2. Gaps and Deficiencies

2.1 Law on Foreign Investment

Gaps and deficiencies identified in the Law concern specific aspects of FDI. See under the remaining categories.

2.2 Forms of Investment

Deficiency: Transfer of Ownership in JVs.
Source: John Dick and Paul A. Delemarre of Freehill Hollingdale & Page, Singapore. In *International Financial Law Review.*
Date: July 1991. Note that the comments were made originally about the earlier version of the Law on Foreign Investment, but apply today under Decree 18.
Details:

Decree 18 (1993) regulates the transfer of legal capital by partners of JVs. As stated in article 30, a partner of a JV may assign its legal capital, but must give first priority to the other member in the enterprise. If the other member does not want the capital, the transferring party may approach a third party. In order for any transfer to be made, however, there must be unanimous agreement by the enterprise's Board of Management. Since the Board must be made up of representatives of all members, the non-transferring members have an effective veto over any transfer. The SCCI must also approve and transfer, and therefore has a veto as well.

Another problem may arise if the transferring party is Vietnamese and the designated transferee is foreign. If the Vietnamese party is the only Vietnamese member of the enterprise, then the enterprise will cease to be a JV under the Law on Foreign Investment after the transfer is made. The SCCI will revoke the JV licence in this situation, and the enterprise will have to reapply for a FOC license.

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Deficiency: Trapped in a JV.
Source: Do Dinh Luong, Legal Expert, Institute of Law Research, Hanoi. Unpublished manuscript on foreign investment in Vietnam.
Date: March, 1992.
Details:

A foreign partner that wants to remove itself from a JV enterprise would normally attempt to assign its share of the legal capital to another party. In order to assign its capital, however, the foreign partner must receive the unanimous approval of the JV's Board of Management, on which all parties are represented. In addition, the foreign partner must receive approval from the SCCI.

If for some reason either the Board of Management or the SCCI vetoes the capital assignment, the foreign partner may simply try to withdraw its capital. The problem here, however, is that "in the course of operations, the joint venture is not allowed to decrease its legal capital" (article 28, Decree 18).

In order to re-gain control of its capital, the foreign partner would have to dissolve the enterprise. As in the case of capital transfer, however, liquidation requires both the unanimous approval of the Board, and the SCCI's blessing. Without these endorsements, the foreign partner's capital is trapped.

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