

2.9.2 Banking

Deficiency: Banking Ordinances vs. Law on Foreign Investment: Which Applies?
Source: Cynthia Brown, Indochina Consulting Services, and Elaine Chiew, Chandler & Thong-ek. "Banking in the bud", in *AsiaLaw*.
Date: June/July, 1993.
Details:

Special legislation exists to govern the activities of JV banks and foreign bank branches in Vietnam. In addition, however, the Law on Foreign Investment and its implementing regulations (Decree 18) exist to regulate all foreign business involvement in Vietnam. The extent to which the provisions in Law on Foreign Investment and Decree 18 apply to the banks is not always clear.

For example, bank branches and JV banks are regulated by detailed circulars from the State Bank, and bank representative offices are regulated by the Ministry of Commerce. If the provisions of the Law on Foreign Investment and Decree 18 also apply to banks, the SCCI may also play a regulatory role over banking activities.

Deficiency: Unsophisticated Legislation.
Source: Cynthia Brown, Indochina Consulting Services, and Elaine Chiew, Chandler & Thong-ek. "Banking in the bud", in *AsiaLaw*.
Date: June/July, 1993.
Details:

The authors identify a general deficiency that foreign investors should keep in mind: the banking laws are not sophisticated documents. As the authors explain, the Vietnamese banking laws

"...do not anticipate the complexities of banking activities, especially in the area of project financing. Furthermore, where the banking regulations are silent on a particular issue, it is not always clear as to what activities are permissible. In a country with few written statutes and no case law, a foreign enterprise seeking to engage in an activity not clearly permitted by the banking regulations would do well to adopt a working relationship with the State Bank, and obtain permission prior to undertaking such an activity" (p. 34).

2.10 Representative Offices

Deficiency: Potential for Conflict in Regulations on Representative Offices.
Source: Fred Burke, Baker & McKenzie (Hong Kong), "Opening Representative Offices in the New Vietnamese Market", in *East Asian Executive Reports*.
Date: March 1992.
Details:

The government issued the Decree on Representative Offices to regulate the establishment and activities of these offices in Vietnam. In addition, however, the local People's Committees may pass their own regulations on representative offices. Reports from Ho Chi Minh City indicate that the local People's Committee has passed rules that supplement the national rules in "a number of significant respects" (p.22). It is not clear which rules apply in the case of conflicts.

It is also worth mentioning that in many areas of Vietnam, local People's Committees are controlled by hardliners who do not always approve of foreign investment. In such areas, it is possible that representative offices will be expected to meet extraordinary demands.