

ON THE COMPANY REGISTRATION AND INSPECTION MECHANISM

by TRẦN HỮU HIỆP

If companies are considered as cells of the economy, the company registration and inspection mechanism will be the midwife that helps with giving birth to companies and feeding up the economy. In developing the market economy under the direction of the Government, it's necessary to innovate the company registration and inspection mechanism. The more the economy develops, the greater the need for an effective and appropriate management mechanism is.

One of important achievements in the economic reform in recent years is the formation of an attractive investment environment. The birth of business laws (such as Companies Act, Private Enterprises Law, Foreign Investment Law, Cooperatives Law and State Enterprises Law) has made the economy stronger and encouraged private investment. The public sector has been beefed up and has played well its leading role in the mix economy. The amount of enterprises in this sector has been reduced from some 12,000 to 6,400 with total capital of VNĐ7,000 billion. In addition there are some 350 companies run by public organizations with total capital of VNĐ1,800 billion and 6,000 cooperatives that have been reorganized recently (350 of them are in rural areas). The non-public sector has developed fast and made a quantitative increase in the last few years. This sector has proved to be very active and strong on business. In 1996, there were over 8,500 limited and joint stock companies with total capital of VNĐ9,000 billion, and some 20,000 private businesses with total capital of VNĐ3,500 billion. In the foreign sector, there were some 1,500 investment projects with total valid capital of US\$24.5 billion. In addition, there are many professional organizations supplying different services for a profit.

Because of the fast development

of all sectors, the company registration and inspection mechanism reveals many defects that need to be reformed.

I. SITUATION

1. Differences between company registration and development plans

a. Decentralization of company registration

Beside the planning authorities responsible for granting licenses to and keeping the register of most kinds of companies (such as foreign-invested companies, private businesses, limited and joint stock companies, state enterprises and companies run by public organizations), some other governmental bodies are also authorized to do the same function:

- People's Committees at district level grant business licenses to family businesses and most cooperatives.

- Provincial services of science, technology and environment grant licenses to scientific centers according to the Decree 35/HDBT issued on Aug. 21, 1992.

- The banking authority licenses branches and rep offices of foreign banks, and local commercial joint stock banks. However, according to the Decree 82/CP issued on Aug. 8, 1994, branches and rep offices of foreign companies must get licenses from the Ministry of Trade.

- The Ministry of Justice grants licenses to legal advisory firms according to the Decree 42/CP issued on July 8, 1995.

- The Ministry of Education and Training gives licenses to foreign vocational schools operating in Vietnam.

- The Vietnam Civil Aviation Board licenses foreign airlines to sell tickets in Vietnam.

- The Governmental Personnel Department in each province decides on the opening of branches or

rep offices of companies from other provinces.

-Names of licenses sometimes cause misunderstanding: Operation License, Certificate of Business Proficiency, Business License, Certificate of Company Registration but all of them always require applicants to get other licenses or certificates before they can start doing business. Almost governmental bodies are authorized to give licenses with the result that a businessperson who operates in different fields has to spend a lot of time and money on getting licenses and on procedural difficulties.

This situation leads to a lack of a centralized body that keep the register of companies and all detailed information about them so as to help the Government learn about all problems arisen, and then, take appropriate measures if need be.

b. Unequal treatment arising from this mechanism

To make registration is both a right and a duty of a company. Through company registration, the Government can control them and protect their legal interests. In the present mechanism, registered companies are controlled strictly and have to pay all charges and fees, but their legal interests aren't protected properly. For example, the company's name and trademarks aren't considered as their invisible assets.

Private persons have to ask for permission to establish their companies and wait for approval, that is, they have no right to employ their capital whereas cooperatives receive more preferential treatment: they aren't required to apply for establishment permit and need only make registration after establishment.

According to the Foreign Investment Law, a foreign private person is allowed to establish a company of his or her own, whereas a Vietnamese citizen is only allowed to form a private business, instead of a com-

pany, and this business isn't recognized by law as a legal person.

2. Procedural difficulties

The procedure for establishing and registering a company is very complex and includes many loopholes.

Foreign-invested companies, after receiving investment licenses, are recognized as legal persons and can come into operation although they have to complete many complicated procedures. The investment license, in principle, is only the Vietnamese government's recognition of this foreign-invested company. According to Section 3, Article 94 of the Civil Law, only if this company proves its financial capacity is it recognized as a legal person. Private persons with a little starting capital (even with no capital) can establish companies legally by opening bank accounts, having their accounts certified by banks and using this certification as a document to apply for establishment licenses. Such companies usually tend to run into debt and become defaulters.

3. Registration mechanism and government's control

a. Organizational problems: The machinery for controlling companies through registration is complicated and cumbersome, therefore applicants' money is milked, control power is decentralized but nobody bears responsibility for it, and as a result, the government's control becomes less effective.

b. Administrative management: because of the decentralized registration mechanism, many businesses, especially scientific research centers, professional service offices, branches and rep offices, could evade taxes.

c. After-registration control: The present mechanism pays too much attention to the establishment of companies but provides no measure to control companies' operation after registration. Information about companies, such as capital and location, wasn't updated. The registry office failed to record changes in companies' development because companies weren't forced to submit periodical reports. Many companies didn't operate according to what they registered with a view to evading taxes.

II. SOLUTIONS AND SUGGESTIONS

1. Reforming the registration mechanism

a. Amending Companies and Private Companies Laws: Those two laws must be amended with a view to allowing foreign residents and Vietnamese expatriates to establish companies, allowing establishment of other kinds of companies, such as one-man companies and unlimited companies, and allowing changes from this kind to another.

b. Removing establishment licenses: The Government need only require businesspeople, like cooperatives, to register their companies after establishment. Only state-owned enterprises need the establishment licenses before making registration. Companies run by public organizations must be subject to the Companies Act, instead of Official Correspondence 283/CN issued on Jan. 16, 1993 by the Government Office (this can be treated as a new kind of company in the would-be-amended Companies Act).

c. Protecting companies' rights and legal interests after registration: The Government had better make consistent regulations on granting business licenses (when the company is registered) so the company can come into operation immediately after registration, thereby saving companies from procedural difficulties.

d. Supplying, through companies registry office, information about local and foreign companies and markets.

e. Reforming the procedure for certifying companies' location: At present, this procedure is carried out according to the Civil Law: companies are required to produce house ownership certificates or rental con-

tracts witnessed by the notary while getting the house and land certificates is time-consuming. Therefore, this procedure affects badly the establishment of companies. To reform this procedure, local governments could be allowed to give the company's head office certificates. These certificates could only be used as a document to register the company, not to prove the land and house ownership.

2. Strengthening the registration machinery

a. Building the system of company registry offices from central to local levels: These offices will have legal entities and be independent from other governmental bodies. They could be organized into departments and a central department and responsible to a ministry, Government Office, local People's Committees or Planning and Investment Services. The organization of this system won't increase the amount of officials because it will employ officials working in above-mentioned bodies responsible for keeping company register.

b. Computerizing the task of inspecting, and keeping the register of, companies by establishing a data bank storing information about all companies.

c. Requiring registered companies to submit periodical reports for inspection.

The situation requires the Government and the Ministry of Planning and Investment to work out an appropriate registration mechanism so as to encourage new investment.

