

Deficiency: Restriction on Assignment of Capital, and Its Effect on Financing.
Source: Do Dinh Luong, Legal Expert, Institute of Law Research, Hanoi. Unpublished manuscript on foreign investment in Vietnam.
Date: March, 1992.
Details:

As explained already, a foreign partner in a JV can only assign its share of the enterprise's legal capital if the JV's Board and the SCCI give their unanimous approval. In most cases, this restriction makes it impossible for the partner to use its interest in the JV as security for financing. The lender has no guarantee that it will be automatically assigned the partner's capital in the event that the partner cannot honour its loan payments.

Gap: Forced Dissolution of Joint Venture.
Source: Barry Wain, "Cancellation of Foreign Investor's License Raises Questions About Vietnam's Policies", in *Asian Wall Street Journal Weekly*.
Date: October 26, 1992.
Details:

In a recent case, the SCCI acted under article 38 of Decree 18¹ to revoke the licence of a JV because the Hong Kong foreign partner allegedly did not respect the terms in the licence. While most observers acknowledge that the foreign partner probably did break the contract, there is some concern over the way that the SCCI handled the affair. Specifically, observers are concerned first about the SCCI's failure to provide details on the alleged transgressions, and second about the lack of an independent appeal process.

The SCCI's handling of the affair exposes two gaps in Decree 18. The Decree does not require the agency to explain its actions, and does not provide for an appeal process. Instead, article 38 simply states that the SCCI "has the authority to dissolve a joint venture prior to the expiry of its duration if the joint venture deviates from its objectives and the scope of its operation as stated in its charter and in the investment licence".

Deficiency: Buy-out Provisions in FOCs.
Source: James Chapman, Johnson Stokes & Master (Hong Kong), "New Developments in the Foreign Investment Law of Vietnam" in *Asia Money Lawyer*.
Date: February, 1993.
Details:

Article 14 of the Law on Foreign Investment in Vietnam allows Vietnamese parties to buy part of FOCs that operate in what the Government determines to be "important economic sectors". Decree 18 – the Law's implementing regulations – clarifies this provision and says that the SCCI

..."shall determine important economic establishments and provide guidelines to the foreign investor to present in the investment application conditions for Vietnamese business, on the basis of agreement, to re-purchase a part of that enterprise to turn it into a joint venture" (article 47).

This buy-out provision is of great concern to investors who invest in the form of a FOC — many choose the FOC form because they do not want Vietnamese involvement. In addition, while Decree 18 does state that the buy-out will be "on the basis of agreement", it is not clear if the investor has any choice over whom its potential partner will be.