CP reads: "The company accepts limited liability for its debts, as required by law, up to its capital actually owned, including shares held by the state." The definition, as set by the draft, is not clear enough. In foreign countries, the limit on company's liability is discussed by owners and written on Articles of Association. This liability is limited to one of the three following levels according to the company's ability to get bank loans:

+ The company's authorized capital.

+ The company's capital owned (including authorized capital plus funds held by the company).

+ The company's capital owned plus guarantee offered by banks.

Thus, the owners of an SOC had better limit their liability to the second level. In other words, the SOC has its liability limited by law to its capital owned.

In addition, the amended decree must require all companies to publicize their limited liability, as set by the Article 31 of the Companies Law: "The words 'Công ty cổ phần' or 'Công ty TNHH' (Limited Company) and the authorized capital must be placed at the last word of the name of the company on its signs, invoices, ads, reports, documents and other business papers". This regulation will remind its partners or creditors of its liability for debts and assert that the State's liability is limited to the amount of capital it allocated to the SOC.

3. As for the capital allocated to the SOC by the State, the draft of amended decree reads: "The allocation of capital should be carried out within 60 days at most after the SOC receives its certificate of registration." This regulation is against the law because a company should meet certain requirements - including requirement regarding capital - before it can receive the certificate of registration. In our opinion, this regulation should be read: "The allocation of capital should be carried out within 60 days at most after the SOC receives the Decision on Establishment in order to help it fulfil registration procedures".

4. As for the issuance of shares, Decree 59/CP and the draft of amended decree repeat that: "The SOC, when issuing shares for cash, should obey regulations set by law." We petition the Government to delete this sentence from the draft for the fact that this case will never happen and if it happens it will violate the Companies Law, because only joint stock companies are allowed to issue shares. Regarding an

SOME OPINIONS ABOUT ADJUSTMENTS TO DECREE 59/CP

by TRẦN TÔ TỬ

equitized SOC, the issuance of shares only takes place after the equitization process is completed. Moreover, this sentence is contrary to the one that preceded it "the mobilization shouldn't change the ownership of the company."

5. Regarding the sale of assets, the draft of amended decree allows proceeds from the sale of assets to be credited to sales account. This regulation is unreasonable and illegal, because this is the sale of assets, not of products, so it can't be considered as a revenue. We think that this amount of money could be credited to the company's fund for development.

6. As for overheads, the regulation, proposed by the draft, that includes some payments for taxes among these overheads is contrary to the Marxist-Leninist political economics. Tax, such as indirect one, could be paid either by consumers or by companies if it is considered as part of the value newly created. So those tax payments could be excluded from company's overheads, and be made to the Government along with company income tax. In addition, the company's taxable income should be well defined with a view to making it applicable to all kinds of company. Otherwise, if the Government want companies to add those tax payments to their overheads in order to prevent taxable income from increasing, those tax payments should be renamed "fees".

7. Regarding the distribution of profits (this is the most important problem to SOCs), the draft limits bonuses paid to employees to 3-month wages at most. This regulation has discouraged productivity and creativity of laborers for years. Moreover, we must realize that the will to set limit on wages and bonuses isn't suitable to the trend of economic reform. In our opinion, when the Personal Income Tax has come into effect, taxation could be used as an instrument for redistributing of income, so the regulation on distribution of profits in companies becomes unnecessary.