

## LAW ON ENTERPRISES

*Pursuant to the Constitution of the Socialist Republic of Vietnam;*

*The National Assembly promulgates the Law on Enterprises.*

### CHAPTER I

#### General Provisions

##### **Article 1. Governing scope**

This Law regulates the establishment, organization of management, re-organization, dissolution and related activities of enterprises, comprising limited liability companies, shareholding companies, partnerships and private enterprises; and regulates corporate groups.

##### **Article 2. Applicable entities**

1. Enterprises.
2. Agencies, organizations and individuals involved in the establishment, organization of management, re-organization, dissolution and related activities of enterprises.

##### **Article 3. Application of Law on Enterprises and specialized laws**

If any specialized law provides special regulations on the establishment, organization of management, re-organization, dissolution and related activities of enterprises, the provisions of such law apply.

##### **Article 4. Interpretation of terms**

In this Law, the following terms are construed as follows:

1. *Foreign individual* means a person without Vietnamese nationality.
2. *Shareholder* means an individual or organization holding at least one share of a shareholding company.
3. *Founding shareholder* means a shareholder holding at least one ordinary share and signing the list of founding shareholders of a shareholding company.

4. *Dividend* means the net profit to be paid for each share in cash or other assets from residual profit of a shareholding company after discharge of its financial obligations.
5. *Limited liability company* comprises one [single] member limited liability companies and limited liability companies with two or more members [multi-member].
6. *National enterprise registration information portal* means an electronic information portal to be used for enterprise registration online and for access to information about enterprise registration.
7. *National enterprise registration database* means the collection of data on enterprise registration throughout the whole country.
8. *Enterprise* means an organization having its own name, having assets and a transaction office, and registered for establishment in accordance with law for trading purposes.
9. *State owned enterprise* means an enterprise in which the State holds one hundred (100) per cent of the charter capital.
10. *Vietnamese enterprise* means an enterprise established or registered for establishment in accordance with the law of Vietnam and having its head office in Vietnam.
11. *Permanent residential address* means the registered head office address in the case of an organization; or the registered permanent residential address or the workplace address or any other address of an individual who registered such address with an enterprise as the contact address.
12. *Market price of share of capital contribution or of a share* means the highest market price for trading on the previous day, the agreed price between a seller and a purchaser, or the price determined by a professional price evaluation organization.
13. *Enterprise registration certificate* means the written or electronic document which an business registration office issues to an enterprise and which records information about enterprise registration.
14. *Capital contribution* means the contribution of assets [to a company] so as to form the charter capital of the company. Capital contribution comprises capital contribution for establishment of an enterprise or additional contribution to the charter capital of an enterprise already established.
15. *National system of information about enterprise registration* comprises the national enterprise registration database, the national enterprise registration information portal and systematic technical infrastructure.
16. *Valid file* means a file containing all documents stipulated in this Law and the contents of which contain complete declarations as required by law.
17. *Business* means the continuous conduct of one, several or all of the stages of an investment process, from production to sale of products or provision of services on the market for profit-making purposes.
18. *Related person* means any organization or individual with a direct or indirect relationship with an enterprise in the following cases:
  - (a) With regard to a subsidiary company in a corporate group, [related person] means the parent company, a manager of the parent company or any person with the authority to appoint such manager;

(b) With regard to a parent company in a corporate group, [*related person*] means any subsidiary company;

(c) A person or a group of persons with the ability to control issuance of decisions by or activities of such enterprise via an entity which manages such enterprise;

(d) A manager of the enterprise;

(dd) Spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling, brother-in-law or sister-in-law of any manager of the company, or of any member or shareholder holding a share of capital contribution or controlling shares;

(e) An individual who is authorized to act as representative of any person or company stipulated in sub-clauses (a), (b), (c), (d) and (dd) of this clause;

(g) An enterprise in which any person or company stipulated in sub-clauses (a), (b), (c), (d), (dd), (e) and (h) of this clause owns [shares] at a level entitling it to control issuance of decisions by any managerial entity in such enterprise;

(h) A group of persons who reach an agreement to co-operate amongst themselves to takeover a share of capital contribution, a share or interest in the company or to control issuance of decisions by the company.

19. *Manager of an enterprise* means a manager of a company or a manager of a private enterprise, comprising the owner of a private enterprise, an unlimited liability partner, the chairman of a members' council, a member of a members' council, the chairman of a company, the chairman of a board of management, a member of a board of management, a director or general director, and an individual holding another managerial position, who is authorized to enter into transactions of the company in the name of the company as stipulated in the charter of the company.

20. *Founder of an enterprise* means an organization or individual establishing or contributing capital to establish an enterprise.

21. *Foreign investor* means an organization or individual who is construed as a foreign investor by the *Law on Investment*.

22. *Share of capital contribution* means the total value of assets contributed or undertaken to be contributed by a member to a limited liability company or partnership. *Capital contribution ratio* means the ratio of the share of capital contribution of a member to the charter capital of the limited liability company or the partnership.

23. *Public utility products or services* means products or services which are essential for the life, economy and social affairs of the country or of civilian communities in territorial zones, which the State needs to ensure for the general interest or for national defence and security purposes, and for which it would be difficult to cover costs if production and supply was implemented in accordance with the market mechanism.

24. *Member of a company* means an individual or organization holding part or all of the charter capital of a limited liability company or partnership.

25. *Partner of a partnership* comprises unlimited liability partners and limited liability partners.

26. *Re-organization of an enterprise* means the division, separation, consolidation, merger or conversion of the type of the enterprise.

27. *Foreign organization* means an organization which is established overseas in accordance with foreign law.

28. *Share or capital contribution ownership ratio of a foreign investor* means the aggregate ratio of ownership of voting capital by all foreign investors in a Vietnamese enterprise.

29. *Voting capital* means the amount of capital contribution or shares entitling the owner to vote on matters which fall within the decision-making power of a members' council or a general meeting of shareholders.

30. *Charter capital* means the total value of assets contributed or undertaken to be contributed by members when establishing a limited liability company or partnership; or means the total aggregate par value of shares sold or registered for subscription when establishing an enterprise in the case of a shareholding company.

#### **Article 5. State guarantees for enterprises and owners of enterprises**

1. The State recognises the long term existence and the development of the types of enterprise prescribed in this Law, ensures the equality of enterprises before the law irrespective of their form of ownership and economic sector; and recognises the lawful profit-making nature of business activities.

2. The State recognises and protects the ownership of assets, invested capital, income and other lawful rights and interests of an enterprise and its owner(s).

3. The lawful assets and invested capital of an enterprise and its owner shall not be nationalized or expropriated by administrative measures.

In extremely necessary cases where the State compulsorily acquires or requisitions with compensation the property of an enterprise for reasons of national defence or security or in the national interest, in emergency cases or in cases of prevention of and fighting against natural disasters, the enterprise shall be paid in the case of compulsory acquisition, or the enterprise shall be compensated in the case of compulsory requisition at the market price at the time of the compulsory acquisition or requisition. The payment or compensation must ensure the interests of the enterprise without discrimination as between types of enterprise.

#### **Article 6. Political organizations and socio-political organizations in enterprises**

1. Political organizations and socio-political organizations in enterprises shall operate in accordance with the provisions of the Constitution, the law, and their charter.

2. An enterprise is obliged to respect and is not permitted to hinder or cause difficulties to the establishment of a political organization or socio-political organization in the enterprise, [and/or] is not permitted to hinder its employees from or cause difficulties to its employees in participating in activities of such organization.

#### **Article 7. Rights of enterprises**

1. To freely conduct business in the lines which are not prohibited by law.

2. To conduct business and select the form of organization of business autonomously; to take the initiative in selecting the line of business, the area for and the form of business, and to take the initiative in adjusting the scope and lines of business.
3. To select forms and methods of raising, allocating and utilizing capital.
4. To take the initiative in seeking markets and customers and signing contracts.
5. To conduct export or import business.
6. To recruit, hire and employ labourers [employees] in accordance with business requirements.
7. To take the initiative in applying science and technology to increase business efficiency and competitiveness.
8. To possess, use and dispose of assets of the enterprise.
9. To refuse requests for provision of human resources not in accordance with law.
10. To lodge complaints or denunciations in accordance with the law on complaints and denunciations.
11. To participate in legal proceedings in accordance with law.
12. Other rights as stipulated by relevant law.

#### **Article 8. Obligations of enterprises**

1. To satisfy all business conditions when conducting business in the lines of business investment which are subject to conditions in accordance with the *Law on Investment* and to ensure maintenance of all such business investment conditions during the process of business operation.
2. To organize accounting work and to prepare and submit truthful and accurate financial statements on time in accordance with the law on accounting and statistics.
3. To declare and pay taxes and to perform other financial obligations as stipulated by law.
4. To ensure the lawful and legitimate rights and interests of employees in accordance with the labour law; not to discriminate between and offend the honour and dignity of employees in the enterprise; not to use forced labour and child labour; to support and facilitate its employees to participate in training to improve their qualifications and technical skill; to implement the regimes of social insurance, job loss insurance, health insurance and other insurance for employees in accordance with law.
5. To ensure and be responsible for the quality of goods and services in accordance with standards stipulated by law or registered or declared standards.
6. To fully and promptly perform the obligations regarding enterprise registration, registration of change to contents of enterprise registration, public disclosure of information about establishment and operation, reporting and other obligations in accordance with this Law and other provisions of relevant law;
7. To be responsible for the honesty and accuracy of information declared in the application file for enterprise registration and in reports; and to promptly make amendments of and additions to such

information on discovery of any information which was declared or reported inaccurately or incompletely.

8. To comply with the law on national defence, security, social order and safety, gender equality, protection of natural resources and environment, protection of historical and cultural sites and places of scenic beauty.

9. To perform obligations in respect of business ethics in order to ensure lawful rights and interests of customers and consumers.

**Article 9** *Rights and obligations of enterprises providing public utility products or services*

1. The rights and obligations stipulated in articles 7 and 8 and in other relevant provisions of this Law.

2. To account for and to be covered for expenses at the price stipulated by the law on tendering, or to collect charges for provision of services in accordance with the regulations of competent State agencies.

3. To be guaranteed an appropriate period for supply of products or provision of services in order to recover invested capital and gain reasonable profit.

4. To supply products or provide services in the correct quantity and quality and on time as committed at the price or charge rate stipulated by competent State agencies.

5. To ensure that equitable and favourable conditions are equally applicable to customers.

6. To be responsible before the law and customers for quantity, quality, terms of supply and prices, and charges for supply of products or provision of services.

**Article 10** *Criteria applicable to and rights and obligations of social enterprises*

1. A social enterprise must satisfy the following criteria:

(a) It is registered for establishment in accordance with this Law;

(b) Its operational objective is to resolve social or environmental issues in the interests of the community;

(c) It uses at least fifty one (51) per cent of its total annual profit to conduct re-investment for the purpose of implementing social or environmental objectives as registered.

2. In addition to the rights and obligations of enterprises stipulated in this Law, a social enterprise has the following rights and obligations:

(a) To maintain the objectives and conditions stipulated in clauses 1(b) and 1(c) of this article during the course of operation; where an enterprise currently operating wishes to convert into a social enterprise or a social enterprise wishes to abandon its social or environmental objectives, or fails to use its profit to conduct re-investment, such enterprise must provide a notice to the competent agency to carry out the procedures as stipulated by law;

(b) The owner of the enterprise or the manager of the social enterprise shall be considered for and entitled to receive favourable conditions and assistance during issuance of relevant licences and certificates in accordance with law;

(c) To be permitted to raise and receive funding [aid] in various forms from individuals, enterprises, non-governmental organizations and other Vietnamese or foreign organizations in order to cover managerial and operational expenses of the enterprise;

(d) Not to use funding raised for purposes other than the purpose of covering managerial and operational expenses in order to resolve social or environmental issues registered by the enterprise;

(dd) A social enterprise entitled to receive incentives or assistance must annually make a report to the competent agency on its operational status.

3. The State has policies to encourage, support and promote the development of social enterprises.

4. The Government shall provide detailed regulations on this article.

### **Article 11. Document retention regime of enterprises**

1. Depending on the form of enterprise, an enterprise must retain the following documents:

(a) Charter of the company; rules on internal management of the company; and register of members or register of shareholders;

(b) Certificate of protection of industrial property rights; certificate of registration of product quality; and other licences and certificates;

(c) Documents and papers certifying ownership of assets of the company;

(d) Minutes of meetings of the Members' Council, the General Meeting of Shareholders, and the

Board of Management; decisions of the enterprise; (dd) Prospectus for issue of securities;

(e) Reports of the Inspection Committee, conclusions of inspection agencies and conclusions of auditing organizations;

(g) Books of accounts, accounting records and annual financial statements.

2. The enterprise must retain the documents stipulated in clause 1 of this article at its head office or another place stipulated in the charter of the company; the documents shall be retained for the duration stipulated by relevant law.

### **Article 12. Report on change of information about managers of enterprises**

An enterprise must make a report to the business registration office in the locality where the enterprise has its head office within five days from the date of change of any information about the full name, contact address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification of any of the following persons:

1. Any member of the Board of Management in the case of a shareholding company;

2. Any member of the Inspection Committee or any inspector;

3. Director or General Director.

### **Article 13. Legal representatives of enterprises**

1. *Legal representative of an enterprise* means an individual representing the enterprise to exercise the rights and perform the obligations arising out of transactions of the enterprise, and representing the enterprise to act as plaintiff, defendant or person with related interests and obligations in arbitration proceedings or courts and to exercise other rights and perform other obligations in accordance with law.

2. Limited liability companies and shareholding companies may have one or more legal representatives. The charter of a company shall specify the number, managerial positions and rights and obligations of the legal representative(s) of the enterprise.

3. An enterprise must ensure that there is always at least one legal representative residing in Vietnam. If the enterprise has only one legal representative, such person must reside in Vietnam and must authorize in writing another person to exercise the rights and perform the obligations of the legal representative when the former exits Vietnam. In such case, the legal representative shall remain responsible for the performance of the authorized rights and obligations.

4. If upon expiry of the term of authorization stipulated in clause 3 of this article, the legal representative of the enterprise has not yet come back to Vietnam and does not provide any other authorization, the following provisions shall apply:

- (a) If such enterprise is a private enterprise, the authorized person shall continue to perform the rights and obligations of the legal representative within the scope of authorization until the legal representative of the enterprise is back to work at the enterprise;

- (b) If such enterprise is a limited liability company, shareholding company or partnership, the authorized person shall continue to perform the rights and obligations of the legal representative within the scope of authorization until the legal representative of the company is back to work at the company or until the company owner, the Members' Council or the Board of Management makes a decision appointing another person to act as legal representative of the enterprise.

5. If an enterprise has only one legal representative who is absent in Vietnam for a period of more than thirty (30) days without authorizing any person to perform the rights and obligations of the legal representative of the enterprise or who is deceased, disappears [is missing], subject to temporary imprisonment or sentenced by a court to a term of imprisonment or whose capacity for civil acts is restricted or lost, then the company owner, the Members' Council or the Board of Management shall appoint another person to act as legal representative of the company.

6. In the case of a limited liability company with two members, if one of the members is an individual acting as the legal representative of the company and is subject to temporary imprisonment or is sentenced by a court to a term of imprisonment, hides from his or her place of residence, loses capacity for civil acts or has his or her capacity for civil acts restricted, or has his or her right to practise forfeited by a court for a crime of smuggling, making counterfeit goods, illegally conducting business, evading tax, cheating customers or any other crime as stipulated by the Criminal Code, then the other member shall automatically become legal representative of the company until there is a new decision on the legal representative of the company made by the Members' Council.

7. In some special cases, competent courts have the right to appoint legal representatives during legal proceedings at the courts.

## **Article 14. Responsibilities of legal representatives of enterprises**

1. A legal representative of an enterprise has the following responsibilities:
  - (a) To exercise the delegated rights and perform the delegated obligations honestly and prudently and to his or her best ability in order to assure the lawful interests of the enterprise;
  - (b) To be loyal to the interests of the enterprise; not to use information, know-how or business opportunities of the enterprise; not to abuse his or her position and power and not to use assets of the enterprise for his or her personal benefit or that of other organizations or individuals;
  - (c) To notify the enterprise in a timely, complete and accurate manner that he or she and a person related to him or her is the owner or holds controlling shares or shares of capital contribution in other enterprises.
2. A legal representative of an enterprise is personally liable for any loss and damage to the enterprise due to a breach of the obligations stipulated in clause 1 of this article.

## **Article 15. Authorized representatives of owners, members and shareholders being organizations**

1. The authorized representative of an owner, member or shareholder of a company being an organization must be an individual authorized in writing to exercise the rights and perform the obligations stipulated in this Law in the name of such owner, member or shareholder.
2. The appointment of an authorized representative shall be implemented in accordance with the following provisions, unless otherwise stipulated by the company charter:
  - (a) An organization being a member of a limited liability company with two or more members and holding at least thirty five (35) per cent of the charter capital may authorize up to three representatives;
  - (b) An organization being a shareholder of a shareholding company and holding at least ten per cent of the total ordinary shares may authorize up to three representatives.
3. If the owner, a member or a shareholder of a company being an organization appoints multiple authorized representatives, the owner, such member or shareholder must specifically determine the share of capital contribution or number of shares of each representative. If the owner, such member or shareholder fails to determine the share of capital contribution or number of shares corresponding to each authorized representative, then the share of capital contribution or number of shares shall be equally distributed to the number of authorized representatives.
4. The appointment of an authorized representative must be in writing and must be notified to the company and shall only be effective in respect of the company as from the date of receipt of the notice by the company. The power of attorney must contain the following particulars:
  - (a) Name, enterprise code number and head office address of the owner, member or shareholder; (b) Number of authorized representatives and percentage of shares or share of capital contribution corresponding to each authorized representative;
  - (c) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card or passport or other lawful personal identification of each authorized representative;
  - (d) Respective term of authorization applicable to each authorized representative, specifying the date of commencement of authorization;

(dd) Full names and signatures of the legal representative of the owner, member or shareholder and of the authorized representative.

5. An authorized representative must satisfy the following criteria and conditions:

(a) Have full capacity for civil acts;

(b) Not be prohibited from establishment and management of enterprises;

(c) A member or shareholder being a company in which the State holds a share of capital contribution or shares accounting for more than fifty (50) per cent of the charter capital is not permitted to appoint the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child or sibling of the manager or of the person authorized to appoint the manager of the company to be the authorized representative at another company;

(d) Other criteria and conditions stipulated by the charter of the company.

#### **Article 16. Responsibilities of authorized representatives of owners, members and shareholders being organizations**

1. An authorized representative shall, in the name of the owner, a member or a shareholder, perform the rights and obligations of the owner, such member or such shareholder at the Members' Council or the General Meeting of Shareholders in accordance with this Law. All restrictions of the owner, member or shareholder on the authorized representative with respect to the performance of the rights and obligations of the owner, member or shareholder respectively at the Members' Council or the General Meeting of Shareholders shall have no legal validity in respect of a third party.

2. An authorized representative is responsible to attend all meetings of the Members' Council or the General Meeting of Shareholders; and to perform the authorized rights and obligations honestly and prudently and to his or her best ability in order to protect the lawful interests of the authorizing owner, member or shareholder.

3. An authorized representative is responsible before the authorizing owner, member or shareholder for any breach of the obligations stipulated in this article. The authorizing owner, member or shareholder is responsible before a third party for any liability arising in connection with the rights and obligations performed via the authorized representative.

#### **Article 17. Prohibited practices**

1. To issue or refuse to issue enterprise registration certificates; to request persons establishing enterprises to submit other additional documents contrary to the provisions of this Law; to cause any delay, trouble, obstruction or difficulty to persons establishing enterprises and business activities of enterprises.

2. To prevent owners, members or shareholders of an enterprise from exercising their rights and performing their obligations in accordance with this Law and the charter of the company.

3. To conduct business in the form of an enterprise without carrying out registration, or to continue to conduct business after revocation of an enterprise registration certificate.

4. To declare dishonestly or inaccurately the contents of the application file for enterprise registration and of the application file for registration of changes in the registered items.

5. To wrongly declare the charter capital or to fail to contribute the amount of charter capital in full as registered; to deliberately under or overvalue assets contributed as capital.
6. To conduct business in lines which are prohibited from business investment, to conduct business in lines of business investment subject to conditions without satisfying all of the business conditions stipulated by the *Law on Investment* or without ensuring maintenance of all business conditions during the course of operation.
7. Money-laundering or deceitful activities.

## **CHAPTER II**

### **Establishment of Enterprises**

#### **Article 18. Right to establish, contribute capital to, purchase shares in, purchase share of capital contribution in and manage enterprises**

1. Organizations and individuals have the right to establish and manage enterprises in Vietnam in accordance with this Law, except for the cases stipulated in clause 2 of this article.
2. The following organizations and individuals do not have the right to establish and manage enterprises in Vietnam:
  - (a) State agencies and units of people's armed forces using State assets to establish business enterprises to make private profit for their own agencies or units;
  - (b) Cadres [senior employees], State officials and State employees in accordance with the law on cadres, State officials and State employees;
  - (c) Officers, non-commissioned officers, career servicemen and national defence workers and employees in agencies and units of the people's army; officers and career non-commissioned officers in agencies and units of the People's Public Security of Vietnam, except for persons appointed to be authorized representatives to manage the State share of capital contribution in enterprises;
  - (d) Management personnel and professional management personnel in State owned enterprises , except for those appointed to be authorized representatives to manage the State share of capital contribution in other enterprises;
  - (dd) Minors; persons whose capacity for civil acts is restricted or lost; organizations without legal entity status;
  - (e) Persons who are prosecuted for criminal liability, serving prison sentences or administrative decisions at compulsory drug rehabilitation establishments or compulsory educational establishments or being prohibited from conducting business, assuming certain positions or doing certain work relating to business pursuant to a decision of a court; other cases as stipulated by the law on bankruptcy and anti-corruption; Where the business registration office so requests, any person registering establishment of an enterprise must submit a legal record to the business registration office.

3. Organizations and individuals have the right to contribute capital to, purchase shares or purchase a share of capital contribution in shareholding companies, limited liability companies and partnerships in accordance with this Law, except for the following cases:

(a) State agencies and units of people's armed forces using State assets to contribute capital to enterprises to make private profit for their own agencies and units;

(b) Persons not permitted to contribute capital to enterprises by the law on State officials and State employees.

4. *Private profit for an agency or unit* as stipulated in clauses 2(a) and 3(a) of this article means using revenue in any form which was earned from business activities, from a capital contribution or from the purchase of shareholding or the purchase of a share of capital contribution, for one of the following purposes:

(a) Distribution in any form to some or all persons stipulated in clauses 2(b) and 2(c) of this article;

(b) Supplementing the operational budget of such agency or unit contrary to the law on the State budget;

(c) Establishing or supplementing a fund which services the private interests of such agency or unit.

#### **Article 19. Contracts prior to enterprise registration**

1. The founder(s) of an enterprise may sign contracts for the purpose of establishment and operation of the enterprise prior to and during enterprise registration.

2. When the enterprise is established, the enterprise must continue to exercise the rights and perform the obligations arising from the signed contracts as stipulated in clause 1 of this article unless otherwise agreed by the parties to such contracts.

3. Where the enterprise is not registered for establishment, the person(s) who signed the contracts pursuant to clause 1 of this article shall be liable or the founders of such enterprise shall be jointly liable for the performance of such contracts.

#### **Article 20. Application file for enterprise registration for a private enterprise**

1. Request for enterprise registration.

2. Copy of citizen's identity card, people's identity card, passport or other lawful personal identification of the owner of the private enterprise.

#### **Article 21. Application file for enterprise registration for a partnership**

1. Request for enterprise registration.

2. Charter of the partnership.

3. List of partners.

4. Copy of citizen's identity cards, people's identity cards, passports or other lawful personal identification of partners.

5. Copy of certificate of registration of investment applicable to foreign investors as stipulated in the *Law on Investment*.

**Article 22. Application file for enterprise registration for a limited liability company**

1. Request for enterprise registration.
2. Charter of the company.
3. List of members.
4. Copy of the following documents:
  - (a) Citizen's identity card, people's identity card, passport or other lawful personal identification of member(s) being individual(s);
  - (b) Establishment decision, enterprise registration certificate or other equivalent document of [the member being] an organization and power of attorney; citizen's identity card, people's identity card, passport or other lawful personal identification of the authorized representative of the member being an organization; In the case of a member being a foreign organization, the copy enterprise registration certificate or equivalent document must have been consularized.
  - (c) Certificate of registration of investment applicable to foreign investors as stipulated in the *Law on Investment*.

**Article 23. Application file for enterprise registration for a shareholding company**

1. Request for enterprise registration.
2. Charter of the company.
3. List of founding shareholders and shareholders being foreign investors.
4. Copy of the following documents:
  - (a) Citizen's identity cards, people's identity cards, passports or other lawful personal identification of founding shareholders and shareholders being foreign investors who are individuals;
  - (b) Establishment decisions, enterprise registration certificates or other equivalent document of [founding shareholders and shareholders being foreign investors which are] organizations and powers of attorney; citizen's identity cards, people's identity cards, passports or other lawful personal identification of authorized representatives of the founding shareholders and shareholders being foreign investors which are organizations; In the case of a shareholder being a foreign organization, the copy enterprise registration certificate or equivalent document must have been consularized.
  - (c) Certificate of registration of investment applicable to foreign investors as stipulated in the *Law on Investment*.

**Article 24. Contents of request for enterprise registration**

1. Name of the enterprise.
2. Address of the head office of the enterprise; telephone number, facsimile number, email (if any).

3. Lines of business.
4. Charter capital; investment capital of the owner of the private enterprise.
5. Classes of shares, par value of shares of each class and total number of shares of each class which may be offered for sale in the case of a shareholding company.
6. Information about registration of tax.
7. Number of employees.
8. Full name, signature, permanent residential address, nationality and number of citizen's identity card, people's identity card, passport or other lawful personal identification of the owner of the private enterprise or of unlimited liability partners.
9. Full name, signature, permanent residential address, nationality and number of citizen's identity card, people's identity card, passport or other lawful personal identification of the legal representative of the enterprise in the case of a limited liability company or shareholding company.

#### **Article 25. Charter of company**

1. The charter of a company comprises the charter upon enterprise registration and the amended charter during the course of operation. The charter of a company shall contain the following main contents:

- (a) Names and head office address of the company; names and addresses of branches and representative offices (if any);
- (b) Lines of business;
- (c) Charter capital, total number of shares, classes of shares and par value of shares of each class in the case of a shareholding company;
- (d) Full names, addresses, nationalities and other basic characteristics of unlimited liability partners in the case of a partnership; of the company owner or of members in the case of a limited liability company; of founding shareholders in the case of a shareholding company; share of capital contribution and its value for each member in the case of a limited liability company or a partnership; number of shares, classes of shares, par value of shares of each class of founding shareholders;
- (dd) Rights and obligations of members in the case of a limited liability company or a partnership; of shareholders in the case of a shareholding company;
- (e) Organizational and managerial structure;
- (g) Legal representative in the case of a limited liability company or a shareholding company;
- (h) Procedures for passing decisions of the company; rules for resolution of internal disputes;
- (i) Bases and methods of calculating remuneration, wages and bonuses of managers and inspectors;
- (k) Circumstances in which a member has the right to require the company to redeem its share of capital contribution in the case of a limited liability company or its shares in the case of a shareholding company;

- (l) Rules for distribution of after-tax profit and dealing with losses in the business;
  - (m) Circumstances for dissolution, procedures for dissolution and procedures for liquidation of the assets of the company;
  - (n) Procedures for amendments of or additions to the charter of the company.
2. The charter upon enterprise registration must contain full names and signatures of the following persons:
- (a) All unlimited liability partners in the case of a partnership;
  - (b) The company owner(s) being individual(s) or the legal representative of the company owner(s) being organization(s) in the case of a one [single] member limited liability company;
  - (c) The member(s) being individual(s) and the legal representative or the authorized representative(s) of the member(s) being organization(s) in the case of a limited liability company with two or more members [multi-member];
  - (d) The founding shareholder(s) being individual(s) and the legal representative or the authorized representative(s) of the founding shareholder(s) being organization(s) in the case of a shareholding company.
3. The amended charter must contain full names and signatures of the following persons:
- (a) The chairman of the Partners' Council in the case of a partnership;
  - (b) The owner, the legal representative of the owner or the legal representative in the case of a one member limited liability company;
  - (c) The legal representative in the case of a limited liability company with two or more members or a shareholding company.

**Article 26. List of members of limited liability company or partnership and list of founding shareholders of shareholding company**

The list of members of a limited liability company or partnership and the list of founding shareholders and shareholders being foreign investors in the case of a shareholding company must be prepared and contain the following main details:

- 1. Full names, signatures, addresses, nationalities, permanent residential addresses and other basic characteristics of members being individuals in the case of a limited liability company or a partnership; of founding shareholders and shareholders being foreign investors who are individuals in the case of a shareholding company;
- 2. Names, enterprise code numbers and head office addresses of members being organizations in the case of a limited liability company or partnership; of founding shareholders and shareholders being foreign investors which are organizations in the case of a shareholding company;
- 3. Full names, signatures, addresses, nationalities and permanent residential addresses of authorized representatives or legal representatives of members being organizations in the case of a limited liability company; and of founding shareholders and shareholders being foreign investors which are organizations in the case of a shareholding company;

4. Share of capital contribution and its value, type of assets, quantity, value of each type of asset contributed as capital, time schedule for contribution of share of capital contribution by each member in the case of a limited liability company or a partnership; number of shares, classes of shares, types of assets, quantity of assets and value of each type of asset contributed as share capital by each founding shareholder and shareholder being a foreign investor in the case of a shareholding company.

#### **Article 27. Sequence and procedures for enterprise registration**

1. The person establishing an enterprise or an authorized person shall send an application file for enterprise registration to the business registration office as stipulated in this Law.

2. The business registration office is responsible to consider the validity of the application file and shall issue an enterprise registration certificate within three working days from the date of receipt of the file. In the case of refusal to issue such certificate, the enterprise registration office must notify the person establishing the enterprise in writing thereof. Such notice must specify the reasons and amendments or additions to the file which are required.

3. The Government shall provide detailed regulations on the sequence, procedures and application files for enterprise registration and on inter-service co-ordination between agencies during issuance of enterprise registration certificates, on labour registration, on social insurance and on enterprise registration via electronic information networks.

#### **Article 28. Issuance of enterprise registration certificate**

1. An enterprise shall be issued with an enterprise registration certificate if it satisfies all of the following conditions:

(a) Its registered line of business is not prohibited from business investment;

(b) The name of the enterprise complies with the provisions of articles 38, 39, 40 and 42 of this Law;

(c) It has a valid application file for enterprise registration;

(d) It has paid in full the enterprise registration fee as stipulated by the law on charges and fees.

2. If the enterprise registration certificate is lost, ruined, damaged or destroyed in any other form, the enterprise shall be re-issued with an enterprise registration certificate and must pay fees in accordance with the law on charges and fees.

#### **Article 29. Contents of enterprise registration certificate**

1. Name of the enterprise and enterprise code number.

2. Head office address of the enterprise.

3. Full name, permanent residential address, nationality and number of citizen's identity card, people's identity card, passport or other lawful personal identification of the legal representative of the enterprise in the case of a limited liability company or shareholding company; and of unlimited liability partners in the case of a partnership, and of the owner of the enterprise in the case of a private enterprise; full names, permanent residential addresses, nationalities, number of citizen's identity cards, people's identity cards, passports or other lawful personal identification of members being individuals; names,

enterprise code numbers and head office addresses of members being organizations in the case of a limited liability company.

4. Charter capital.

### **Article 30. Enterprise code numbers**

1. *Enterprise code number* means a row of numbers created by the national system of information about enterprise registration, issued to an enterprise upon establishment and stated in the enterprise registration certificate. Each enterprise has one unique code number which shall not be re-used to be issued to another enterprise.

2. Enterprise code numbers are used for the purpose of performing tax obligations, administrative procedures and other rights and obligations.

### **Article 31. Registration of change to contents of enterprise registration certificates**

1. When an enterprise changes any content of its enterprise registration certificate as stipulated in article 29 of this Law, it must register [such change] with the business registration office.

2. The legal representative of the enterprise is responsible to register such change within ten (10) days from the date of the change.

3. The business registration office is responsible to consider the validity of the application file and issue a new enterprise registration certificate within three working days from the date of receipt of the file. In the case of refusal, the business registration office must send a written notice to the enterprise thereof. The notice must specify the reasons and amendments or additions required (if any).

4. The registration of change to any content of an enterprise registration certificate pursuant to a decision of a court or arbitrator shall be implemented in accordance with the following sequence and procedures:

(a) The person requesting registration of change to the content of the enterprise registration certificate shall send a request for registration of change to the competent business registration office within fifteen (15) working days from the effective date of the judgement or decision, enclosing a copy of the judgement or decision which is effective;

(b) The business registration office is responsible to consider and issue a new enterprise registration certificate in accordance with the contents stated in the judgement or decision which is effective within three working days from the date of receipt of the request for registration. In the case of refusal, the business registration office must notify the requesting person in writing thereof. The notice must specify the reasons and amendments of or additions to the file required (if any).

### **Article 32. Notice of change to contents of enterprise registration**

1. An enterprise is required to notify the business registration office of change to any of the following contents:

(a) Change of lines of business;

(b) Change of a founding shareholder in the case of a shareholding company and a shareholder being a foreign investor, except in the case of a listed company;

(c) Change of other contents in the application file for enterprise registration.

2. The legal representative of the enterprise is responsible to make a notice of change to the content of enterprise registration within ten (10) days from the date of such change.

3. A company must send a written notice to the business registration office in the locality where the head office of the company is located within ten (10) days from the date of change to any shareholder being foreign investor who is registered in the register of shareholders of the company. Such notice must contain the following particulars:

(a) Name, enterprise code number, head office address;

(b) In the case of a shareholder being a foreign investor who transfers shares, [the following particulars must be stated]: name, head office address of the foreign shareholder being an organization; full name, nationality, address of the shareholder being an individual; volume of shares and class of shares and ratio of ownership of its or his/her existing shares in the company; volume of shares and class of shares transferred;

(c) In the case of a shareholder being a foreign investor who receives an assignment, [the following particulars must be stated]: name, head office address of the foreign shareholder being an organization; full name, nationality, address of the shareholder being an individual; volume of shares and class of shares of which the shareholder receives assignment; volume of shares, class of shares and ratio of ownership of its or his/her respective shares in the company;

(d) Full name and signature of the legal representative of the company.

4. The business registration office is responsible to consider the validity of the application file and make changes to the contents of enterprise registration within three working days from the date of receipt of the notice. In the case of refusal to supplement the enterprise registration file, the business registration office shall notify the enterprise in writing thereof. The notice must specify the reasons and the amendments or additions required (if any).

5. The registration of change to any content of enterprise registration pursuant to a decision of a court or an arbitrator shall be carried out in accordance with the following sequence and procedures:

(a) The person requesting registration of change to the content of enterprise registration shall send a notice of registration of change to the competent business registration office within ten (10) working days from the effective date of the judgement or decision, enclosing a copy of the judgement or decision which is effective;

(b) The business registration office is responsible to consider and make change to the content of enterprise registration in accordance with the judgement or decision which is effective within three working days from the date of receipt of the notice. In the case of refusal to supplement or amend information pursuant to the notice, the business registration office must notify the requesting person in writing thereof. The notice must specify the reasons and the amendments of or additions to the file required (if any).

### **Article 33. Announcement of contents of enterprise registration**

1. Upon issuance of an enterprise registration certificate, the enterprise must make a public announcement on the national enterprise registration information portal in accordance with the stipulated sequence and procedures, and must pay fees in accordance with regulations. The

announcement must contain the contents of the enterprise registration certificate and the following information:

(a) Lines of business;

(b) List of founding shareholders and shareholders being foreign investors in the case of a shareholding company.

2. Where any content of enterprise registration is changed, such change must be publicly announced on the national enterprise registration information portal within the time-limit stipulated in clause 3 of this article.

3. The time-limit for public announcement of information about an enterprise as stipulated in clauses 1 and 2 of this article is thirty (30) days from the date of public announcement.

#### **Article 34. Provision of information about contents of enterprise registration**

1. Within five working days from the date of issuance of an enterprise registration certificate or change of any content of enterprise registration, the business registration office must send the information about enterprise registration and about the change of the content of enterprise registration to the tax office, the statistics office, the labour management agency and the social insurance agency, and must periodically send such information to other competent State agencies at the same level, and to the people's committee of the district, town or provincial city (hereinafter collectively referred to as *district level*) where the enterprise has its head office.

2. Organizations and individuals have the right to request the business registration office to provide information required to be publicly announced by the enterprise in accordance with law.

3. The business registration office is obliged to provide fully and promptly information stipulated in clause 2 of this article.

4. The Government shall provide detailed regulations on this article.

#### **Article 35. Assets contributed as capital**

1. Assets contributed as capital may be Vietnamese Dong, freely convertible foreign currency, gold, value of land use rights, value of intellectual property rights, technologies, technical know-how and other assets which can be valued in Vietnamese Dong.

2. Intellectual property rights which are used to contribute capital comprise copyright, copyright-related rights, industrial property rights, rights to plant varieties and other intellectual property rights in accordance with the law on intellectual property. Only individuals and organizations who are lawful owners of the above rights have the right to use such assets to contribute capital.

#### **Article 36. Transfer of ownership of assets contributed as capital**

1. Members of a limited liability company or partnership and shareholders of a shareholding company must transfer ownership of assets contributed as capital to the company in accordance with the following provisions:

(a) In respect of assets with registration of ownership or value of land use rights, the person contributing capital must carry out the procedures to transfer the ownership of such assets or the land use rights to the company at a competent State agency. Registration fees shall not be payable in respect of a transfer of ownership of assets contributed as capital.

(b) In respect of assets without registration of ownership, capital contribution must be made by handing over assets contributed as capital, as evidenced by minutes. The minutes of such hand-over must specify the name and address of the head office of the company; full name, permanent residential address, number of citizen's identity card, people's identity card, passport or other lawful personal identification, number of establishment decision or registration of the person contributing capital; type of asset and number of units of assets contributed as capital; total value of assets contributed as capital and percentage of the total value of such assets in the charter capital of the company; date of hand-over; signatures of the person contributing capital or of the authorized representative of the person contributing capital and of the legal representative of the company.

(c) Shares or share of capital contribution by way of assets which is not denominated in Vietnamese Dong, freely convertible foreign currency or gold shall be deemed to have been paid only when the legal ownership of the assets contributed as capital has been transferred to the company.

2. Procedures for transfer of ownership to the enterprise are not required where the asset is used for the business operations of the owner of a private enterprise.

3. All payments for any purchase, sale or transfer of shares and share of capital contribution and the receipt of dividends by foreign investors must be made through capital accounts of such investors opened at banks in Vietnam, except for payment by assets.

#### **Article 37. Valuation of assets contributed as capital**

1. Assets contributed as capital which are not denominated in Vietnamese Dong, freely convertible foreign currency or gold must be valued by members, founding shareholders or professional price evaluation organizations, and must be denominated in Vietnamese Dong.

2. Assets contributed to an enterprise upon its establishment shall be valued by members or founding shareholders on an agreed basis or shall be valued by a professional price evaluation organization. In the case of valuation by a professional price evaluation organization, the value of the assets contributed as capital must be approved by a majority of members or founding shareholders. If the assets contributed as capital are valued at more than their actual value at the time of capital contribution, the members or founding shareholders must jointly make additional contribution in an amount equal to the difference between the valuation and the actual value of the assets contributed as capital at the time of completion of the valuation, and concurrently, are jointly liable for any loss and damage caused by the contributed assets being valued intentionally at more than their actual value.

3. Assets contributed as capital during the course of operations shall be valued on the basis of agreement between the owner or the members' council [or the partners' council] in the case of a limited liability company or partnership or the board of management in the case of a shareholding company [on the one hand] and the person making the capital contribution [on the other hand] or by a professional price evaluation organization. Where a professional price evaluation organization conducts the valuation, the value of the assets contributed as capital must be accepted by the person making the capital contribution and the enterprise. Where the assets contributed as capital are valued at more than their actual value at the time of capital contribution, the person making the capital contribution, the owner or members of the members' council [or the partners' council] in the case of a limited liability company or

partnership or members of the board of management in the case of a shareholding company shall jointly make additional contribution in an amount equal to the difference between the valuation and the actual value of the assets contributed as capital at the time of completion of the valuation, and concurrently, are jointly liable for any loss and damage caused by the contributed assets being valued intentionally at more than their actual value.

### **Article 38. Name of enterprise**

1. The Vietnamese name of an enterprise contains two components in accordance with the following order:

(a) Type of enterprise. The name of type of the enterprise shall be written as "cong ty trach nhiem huu han" or "cong ty TNHH" in the case of a limited liability company; or written as "cong ty co phan" or "cong ty CP" in the case of a shareholding company; or written as "cong ty hop danh" or "cong ty HD" in the case of a partnership; or written as "doanh nghiep tu nhan", "DNTN" or "doanh nghiep TN" in the case of a private enterprise;

(b) Proper name. The proper name shall be written using the letters in the Vietnamese alphabet, letters F, J, Z, W, numerals and symbols.

2. The name of an enterprise must be affixed at its head office, branches, representative offices and business locations. The name of the enterprise must be printed or written on transaction papers, documents, materials and printed matter issued by the enterprise.

3. Pursuant to the provisions in this article and articles 39, 40 and 42 of this Law, the business registration office has the right to refuse to accept the name proposed to be registered by an enterprise.

### **Article 39. Prohibited practices in naming enterprises**

1. To use names which are identical to or cause confusion with the name of a registered enterprise as stipulated in article 42 of this Law.

2. To use the name of a State agency, an unit of the people's armed forces, a political organization, a socio-political organization, a socio-political occupational organization, a social organization, a socio-occupational organization as the whole or a part of the proper name of an enterprise, except where such agency, unit or organization so approves.

3. To use terms or symbols which are contrary to historical traditions, culture, ethics and fine customs of the people.

### **Article 40. Names of enterprises in foreign languages and abbreviated names of enterprises**

1. The name of an enterprise in a foreign language shall be the name which is translated from Vietnamese into any of the foreign languages in the Latin lettering system. When [the name of the enterprise] is translated into a foreign language, its proper name may remain unchanged or may be translated into such foreign language with a corresponding meaning.

2. Where an enterprise has its name in a foreign language, then its name in the foreign language shall be printed or written in smaller size than that of its Vietnamese name at the head office, branches, representative offices and business locations of the enterprise or on transaction papers, documents, materials and printed matter issued by the enterprise.

3. The abbreviated name of an enterprise may be an abbreviation of its Vietnamese name or its foreign language name.

#### **Article 41. Names of branches, representative offices and business locations**

1. The name of a branch, representative office or business location must be written using the letters in the Vietnamese alphabet, letters F, J, Z, W, and numerals and symbols.

2. The name of a branch or representative office must include the name of the enterprise together with the words "branch" in respect of a branch or "representative office" in respect of a representative office.

3. The name of a branch, representative office or business location must be written or affixed at the head office of the branch, representative office or business location. The name of the branch or representative office shall be printed or written in smaller size than that of the Vietnamese name of the enterprise on transaction papers, documents, materials and printed matter issued by the branch or representative office.

#### **Article 42. Identical names and names which cause confusion**

1. Identical names means that the Vietnamese name of an enterprise requesting registration, when written, is completely similar to the Vietnamese name of a registered enterprise.

2. The following cases shall be considered as names which cause confusion with the name of a registered enterprise:

(a) The Vietnamese name of an enterprise requesting registration is pronounced the same as the name of a registered enterprise;

(b) The abbreviated name of an enterprise requesting registration is identical to the abbreviated name of a registered enterprise;

(c) The foreign language name of an enterprise requesting registration is identical to the foreign language name of a registered enterprise;

(d) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by an ordinal number, a cardinal number or letters in the Vietnamese alphabet and letters F, J, Z, W immediately after the proper name of such enterprise;

(dd) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by the symbols "&", ".", "+", "-" and "\_";

(e) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by the word "tan" immediately preceding or the word "moi" immediately following or preceding the proper name of a registered enterprise;

(g) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by the following words: "mien Bac [northern]", "mien Nam [southern]", "mien Trung [central]", "mien Tay [western]", "mien Dong [eastern]" or words of similar meanings. The cases stipulated in sub-clauses (d), (dd), (e) and (g) of this clause shall not apply to subsidiary companies of registered companies.

#### **Article 43. Head office of enterprise**

The head office of an enterprise is the place for contact of the enterprise within the territory of Vietnam, having a definite address including house number, alley, lane, street or hamlet, commune, ward, township, district, provincial town, provincial city, province or city under central authority; and telephone and facsimile numbers and email address (if any).

#### **Article 44. Seal of enterprise**

1. An enterprise has the right to decide on the form, number and contents of its seal. The contents of a seal must contain the following information:
  - (a) Name of the enterprise;
  - (b) Enterprise code number.
2. Before use, the enterprise is obliged to notify the business registration office of the sample seal for the purpose of publicly publishing it on the national enterprise registration information portal.
3. The seal shall be managed, used and retained in accordance with the provisions of the charter of the company.
4. The seal shall be used in the cases stipulated by law or as agreed by the trading parties.
5. The Government shall provide detailed regulations on this article.

#### **Article 45. Branches, representative offices and business locations of enterprises**

1. A branch shall be a dependent unit of an enterprise, having the task of performing all or a number of the functions of the enterprise, including the function of authorized representative. The lines of business of the branch must be consistent with the lines of business of the enterprise.
2. A representative office shall be a dependent unit of an enterprise, having the task of acting as the authorized representative in the interests of the enterprise and protecting such interests.
3. A business location shall be a location where an enterprise carries out specific business activities.

#### **Article 46. Establishment of branches and representative offices of enterprises**

1. An enterprise has the right to establish branches and representative offices in Vietnam and overseas.

An enterprise may locate one or more branches or representative offices within [the same] one locality [defined] on the basis of its administrative boundaries.

2. In the case of establishment of a branch or representative office in Vietnam, the enterprise shall send an application file for registration of operation of the branch or representative office to the competent business registration office in the locality where such branch or representative office of the enterprise is located. Such application file shall comprise:
  - (a) A notice of establishment of the branch or representative office;
  - (b) A copy of the establishment decision and a copy of the minutes of the meeting on establishment of the branch or representative office of the enterprise; and a copy of the citizen's identity card, people's identity card, passport or other lawful personal identification of the head of the branch or representative office.

3. The business registration office is responsible to consider the validity of the application file and issue a certificate of registration of operation of the branch or representative office within three working days from the date of receipt of the file; in the case of refusal to issue such a certificate, the business registration office must notify the enterprise in writing thereof. Such notice must specify the reasons and any amendments or additions required (if any).
4. The business registration office which issues the certificate of registration of operation of the branch or representative office must provide information to the business registration office in the locality where the head office of the enterprise is located, and must provide information about registration of operation of the branch or representative office to the tax office [and] the statistics office within five working days from the date of issuance of the certificate of registration of operation of the branch or representative office; and must periodically provide information about registration of operation of the branch or representative office to other competent State agencies at the same level [and] the people's committee at the district level where the branch or representative office is located.
5. The legal representative of the enterprise is responsible to register changes to the contents of the certificate of registration of operation of the branch or representative office within ten (10) working days from the date of change.
6. The Government shall provide detailed regulations on this article.

## **CHAPTER III**

### **Limited Liability Companies**

#### **SECTION I**

#### **Limited Liability Companies with Two or More Members**

##### **Article 47. Limited liability companies with two or more members**

1. A limited liability company with two or more members is an enterprise in which:
  - (a) A member may be an organization or an individual; the number of members shall not exceed fifty (50);
  - (b) A member shall be liable for the debts and other property obligations of the enterprise to the extent of the amount of capital contributed to the enterprise, except for the case stipulated in article 48.4 of this Law;
  - (c) The share of capital contribution of each member may only be assigned in accordance with articles 52, 53 and 54 of this Law.
2. A limited liability company with two or more members shall have legal entity status from the date of issuance of the enterprise registration certificate.
3. A limited liability company with two or more members may not issue shares.

##### **Article 48. Capital contribution for establishment of companies and issuance of capital contribution certificates**

1. The charter capital of a limited liability company with two or more members when implementing enterprise registration shall be the total value of shares of capital contribution which the members undertake to contribute to the company.
2. Members must contribute [pay] their shares of capital contribution to the company in full and in the type of assets as undertaken when registering establishment of an enterprise, within ninety (90) days from the date of issuance of the enterprise registration certificate. A member of the company is only permitted to pay its share of capital contribution to the company by assets different from the type of assets undertaken if the majority of other members so agree. Within such period, the members shall have the rights and obligations corresponding to their ratios of capital contribution as undertaken to be paid.
3. Where a member fails to contribute or fails to contribute in full the amount of capital as undertaken upon expiry of the period stipulated in clause 2 of this article, it shall be dealt with as follows:
  - (a) The member failing to contribute capital as undertaken shall automatically cease to be a member of the company;
  - (b) The member failing to pay in full its share of capital contribution as undertaken shall have the rights corresponding to the share of capital contribution already paid;
  - (c) The share of capital contribution having not yet been paid by a member shall be offered for sale in accordance with a decision of the Members' Council.
4. If any member fails to contribute capital or fails to contribute in full the amount of capital undertaken, the company must register adjustment of its charter capital [and/or] capital contribution ratios of members equal to the amount of contributed capital within sixty (60) days from the last day on which the share of capital contribution is required to be fully paid as prescribed in clause 2 of this article must be made. Any member failing to contribute or failing to contribute in full the amount of capital undertaken must be responsible for financial obligations of the company in proportion to the share of capital contribution undertaken which arose prior to the date on which the company registers change of the charter capital and shares of capital contribution of members.
5. Upon full payment of the share of capital contribution [by a member], the company must issue a capital contribution certificate to the member corresponding to the value of the share of capital which has been contributed. A capital contribution certificate shall contain the following main details:
  - (a) Name, enterprise code number and head office address of the company;
  - (b) Charter capital of the company;
  - (c) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification of a member being an individual; name, number of establishment decision or enterprise code number and head office address of a member being an organization;
  - (d) Share of capital contribution of the member and its value;
  - (dd) Number and date of issuance of the capital contribution certificate;
  - (e) Full name and signature of the legal representative of the company.

6. Where a capital contribution certificate is lost, ruined, damaged or otherwise destroyed, the member shall be re-issued by the company with a capital contribution certificate in accordance with the sequence and procedures stipulated in the charter of the company.

#### **Article 49. Register of members**

1. A company must establish a register of members immediately after issuance of an enterprise registration certificate. A register of members must contain the following main details:

(a) Name, enterprise code number and head office address of the company;

(b) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification of a member being an individual; name, number of establishment decision or enterprise code number and head office address of a member being an organization;

(c) Share of capital contribution and value of contributed capital, time of capital contribution; types of asset contributed as capital, quantity [and] value of each type of asset contributed as capital of each member;

(d) Signatures of members being individuals or of legal representatives of members being organizations;

(dd) Number and date of issuance of the capital contribution certificate of each member.

2. The register of members shall be retained at the head office of the company.

#### **Article 50. Rights of members**

1. To attend meetings of the Members' Council, to discuss, make recommendations and vote on the matters within the authority of the Members' Council.

2. To have the number of votes in proportion to its share of capital contribution, except for the case stipulated in article 48.2 of this Law.

3. To have profit distributed to it in proportion to its share of capital contribution after the company has paid taxes in full and fulfilled all other financial obligations in accordance with law.

4. To have distributed to it the remainder of the value of assets of the company in proportion to its share of capital contribution in the company upon dissolution or bankruptcy of the company.

5. To be given priority in making additional capital contributions to the company upon any increase of charter capital of the company.

6. To dispose of its share of capital contribution by way of assignment of all or part [of its share of capital contribution], or by gift or other methods in accordance with law and the charter of the company.

7. To initiate legal action regarding civil liability by itself or in the name of the company against the chairman of the Members' Council, the director or general director, the legal representative or other managers in accordance with article 72 of this Law.

8. Except for the case stipulated in clause 9 of this article, any [one] member or a group of members holding ten (10) per cent or more of the charter capital or a smaller percentage as stipulated in the charter of the company, also has the following rights:

- (a) To request that a meeting of the Members' Council be convened to deal with issues within its authority;
- (b) To inspect, sight or consult transaction monitoring records, books of account and annual financial statements;
- (c) To inspect, sight, consult or copy the register of members, minutes of meetings and resolutions of the Members' Council and other files of the company;
- (d) To request a court to cancel a resolution of the Members' Council within ninety (90) days from the date of closing of a meeting of the Members' Council if the sequence, procedures and conditions [for holding] such meeting or the contents of such resolution are inconsistent with or do not comply with this Law and the charter of the company.

9. Where any [one] member of the company holds more than ninety (90) per cent of the charter capital and the charter of the company does not stipulate a smaller percentage as provided in clause 8 of this article, the other group of members automatically have the rights stipulated in clause 8 of this article.

10. Other rights in accordance with this Law and the charter of the company.

#### **Article 51. Obligations of members**

1. To contribute in full and on time the amount of capital as undertaken and to be liable for the debts and other property obligations of the company to the extent of the amount of capital contributed to the company, except for the cases stipulated in articles 48.2 and 48.4 of this Law.

2. Not to withdraw its contributed capital from the company in any form, except for the cases stipulated in articles 52, 53, 54 and 68 of this Law.

3. To comply with the charter of the company.

4. To observe resolutions and decisions of the Members' Council.

5. To bear personal liability when performing the following acts in the name of the company:

- (a) Breach of the law;
- (b) Conduct of business or other transactions not in the interests of the company and [thereby] causing loss to other persons;
- (c) Premature payment of debts in cases where the company is likely to be in financial danger.

6. To perform other obligations as stipulated in this Law.

#### **Article 52. Redemption of shares of capital contribution**

1. A member may demand that the company redeem its share of capital contribution if such member voted against a resolution of the Members' Council on the following issues:

- (a) Amendment of or addition to the provisions of the charter of the company relating to the rights and obligations of members and of the Members' Council;
  - (b) Re-organization of the company;
  - (c) Other cases as stipulated in the charter of the company. The demand for redemption of shares of capital contribution must be made in writing and sent to the company within fifteen (15) days from the date on which the resolution stipulated in this clause is passed.
2. Where a member makes a demand as stipulated in clause 1 of this article and a price is not able to be agreed, the company must redeem the share of capital contribution of such member at the market price or at the price calculated as stipulated in the charter of the company within fifteen (15) days from the date of receipt of such demand. Payment may only be made if, after full payment for such redeemed share of capital contribution, the company will still be able to satisfy all debts and other property obligations.
3. Where the company does not redeem the share of capital contribution as stipulated in clause 2 of this article, such member has the right to freely assign its share of capital contribution to another member or a non-member.

#### **Article 53. Assignment of shares of capital contribution**

1. Except in the cases stipulated in articles 52.3, 54.5 and 54.6 of this Law, a member of a limited liability company with two or more members has the right to assign a part or all of its share of capital contribution to other persons in accordance with the following provisions:
- (a) [A member wishing to assign a part or all of its share of capital contribution] must offer to sell such share of capital contribution to all other members in proportion to their respective shares of capital contribution in the company on equal terms;
  - (b) Assignment to non-members on the same conditions for offer applicable to other members as stipulated in sub-clause (a) of this clause shall be permitted only where the other members of the company do not purchase or do not purchase in full within thirty (30) days from the date of offer.
2. An assigning member still has the rights and obligations owed to the company corresponding to the relevant share of capital contribution until the details of the purchaser as stipulated in clauses 1(b), 1(c) and 1(d) of article 49 of this Law are fully recorded in the register of members.
3. Where the assignment or change of shares of capital contribution by members results in the fact that there is only one member in the company, the company must organize its operation in the form of a one member limited liability company and concurrently register change to its enterprise registration within fifteen (15) days from the date of completion of the assignment.

#### **Article 54. Dealing with shares of capital contribution in some special cases**

1. In the case of a member being an individual who is dead, his or her heir under a will or at law shall be a member of the company. In the case of a member being an individual who is declared missing by a court, the person managing the property of such member as stipulated in the civil law shall be a member of the company.
2. In the case where the capacity for civil acts of a member is restricted or lost, the rights and obligations of such member in the company shall be exercised by his or her guardian.

3. The share of capital contribution of a member shall be redeemed by the company or assigned in accordance with articles 52 and 53 of this Law in the following cases:

- (a) An heir does not wish to become a member;
- (b) A recipient of a gift as stipulated in clause 5 of this article is not approved by the Members' Council to become a member;
- (c) A member being an organization was dissolved or bankrupt.

4. Where a member being an individual dies intestate or where his or her heir disclaims the inheritance or the right to inherit is forfeited, such share of capital contribution shall be dealt with in accordance with civil law.

5. A member may make a gift of a part or all of its share of capital contribution in the company to other persons. Where the recipient of a gift is the spouse, father, mother, child or a relative up to the third level of heirs, the recipient of the gift shall automatically become a member of the company. In other cases, the recipient of a gift shall become a member of the company only upon approval of the Members' Council.

6. Where a member uses its share of capital contribution to pay a debt, the payee may use such share of capital contribution in either of the two following methods:

- (a) To become a member of the company upon approval of the Members' Council;
- (b) To offer for sale and assign such share of capital contribution in accordance with article 53 of this Law.

#### **Article 55. Organizational and management structure of companies**

A limited liability company of two or more members shall have a Members' Council, a chairman of the Members' Council and a director or general director. A limited liability company of more than eleven (11) members must have an Inspection Committee; where there are less than eleven (11) members, an Inspection Committee may be established in accordance with the corporate governance requirements. The powers, obligations, criteria, conditions and working regulations of the Inspection Committee and the head of the Inspection Committee shall be stipulated in the charter of the company.

#### **Article 56. Members' Council**

1. The Members' Council shall comprise all members of the company and shall be the highest decision-making authority of the company. The charter of the company shall make provisions on the frequency of meetings of the Members' Council, but the Members' Council shall meet at least once a year.

2. The Members' Council has the following rights and obligations:

- (a) To make decisions on annual business plans and developmental strategies of the company;
- (b) To make decisions on any increase or reduction of the charter capital and on the timing and method of raising additional capital;
- (c) To make decisions on projects for investment and development of the company;

(d) To make decisions on solutions for market development, marketing and technology transfer; to approve loan agreements<sup>8</sup> and contracts for sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the most recently published financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;

(dd) To elect, remove or discharge the chairman of the Members' Council; to make decisions on the appointment, removal, dismissal, signing and termination of contracts of the director or general director, the chief accountant and other managers stipulated in the charter of the company;

(e) To make decisions on salary, bonus and other benefits for the chairman of the Members' Council, the director or general director, the chief accountant and other managers stipulated in the charter of the company;

(g) To approve annual financial statements, plans for use and distribution of profits or plans for dealing with losses of the company;

(h) To make decisions on the organizational and managerial structure of the company;

(i) To make decisions on the establishment of subsidiary companies, branches and representative offices;

(k) To make amendments of or additions to the charter of the company;

(l) To make decisions on re-organization of the company;

(m) To make decisions on dissolution or petition for bankruptcy of the company;

(n) Other rights and obligations in accordance with this Law and the charter of the company.

3. In a case where an individual member of a limited liability company is subject to temporary imprisonment, sentenced by a court to a term of imprisonment or has his or her right to practise withdrawn in accordance with the Criminal Code, such member shall authorize another person to participate in the Members' Council of the company.

#### **Article 57. Chairman of Members' Council**

1. The Members' Council shall elect a member to be its chairman. The chairman of the Members' Council may concurrently act as the director or general director of the company.

2. The chairman of the Members' Council has the following rights and obligations:

(a) To prepare working programs and plans of the Members' Council;

(b) To prepare program, agenda and documents for meetings of the Members' Council or for collecting opinions of members;

(c) To convene and preside over meetings of the Members' Council or to organize the collection of opinions of members;

(d) To supervise or organize the supervision of implementation of resolutions of the Members' Council;

(dd) To sign resolutions of the Members' Council on its behalf;

(e) Other rights and obligations in accordance with this Law and the charter of the company.

3. The term of the chairman of the Members' Council shall not exceed five years. The chairman of the Members' Council may be re-elected for an unlimited number of terms.

4. In his or her absence or in the case of lack of capacity to perform his or her rights and obligations, the chairman of the Members' Council shall authorize a member in writing to perform the rights and obligations of the chairman of the Members' Council in accordance with the principles stipulated in the charter of the company. Where no member is authorized, one of the members of the Members' Council shall convene a meeting with all other members to elect one person from the members to temporarily perform the rights and obligations of the chairman of the Members' Council on the principle of simple majority.

#### **Article 58. Convening meetings of Members' Council**

1. A meeting of the Members' Council may be convened at the request of the chairman of the Members' Council or at the request of a member or a group of members as stipulated in articles 50.8 and 50.9 of this Law. A meeting of the Members' Council must be held at the head office of the company, unless otherwise stipulated in the charter of the company. The chairman of the Members' Council shall prepare programs, agenda and documents and convene meetings of the Members' Council. A member has the right to make written recommendations on addition to the agenda. A recommendation must contain the following main details:

(a) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification of a member being an individual; name, enterprise code number or number of establishment decision, head office address of a member being an organization; full name and signature of the member or its authorized representative;

(b) Ratio of capital contribution, number and date of issuance of capital contribution certificate;

(c) Items recommended for inclusion in the agenda;

(d) Reason for recommendation. The chairman of the Members' Council must approve a recommendation and include it in the agenda of a meeting of the Members' Council if such recommendation contains all of the stipulated details and is sent to the head office of the company at least one working day prior to the date of the meeting of the Members' Council; where a recommendation is submitted immediately prior to a meeting, it shall be approved if the majority of the attending members so agree.

2. The notice of invitation to a meeting of the Members' Council may be in the form of a letter of invitation or by telephone, fax or other electronic means as stipulated in the charter of the company and shall be sent directly to each member of the Members' Council. The invitation must specify the time, venue and agenda of the meeting. The agenda and documents for a meeting must be sent to members of the company prior to the meeting. Documents to be used in a meeting relating to decisions on amendment of or addition to the charter of the company, approval of the developmental direction of the company, approval of annual financial statements, or re-organization or dissolution of the company must be sent to members no later than seven working days prior to the date of the meeting. The period for sending other documents shall be as stipulated in the charter of the company.

3. Where the chairman of the Members' Council does not convene a meeting of the Members' Council at the request of a member or a group of members as stipulated in articles 50.8 and 50.9 of this

Law within fifteen (15) days from the date of receipt of such request, such member or group of members shall convene a meeting of the Members' Council.

4. Unless otherwise stipulated in the charter of the company, the request to convene a meeting of the Members' Council as provided in clause 3 of this article must be in writing and contain the following main details:

(a) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification of a member being an individual; name, enterprise code number or number of establishment decision and head office address of a member being an organization; ratio of capital contribution, number and date of issuance of capital contribution certificate of each requesting member;

(b) Reason for request to convene a meeting of the Members' Council and issues to be dealt with;

(c) Proposed agenda of the meeting;

(d) Full name and signature of each requesting member or its authorized representative.

5. Where a request to convene a meeting of the Members' Council does not contain all of the details stipulated in clause 4 of this article, the chairman of the Members' Council must notify the member or the group of members concerned in writing within seven working days from the date of receipt of the request. In other cases, the chairman of the Members' Council must convene a meeting of the Members' Council within fifteen (15) days from the date of receipt of the request. Where the chairman of the Members' Council does not convene a meeting of the Members' Council as stipulated, he or she must bear personal liability before the law for any loss arising to the company and to the relevant members of the company. In this case, the requesting member or group of members has the right to convene a meeting of the Members' Council. The reasonable expenses for convening and conducting a meeting of the Members' Council shall be reimbursed by the company.

#### **Article 59. Conditions and procedures for conducting meetings of Members' Council**

1. A meeting of the Members' Council shall be conducted where the attending members hold at least sixty five (65) per cent of the charter capital; the specific percentage shall be stipulated in the charter of the company.

2. If the charter does not stipulate or does not otherwise stipulate, a meeting of the Members' Council shall be convened as follows where the first meeting does not satisfy the condition to be conducted stipulated in clause 1 of this article:

(a) The meeting may be convened for a second time within fifteen (15) days from the date on which the first meeting was intended to be conducted. A meeting of the Members' Council which is convened for a second time shall be conducted where the attending members hold at least fifty (50) per cent of the charter capital;

(b) Where a meeting which has been convened for a second time does not satisfy the condition stipulated in clause 2(a) of this article, it may be convened for a third time within ten (10) working days from the date on which the second meeting was intended to be conducted. In this case, the meeting of the Members' Council shall be conducted irrespective of the number of attending members and of the amount of charter capital represented by attending members.

3. A member or an authorized representative of a member must attend and vote at meetings of the Members' Council. The procedures for conducting meetings of the Members' Council and the voting method shall be stipulated in the charter of the company.

4. Where a meeting which satisfies the conditions stipulated in this article fails to complete its agenda within the proposed time-limit, the meeting session may be extended; the extended period must not exceed thirty (30) days from the date of opening of such meeting.

#### **Article 60. Resolutions of Members' Council**

1. The Members' Council shall pass resolutions within its authority by way of voting at meetings, collecting opinions in writing or in other forms as stipulated in the charter of the company.

2. Unless otherwise stipulated in the charter of the company, decisions on the following issues must be passed by way of voting at meetings of the Members' Council:

(a) Amendment of or addition to the contents of the charter of the company in accordance with article 25 of this Law;

(b) Decisions on the developmental direction of the company;

(c) Election, discharge or removal of the chairman of the Members' Council; appointment, dismissal or removal of the director or general director;

(d) Approval of annual financial statements;

(dd) Re-organization or dissolution of the company.

3. Unless otherwise stipulated in the charter of the company, a resolution of the Members' Council shall be [deemed] passed in a meeting in the following cases:

a) It is agreed by the number of votes representing at least sixty five (65) per cent of the aggregate capital of the attending members, except for the cases stipulated in sub-clause (b) of this clause;

(b) In respect of decisions relating to the sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the most recent financial statement of the company, or a smaller percentage or value as stipulated in the charter of the company, the amendment of and addition to the charter of the company, the re-organization or dissolution of the company, agreement by the number of votes representing at least seventy five (75) per cent of the aggregate capital of the attending members shall be required.

4. A member shall be deemed to attend and vote at a meeting of the Members' Council in the following circumstances:

(a) Such member attends and votes in person at the meeting;

(b) Such member authorizes another person to attend and vote at the meeting;

(c) Such member attends and votes via an online conference, by casting an electronic vote or other electronic forms;

(d) Such member sends its vote to the meeting by mail, fax or email.

5. A resolution of the Members' Council shall be passed by way of collection of written opinions if it is agreed by members holding at least sixty five (65) per cent of the charter capital; the specific percentage shall be stipulated in the charter of the company.

#### **Article 61. Minutes of meetings of Members' Council**

1. All meetings of the Members' Council must be recorded in minutes and may be sound recorded or recorded and stored in other electronic forms.

2. Minutes of each meeting of the Members' Council must be completed and passed immediately prior to the closing of the meeting. The minutes must include the following main details:

(a) Time and venue of the meeting; purposes and agenda of the meeting;

(b) Full names, ratios of capital contribution, number and date of issuance of capital contribution certificates of members or their authorized representatives attending the meeting; full names, ratios of capital contribution, number and date of issuance of capital contribution certificates of members or their authorized representatives not attending the meeting;

(c) Matters discussed and voted on; summary of opinions of members on each of the matters discussed;

(d) Total number of votes which are valid or invalid; and [total number of votes] for or against each matter voted on;

(dd) Decisions passed;

(e) Full names and signatures of the person writing the minutes and the chairman of the meeting.

3. The person writing the minutes and the chairman of a meeting are jointly responsible for the accuracy and truthfulness of the minutes of the meeting of the Members' Council.

#### **Article 62. Procedures for passing resolutions of Members' Council by way of collection of written opinions**

If the charter of the company does not stipulate or does not otherwise stipulate, the authority and procedures for collection of written opinions of members to pass a resolution shall be implemented as follows:

1. The chairman of the Members' Council shall make a decision on collection of written opinions of members of the Members' Council to pass decisions within his authority;

2. The chairman of the Members' Council is responsible to organize the preparation and delivery of reports and submissions on the issues to be decided upon, and draft resolutions and opinion forms [slips] to members of the Members' Council;

3. An opinion slip must contain the following main details:

(a) Name, enterprise code number and address of head office;

(b) Full name, address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification, ratio of capital contribution of member of the Members' Council;

(c) Matters on which opinions are collected and corresponding responses in the order of for, against and abstention;

(d) Time-limit for sending the opinion slip to the company;

(dd) Full name and signature of the chairman of the Members' Council. An opinion slip which contains complete details and is signed by the member of the company and is sent to the company within the stipulated time-limit shall be deemed to be valid;

4. The chairman of the Members' Council shall organize the counting of opinion slips, prepare a report thereon and notify the results thereof and the passed decision to members within seven working days from the expiry date of the time-limit for opinion slips to be sent to the company by members. The report on results of counting slips shall have the same validity as the minutes of a meeting of the Members' Council and must contain the following main details:

(a) Purposes and agenda of obtaining opinions;

(b) Full names, ratios of capital contribution, number and date of issuance of capital contribution certificates of members or authorized representatives sending valid opinion slips; full names, ratios of capital contribution, number and date of issuance of capital contribution certificates of members or authorized representatives not receiving opinion slips or sending invalid opinion slips;

(c) Matters for which opinions are collected and which are voted on; summary (if any) of opinions of members on each of the matters for which opinions are collected;

(d) Total number of opinion slips which are valid, invalid or not received; and total number of valid opinion slips for or against on each matter voted on;

(dd) Passed decisions and corresponding percentage of votes;

(e) Full names and signatures of the person counting opinion slips and the chairman of the Members' Council. The person counting opinion slips and the chairman of the Members' Council are jointly responsible for the completeness, accuracy and truthfulness of the report on results of counting slips.

### **Article 63. Effectiveness of resolutions of Members' Council**

Unless otherwise stipulated in the charter of the company, a resolution of the Members' Council shall be effective for implementation from the date on which it is passed or from the effective date stated in such resolution.

Where a member or a group of members requests a court or an arbitrator to cancel a resolution which was passed, such resolution shall continue to be effective until a decision issued by the court or the arbitrator takes effect.

### **Article 64. Director or general director**

1. The director or general director of a company is the person who manages the day-to-day business operations of the company and is responsible to the Members' Council for the exercise of his or her rights and the performance of his or her obligations.

2. The director or general director has the following rights and obligations:

- (a) To organize the implementation of resolutions of the Members' Council;
- (b) To make decisions on all matters relating to the day-to-day business operations of the company;
- (c) To organize the implementation of the business plan and investment plan of the company;
- (d) To issue the rules on internal management of the company unless otherwise stipulated in the charter of the company;
- (dd) To appoint, remove or discharge managerial positions in the company, except for those within the authority of the Members' Council;
- (e) To sign contracts in the name of the company, except for those within the authority of the chairman of the Members' Council;
- (g) To make recommendations on the organizational structure of the company;
- (h) To submit the final annual financial statements to the Members' Council;
- (i) To recommend the plan for use of profit or for dealing with losses in business;
- (k) To recruit employees;
- (l) Other rights and obligations as stipulated in the charter of the company and in the labour contract which the director or general director enters into with the company in accordance with resolutions of the Members' Council.

**Article 65. Criteria and conditions to become director or general director**

1. Have full capacity for civil acts and not fall into the category of entities not permitted to manage enterprises in accordance with article 18.2 of this Law.
2. Have professional qualifications and experience in business administration of the company if the charter of the company does not otherwise stipulate.
3. In the case of a subsidiary company of a company in which the share of capital contribution or shareholding held by the State accounts for more than fifty (50) per cent of the charter capital, in addition to the criteria and conditions stipulated in clauses 1 and 2 of this article, the director or general director [of the subsidiary company] must not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling, brother-in-law or sister-in-law of the managers of the parent company and of the person representing the State share of capital in such [parent] company.

**Article 66. Remuneration, salary and bonus of chairman of Members' Council, director, general director and other managers**

1. The company shall pay remuneration, salary and bonus to the chairman of the Members' Council, the director or general director and other managers in accordance with its business results and efficiency.
2. The remuneration and salary of the chairman of the Members' Council, the director or general director and other managers shall be included in business expenses in accordance with the law on corporate income tax and other relevant laws, and must be recorded as a separate item in annual financial statements of the company.

## **Article 67. Contracts and transactions which must be approved by Members' Council**

1. A contract or transaction between the company and the following persons must be approved by the Members' Council:

- (a) A member, the authorized representative of a member, the director or general director or the legal representative of the company;
- (b) A related person of the persons stipulated in sub-clause (a) of this clause;
- (c) A manager of the parent company, [or] a person authorized to appoint managers of the parent company;
- (d) A related person of the persons stipulated in sub-clause (c) of this clause.

2. The signatory of a contract or transaction must send to the members of the Members' Council [and/or] inspectors a notice of entities involved in such contract or transaction; and must enclose the draft contract or a notice of the main contents of the transaction intended to be conducted. Unless otherwise stipulated in the charter of the company, the Members' Council must make a decision on approval of such contract or transaction within fifteen (15) days from the date of receipt of the notice; in this case, the contract or transaction shall be approved upon agreement by the members representing at least sixty five (65) per cent of the total voting capital. The interested members in such contract or transaction may not be included for voting.

3. A contract or transaction shall be void and be dealt with in accordance with law where it is entered into not in accordance with the provisions in clauses 1 and 2 of this article, [thereby] causing loss and damage to the company. The signatory of the contract or transaction, the interested member and the related persons of such member must compensate for any loss arising and return to the company any benefits gained from the performance of the contract or transaction which was signed contrary to the provisions of clauses 1 and 2 of this article or which causes loss and damage to the company.

## **Article 68. Change of charter capital**

1. A company may increase its charter capital in the following cases:

- (a) Increasing the contributed capital of members;
- (b) Raising contributed capital from new members.

2. In the case of increase of contributed capital of members, the additional contributed capital shall be allocated to each member in proportion to its share of capital contribution in the charter capital of the company. A member may assign his/her right to contribute capital to another person in accordance with article 53 of this Law. A member which opposes the decision on increase of the charter capital has the option not to contribute additional capital. In this case, the amount of additional contributed capital of such member shall be divided amongst other members in proportion to their respective shares of contributed capital in the charter capital of the company, unless otherwise agreed by the members.

3. A company may reduce its charter capital by way of:

- (a) Returning part of the contributed capital to members in proportion to their respective shares of contributed capital in the charter capital of the company if business operations have been carried out continuously for more than two years from the date of enterprise registration, and ensuring that debts and

other property obligations are able to be paid in full after returning [part of the contributed capital] to members;

(b) The company redeems shares of capital contribution from its members as stipulated in article 52 of this Law;

(c) The members fail to pay the charter capital in full and on time as stipulated in article 48 of this Law.

4. Within ten (10) days from the date of completion of the increase or reduction of the charter capital, the company must notify the business registration office in writing. The notice must contain the following main details:

(a) Name, head office address, enterprise code number;

(b) Charter capital; proposed amount of increase or reduction of capital;

(c) Timing, reasons and form of increase or reduction of capital;

(d) Full name and signature of the legal representative of the enterprise.

In the case of an increase of charter capital, the notice must be accompanied by a resolution and the minutes of meeting of the Members' Council. In the case of a reduction of the charter capital, the notice must be accompanied by a resolution and the minutes of meeting of the Members' Council and the most recent financial statements. The business registration office shall update information about the increase or reduction of charter capital within three working days from the date of receipt of the notice.

#### **Article 69. Conditions for distribution of profit**

The company may distribute profit to its members only when it generates profit from its business and has fulfilled its tax obligations and other financial obligations in accordance with law, and must ensure that due debts and other property obligations are able to be paid in full after distribution of profit.

#### **Article 70. Recovery of returned shares of capital contribution or distributed profit**

Where part of contributed capital is returned as a result of a reduction of charter capital not in accordance with article 68.3 of this Law or where profit is distributed to members not in accordance with article 69 of this Law, all members must surrender to the company the amount of money or other assets they received or shall be jointly liable for all debts or other property obligations of the company until all members have returned all monies or other assets they received which are equal to the reduced capital or distributed profit.

#### **Article 71. Responsibilities of chairman of Members' Council, director, general director, legal representative, inspectors and other managers**

1. The chairman of the Members' Council, director or general director, legal representative, an inspector and any other manager of a company has the following responsibilities:

(a) To exercise his or her delegated rights and perform his or her delegated obligations honestly and prudently and to their best ability in order to assure the maximum legitimate interests of the company;

(b) To be loyal to the interests of the company; not to use information, know-how or business opportunities of the company, and not to abuse his or her position and power or to use assets of the company for his or her own personal benefit or for the benefit of other organizations or individuals;

(c) To notify in a timely manner, fully and accurately the company of any enterprise in which he or she or his or her related person acts as the owner or holds controlling shares or a share of capital contribution;

(d) Other rights and obligations as stipulated by law and in the charter of the company.

2. The director or general director is not entitled to any increase in salary or bonus when the company is not able to pay all of its due debts.

3. The written notice of related persons as stated in clause 1(c) of this article shall comprise the following particulars:

(a) Name, enterprise code number and address of the head office of the enterprise in which they own a share of capital contribution or shares; ratio of ownership of capital contribution or shareholding and the time when they acquired ownership;

(b) Name, enterprise code number and address of the head office of the enterprise in which their related persons jointly or separately own shares or a share of capital contribution accounting for more than ten (10) per cent of the charter capital.

4. The declaration stipulated in clauses 1 and 3 of this article must be made within five working days from the date on which a related interest arises or changes. The company must collate and update the list of related persons of the company and their transactions with the company. Such list must be kept at the head office of the company. Members, managers, inspectors of the company and their authorized representatives have the right to sight, make an extract of or copy part or all of the information stipulated in clauses 1 and 3 of this article during working hours in accordance with the sequence and procedures stipulated in the charter of the company.

#### **Article 72. Initiation of legal action against managers**

1. A member of a company may, in its own name or in the name of the company, initiate a legal action regarding civil liability against the chairman of the Members' Council, director or general director, legal representative or other manager who commits a breach of obligations of managers in the following circumstances:

(a) They commit a breach of the provisions of article 71 of this Law;

(b) They fail to perform correctly and completely their delegated rights and obligations or perform their delegated rights and obligations contrary to law or the charter of the company; or fail to perform or fail to fully or promptly perform a resolution of the Members' Council;

(c) Other circumstances in accordance with law and the charter of the company.

2. The sequence and procedures for initiation of a legal action shall be implemented in accordance with the corresponding provisions of the law on civil proceedings.

3. Where a member initiates a legal action in the name of the company, then any expenses for initiation of the legal action shall be included in the expenses of the company, except where the petition for institution of the legal action of such member is rejected.

## SECTION II

### One Member Limited Liability Companies

#### Article 73. One member limited liability companies

1. A one member limited liability company is an enterprise owned by one organization or individual (hereinafter referred to as company owner); the company owner is liable for all debts and other property obligations of the company to the extent of the amount of the charter capital of the company.
2. A one member limited liability company shall have legal entity status from the date of issuance of the enterprise registration certificate.
3. A one member limited liability company may not issue shares.

#### Article 74. Contribution of capital for establishment of companies

1. The charter capital of a one member limited liability company at the time of enterprise registration shall be the total value of assets undertaken to be contributed by the owner and stated in the charter of the company.
2. The owner must make contribution in full and in the type of assets as undertaken when registering establishment of an enterprise, within ninety (90) days from the date of issuance of the enterprise registration certificate.
3. In the case of failure to contribute in full to the charter capital within the period stipulated in clause 2 of this article, the company owner must register adjustment of the charter capital equal to the value of the actually contributed capital within thirty (30) days from the last day on which the charter capital must be fully contributed. In this case, the owner must be responsible for the financial obligations of the company in proportion to the share of capital contribution as undertaken, which arose before the company registers change of the charter capital.
4. The owner is responsible to the extent of all assets owned by him or her for financial obligations of the company, and for any loss and damage resulting from failure to contribute or failure to contribute in full and on time to the charter capital.

#### Article 75. Rights of company owner

1. A company owner being an organization has the following rights:
  - (a) To make decisions on the contents of the charter of the company, amendments of and additions to the charter of the company;
  - (b) To make decisions on developmental strategies and annual business plans of the company;
  - (c) To make decisions on the organizational and managerial structure of the company, and to appoint, remove or discharge managers of the company;
  - (d) To make decisions on projects for investment and development;
  - (dd) To make decisions on solutions for market development, marketing and technology;

- (e) To approve loan agreements and other contracts as stipulated in the charter of the company valued at fifty (50) or more per cent of the total value of the assets recorded in the most recent financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;
- (g) To make decisions on sale of assets valued at fifty (50) or more per cent of the total value of the assets recorded in the most recent financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;
- (h) To make decisions on increase in charter capital of the company; on assignment of all or part of the charter capital of the company to other organizations or individuals;
- (i) To make decisions on establishment of subsidiary companies or on capital contribution to other companies;
- (k) To organize supervision and assessment of the business operations of the company;
- (l) To make decisions on use of profit after fulfilment of tax obligations and other financial obligations of the company;
- (m) To make decisions on re-organization or dissolution and petition for bankruptcy of the company;
- (n) To recover all of the value of assets of the company after the company completes dissolution or bankruptcy [procedures];
- (o) Other rights in accordance with this Law and the charter of the company.

2. A company owner being an individual has the following rights:

- (a) To make decisions on the contents of the charter of the company, amendments of and additions to the charter of the company;
- (b) To make decisions on investment, business and internal management of the company, unless otherwise stipulated in the charter of the company;
- (c) To make decisions on increase in the charter capital, and on assignment of all or part of the charter capital of the company to other organizations or individuals;
- (d) To make decisions on use of profit after fulfilment of tax obligations and other financial obligations of the company;
- (dd) To make decisions on re-organization or dissolution and petition for bankruptcy of the company;
- (e) To recover all of the value of assets of the company after the company completes dissolution or bankruptcy [procedures];
- (g) Other rights in accordance with this Law and the charter of the company.

#### **Article 76. Obligations of company owner**

1. To contribute in full and on time to the charter capital of the company.
2. To comply with the charter of the company.

3. To identify and separate assets of the company owner from assets of the company. A company owner being an individual must separate his or her personal expenditure and the expenditure for his or her family from the expenditure for him or her as the chairman of the company and the director or general director of the company.
4. To comply with the law on contracts and relevant laws with respect to any purchase, sale, borrowing, lending, lease or rental and other transactions between the company and the company owner.
5. A company owner may withdraw capital only by way of assignment of a part or all of the charter capital to other organizations and individuals; in the case of withdrawal of all or part of its contributed charter capital from the company in another form, the company owner and the organization or individual concerned must be jointly liable for debts and other property obligations of the company.
6. The company owner may not withdraw profit in cases where the company has not paid in full all debts and other property obligations which are due.
7. To perform other obligations in accordance with this Law and the charter of the company.

**Article 77. Exercise of rights of company owner in some special cases**

1. Where a company owner assigns or makes a gift of part of the charter capital to another organization or individual or where a company admits new members, the company must organize its operation in the form of a limited liability company with two or more members or a shareholding company and concurrently register change to its enterprise registration with the business registration office within ten (10) days from the date of completion of the assignment or making the gift, or admission of new members.
2. Where a company owner being an individual is subject to temporary imprisonment, sentenced by a court to a term of imprisonment or has his or her right to practise forfeited by a court as stipulated by law, such member shall authorize another person to exercise the rights and perform the obligations of the company owner.
3. Where a company owner being an individual is dead, then his or her heir(s) under a will or at law shall be the owner or a member of the company. The company must organize its operation in the corresponding form of enterprise and must register change to its enterprise registration within ten (10) days from the date of completion of resolution of inheritance.

Where a company owner being an individual dies intestate or where his or her heir disclaims the inheritance or the right to inherit is forfeited, the share of capital contribution of the owner shall be dealt with in accordance with civil law.

4. Where the capacity for civil acts of a company owner being an individual is restricted or lost, the rights and obligations of the company owner shall be performed via his or her guardian.
5. Where a company owner being an organization is dissolved or bankrupt, the person(s) receiving assignment of the share of capital contribution of the owner shall become the owner or member(s) of the company. The company must organize its operation in the corresponding form of enterprise and register change to its enterprise registration within ten (10) days from the date of completion of the assignment.

## **Article 78. Organizational and managerial structure of one member limited liability company owned by an organization**

1. A one member limited liability company owned by an organization shall be organized, managed and operate in either of the following models:

- (a) Chairman of the company, director or general director and inspectors;
- (b) Members' Council, director or general director and inspectors.

2. If the charter of the company does not contain a [relevant] provision, the chairman of the Members' Council or the chairman of the company shall be the legal representative of the company.

3. Unless otherwise stipulated in the charter of the company, the functions, rights and obligations of the Members' Council, the chairman of the company, the director or general director and inspectors shall be as stipulated in this Law.

## **Article 79. Members' Council**

1. Members of the Members' Council shall be appointed or discharged by the company owner; the Members' Council shall consist of from three to seven members with a term of office not exceeding five years. The Members' Council shall, in the name of the company owner, implement rights and obligations of the company owner; and implement rights and obligations of the company in the name of the company except for the rights and obligations of the director or general director; and is responsible before the law and to the company owner for the implementation of delegated rights and obligations in accordance with this Law and other provisions of relevant laws.

2. The rights, obligations and working relationship of the Members' Council in respect of the company owner shall be as stipulated in the charter of the company and in relevant laws.

3. The chairman of the Members' Council shall be appointed by the owner or elected by the members of the Members' Council on the principle of simple majority and in accordance with the sequence and procedures stipulated in the charter of the company. Unless otherwise stipulated in the charter of the company, the term of office and the rights and obligations of the chairman of the Members' Council shall be as stipulated in article 57 and in other relevant provisions of this Law.

4. The authority and methods to convene meetings of the Members' Council shall be as stipulated in article 58 of this Law.

5. A meeting of the Members' Council shall be conducted where at least two thirds ( $\frac{2}{3}$ ) of the total number of members attend. Unless otherwise stipulated in the charter of the company, each member shall have an equal vote. The Members' Council may pass a decision by way of collection of written opinions.

6. A resolution of the Members' Council shall be passed when it is agreed by more than half of the attending members. Any amendment of or addition to the charter of the company, any reorganization of the company, or any assignment of a part or all of the charter capital of the company must be agreed by at least three quarters ( $\frac{3}{4}$ ) of the attending members.

A resolution of the Members' Council shall take effect from the date of passing or from the date stated in such resolution, unless otherwise stipulated in the charter of the company.

7. All meetings of the Members' Council must be minuted, and may be sound recorded or recorded and stored in other electronic forms. The contents of minutes of meetings of the Members' Council shall be as stipulated in article 61 of this Law.

#### **Article 80. Chairman of company**

1. The chairman of a company shall be appointed by the owner. The chairman of the company shall, in the name of the company owner, implement rights and obligations of the company owner; and implement rights and obligations of the company in the name of the company except for the rights and obligations of the director or general director; and is responsible before the law and to the company owner for the implementation of delegated rights and obligations in accordance with this Law, [other] relevant laws and the charter of the company.

2. The rights, obligations and working regime of the chairman of the company in respect of the company owner shall be as stipulated in the charter of the company, this Law and in relevant laws.

3. A decision of the chairman of the company on implementation of the rights and obligations of the company owner shall take effect from the date of approval by the company owner, unless otherwise stipulated in the charter of the company.

#### **Article 81. Director or general director**

1. The Members' Council or the chairman of the company shall appoint or employ a director or general director for a term not exceeding five years to manage the day-to-day business operations of the company. The director or general director is responsible before the law and to the Members' Council or to the chairman of the company for the implementation of his or her rights and obligations. The chairman of the Members' Council, other members of the Members' Council or the chairman of the company may concurrently act as the director or general director unless otherwise stipulated by law or the charter of the company.

2. The director or general director has the following rights and obligations:

(a) To organize the implementation of decisions of the Members' Council or of the chairman of the company;

(b) To make decisions on all matters relating to the day-to-day business operations of the company;

(c) To organize the implementation of the business plan and investment plan of the company;

(d) To issue the rules on internal management of the company;

(dd) To appoint, remove or discharge managers in the company, except for entities falling within the authority of the Members' Council or of the chairman of the company;

(e) To sign contracts in the name of the company, except in cases falling within the authority of the chairman of the Members' Council or of the chairman of the company;

(g) To make recommendations with respect to the organizational structure of the company;

(h) To submit the final annual financial statements to the Members' Council or to the chairman of the company;

(i) To recommend the plan for use of profit or for dealing with losses in business;

- (k) To recruit employees;
  - (l) Other rights and obligations as stipulated in the charter of the company and in the labour contract which the director or general director enters into with the chairman of the Members' Council or the chairman of the company.
3. A director or general director must satisfy the following criteria and conditions:
- (a) Have full capacity for civil acts and not fall into the category of entities stipulated in article 18.2 of this Law;
  - (b) Have professional qualifications and practical experience in business administration of the company, unless otherwise stipulated in the charter of the company.

### **Article 82. Inspectors**

1. The company owner shall decide on the number of inspectors, the appointment of inspectors for a term not exceeding five years, and on the establishment of an inspection committee. Inspectors are responsible before the law and to the company owner for the implementation of their rights and obligations.
2. Inspectors have the following rights and obligations:
- (a) To check the lawfulness, honesty and prudence of the Members' Council, the chairman of the company and the director or general director in organizing the implementation of ownership rights and in managing the business of the company;
  - (b) To evaluate financial statements, business status reports, reports on assessment of management and other reports prior to submission to the company owner or relevant State agencies; to submit evaluation reports to the company owner;
  - (c) To make recommendations to the company owner on solutions for amendment of and addition to the organizational and managerial structure and the administration of the business of the company;
  - (d) To sight any file or document of the company at the head office or a branch or representative office of the company. Members of the Members' Council, the chairman of the company, the director or general director and other managers have the obligation to provide completely and promptly any information on the implementation of ownership rights and on management, administration and the business of the company at the request of an inspector;
  - (dd) To attend and participate in discussions at meetings of the Members' Council and other meetings of the company;
  - (e) Other rights and obligations in accordance with the charter of the company or as requested or decided by the company owner.
3. Inspectors must satisfy the following criteria and conditions:
- (a) Have full capacity for civil acts and not fall into the category of entities stipulated in article 18.2 of this Law;
  - (b) Not be a related person of a member of the Members' Council, of the chairman of the company, of the director or general director or of the person authorized to appoint directly inspectors;

(c) Have professional qualifications and work experience in accounting and auditing or professional qualifications and practical experience in the lines of business of the company or [satisfy] other criteria or conditions as stipulated in the charter of the company.

4. The charter of the company shall contain specific provisions on contents and methods of co-ordination of activities of inspectors.

**Article 83. Responsibilities of members of Members' Council, chairman of company, director, general director and inspectors**

1. To comply with the law, the charter of the company and the decisions of the company owner in the implementation of delegated rights and obligations.

2. To perform delegated rights and obligations honestly, prudently and to their best ability in order to assure the maximum legitimate interests of the company and the company owner.

3. To be loyal to the interests of the company and the company owner; not to use information, know-how, business opportunities of the company, or to abuse his or her position and power or to use assets of the company for personal benefit or for the benefit of other organizations or individuals.

4. To notify the company in a timely, complete and accurate manner of any enterprise in which he or she and his or her related person(s) are the owner or hold controlling shares or share of capital contribution. This notice shall be displayed at the head office and branches of the company.

5. Other rights and obligations as stipulated in this Law and in the charter of the company.

**Article 84. Remuneration, salary and other benefits of managers of company and inspectors**

1. Managers of a company and inspectors are entitled to remuneration or salary and other benefits in accordance with the business results and efficiency of the company.

2. The company owner shall decide on the rate of remuneration, salary and other benefits of members of the Members' Council, the chairman of the company and inspectors. Remuneration, salary and other benefits of managers of the company and inspectors shall be included in business expenses in accordance with the law on tax and other relevant laws, and be recorded as a separate item in annual financial statements of the company.

3. Remuneration, salary and other benefits of inspectors may be directly paid by the company owner in accordance with the charter of the company.

**Article 85. Organizational and management structure of one member limited liability company owned by an individual**

1. A one member limited liability company owned by an individual shall have a chairman of the company and a director or general director.

2. The chairman of the company may act concurrently or employ another person as the director or general director.

3. The rights and obligations of the director or general director shall be stipulated in the charter of the company and in the labour contract which the director or general director enters into with the chairman of the company.

## **Article 86. Contracts and transactions of company with related persons**

1. Unless otherwise stipulated in the charter of the company, any contract or transaction between a one member limited liability company owned by an organization and the following persons must be considered and decided by the Members' Council or the chairman of the company, the director or general director and inspectors:

- (a) The company owner and a related person of the company owner;
- (b) A member of the Members' Council, the director or general director and the inspectors;
- (c) A related person of the persons stipulated in sub-clause (b) of this clause;
- (d) A manager of the company owner, the person authorized to appoint such managers;
- (dd) A related person of the persons stipulated in sub-clause (d) of this clause.

The signatory of the contract must notify the Members' Council or the chairman of the company, the director or general director and the inspectors of entities involved in such contract or transaction; and concurrently enclose the draft of such contract or main contents of such transaction.

2. Unless otherwise stipulated in the charter of the company, the Members' Council, the chairman of the company and inspectors must make a decision approving the contract or transaction within ten (10) days from the date of receipt of the notice on the principle of majority. Each person has one vote. Persons with related interests shall not have the right to vote.

3. The contract or transaction stipulated in clause 1 of this article may be approved only upon satisfaction of the following conditions:

- (a) The parties entering into the contract or performing the transaction are independent legal entities with separate rights, obligations, assets and interests;
- (b) The price used in the contract or transaction is the market price at the time when the contract is entered into or when the transaction is performed;
- (c) The company owner complies with the obligations stipulated in article 76.4 of this Law.

4. A contract or transaction shall be void and dealt with in accordance with law where it is not entered into in accordance with the provisions of clauses 1, 2 and 3 of this article, causing loss and damage to the company. The signatories to the contract and related persons being the parties to the contract must be jointly responsible for any loss arising and for returning to the company any benefit gained from the performance of such contract or transaction.

5. A contract or transaction between a one member limited liability company owned by an individual and the company owner or a related person of the company owner must be recorded and retained as a separate file of the company.

## **Article 87. Change of charter capital**

1. A one member limited liability company shall change its charter capital in the following cases:

(a) Return of part of capital contribution in its charter capital if it carries out business activities continuously for more than two years from the date of enterprise registration, and ensures payment of all of its debts and other property obligations after it repays the owner.

(b) The owner fails to pay in full and on time for the charter capital in accordance with article 74 of this Law.

2. A one member limited liability company increases its charter capital by way of the company owner making additional investment or raising additional capital contributed by other persons. The owner shall decide on the form of increase and the amount of increase of charter capital.

3. Where the charter capital is increased by way of raising additional capital contributed by other persons, the company must organize management in one of two following forms:

(a) [The company shall be organized in the form of] a limited liability company with two or more members and the company must notify any change to its enterprise registration within ten (10) days from the date of completion of change of the charter capital.

(b) [The company shall be organized in the form of] a shareholding company in accordance with article 196 of this Law.

## CHAPTER IV

### State Owned Enterprises

#### Article 88. Application of provisions to State owned enterprises

1. State owned enterprises shall be organized and managed in accordance with this Chapter, corresponding provisions of Section II of Chapter III and other relevant provisions of this Law. If there is any difference between the provisions of Chapters IV and III and other relevant provisions of this Law, the provisions of this Chapter shall apply.

2. The organization and management of enterprises in which the State holds one hundred (100) per cent of the charter capital shall be stipulated in the corresponding provisions of Section 1 of Chapters III and V of this Law.

#### Article 89. Organizational and managerial structure

The agency representing the owner shall make a decision on organization and management of a State owned enterprise in the form of a limited liability company in accordance with either of the models stipulated in article 78.1 of this Law.

#### Article 90. Members' Council

1. The Member's Council shall, in the name of the company, exercise the rights and perform the obligations of the company as stipulated in this Law and other provisions of relevant laws.

2. The Members' Council shall comprise a chairman and other members with the number not exceeding seven. Members of the Members' Council shall work full-time and shall be appointed, removed, dismissed, rewarded or disciplined pursuant to decisions of the agency representing the owner.

3. The term of the chairman and other members of the Members' Council shall not exceed five years.

Members of the Members' Council may be re-appointed but shall only be appointed as members of the members' council of [the same] one company for no more than two terms of office.

#### **Article 91. Rights and obligations of Members' Council**

1. The Members' Council shall, in the name of the company, implement the rights and obligations of the owner, shareholders and members with respect to companies in which the [former] company is the owner or holds shares or share of capital contribution.

2. The Members' Council has the following rights and obligations:

(a) To make decisions on the contents as stipulated in the *Law on Management and Use of State Capital Invested in Production and Business in Enterprises*;

(b) To make decisions on establishment, re-organization and dissolution of branches, representative offices and dependent cost accounting units;

(c) To make decisions on annual plans for production and business and guidelines for development of the market, marketing and technology of the company;

(d) To organize internal audit activities and to make a decision on establishment of an internal audit unit of the company.

(dd) Other rights and obligations as stipulated by this Law, relevant laws and the charter of the company.

#### **Article 92. Criteria and conditions applicable to members of Members' Council**

1. Have professional qualifications and practical experience in business administration or in the operational sectors and industries of the enterprise.

2. Not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling, brother-in-law or sister-in-law of the head or the deputy head of the agency representing the owner, of a member of the Members' Council, of the director, deputy director or general director, deputy general director or the chief accountant of the company, or of an inspector of the company.

3. Not be a State official or State employee in any State agency, political organization or socio-political organization or not be a manager or operator in a member enterprise.

4. Not ever have been dismissed from the position of the chairman of the Members' Council, a member of the Members' Council, the chairman of the company, the director, the deputy director or the general director, deputy general director of a State owned enterprise.

5. Other criteria and conditions in accordance with the charter of the company.

#### **Article 93. Removal and dismissal of members of Members' Council**

1. The chairman or any other member of the Members' Council shall be removed in the following cases:

- (a) The chairman or such member no longer satisfies the criteria and conditions stipulated in article 92 of this Law;
- (b) The chairman or such member makes an application for resignation which is approved in writing by the agency representing the owner;
- (c) The chairman or such member receives a decision on transfer, on arrangement of other work or retirement;
- (d) The chairman or such member does not have sufficient capability or qualifications to assume the assigned work or his or her capacity for civil acts is lost or restricted;
- (dd) The chairman or such member is not in good health or is no longer creditworthy for holding the position of a member of the Members' Council.

2. The chairman or any other member of the Members' Council shall be dismissed in the following cases:

- (a) The company fails to complete objectives or targets in annual plans, or fails to preserve and develop investment capital at the request of the agency representing the owner without being able to provide explanations on objective causes or providing such explanations which are not accepted by the agency representing the owner;
- (b) The chairman or such member is prosecuted and is declared guilty by a court;
- (c) The chairman or such member acts dishonestly in performing his or her rights and obligations or abuses his or her position and powers and uses the property of the company for his or her personal interest or for the interest of other organizations or individuals; or provides an untruthful report on the financial status and production and business results of the company.

3. Within sixty (60) days from the date of the decision on removal or dismissal, the agency representing the owner shall consider and make a decision on selection and appointment of another person for replacement.

**Article 94. Chairman of Members' Council**

1. The chairman of the Members' Council shall be appointed by the agency representing the owner.

The chairman of the Members' Council is not permitted to concurrently act as the director or general director of the company or of other enterprises.

2. The chairman of the Members' Council has the following rights and obligations:

- (a) To formulate quarterly and annual operational plans of the Members' Council;
- (b) To prepare agenda and documents for meetings of the Members' Council or to collect opinions [from members] of the Members' Council;
- (c) To convene and chair meetings of the Members' Council or to collect opinions from members of the Members' Council;
- (d) To organize implementation of resolutions of the agency representing the owner and resolutions of the Members' Council;

(dd) To organize supervision of, directly supervise and assess results of implementation of strategic objectives, operational results of the company and results of management and operation by the director or general director of the company;

(e) To organize announcement and disclosure of information about the company in accordance with law; to be responsible for the completeness, accuracy, truthfulness and systematic nature of disclosed information and for updating same;

(g) Other rights and obligations in accordance with this Law, relevant laws and the charter of the company.

3. In addition to the cases stipulated in article 93 of this Law, the chairman of the Members' Council may be removed or dismissed if he or she is unable to perform the duties stipulated in clause 2 of this article.

#### **Article 95. Rights and obligations of other members of Members' Council**

1. To attend meetings of the Members' Council, and to discuss, make recommendations and vote on issues within the authority of the Members' Council.

2. To inspect, sight, consult, copy or make an extract of transaction monitoring records, books of account, annual financial statements, the register of minutes of meetings of the Members' Council and other papers and documents of the company.

3. Other rights and obligations as stipulated in this Law, relevant laws and the charter of the company.

#### **Article 96. Responsibilities of chairman and other members of Members' Council**

1. To comply with law, the charter of the company and decisions of the company owner.

2. To exercise their rights and perform their obligations honestly and prudently to their best ability in order to assure the maximum legitimate interests of the company and of the State.

3. To be loyal to the interests of the company and the State; not to use information, know-how and business opportunities of the company and not to abuse their positions and powers or use assets of the company for their own personal benefit or for the benefit of other organizations or individuals.

4. To notify the company in a timely manner, fully and accurately, of enterprises in which they and their related persons act as the owner or have shares or shares of capital contribution. This notice shall be displayed at the head office and branches of the company.

5. To comply with resolutions of the Members' Council.

6. To be personally liable for taking advantage of the good name of the company to commit a breach of law, to carry out business or other transactions not for the interests of the company and causing loss and damage to others, or to pay all premature debts when the company may bear financial risks.

7. If a member of the Members' Council is discovered to have committed a breach of obligations when performing assigned rights and obligations, the other members of the Members' Council are obliged to make a written report to the agency representing the owner, to require termination of the breach and have solutions for remedying consequences.

## **Article 97. Working regime, conditions and procedures for conducting meetings of Members' Council**

1. The Members' Council shall work on a collective basis; and it shall meet at least once every quarter in order to consider and decide issues within the scope of its rights and obligations. With respect to issues which do not require discussion, the Members' Council may collect written opinions from members in accordance with the charter of the company.

The Members' Council may hold an extraordinary meeting to resolve urgent issues at the request of the agency representing the company owner or at the request of the chairman of the Members' Council or of above fifty (50) per cent of the total number of members of the Members' Council, or [at the request of] the director or general director.

2. The chairman of the Members' Council or a member authorized by the chairman of the Members' Council is responsible to prepare agenda and documents and convene and chair meetings of the Members' Council. Members of the Members' Council may make written recommendations on the agenda of a meeting. The contents and documents of a meeting must be sent to the members of the Members' Council and delegates if any who are invited to attend the meeting at least three working days prior to the date of the meeting. The documents to be used in the meeting in relation to recommendations to the agency representing the company owner on amendment of and addition to the charter of the company, approval of developmental direction of the company, approval of annual financial statements, re-organization or dissolution of the company must be sent to the members no later than five working days prior to the date of the meeting.

3. The notice of invitation to a meeting may be made in the form of a letter of invitation, by telephone, by facsimile or by other electronic means and shall be sent directly to each member of the Members' Council and other delegates who are invited to attend the meeting. The invitation must specify the time, venue and agenda of the meeting. The form of an online meeting may be applied where necessary.

4. Meetings for collecting opinions from members of the Members' Council shall be valid when at least two-thirds of the total number of members of the Members' Council participate. A resolution of the Members' Council shall be passed when above half of the total number of attending members vote in favour; in the case of a tied vote, the content on which the chairman of the Members' Council or the person authorized by the chairman of the Members' Council to chair the meeting casted a vote in favour, shall be passed. Members of the Members' Council have the right to reserve their opinions and to make recommendations to the agency representing the company owner.

5. In the case of collection of written opinions from members of the Members' Council, a resolution of the Members' Council shall be passed when above half of the total number of members agree.

A resolution may be passed by using a number of counterparts of the same document if each counterpart bears the signature of at least one member of the Members' Council.

6. Based on the contents and agenda of a meeting, when it considers it necessary, the Members' Council has the right or is responsible to invite authorized representatives of related agencies and organizations to attend the meeting and discuss specific issues on the agenda of the meeting. The representatives of such agencies and organizations have the right to express their opinions but shall not participate in voting. Any opinion of the representatives invited to attend the meeting shall be fully recorded in the minutes of the meeting.

7. Contents of issues discussed, opinions expressed, results of voting, decisions passed by the Members' Council and conclusions of meetings of the Members' Council shall be minuted. The chairman and the secretary of a meeting must be jointly responsible for the accuracy and truthfulness of the minutes of the meeting of the Members' Council. The minutes of the meeting of the Members' Council must be completed and passed prior to the closing of the meeting. The minutes must contain the following main particulars:

- (a) Time, venue, purpose and agenda of the meeting; list of attending members; issues discussed and voted on; and summary of opinions of the members on each issue discussed;
- (b) Number of votes for and against in a case where the abstaining method is not applied or number of votes for, against and abstentions in a case where the abstaining method is applied;
- (c) Decisions passed; full names and signatures of attending members.

8. Any member of the Members' Council has the right to request the director, deputy director or general director, deputy general director, chief accountant and managers or operators in any [other] company or subsidiary company in which the company holds 100% of the charter capital, and [request] the representative of capital contribution of the company in any other enterprise to provide information and data on the financial and operational status of the enterprise pursuant to the information rules of, or a resolution of the Members' Council. The person requested to provide information must promptly provide the complete and accurate information and data requested by the member of the Members' Council, unless otherwise decided by the Members' Council.

9. The Members' Council shall use the executive apparatus, the assisting department (if any) and the seal of the company to perform its duties.

10. Operational expenses of the Members' Council and wages, allowances and other remuneration shall be included in management expenses of the company.

11. In necessary cases, the Members' Council shall organize the collection of opinions from domestic and foreign consultants prior to making decisions on important matters within the authority of the Members' Council. Any expenses for collecting opinions from consultants shall be stipulated in the regulations on financial management of the company.

12. Resolutions of the Members' Council shall take effect from the date of passing or from the effective date stated in such resolutions, except for cases in which the approval of the agency representing the owner is required.

#### **Article 98. Chairman of company**

1. The chairman of a company shall be appointed by the agency representing the owner in accordance with law. The term of office of the chairman of the company shall not exceed five years. The chairman of the company may be re-appointed but for no more than two terms of office. The criteria and conditions for removal or dismissal of the chairman of the company and cases of removal or dismissal of the chairman of the company shall be in accordance with articles 92 and 93 of this Law.

2. The chairman of the company shall exercise the rights and perform the obligations of the representative of the owner directly in the company in accordance with the *Law on Management and Use of State Capital Invested in Production and Business in Enterprises*, and other rights and obligations as prescribed in articles 91 and 96 of this Law.

3. Salaries, bonuses and other benefits of the chairman of the company shall be decided by the agency representing the owner and shall be included in management expenses of the company.
4. The chairman of the company shall use the managerial and executive apparatus and the assisting department (if any) and the seal of the company to exercise his or her rights and perform his or her obligations. In necessary cases, the chairman of the company shall organize the collection of opinions from domestic and foreign consultants prior to making decisions on important matters within the authority of the chairman of the company. Any expenses for collecting opinions from consultants shall be stipulated in the regulations on financial management of the company.
5. Decisions within the authority stipulated in clause 2 of this article must be made in writing and signed with the title of the chairman of the company, including the case where the chairman of the company acts concurrently as the director or general director.
6. A decision of the chairman of the company shall take effect from the date of its signing or from the effective date stated in such decision, except for the case where approval of the agency representing the owner is required.
7. In a case where the chairman of the company is absent from Vietnam for a period of more than thirty (30) days, the chairman of the company must authorize another person in writing to perform a number of rights and obligations of the chairman of the company. Such authorization must be promptly notified in writing to the agency representing the owner. Other cases of authorization shall be as stipulated in the regulations on internal management of the company.

#### **Article 99. Director or general director of company**

1. The director or general director of a company shall be appointed by the Members' Council or the chairman of the company or shall be hired in accordance with the personnel plan approved by the agency representing the owner. The company shall have one or more deputy general directors or deputy directors. The number of and the authority to appoint deputy general directors or deputy directors shall be stipulated in the charter of the company. Rights and obligations of deputy directors or deputy general directors shall be stipulated in the charter of the company or in their labour contracts.
2. A director or general director is responsible to manage the day-to-day operations of the company, and has the following rights and obligations:
  - (a) To organize implementation and assessment of results of implementation of business schemes and plans and investment plans of the company;
  - (b) To organize implementation and assess results of implementation of resolutions of the Members' Council, the chairman of the company and the agency representing the company owner;
  - (c) To make decisions on daily affairs of the company;
  - (d) To promulgate regulations on internal management of the company as approved by the Members' Council or the chairman of the company;
  - (dd) To sign contracts and agreements in the name of the company, except for those within the authority of the chairman of the Members' Council or the chairman of the company;
  - (e) To appoint, hire, remove, dismiss or terminate contracts for managerial positions in the company, except for those within the authority of the Members' Council or the chairman of the company;

- (g) To recruit employees;
- (h) To prepare quarterly and annual reports on results of implementation of objectives of business plans and annual financial statements and submit same to the Members' Council or the chairman of the company;
- (i) To make recommendations on plans for re-organization of the company, when considered necessary;
- (k) To make recommendations on allocation and use of after-tax profit and other financial obligations of the company;
- (l) Other rights and obligations in accordance with law and the charter of the company.

**Article 100. Criteria and conditions applicable to director or general director**

1. Have professional qualifications [and/or] practical experience in business administration or in the sectors and lines of business of the company.
2. Not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child or sibling of the head or deputy head of the agency representing the owner.
3. Not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child or sibling of a member of the Members' Council.
4. Not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child or sibling of a deputy general director, deputy director or the chief accountant of the company.
5. Not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling, brother-in-law or sister-in-law of an inspector of the company.
6. Not be concurrently a cadre or official in a State agency or a political organization or socio-political organization.
7. Not ever been dismissed from the position of the chairman of the Members' Council, the member of the Members' Council, the chairman of the company, the director or general director, the deputy general director or deputy director in the company or in another State owned enterprise.
8. Not be permitted to act concurrently as the director or general director of another enterprise;
9. Other criteria and conditions stipulated in the charter of the company.

**Article 101. Removal or dismissal of director, general director and other managers of company**

1. A director or general director shall be removed in the following cases:
  - (a) He or she no longer satisfies the criteria and conditions stipulated in article 100 of this Law;
  - (b) He or she makes an application for resignation.
2. A director or general director shall be dismissed in the following cases:
  - (a) The enterprise fails to maintain capital in accordance with law;

- (b) The enterprise fails to complete objectives of annual business plans;
  - (c) He or she is not qualified and capable of satisfying requirements of new developmental strategies and business plans of the enterprise;
  - (d) The enterprise commits a breach of law or carries out business activities contrary to law;
  - (dd) He or she commits a breach of one of the obligations of managers as stipulated in article 96 of this Law;
  - (e) Other cases in accordance with the charter of the company.
3. Cases of removal or dismissal of deputy general directors or deputy directors, chief accountant and other managers of the company shall be stipulated in the charter of the company.

#### **Article 102. Inspection Committee**

1. On the basis of the scale of the company, the agency representing the owner shall make a decision appointing one inspector or establishing an inspection committee which comprises three to five inspectors. The term of an inspector shall not exceed five years and [inspectors] may be re-appointed but each individual is only permitted to be appointed to be an inspector of [the same] one company for no more than two terms of office.
2. The Inspection Committee has the following rights and obligations:
  - (a) To supervise the organization of implementation of developmental strategies, business plans, and the implementation of strategic objectives and planned objectives of the company;
  - (b) To supervise and assess the implementation of rights and obligations by members of the Members' Council, by the Members' Council and by the director or general director of the company;
  - (c) To supervise and assess the effectiveness of and the level of compliance with internal auditing regulations, regulations on management and prevention of risks, reporting regulations and other regulations on internal management of the company;
  - (d) To supervise the lawfulness, systematic nature and truthfulness in accounting work, books of account, financial statements, appendices and related documents;
  - (dd) To supervise transactions of the company with related parties;
  - (e) To supervise the implementation of large investment projects, purchase and sale transactions and other business transactions on a large scale or abnormal business transactions of the company;
  - (g) To prepare and send reports on assessment of and recommendation on the contents stipulated in sub-clauses from (a) to (e) of this clause to the agency representing the owner and the Members' Council;
  - (h) To perform other rights and obligations at the request of the agency representing the owner or in accordance with the charter of the company.
3. Salaries and bonuses of inspectors shall be decided and paid by the agency representing the owner.
4. The Government shall provide detailed regulations on this article.

### **Article 103. Criteria and conditions applicable to inspectors**

[An inspector must satisfy the following criteria and conditions:]

1. Such inspector was trained in any of the following specialties: finance, accounting, auditing, law and business administration, and have at least three years' work experience. The head of the Inspection Committee must have at least five years' work experience relating to the specialties of finance, accounting, auditing, law [and/or] business administration in which he/she was trained.
2. Such inspector must not be an employee of the company.
3. Such inspector must not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling, brother-in-law or sister-in-law of the following entities:
  - (a) The head or deputy head of the agency representing the owner of the company;
  - (b) A member of the Members' Council of the company;
  - (c) A deputy director or deputy general director or chief accountant of the company;
  - (d) Other inspectors of the company.
4. Such inspector must not concurrently act as the general director or director of any other enterprise.
5. Such inspector must not concurrently act as an inspector, a member of the members' council or a member of the board of management of any enterprise which is not a State owned enterprise.
6. Other criteria and conditions stipulated in the charter of the company.

### **Article 104. Rights of Inspection Committee and inspectors**

1. To attend meetings of the Members' Council, and official and unofficial consultations and discussions between the agency representing the owner and the Members' Council; to formally question the Members' Council, members of the Members' Council and the director or general director of the company in relation to plans, projects or programs on investment in development and other decisions during management and operation of the company.
2. To review books of account, reports, contracts, transactions and other documents of the company; to inspect the management and operation work of the Members' Council, members of the Members' Council and the director or general director when they consider it necessary or at the request of the agency representing the owner.
3. To consider and evaluate the actual status of business activities, the actual financial status of the company, the actual status of operation and the effectiveness of regulations on internal management of the company.
4. To request members of the Members' Council, the director, deputy director or general director, deputy general director, chief accountant and other managers to make reports on or provide information about anything within their scope of management and on the business and investment activities of the company.

5. To request the managers of the company to make reports on the actual financial status and the actual status and results of business of subsidiary companies when they consider it necessary in order to carry out duties stipulated in law and the charter of the company.
6. To immediately make a report to the agency representing the company owner, other members of the Inspection Committee and related individuals if they discover that a member of the Members' Council, the director or general director and any other manager contravenes the provisions on their rights, obligations and responsibilities or are likely to contravene such provisions; or if they discover any breach of law, or any contravention of provisions on economic management or the provisions of the charter of the company or the regulations on internal management of the company.
7. To request the agency representing the owner to establish an unit which carries out auditing duties to provide advice to and directly assist the Inspection Committee in performing its delegated rights and obligations.
8. To exercise other rights in accordance with the charter of the company.

#### **Article 105. Working regime of Inspection Committee and inspectors**

1. The head of the Inspection Committee shall work full-time in the company; other members may participate on the inspection committees of no more than four State owned enterprises but must obtain the written consent of the agency representing the owner.
2. The head of the Inspection Committee shall formulate annual, quarterly and monthly working plans of the Inspection Committee, and shall assign specific duties and work to each member.
3. Inspectors shall independently and on their own initiative perform their assigned duties and work, and shall propose and recommend implementation of other inspection duties and work beyond the plans or scope assigned to them if considered necessary.
4. The Inspection Committee shall meet at least once every month in order to review, evaluate and pass reports on results of inspection in a month and submit same to the agency representing the owner, and shall discuss and pass the next operational plans of the Inspection Committee.
5. A decision of the Inspection Committee shall be passed when a majority of the number of attending members agree. Any opinion different from the contents of the passed decision must be fully and accurately recorded and must be reported to the agency representing the owner.

#### **Article 106. Responsibilities of inspectors**

1. To comply with law, the charter of the company, decisions of the agency representing the owner and professional ethics during implementation of the rights and obligations stipulated in this Law and the charter of the company.
2. To exercise their delegated rights and perform their delegated obligations honestly and prudently and to their best ability to protect the interests of the State and the legitimate interests of parties in the company.
3. To be loyal to the interests of the State and of the company; not to use information, know-how and business opportunities or to abuse their powers and positions and use assets of the company for their own interest or for the interest of other organizations or individuals.
4. Other obligations in accordance with this Law and the charter of the company.

5. In the case of breach of the obligations stipulated in clauses 1, 2, 3 and 4 of this article which causes loss to the company, the inspectors must be personally or jointly liable to compensate for such loss, and may also be disciplined or subject to administrative penalties or subject to criminal prosecution in accordance with law depending on the nature and seriousness of the breach and the loss.

6. Any income and other benefits which the inspectors obtain directly or indirectly resulting from a breach of the obligations stipulated in clauses 1, 2, 3 and 4 of this article must be returned to the company.

7. If it is discovered that an inspector commits a breach of obligations during implementation of his or her delegated rights and obligations, the other members of the Inspection Committee are obliged to report it in writing to the agency representing the owner, and request termination of the breach and they may take measures for rectifying consequences.

#### **Article 107. Removal and dismissal of inspectors**

1. An inspector shall be removed in the following cases:

- (a) Such inspector no longer satisfies the criteria and conditions as prescribed in article 103 of this Law;
- (b) Such inspector makes an application for resignation which is approved by the agency representing the owner;
- (c) Such inspector is transferred or assigned to carry out other duties by the agency representing the owner or other competent agencies;
- (d) Other cases as stipulated in the charter of the company.

2. An inspector shall be dismissed in the following cases:

- (a) Such inspector fails to complete his or her delegated duties and work;
- (b) Such inspector fails to perform his or her rights and obligations for a period of three consecutive months, except for cases of force majeure;
- (c) Such inspector commits a serious breach or commits a number of breaches of the obligations of inspectors as stipulated in this Law and the charter of the company;
- (d) Other cases stipulated in the charter of the company.

#### **Article 108. Periodical disclosure of information**

1. A company must make periodical disclosure of the following information on the websites of the company and of the agency representing the owner:

- (a) Basic information about the company and the charter of the company;
- (b) General objectives, specific objectives and targets of annual business plans;
- (c) [Annual financial] statements and summary of annual financial statements which were audited by an independent auditing organization within no more than one hundred and fifty (150) days from the end of a financial year;

(d) [Semi-annual financial] statements and summary of semi-annual financial statements which were audited by an independent auditing organization; the time-limit for disclosure must be prior to 31 July each year;

The contents of disclosure of information stipulated in sub-clauses (c) and (d) of this clause shall include financial statements of the parent company and consolidated financial statements;

(dd) Reports on evaluation of results of implementation of production and business plans for each year and for the latest three years as at the year of reporting;

(e) Reports on results of implementation of public duties which are assigned in accordance with plans or subject to tendering (if any) and other social responsibilities;

(g) Reports on the actual status of management and the organizational structure of the company.

2. A report on the actual status of management of the company shall comprise the following information:

(a) Information about the agency representing the owner, the head and the deputy head of the agency representing the owner;

(b) Information about the managers of the company, including professional qualifications, work experience, managerial positions held, methods of appointment, managerial work assigned, amount of salary, bonus, methods of payment of salaries and other benefits; related persons and their related interests in respect of the company, and their annual self-criticism and self- evaluation forms in the capacity as managers of the company;

(c) Related decisions of the agency representing the owner; decisions and resolutions of the Members' Council or of the chairman of the company;

(d) Information about the Inspection Committee and inspectors and about their activities;

(dd) Information about the General Meeting of Workers and Officials; annual average number of employees and [number of employees] at the time of reporting, annual average salaries and other benefits per employee;

(e) Reports on conclusions of the inspectorate agency (if any) and reports of the Inspection Committee and inspectors;

(g) Information about related parties of the company and transactions of the company with related parties;

(h) Other information as stipulated in the charter of the company.

3. Information must be reported and disclosed in a complete, accurate and timely manner in accordance with law.

4. The legal representative or the person authorized to disclose information shall make disclosure of information. The legal representative must be responsible for the completeness, updating, honesty and accuracy of disclosed information.

5. The Government shall provide detailed regulations on this article.

## **Article 109. Extraordinary disclosure of information**

1. A company must publish on its website and in its printed matter (if any) and publicly display at its head office and business locations extraordinary information within thirty six (36) hours from the time of occurrence of one of the following events:

(a) An account of the company at a bank is blockaded or is permitted to resume operation after blockade;

(b) The business activities are partly or wholly suspended; or the enterprise registration certificate, the establishment licence, the licence for establishment and operation, the operational licence or any other licence relating to the business of the company is revoked;

(c) Amendment or addition is made to the enterprise registration certificate, the licence for establishment and operation, the operational licence or any other licence or certificate relating to the operation of the enterprise;

(d) There is a change of managers of the company comprising members of the Members' Council, the chairman of the company, the director, deputy director or general director, deputy general director, the head of the Inspection Committee or inspectors, the chief accountant or the head of the finance and accounting department;

(dd) There is a decision on discipline, prosecution of, or there is a judgement or decision of a court with respect to, one of the managers of the enterprise;

(e) There is a conclusion of the inspection agency or of the tax administrative agency on a breach of law by the enterprise;

(g) There is a decision on change of the independent auditing organization, or the auditing of financial statements is refused;

(h) There is a decision on establishment, dissolution, consolidation, merger or conversion of a subsidiary company; or there is a decision on investment, reduction of capital or de-investment in other companies.

2. The Government shall provide detailed regulations on this article.

## **CHAPTER V**

### **Shareholding Companies**

#### **Article 110. Shareholding companies**

1. A shareholding company is an enterprise in which:

(a) The charter capital is divided into equal portions called shares;

(b) Shareholders may be organizations or individuals; the minimum number of shareholders is three and there is no restriction on the maximum number;

(c) Shareholders are liable for the debts and other property obligations of the enterprise to the extent of the amount of capital contributed to the enterprise;

(d) Shareholders may freely assign their shares to other persons, except in the cases stipulated in article 119.3 and article 126.1 of this Law.

2. A shareholding company has legal entity status from the date of issuance of the enterprise registration certificate.

3. A shareholding company may issue all classes of shares to raise funds.

#### **Article 111. Capital of shareholding companies**

1. Charter capital of a shareholding company means the total aggregate par value of shares of all classes which have been sold. The charter capital of a shareholding company at the time of registration of establishment of enterprise shall be the total aggregate par value of shares of all classes which have been registered for subscription and stated in the charter of the company.

2. *Shares which have been sold* means the number of shares [entitled] to be offered for sale for which the shareholders have paid in full to the company. At the time of registration of establishment of enterprise, shares which have been sold shall be the total number of shares of all classes which have been registered for subscription.

3. *Shares [entitled] to be offered for sale of a shareholding company* means the total number of shares of all classes which the General Meeting of Shareholders decides to offer for sale in order to raise capital. The number of shares to be offered for sale of a shareholding company at the time of enterprise registration shall be the total number of shares of all classes which the company will sell to raise capital, including shares which have been registered for subscription and shares which have not been registered for subscription.

4. *Unsold shares* means shares which may be offered for sale and have not been paid for. At the time of registration of establishment of enterprise, unsold shares shall be the total number of shares which shareholders have not yet registered for subscription.

5. A company may change its charter capital in the following cases:

(a) Pursuant to a decision of the General Meeting of Shareholders, the company shall return part of the capital contribution to the shareholders in proportion to their ratio of ownership of shares in the company if the company has conducted business activities for two consecutive years from the date of enterprise registration, and must ensure payment of all debts and other property obligations upon return to the shareholders;

(b) The company redeems issued shares in accordance with articles 129 and 130 of this Law;

(c) The shareholders fail to pay for the charter capital in full and on time in accordance with article 112 of this Law.

#### **Article 112. Payment of shares which have been registered for subscription upon enterprise registration**

1. Shareholders must pay in full for the number of shares which have been registered for subscription within ninety (90) days from the date of issuance of the enterprise registration certificate, except where the charter of the company or share subscription agreement stipulates a shorter time-limit. The Board of Management is responsible to supervise and monitor [to ensure that] shares which have been registered for subscription by the shareholders shall be paid in full and on time.

2. Within the period from the date on which the company is issued with an enterprise registration certificate to the last day on which the shares which have been registered for subscription must be paid in full in accordance with clause 1 of this article, the number of votes of the shareholders shall be calculated on the basis of the number of ordinary shares which have been registered for subscription, unless otherwise stipulated in the charter of the company.

3. If upon expiry of the period stipulated in clause 1 of this article, any shareholder has not paid or has only paid for part of the number of shares registered for subscription, the following provisions shall apply:

(a) The shareholder who has not paid for the number of shares registered for subscription shall automatically no longer be a member of the company and must not assign the right to purchase such shares to another person;

(b) The shareholder who has only paid for part of the number of shares registered for subscription shall have the right to vote and receive dividends and other rights in proportion to the number of shares paid; and must not assign the right to purchase the number of shares unpaid to another person;

(c) Shares which have not been paid for shall be deemed unsold shares and the Board of Management has the right to sell such shares;

(d) The company must register adjustment of the charter capital on the basis of the par value of shares which have been paid for in full and any change to founding shareholders within thirty (30) days from the date of expiry of the period in which the shares registered for subscription must be paid for in full as stipulated in clause 1 of this article.

4. Any shareholder who has not paid or has not paid in full for the number of shares registered for subscription must be responsible for the financial obligations of the company in proportion to the total aggregate par value of shares registered for subscription, which arise within the period stipulated in clause 1 of this article. Members of the Board of Management and the legal representative must be jointly responsible for any loss arising from failure to implement or failure to implement correctly the provisions of clauses 1 and 3(d) of this article.

### **Article 113. Classes of shares**

1. A shareholding company must have ordinary shares. Owners of ordinary shares shall be ordinary shareholders.

2. In addition to ordinary shares, a shareholding company may have preference shares. Owners of preference shares shall be referred to as preference shareholders. Preference shares shall be of the following classes:

(a) Voting preference shares;

(b) Dividend preference shares;

(c) Redeemable preference shares;

(d) Other preference shares as stipulated in the charter of the company.

3. Only organizations authorized by the Government and founding shareholders may hold voting preference shares. The voting preference [shares] of founding shareholders shall be valid for three years

only, as from the date of issuance of the enterprise registration certificate of the company. After such period, voting preference shares of founding shareholders shall be converted into ordinary shares.

4. Persons being entitled to purchase dividend preference shares, redeemable preference shares and other preference shares shall be stipulated in the charter of the company or decided by the General Meeting of Shareholders.

5. Each share of the same class shall entitle its holder to the same rights, obligations and interests.

6. Ordinary shares may not be converted into preference shares. Preference shares may be converted into ordinary shares pursuant to a resolution of the General Meeting of Shareholders.

#### **Article 114. Rights of ordinary shareholders**

1. Ordinary shareholders have the following rights:

(a) To attend and express opinions at the General Meeting of Shareholders and to exercise the right to vote directly or through an authorized representative or in other forms stipulated in law or in the charter of the company. Each ordinary share shall carry one vote;

(b) To receive dividends at the rate decided by the General Meeting of Shareholders;

(c) To be given priority in subscribing for new shares offered for sale in proportion to the number of ordinary shares each shareholder holds in the company;

(d) To freely assign their shares to other persons, except in the cases stipulated in articles 119.3 and 126.1 of this Law;

(dd) To sight, consult and make an extract of information on the list of shareholders with voting rights and to request amendment of incorrect information;

(e) To sight, consult and make an extract or copy of the charter of the company, minutes of meetings of the General Meeting of Shareholders and resolutions of the General Meeting of Shareholders;

(g) Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the ratio of ownership of shares in the company;

2. A shareholder or a group of shareholders holding ten (10) or more per cent of the total ordinary shares for a consecutive period of six months or more, or holding a smaller percentage as stipulated in the charter of the company, has the following rights:

(a) To nominate candidates to the Board of Management and the Inspection Committee;

(b) To sight and make an extract of the book of minutes and resolutions of the Board of Management, mid-year and annual financial statements in accordance with the forms of the Vietnamese accounting regime, and reports of the Inspection Committee;

(c) To request the convening of a General Meeting of Shareholders in the cases stipulated in clause 3 of this article;

(d) To request the Inspection Committee to inspect each issue relating to the management and administration of the operation of the company where it is considered necessary. The request must be

made in writing and must contain the full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent residential address, nationality, number of establishment decision or number of enterprise registration in respect of a shareholder being an organization; number of shares and date of registration of shares of each shareholder, total number of shares of the group of shareholders and the percentage of ownership in the total number of shares of the company; issues to be inspected and purpose of the inspection;

(dd) Other rights in accordance with this Law and the charter of the company.

3. A shareholder or a group of shareholders stipulated in clause 2 of this article has the right to request the convening of a General Meeting of Shareholders in the following cases:

(a) The Board of Management commits a serious breach of the rights of shareholders or the obligations of managers or makes a decision which falls outside its delegated authority;

(b) The term of the Board of Management has expired for more than six months and a new Board of Management has not been elected to replace it;

(c) Other cases as stipulated in the charter of the company.

The request must be made in writing and must contain the full name, permanent residential address, number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, enterprise code number or number of establishment decision, head office address in respect of a shareholder being an organization; number of shares and date of registration of shares of each shareholder, total number of shares of the group of shareholders and the percentage of ownership in the total number of shares of the company; and grounds and reasons for the request to convene a meeting of the General Meeting of Shareholders. The request must be accompanied by documents and evidence of the breaches of the Board of Management and the seriousness of such breaches, or on the decision which falls outside its authority.

4. Unless otherwise stipulated in the charter of the company, the nomination of candidates to the Board of Management and the Inspection Committee stipulated in clause 2(a) of this article shall be carried out as follows:

(a) Ordinary shareholders forming a group to nominate candidates to the Board of Management and the Inspection Committee must notify attending shareholders of the formation of the group prior to the opening of the General Meeting of Shareholders;

(b) Based on the number of members of the Board of Management and the Inspection Committee, the shareholder or group of shareholders stipulated in clause 2 of this article has the right to nominate one or more persons as decided by the General Meeting of Shareholders as candidates to the Board of Management and the Inspection Committee. Where the number of candidates nominated by the shareholder or the group of shareholders is lower than the number of candidates they are entitled to nominate as decided by the General Meeting of Shareholders, the remaining candidates shall be nominated by the Board of Management, the Inspection Committee and other shareholders.

5. Other rights in accordance with this Law and the charter of the company.

#### **Article 115. Obligations of ordinary shareholders**

1. To pay in full and on time for the shares undertaken to be subscribed.

Not to withdraw the ordinary share capital contributed from the company in any form, except where shares are redeemed by the company or other persons. Where a shareholder withdraws a part or all of the share capital contributed not in accordance with this clause, such shareholder and any person with related interests in the company must be jointly liable for debts and other property obligations of the company to the extent of the value of shares withdrawn and any loss occurring.

2. To comply with the charter and the regulations on internal management of the company.
3. To observe resolutions of the General Meeting of Shareholders and the Board of Management.
4. To perform other obligations in accordance with this Law and the charter of the company.

#### **Article 116. Voting preference shares and rights of voting preference shareholders**

1. A voting preference share is a share which carries more votes than an ordinary share. The number of votes per voting preference share shall be stipulated in the charter of the company.
2. Voting preference shareholders have the following rights:
  - (a) To vote on matters which fall within the authority of the General Meeting of Shareholders with the number of votes in accordance with clause 1 of this article;
  - (b) Other rights as ordinary shareholders, except as stipulated in clause 3 of this article.
3. Voting preference shareholders may not assign such shares to other persons.

#### **Article 117. Dividend preference shares and rights of dividend preference shareholders**

1. A dividend preference share is a share for which a dividend is paid at a rate higher than that paid for an ordinary share or at an annual fixed rate. Annually paid dividends shall include fixed dividends and bonus dividends. Fixed dividends shall not depend on the outcome of the business of the company. The specific rate of fixed dividends and method for determination of bonus dividends shall be stipulated in dividend preference share certificates.
2. Dividend preference shareholders have the following rights:
  - (a) To receive dividends as stipulated in clause 1 of this article;
  - (b) Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the ratio of ownership of shares in the company after the company has paid in full its debts and redeemable preference shares;
  - (c) Other rights as ordinary shareholders, except as stipulated in clause 3 of this article.
3. Dividend preference shareholders do not have the right to vote, the right to attend General Meetings of Shareholders or the right to nominate candidates to the Board of Management and the Inspection Committee.

#### **Article 118. Redeemable preference shares and rights of redeemable preference shareholders**

1. A redeemable preference share is a share the contributed capital of which is redeemed by the company at the demand of its owner or in accordance with the conditions stipulated in the redeemable preference share certificate.

2. Other rights of redeemable preference shareholders are the same as those of ordinary shareholders, except as stipulated in clause 3 of this article.
3. Redeemable preference shareholders do not have the right to vote, the right to attend General Meetings of Shareholders or the right to nominate candidates to the Board of Management and the Inspection Committee.

#### **Article 119. Ordinary shares of founding shareholders**

1. A newly established shareholding company must have at least three founding shareholders. A shareholding company which is converted from a State owned enterprise or from a limited liability company or which is divided, de-merged, consolidated or merged from another shareholding company need not necessarily have founding shareholders.

In a case where there is no founding shareholder, the charter of the shareholding company which is included in the application file for enterprise registration must bear the signature of the legal representative or signatures of ordinary shareholders of such company.

2. Founding shareholders must together register to subscribe at least twenty (20) per cent of the total number of ordinary shares which may be offered for sale at the time of enterprise registration.
3. Within a period of three years from the date of issuance of the enterprise registration certificate to the company, a founding shareholder may freely assign its shares to other founding shareholders, and is only permitted to assign its shares to persons not being founding shareholders upon approval of the General Meeting of Shareholders. In this case, shareholders intending to assign shares may not vote on the assignment of such shares.
4. All restrictions on ordinary shares of founding shareholders shall be lifted after three years from the date of issuance of the enterprise registration certificate to the company. All restrictions in this provision shall not apply to additional shares which founding shareholders have after registration of establishment of the enterprise and to shares which founding shareholders assign to others not being founding shareholders of the company.

#### **Article 120. Share certificates**

1. Share certificates are certificates issued by a shareholding company, book entries or electronic data certifying the ownership of one or more shares of such company. A share certificate must contain the following main details:

- (a) Name, enterprise code number and head office address of the company;
- (b) Number of shares and class of shares;
- (c) Par value of each share and total par value of shares included in the share certificate;
- (d) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, enterprise code number or number of establishment decision, head office address in respect of a shareholder being an organization;
- (dd) Summary of procedures for share assignment;
- (e) Signature of the legal representative and seal of the company (if any);

(g) Registration number in the register of shareholders of the company and date of issue of the share certificate;

(h) Preference share certificates shall also include other details as stipulated in articles 116, 117 and 118 of this Law.

2. Where there are errors in the contents and form of a share certificate issued by a company, the rights and interests of its owner shall not be affected. The legal representative of the company is liable for any loss caused by such errors.

3. Where a share certificate is lost, ruined or otherwise damaged, the shareholder shall be re-issued by the company with a share certificate at the request of such shareholder.

Such request of the shareholder must contain the following particulars:

(a) The share certificate was lost, ruined or otherwise damaged; in the case of loss, the shareholder must guarantee that the shareholder has made best efforts to search for the share certificate and that, if it is found, the shareholder will return it to the company for destruction;

(b) That [the shareholder] shall be responsible for any disputes arising from the re-issuance of a new share certificate.

In the case of a share certificate which has a total par value of more than ten (10) million Vietnamese Dong, prior to acceptance of a request for issue of a new share certificate, the legal representative of the company may request that the owner of the share certificate post a notice of the fact that the share certificate has been lost, ruined or otherwise damaged and make a request to the company to issue a new share certificate after fifteen (15) days from the date of posting of the notice.

#### **Article 121. Register of shareholders**

1. A shareholding company must establish and maintain a register of shareholders from the date of issuance of the enterprise registration certificate. The register of shareholders may be in the form of a written document or an electronic file, or both.

2. A register of shareholders must contain the following main details:

(a) Name and address of head office of the company;

(b) Total number of shares which may be offered for sale, classes of shares which may be offered for sale, and number of shares of each class which may be offered for sale;

(c) Total number of shares of each class already sold and value of share capital already contributed;

(d) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, enterprise code number or number of establishment decision, head office address in respect of a shareholder being an organization;

(dd) Number of shares of each class of each shareholder and date of share registration.

3. The register of shareholders shall be retained at the head office of the company or at the Vietnam Securities Depository. Shareholders have the right to inspect, consult or make an extract or copy

of the register of shareholders during business hours of the company or of the Vietnam Securities Depository.

4. Where a shareholder changes his or her permanent residential address, such shareholder must promptly notify the company of such change in order for the latter to update the register of shareholders. The company is not responsible for failure to contact the shareholder resulting from the fact that the company is not notified of such change.

#### **Article 122. Offer to sell shares**

1. Offer to sell shares means a company increasing the number of shares which may be offered for sale and selling such shares during the course of operation in order to increase the charter capital.

2. The offer to sell shares may be implemented by one of the following methods:

- (a) Offer for sale to existing shareholders;
- (b) Public offer for sale;
- (c) Private share placement.

3. The public offer for sale and offer to sell shares of listed shareholding companies and public shareholding companies shall be implemented in accordance with the law on securities.

4. The company shall register any change to its charter capital within ten (10) days from the date of completion of a tranche of sale of shares.

#### **Article 123. Private share placement**

Private share placement by a shareholding company not being a public shareholding company is regulated as follows:

1. Within five working days from the date of issuance of a decision on private share placement, the company must notify the private share placement to the business registration office, enclosing the following documents:

- (a) Resolution of the General Meeting of Shareholders on private share placement;
- (b) Placement plan passed by the General Meeting of Shareholders (if any);

2. A notice of private share placement shall contain the following particulars:

- (a) Name, head office address and enterprise code number;
- (b) Total number of shares intended to be offered for sale; classes of shares to be offered for sale and number of shares of each class to be offered for sale;
- (c) Time and method of offer to sell shares;
- (d) Full name and signature of the legal representative of the company;

3. The company has the right to sell shares after five working days from the date on which it sends a notice without receiving any objection from the business registration office.

4. The company shall register any change to its charter capital with the business registration office within ten (10) days from the date of completion of a share sale tranche.

#### **Article 124. Offer to sell shares to existing shareholders**

1. Offer to sell shares to existing shareholders means a company increases the number of shares which may be offered for sale and sells all such shares to all shareholders in proportion to the respective number of shares they hold in the company.

2. The offer to sell shares to existing shareholders by a shareholding company not being a public shareholding company shall be implemented as follows:

(a) The company must notify shareholders in writing by a method guaranteed to reach their permanent residential addresses or contact addresses as stated in the register of shareholders no later than fifteen (15) days prior to expiry of the period for registration to subscribe shares;

(b) The notice must contain full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification of a shareholder being an individual; name, enterprise code number or number of establishment decision, head office address of a shareholder being an organization; the current number of shares and percentage of shares of the shareholder in the company; total number of shares intended to be offered for sale and number of shares which the shareholder is entitled to subscribe for; offered selling price of shares; time-limit for registration to subscribe; and full name and signature of the legal representative of the company. The notice must be accompanied by a registration form for share subscription issued by the company. If the registration form for share subscription is not returned to the company within the notified time-limit, the relevant shareholder shall be deemed to have rejected<sup>10</sup> the priority right for subscription;

(c) Shareholders have the right to transfer their priority right for subscription for shares to other persons.

3. Where shareholders and transferees of priority rights for subscription do not register to subscribe for all of the shares intended to be offered for sale, the Board of Management has the right to sell such remaining shares which may be offered for sale to shareholders of the company or to other persons in a reasonable manner with conditions not more favourable than the conditions offered to shareholders, except where otherwise approved by the General Meeting of Shareholders or where shares are sold through a Stock Exchange.

4. Shares shall be deemed to have been sold when such shares have been paid for in full and all details of purchasers as stipulated in article 121.2 of this Law have been recorded in the register of shareholders; from such point of time, the purchasers of shares shall become shareholders of the company.

5. After shares are paid for in full, the company must issue and deliver share certificates to the purchasers. A company may sell shares without delivering share certificates. In this case, the details of shareholders as stipulated in article 121.2 of this Law shall be recorded in the register of shareholders to certify the ownership of shares of such shareholders in the company.

## **Article 125. Sale of shares**

The Board of Management shall make a decision on the time and method of selling shares and selling price of shares. The selling price of shares must not be lower than the market price at the time of offer for sale or the book value of shares at the most recent time, except for the following cases

1. Shares are initially offered to persons not being founding shareholders;
2. Shares are offered to all shareholders in proportion to the respective number of shares they hold in the company;
3. Shares are offered to brokers or underwriters. In this case, the specific amount or ratio of discount must be approved by the General Meeting of Shareholders, unless otherwise stipulated in the charter of the company;
4. Other cases and the rate of discount in such cases as stipulated in the charter of the company.

## **Article 126. Assignment of shares**

1. Shares may be freely assigned, except in the cases stipulated in article 119.3 of this Law and except where the charter of the company provides restrictions on assignment of shares. Where the charter of the company provides restrictions on assignment of shares, such restrictions shall only be effective if they are specified in respective share certificates.
2. Assignment shall be conducted in the form of a contract by normal methods or via trading on the securities market. In the case of assignment by a contract, assignment documents must be signed by the assignor and the assignee or their authorized representatives. In the case of assignment via trading on the securities market, the sequence, procedures and acknowledgement of ownership shall be as stipulated in the law on securities.
3. Where a shareholder being an individual dies, the heir of such shareholder under a will or at law shall become a shareholder of the company.
4. Where a member being an individual dies intestate or where his or her heir disclaims the inheritance or the right to inherit is forfeited, such shares shall be dealt with in accordance with the civil law.
5. A shareholder has the right to make a gift of part or all of his or her shares in the company to another person or use his or her shares to pay debts. In this case, the person receiving such gift or receiving payment of debts by shares shall become a shareholder of the company.
6. Where a shareholder assigns a number of shares, the old share certificate shall be cancelled and the company shall issue a new share certificate recording the number of shares assigned and the remaining number of shares.
7. Persons receiving shares in the cases stipulated in this article shall only become shareholders of the company from the time when information about such persons as stipulated in article 121.2 of this Law is fully recorded in the register of shareholders.

## **Article 127. Issue of bonds**

1. A shareholding company may issue bonds, convertible bonds and other classes of bonds in accordance with law and the charter of the company.

2. A company which fails to pay in full for the principal and interest of issued bonds or fails to pay or fails to pay in full for due debts in three consecutive preceding years shall not have the right to issue bonds, unless otherwise stipulated in the law on securities.
3. The issue of bonds to creditors being selected financial institutions is not restricted by clause 2 of this article.
4. Unless otherwise stipulated in the charter of the company, the Board of Management has the right to make decisions on the class of bonds, total value of bonds and timing of issue, but must report to the General Meeting of Shareholders at its next meeting. The report must be accompanied by documents and files to explain the resolution of the Board of Management on issue of bonds.
5. Where a shareholding company issues bonds to be converted into shares, it shall implement same in accordance with the respective sequence and procedures for offer to sell shares stipulated in this Law and other provisions of relevant laws. The company shall register any change to its charter capital within ten (10) days from the date of completion of conversion of bonds into shares.

#### **Article 128. Purchase of shares and bonds**

Shares and bonds of shareholding companies may be paid for in Vietnamese Dong, freely convertible foreign currency, gold, value of land use rights, value of intellectual property rights, technology, technical know-how, or other assets stipulated in the charter of the company, and shall be paid in full in one instalment.

#### **Article 129. Redemption of shares upon demand by shareholders**

1. A shareholder voting against a resolution on re-organization of the company or against a change to the rights and obligations of shareholders stipulated in the charter of the company may demand the company redeem its shares. Such demand must be made in writing and specify the name and address of the shareholder, the number of shares of each class, the intended selling price, and the reason for demanding redemption by the company. Such demand must be sent to the company within ten (10) days from the date on which the General Meeting of Shareholders passed the resolution on the matter referred to in this clause.
2. The company must redeem shares upon demand by the shareholder as stipulated in clause 1 of this article at the market price or the price determined on the basis of the principles stipulated in the charter of the company, within a period of ninety (90) days from the date of receipt of the demand. Where there is disagreement about the price, the parties may request valuation by a professional price evaluation organization. The company shall recommend at least three professional price evaluation organizations for the shareholder to select from, and such selection shall be the final decision.

#### **Article 130. Redemption of shares pursuant to decision of company**

A company may redeem no more than thirty (30) per cent of the total number of ordinary shares sold, and part or all of the dividend preference shares sold, in accordance with the following provisions:

1. The Board of Management has the right to decide on redemption of no more than ten (10) per cent of the total number of shares of each class already offered within a period of twelve (12) months. In other cases, redemption of shares shall be decided by the General Meeting of Shareholders;
2. The Board of Management shall decide on the price for redemption of shares. The price for redemption of ordinary shares shall not be higher than the market price at the time of redemption, subject

to the exception in clause 3 of this article. In respect of shares of other classes, unless otherwise stipulated in the charter of the company or agreed between the company and the relevant shareholders, the price for redemption shall not be lower than the market price;

3. The company may redeem shares of each shareholder in proportion to the respective numbers of shares each [shareholder] holds in the company. In this case, the decision to redeem shares of the company shall be notified by a method guaranteed to reach all shareholders within thirty (30) days from the date on which such decision is passed. The notice must include the name and address of the head office of the company, total number of shares and class of shares to be redeemed, price for redemption or principle for determination of the price for redemption, procedures and time-limit for payment, and procedures and time-limit for shareholders to offer to sell their shares to the company.

Shareholders agreeing to have their shares redeemed must send an offer to sell their shares by a method guaranteed to reach the company within thirty (30) days from the date of notice. The offer must include the full name, permanent residential address, number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, enterprise code number or number of establishment decision, head office address in respect of a shareholder being an organization; number of shares owned and number of shares offered; payment methods; and signature of the shareholder or the legal representative of the shareholder. The company shall only redeem shares offered within the above time-limit.

#### **Article 131. Conditions for payment for and dealing with redeemed shares**

1. A company may only pay shareholders for redeemed shares in accordance with articles 129 and 130 of this Law if, after such redeemed shares are paid for, the company will still be able to satisfy in full its debts and other property obligations.

2. All shares redeemed in accordance with articles 129 and 130 of this Law shall be considered unsold shares in accordance with article 111.4 of this Law. The company must carry out procedures for reduction of its charter capital corresponding to the total par value of shares redeemed by the company within ten (10) days from the date of completion of payment for redemption of shares, unless otherwise stipulated in the law on securities.

3. Share certificates certifying the ownership of redeemed shares must be destroyed immediately after the corresponding shares are paid for in full. The chairman of the Board of Management and the director or general director must be jointly responsible for any loss caused to the company by failure to destroy or by delayed destruction of share certificates.

4. After the redeemed shares are paid for in full, if the total value of assets recorded in the accounting books of the company is reduced by more than ten (10) per cent, the company must notify all creditors thereof within fifteen (15) days from the date on which the redeemed shares are paid for in full.

#### **Article 132. Payment of dividends**

1. Dividends paid on preference shares shall be in accordance with the respective conditions applicable to each class of preference shares.

2. Dividends paid on ordinary shares shall be determined on the basis of the realized net profit and payment for dividends shall be sourced from profit retained by the company. A shareholding company may pay dividends for ordinary shares only when the company satisfies all the following conditions:

- (a) The company has fulfilled its tax obligations and other financial obligations in accordance with law;
- (b) The company has made appropriation for all funds of the company and has made up fully for previous losses in accordance with law and the charter of the company;
- (c) After payment of all intended dividends, the company will still be able to satisfy its debts and other property obligations which become due.

3. Dividends may be paid in cash, by shares of the company or by other assets as stipulated in the charter of the company. Where payment is made in cash, it must be made in Vietnamese Dong and may be made by cheque, bank transfer or money order mailed to the permanent residential address or contact address of shareholders.

4. Dividends must be paid in full within six months from the date of closing of the annual General Meeting of Shareholders. The Board of Management shall prepare a list of shareholders to be paid dividends and shall determine the rate of dividend paid for each share and the time-limit and method of payment no later than thirty (30) days prior to each payment of dividends. The notice on payment of dividends shall be sent by a method guaranteed to reach the shareholders at the addresses registered in the register of shareholders no later than fifteen (15) days prior to the actual payment of dividends. The notice must contain the following particulars:

- (a) Name and head office address of the company;
- (b) Full name, permanent residential address, nationality, number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual;
- (c) Name, enterprise code number or number of establishment decision, head office address in respect of a shareholder being an organization;
- (d) Number of shares of each class of such shareholder, dividend rate for each share and total dividends to be paid to such shareholder;
- (dd) Time and method for payment of dividends;
- (e) Full names and signatures of the chairman of the Board of Management and the legal representative of the company.

5. Where shares are assigned between the [time of] completion of the list of shareholders and the time of payment of dividends, the assignor shall receive the dividends from the company.

6. In the case of payment of dividends by shares, the company is not required to carry out the procedures for offer to sell shares in accordance with articles 122, 123 and 124 of this Law. The company must register an increase of its charter capital corresponding to the total par value of shares used to pay for dividends, within ten (10) days from the date of completion of payment of dividends.

### **Article 133. Recovery of payments for redeemed shares or dividends**

Where a payment for redeemed shares is made other than pursuant to article 131.1 of this Law or where dividends are paid other than pursuant to article 132 of this Law, all shareholders shall surrender to the company the monies or other assets received; where a shareholder is not able to surrender same to the

company, all members of the Board of Management shall be jointly liable for the debts and other property obligations of the company to the extent of the monies or assets which have been paid to shareholders but not surrendered.

#### **Article 134. Organizational and managerial structure of shareholding companies**

1. Shareholding companies may select either of the following models of organization of management and operation, unless otherwise stipulated in the law on securities:

(a) A General Meeting of Shareholders, a Board of Management, an Inspection Committee and a director or general director. If a shareholding company has less than eleven (11) shareholders being organizations which own less than fifty (50) per cent of the total shares of the company, it is not required to have an Inspection Committee;

(b) A General Meeting of Shareholders, a Board of Management and a director or general director. In this case, at least twenty (20) per cent of the number of members of the Board of Management must be independent members and there must be an internal auditing committee under the Board of Management. Independent members shall perform the function of supervision and organize implementation of control of the management and operation of the company.

2. Where there is only one legal representative, the chairman of the Board of Management or the director or general director shall be the legal representative of the company. Unless otherwise stipulated in the charter, the chairman of the Board of Management shall be the legal representative of the company. Where there is more than one legal representative, the chairman of the Board of Management and the director or general director shall automatically be the legal representatives of the company.

#### **Article 135. General Meeting of Shareholders**

1. The General Meeting of Shareholders shall include all shareholders entitled to vote and shall be the highest decision-making authority of a shareholding company.

2. The General Meeting of Shareholders has the following rights and obligations:

(a) To pass the developmental direction of the company;

(b) To make decisions on the classes of shares and total number of shares of each class which may be offered for sale; to make decisions on the rate of annual dividend for each class of shares;

(c) To elect, remove or discharge members of the Board of Management and inspectors;

(d) To make investment decisions or decisions on sale of assets valued at thirty five (35) or more per cent of the total value of assets recorded in the most recent financial statements of the company, unless the charter of the company stipulates some other percentage or value;

(dd) To make decisions on amendments of and additions to the charter of the company;

(e) To approve annual financial statements;

(g) To make decisions on redemption of more than ten (10) per cent of the total number of shares of each class already sold;

(h) To consider and deal with breaches by the Board of Management and the Inspection Committee which cause loss to the company and its shareholders;

- (i) To make decisions on re-organization and dissolution of the company;
- (k) Other rights and obligations in accordance with this Law and the charter of the company.

**Article 136. Authority to convene meeting of General Meeting of Shareholders**

1. The General Meeting of Shareholders shall convene annual meetings once per year. In addition to annual meetings, the General Meeting of Shareholders may convene extraordinary meetings. The location of meetings of the General Meeting of Shareholders must be within the territory of Vietnam. If a meeting of the General Meeting of Shareholders is concurrently held in various locations, the location of the meeting of the General Meeting of Shareholders shall be determined as the location where the chairman [of the meeting] attends the meeting.

2. The General Meeting of Shareholders must hold its annual meeting within four months from the end of the financial year. At the request of the Board of Management, the business registration office may extend such time-limit, but not beyond six months from the end of the financial year.

An annual meeting of the General Meeting of Shareholders shall debate and pass the following issues:

- (a) Annual business plan of the company;
- (b) Annual financial statements;
- (c) Report of the Board of Management regarding management by and operational results of the Board of Management and each member of the Board of Management;
- (d) Report of the Inspection Committee regarding business results of the company [and/or] operational results of the Board of Management and the director or general director;
- (dd) Report on self-assessment of operational results of the Inspection Committee and of each inspector;
- (e) Amount of dividend payable on each class of share;
- (g) Other matters within its authority.

3. The Board of Management must convene an extraordinary meeting of the General Meeting of Shareholders in the following cases:

- (a) The Board of Management considers that it is necessary to do so in the interests of the company;
- (b) The number of the remaining members of the Board of Management or of the Inspection Committee is less than the number of members required by law;
- (c) Upon request by a shareholder or a group of shareholders as stipulated in article 114.2 of this Law;
- (d) Upon demand by the Inspection Committee;
- (dd) In other cases as stipulated by law and in the charter of the company.

4. Unless otherwise stipulated in the charter of the company, the Board of Management must convene a meeting of the General Meeting of Shareholders within thirty (30) days from the date on which the number of remaining members of the Board of Management is as stipulated in sub-clause (b) or from the date of receipt of a request as stipulated in clauses 3(c) and 3(d) this article.

If the Board of Management fails to convene a meeting of the General Meeting of Shareholders as stipulated, the chairman of the Board of Management and members of the Board of Management must be responsible before the law and must compensate for any loss to the company.

5. Where the Board of Management fails to convene a meeting of the General Meeting of Shareholders as stipulated in clause 4 of this article, within thirty (30) days thereafter, the Inspection Committee shall, in place of the Board of Management, convene a meeting of the General Meeting of Shareholders in accordance with this Law.

If the Inspection Committee fails to convene a meeting as stipulated, the Inspection Committee must be responsible before the law and must compensate for any loss to the company.

6. Where the Inspection Committee fails to convene a meeting as stipulated in clause 5 of this article, the shareholder or group of shareholders stipulated in article 114.2 of this Law has the right to represent the company to convene a meeting of the General Meeting of Shareholders in accordance with this Law.

7. The convenor must carry out the following work to hold a meeting of the General Meeting of Shareholders:

- (a) To prepare a list of shareholders entitled to attend the meeting;
- (b) To provide information and deal with complaints relating to the list of shareholders;
- (c) To prepare the program and agenda of the meeting;
- (d) To prepare documents for the meeting;
- (dd) To draft a resolution of the General Meeting of Shareholders in accordance with the proposed agenda of the meeting; list and details of candidates in the case of election of members of the Board of Management or inspectors;
- (e) To determine the time and venue of the meeting;
- (g) To send a notice of invitation to the meeting to each shareholder entitled to attend the meeting in accordance with this Law;
- (h) Other work serving the meeting.

8. The expenses for convening and conducting a meeting of the General Meeting of Shareholders as stipulated in clauses 4, 5 and 6 of this article shall be reimbursed by the company.

#### **Article 137. List of shareholders entitled to attend meeting of General Meeting of Shareholders**

1. The list of shareholders entitled to attend a meeting of the General Meeting of Shareholders shall be prepared based on the register of shareholders of the company. The list of shareholders entitled to attend a meeting of the General Meeting of Shareholders shall be prepared no earlier than five days prior

to the date on which the notice of invitation to the meeting of the General Meeting of Shareholders is sent, if the charter of the company does not stipulate a longer time-limit.

2. The list of shareholders entitled to attend a meeting of the General Meeting of Shareholders shall include the full name, permanent residential address, nationality and number of citizen's identity card, people's identity card, passport or other lawful personal identification in respect of shareholders being individuals; name, enterprise code number or number of establishment decision, head office address in respect of shareholders being organizations; and number of shares of each class and number and date of registration of each shareholder.

3. Shareholders have the right to inspect, consult, make an extract of and copy the list of shareholders entitled to attend a meeting of the General Meeting of Shareholders; to request correction of wrong information or addition of necessary information about themselves in the list of shareholders entitled to attend a meeting of the General Meeting of Shareholders. The manager of the company must promptly provide information in the register of shareholders, and must amend or supplement any wrong information at the request of shareholders; and concurrently, must be responsible to compensate for any loss from failure to provide or failure to provide promptly and accurately information in the register of shareholders as requested. The sequence and procedures for requesting information in the register of shareholders shall be in accordance with the charter of the company.

#### **Article 138. Program and agenda of meeting of General Meeting of Shareholders**

1. The convenor of a meeting of the General Meeting of Shareholders must prepare the program and agenda of the meeting.

2. A shareholder or group of shareholders stipulated in article 114.2 of this Law may recommend items to be included in the agenda of a meeting of the General Meeting of Shareholders. The recommendation must be made in writing and be sent to the company no later than three working days prior to the date of opening, unless the charter of the company stipulates some other time-limit. The recommendation must specify the name of shareholder(s), the number of shares of each class of shareholder(s) or equivalent information, and the items recommended to be included in the agenda.

3. The convenor of a meeting of the General Meeting of Shareholders may refuse the recommendation stipulated in clause 2 of this article in one of the following cases:

- (a) The recommendation is not sent on time, is insufficient, or relates to an irrelevant matter;
- (b) The item recommended does not fall within the decision-making authority of the General Meeting of Shareholders;
- (c) Other cases as stipulated in the charter of the company.

4. The convenor of a meeting of the General Meeting of Shareholders must accept and include the recommendations stipulated in clause 2 of this article into the draft program and agenda for the meeting, except in the cases stipulated in clause 3 of this article; the recommendation shall be added officially to the program and agenda for the meeting if the General Meeting of Shareholders so agrees.

#### **Article 139. Invitations to meeting of General Meeting of Shareholders**

1. The convenor of a meeting of the General Meeting of Shareholders shall send a notice of invitation to all shareholders on the list of shareholders entitled to attend the meeting no later than ten (10) days prior to the date of opening, if the charter of the company does not stipulate a longer time-limit. The

notice of invitation must contain the name, head office address, enterprise code number; name and permanent residential address of the shareholder, time and location of the meeting, and other requirements applicable to attendees.

2. The notice must be sent by a method guaranteed to reach the contact addresses of shareholders; and concurrently must be published on the website of the company and in a central or local daily newspaper, if the company considers it necessary in accordance with the charter of the company.

3. The notice of invitation must be accompanied by the following documents:

(a) The program of the meeting, documents to be used in the meeting and draft resolution for each matter in the program;

(b) Voting slips;

(c) Form of appointment of an authorized representative to attend the meeting.

4. Where the company has its own website, the sending of documents of the meeting in accordance with the [details of the] notice of invitation stipulated in clause 3 of this article may be replaced by the publication of same on the website of the company. In this case, the notice of invitation must specify where and how to download documents and the company must [also] send the documents of the meeting to shareholders [by mail] if they so request.

#### **Article 140. Exercise of the right to attend meeting of General Meeting of Shareholders**

1. A shareholder may attend a meeting in person, or authorize another person in writing to attend a meeting or may attend a meeting in any of the forms stipulated in clause 2 of this article. A shareholder being an organization which does not have an authorized representative pursuant to the provisions in article 15.4 of this Law shall authorize another person to attend a meeting of the General Meeting of Shareholders.

The authorization for a representative to attend a meeting of the General Meeting of Shareholders must be made in writing on the form issued by the company. When registering to attend a meeting of the General Meeting of Shareholders, the person authorized to attend the meeting must present the written authorization prior to entering the meeting room.

2. A shareholder shall be deemed to attend and vote at a meeting of the General Meeting of Shareholders in the following cases:

(a) Such shareholder attends and votes in person at the meeting;

(b) Such shareholder authorizes another person to attend and vote at the meeting;

(c) Such shareholder attends and votes [at a meeting] via an online conference, or by casting an electronic vote or by other electronic forms;

(d) Such shareholder sends his or her voting slip to the meeting by mail, by fax or email.

#### **Article 141. Conditions for conducting meeting of General Meeting of Shareholders**

1. A meeting of the General Meeting of Shareholders shall be conducted where the number of attending shareholders represents at least fifty one (51) per cent of the total number of voting slips. The specific percentage shall be stipulated in the charter of the company.

2. Where a meeting is not able to be conducted for the first time because the condition stipulated in clause 1 of this article is not satisfied, the meeting may be convened for a second time within thirty (30) days from the date of the intended opening of the first meeting, unless otherwise stipulated in the charter of the company. A meeting of the General Meeting of Shareholders which is convened for a second time shall be conducted where the number of attending shareholders represents at least thirty three (33) per cent of the total number of voting slips. The specific percentage shall be stipulated in the charter of the company.

3. Where a meeting convened for a second time is not able to be conducted because the condition stipulated in clause 2 of this article is not satisfied, it may be convened for a third time within twenty (20) days from the date of the intended opening of the second meeting, unless otherwise stipulated in the charter of the company. In this case, a meeting of the General Meeting of Shareholders shall be convened irrespective of the total number of voting slips of shareholders attending the meeting.

4. Only the General Meeting of Shareholders may make decisions on change of the agenda accompanying the notice of invitation to the meeting as stipulated in article 139 of this Law.

#### **Article 142. Procedures for conducting and voting at a meeting of General Meeting of Shareholders**

Unless otherwise stipulated in the charter of the company, the procedures for conducting and voting at a meeting of the General Meeting of Shareholders shall be conducted as follows:

1. Prior to the time of opening of a meeting, procedures shall be carried out for registration of shareholders attending the meeting of the General Meeting of Shareholders;

2. The election of the chairman, secretary and vote-counting committee [of a meeting] shall be stipulated as follows:

(a) The chairman of the Board of Management shall act as chairman of all meetings which are convened by the Board of Management; if the chairman is absent or is not temporarily able to work, the remaining members of the Board of Management shall elect one of them to act as the chairman of the meeting on the principle of majority; if they cannot elect a person to act as chairman, the head of the Inspection Committee shall arrange for the General Meeting of Shareholders to elect the chairman of the meeting, and the person with the highest number of votes shall act as the chairman of the meeting;

(b) In other cases, the person who signed the document convening the meeting of the General Meeting of Shareholders shall arrange for the General Meeting of Shareholders to elect a chairman of the meeting, and the person with the highest number of votes shall act as the chairman of the meeting;

(c) The chairman shall elect one or more persons to act as secretary of the meeting;

(d) The General Meeting of Shareholders shall elect one or more persons to the vote-counting committee on the proposal of the chairman of the meeting;

3. The program and agenda of the meeting must be passed by the General Meeting of Shareholders in the opening session. The program must specify in detail the time [duration] applicable to each issue in the agenda for the meeting;

4. The chairman has the right to take necessary and reasonable measures to direct the conduct of the meeting in an orderly manner, correctly in accordance with the program as passed, and so that it reflects the wishes of the majority of attendees;

5. The General Meeting of Shareholders shall discuss and vote on each issue in the agenda for the meeting. Voting shall be conducted by way of collection of voting cards which agree with a resolution, then collection of voting cards which do not agree, and finally checking of the overall numbers of votes which agree, which do not agree, and abstentions. The chairman shall announce the results of the voting counts immediately prior to the closing of the meeting, unless otherwise stipulated in the charter;

6. Any shareholder or person authorized to attend a meeting who arrives after the opening of the meeting shall still be registered and has the right to participate in voting immediately after registration; in such case, the effectiveness of any item which was previously voted on shall not be affected;

7. The convener of a meeting of the General Meeting of Shareholders has the following rights:

(a) To require all persons attending the meeting to be [security] checked or subject to other lawful and reasonable security measures;

(b) To request a competent agency to maintain order during the meeting; to expel from a meeting of the General Meeting of Shareholders any person who fails to comply with the right of the chairman to control the meeting, who disrupts order or intentionally prevents normal progress of the meeting or who fails to comply with a request to undergo a security check;

8. The chairman has the right to adjourn a meeting of the General Meeting of Shareholders for which sufficient attendees have registered as stipulated to another time or to change the location of the meeting in the following cases:

(a) The location for the meeting does not have sufficient suitable seating for all of the attendees;

(b) The communication means at the location of the meeting do not ensure the attending shareholders participate, discuss and vote [at the meeting];

(c) There is an attendee who obstructs the meeting or disrupts order, and there is a danger that the meeting might not be conducted fairly and lawfully.

The maximum time of any adjournment of a meeting shall be three days as from the date of the proposed opening of the meeting;

9. If the chairman adjourns or suspends a meeting of the General Meeting of Shareholders contrary to the provisions in clause 8 of this article, the General Meeting of Shareholders shall elect another person from the attendees to replace the chairman in conducting the meeting until its completion; and all resolutions passed at such meeting shall be effective.

#### **Article 143. Form of passing of resolutions of General Meeting of Shareholders**

1. The General Meeting of Shareholders shall pass decisions which fall within its power by way of voting in a meeting or collecting written opinions.

2. Unless otherwise stipulated in the charter of the company, a resolution of the General Meeting of Shareholders on the following matters must be passed by way of voting in a meeting of the General Meeting of Shareholders:

(a) Amendment of or addition to contents of the charter of the company;

(b) Developmental direction of the company;

- (c) Classes of shares and total number of shares of each class;
- (d) Election, removal or discharge of members of the Board of Management and Inspection Committee;
- (dd) Decision on any investment or sale of assets valued at equal to or more than thirty five (35) per cent of the total value of assets recorded in the most recent financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;
- (e) Approval of the annual financial statements;
- (g) Re-organization or dissolution of the company.

**Article 144. Conditions for passing resolutions**

1. A resolution on the following matters shall be passed if it is agreed by a number of shareholders representing at least sixty five (65) per cent of the total number of voting slips of all attending shareholders; the specific percentage shall be stipulated in the charter of the company:

- (a) Classes of shares and the total number of shares of each class;
- (b) Change of lines of business and business sectors;
- (c) Change of the organizational and managerial structure of the company;
- (d) Investment project or sale of assets valued at equal to or more than thirty five (35) per cent of the total value of assets recorded in the most recent financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;
- (dd) Re-organization or dissolution of the company;
- (e) Other matters as stipulated in the charter of the company.

2. Other resolutions shall be passed when they are agreed by a number of shareholders representing at least fifty one (51) per cent of the total number of voting slips of all attending shareholders, except in the cases stipulated in clauses 1 and 3 of this article; the specific percentage shall be stipulated in the charter of the company.

3. Unless otherwise stipulated in the charter of the company, voting to elect members of the Board of Management and of the Inspection Committee must be implemented by the method of cumulative voting, whereby each shareholder shall have as its total number of votes the total number of shares it owns multiplied by the number of members to be elected to the Board of Management or the Inspection Committee, and each shareholder has the right to accumulate all or part of its total votes for one or more candidates. Persons who are elected as members of the Board of Directors or inspectors shall be determined on the basis of a descending vote count, starting with the candidate with the highest number of votes until the number of members required by the company charter have been elected. If there are two or more candidates who obtain the same number of votes for being the last member of the Board of Management or the Inspection Committee, such member shall be elected amongst the number of candidates having an equal number of votes or selected in accordance with the criteria in the regulations on election or the charter of the company.

4. Where a resolution is passed by way of collection of written opinions, a resolution of the General Meeting of Shareholders shall be passed when it is agreed by a number of shareholders

representing at least fifty one (51) per cent of the total votes. The specific percentage shall be stipulated in the charter of the company.

5. Resolutions of the General Meeting of Shareholders must be notified to shareholders entitled to attend a meeting of the General Meeting of Shareholders within fifteen (15) days from the date of approval thereof. If the company has its own website, the resolutions may be published on the website of the company instead.

**Article 145. Authority and procedures for collection of written opinions in order to pass resolutions of General Meeting of Shareholders**

Unless otherwise stipulated in the charter of the company, the authority and procedures for collection of written opinions in order to pass a resolution of the General Meeting of Shareholders shall be implemented in accordance with the following provisions:

1. The Board of Management has the right to collect written opinions of shareholders in order to pass a resolution of the General Meeting of Shareholders if it is considered necessary in the interests of the company;

2. The Board of Management shall prepare written opinion forms, a draft of the resolution of the General Meeting of Shareholders, and other documents explaining the draft resolution, and shall send same to all shareholders with voting rights no later than ten (10) days prior to the time-limit within which they are required to return their written opinion forms, if the charter of the company does not stipulate a longer time-limit. The preparation of a list of shareholders sending written opinion forms shall be implemented in accordance with articles 137.1 and 137.2 of this Law. The request for and method of sending written opinion forms and enclosed documents shall be implemented in accordance with article 139 of this Law;

3. The written opinion form must contain the following basic details:

(a) Name, head office address, and enterprise code number;

(b) Purpose of collecting written opinions;

(c) Full name, permanent residential address, nationality, and the number of citizen's identity card, people's identity card, of the passport or other lawful personal identification in respect of a shareholder being an individual; name, enterprise code number or number of establishment decision, head office address of a shareholder being an organization or full name, permanent residential address, nationality, number of citizen's identity card, people's identity card or passport or other lawful personal identification of the authorized representative of a shareholder being an organisation; number of shares of each class and number of votes of the shareholder;

(d) Issue on which it is necessary to obtain opinions for passing;

(dd) Voting options, comprising agreement, non-agreement, or abstention;

(e) Time-limit within which the completed written opinion form must be returned to the company;

(g) Full names and signatures of the chairman of the Board of Management and of the legal representative of the company;

4. A shareholder may send a completed written opinion form to the company in any of the following forms:

- (a) By mail.

The completed written opinion form must bear the signature of the shareholder being an individual, and of the authorized representative or of the legal representative of the shareholder being an organization. The written opinion form which is returned to the company must be enclosed in a sealed envelope and must not be opened by any person prior to vote-counting;

- (b) By fax or electronic mail.

The written opinion form which is sent to the company by fax or electronic mail must be kept confidential until the time of counting of votes.

Any completed written form which is returned to the company after the expiry of the time-limit stated in the written opinion form or any form which has been opened in the case of sending by mail and disclosed in the case of sending by fax or electronic mail shall be invalid. Written opinion forms which are not returned shall be deemed to be forms not participating in the vote;

5. The Board of Management shall organize the vote-counting and prepare the minutes of vote-counting in the presence of the Inspection Committee or of shareholders not holding managerial positions in the company.

The minutes of vote-counting shall contain the following basic details:

- (a) Name, head office address, and enterprise code number;
- (b) Purpose of collection of written opinions and issues on which it is necessary to obtain written opinions in order to pass a resolution;
- (c) Number of shareholders with total numbers of votes having participated in the vote, classifying the votes into valid and invalid and method of sending votes and including an appendix being a list of the shareholders having participated in the vote
- (d) Total number of votes for, against and abstentions on each issue voted on;
- (dd) Matters which have been passed;
- (e) Full names and signatures of the chairman of the Board of Management, of the legal representative of the company, of the person who supervised the vote-counting, and of the person who counted votes.

The members of the Board of Management, the person who counted votes and the person who supervised the vote-counting are jointly liable for the truthfulness and accuracy of the minutes of vote-counting, and are jointly liable for any loss arising from a resolution which is passed due to an untruthful or inaccurate counting of votes;

6. The minutes of vote-counting must be sent to shareholders within a time-limit of fifteen (15) days from the date of completion of the vote-counting. If the company has its own website, the minutes of vote-counting may be published on the website of the company instead;

7. Completed written opinion forms, the minutes of vote-counting, the resolution which was passed and any related documents sent with all of the written opinion forms shall be archived at the head office of the company;

8. A resolution which is passed by way of collection of written opinions of shareholders shall have the same validity as a resolution passed in a meeting of the General Meeting of Shareholders.

#### **Article 146. Minutes of meeting of General Meeting of Shareholders**

1. Meetings of the General Meeting of Shareholders shall be minuted and may be sound recorded or recorded and stored in other electronic forms. Minutes must be prepared in Vietnamese and may also be in a foreign language, and must contain the following main details:

- (a) Name, head office address, and enterprise code number;
- (b) Time and location of the meeting of the General Meeting of Shareholders;
- (c) Program and agenda of the meeting;
- (d) Full names of the chairman and secretary;
- (dd) Summary of developments of the meeting and of opinions stated in the General Meeting of Shareholders on each matter set out in the meeting agenda;
- (e) Number of shareholders and total number of votes of attending shareholders, appendix listing registered shareholders and representatives of shareholders attending the meeting with the total number of their shares and the corresponding total number of votes;
- (g) Total number of votes for each issue voted on, specifying the method of voting, the number of valid or invalid votes, the number of votes for, against, and abstentions; and the corresponding percentage of the total number of votes of shareholders attending the meeting;
- (h) Matters which were passed and corresponding percentage of votes for passing;
- (i) Signatures of the chairman and secretary.

Minutes prepared in Vietnamese and minutes prepared in a foreign language shall be of equal legal validity. In the case of any difference in the contents of the minutes between the Vietnamese text and the foreign language text, the contents in the Vietnamese text shall prevail.

2. The minutes of a meeting of the General Meeting of Shareholders must be completed and approved prior to the closing of the meeting.

3. The chairman and secretary of the meeting must be jointly liable for the truthfulness and accuracy of the contents of the minutes.

The minutes of a meeting of the General Meeting of Shareholders must be sent to all shareholders within a time-limit of fifteen (15) days from the date of the closing of the meeting. The minutes of vote-counting may be published on the website (if any) of the company instead.

The minutes of a meeting of the General Meeting of Shareholders, the appendix listing the shareholders registered to attend the meeting, the resolutions passed and any related documents sent together with the notice of invitation to attend the meeting must be archived at the head office of the company.

#### **Article 147. Demand for cancellation of resolutions of General Meeting of Shareholders**

Within ninety (90) days from the date of receipt of the minutes of a meeting of the General Meeting of Shareholders or the minutes of the results of vote-counting by way of written opinions from the General

Meeting of Shareholders, a shareholder or a group of shareholders stipulated in article 114.2 of this Law have the right to request a court or an arbitrator to consider and cancel a resolution or part of the contents of a resolution of the General Meeting of Shareholders in the following cases:

1. The sequence and procedures for convening a meeting and issuing a decision of the General Meeting of Shareholders did not comply with this Law and the charter of the company, except in the case stipulated in article 148.2 of this Law;
2. The content of the resolution breaches the law or the charter of the company.

#### **Article 148. Effectiveness of resolutions of General Meeting of Shareholders**

1. A resolution of the General Meeting of Shareholders shall be effective as from the date it is passed or as from the effective date stated in such resolution.
2. Any resolution of the General Meeting of Shareholders which is passed by one hundred (100) per cent of the total voting shares shall be lawful and effective even when the sequence and procedures for passing such resolution are not implemented correctly in accordance with regulations.
3. If a shareholder or a group of shareholders requests a court or an arbitrator to cancel a resolution of the General Meeting of Shareholders as stipulated in article 147 of this Law, such resolution shall remain effective until the court or arbitrator makes some other decision, except in the case where temporary emergency measures are applied pursuant to a decision of a competent agency.

#### **Article 149. Board of Management**

1. The Board of Management is the body managing the company and shall have full authority to make decisions in the name of the company and to exercise the rights and perform the obligations of the company which do not fall within the authority of the General Meeting of Shareholders.
2. The Board of Management has the following rights and obligations:
  - (a) To make decisions on medium term developmental strategies and plans, and on annual business plans of the company;
  - (b) To recommend the classes of shares and total number of shares of each class which may be offered;
  - (c) To make decisions on selling new shares within the number of shares of each class which may be offered for sale; to make decisions on raising additional funds in other forms;
  - (d) To make decisions on the selling price of shares and bonds of the company;
  - (dd) To make decisions on redemption of shares in accordance with the provisions in article 130.1 of this Law;
  - (e) To make decisions on investment plans and investment projects within the authority and limits stipulated by law;
  - (g) To make decisions on solutions for market expansion, marketing and technology;
  - (h) To approve contracts for purchase, sale, borrowing, lending and other contracts valued at thirty five (35) or more per cent of the total value of assets recorded in the most recent financial

statements of the company, if the charter of the company does not stipulate any other percentage or value. This provision shall not apply to contracts and transactions stipulated in clause 2(d) of article 135 and clauses 1 and 3 of article 162 of this Law;

(i) To elect, remove or discharge the chairman of the Board of Management; to appoint, remove, and sign contracts or terminate contracts with the director or the general director and other key managers of the company as stipulated in the charter of the company; to make decisions on salaries and other benefits of such managers; to appoint authorized representatives to participate in the members' council or general meeting of shareholders of other companies, and to make decisions on the level of remuneration and other benefits of such persons;

(k) To supervise and direct the director or general director and other managers in their work of conducting the day-to-day business of the company;

(l) To make decisions on the organizational structure and the rules on internal management of the company, to make decisions on the establishment of subsidiary companies, the establishment of branches and representative offices and the capital contribution to or purchase of shares of other enterprises;

(m) To approve the agenda and contents of documents for the meetings of the General Meeting of Shareholders; to convene meetings of the General Meeting of Shareholders or to obtain written opinions in order for the General Meeting of Shareholders to pass decisions;

(n) To submit annual finalized financial reports to the General Meeting of Shareholders;

(o) To recommend the dividend rates to be paid, to make decisions on the time-limit and procedures for payment of dividends or for dealing with losses incurred in the business operations;

(p) To recommend re-organization or dissolution [of the company], or to request bankruptcy of the company;

(q) Other rights and obligations in accordance with this Law and the charter of the company.

3. The Board of Management shall pass decisions by way of voting in a meeting, collection of written opinions, or otherwise as stipulated in the charter of the company. Each member of the Board of Management shall have one vote.

4. When implementing its functions, rights and obligations, the Board of Management shall strictly comply with the provisions of law, the charter of the company and the resolutions of the General Meeting of Shareholders. If the Board of Management passes a resolution which is contrary to law or contrary to the provisions of the charter of the company, thereby causing loss to the company, the members who agreed to pass such resolution shall be personally jointly liable for such resolution and they must compensate the company for loss; any member who opposed the passing of such resolution shall be relieved from liability. In such case, a shareholder owning shares in the company for a consecutive period of at least one year has the right to request the Board of Management to suspend implementation of a resolution as mentioned above.

#### **Article 150. Term of office and numbers of members of Board of Management**

1. The Board of Management shall have three to eleven (11) members. The charter of the company shall specify the number of members of the Board of Management.

2. The term of office of members of the Board of Management or independent members of the Board of Management shall not exceed five years; and they may be re-elected for an unlimited number of terms. The specific number [of members] and period of a term of office and the number of members of the Board of Management who must reside permanently in Vietnam shall be as stipulated in the charter of the company.

3. If the term of office of all members of the Board of Management expires at the same time, such members shall continue to be members of the Board of Management until new members are elected as replacements and take over the work, unless otherwise stipulated in the charter of the company.

4. In a case where a shareholding company is organized and managed in accordance with clause 1(b) of article 134 of this Law, then the documents and transactions of the company must clearly write "independent members" before full names of corresponding members of the Board of Management.

5. The charter of the company shall specify the number, rights, obligations, methods of organization and co-ordination of activities of independent members of the Board of Management.

### **Article 151. Structure, criteria and conditions for acting as member of Board of Management**

1. A member of the Board of Management must satisfy the following criteria and conditions:

(a) Have full capacity for civil acts, and not fall into the category of persons not permitted to manage an enterprise as stipulated in article 18.2 of this Law;

(b) Have professional expertise and experience in business management of the company and not necessarily be a shareholder of the company, unless otherwise stipulated in the charter of the company;

(c) A member of the Board of Management may concurrently be a member of the board of management of another company;

(d) In the case of a subsidiary company in which the State holds more than fifty (50) per cent of the charter capital, a member of the Board of Management must not be the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling, brother-in-law or sister-in-law of the director or general director or other managers of the company, or must not be a related person of a manager or a person with the authority to appoint managers of the parent company.

2. An independent member of the Board of Management stipulated in clause 1(b) of article 134 of this Law must satisfy the following criteria and conditions, unless otherwise stipulated in the law on securities:

a) Not being a person currently working for the company or any subsidiary company of the company; or not being a person having worked for the company or any subsidiary company of the company for at least the three preceding years;

(b) Not being a person who is currently entitled to salary or remuneration from the company, except for allowances which members of the Board of Management are entitled to in accordance with regulations;

(c) Not being a person whose spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child or sibling is a major shareholder of the company, or a manager of the company or its subsidiary company;

(d) Not being a person directly or indirectly owning at least one per cent of the total voting shares in the company;

(dd) Not being a person having been a member of the Board of Management or the Inspection Committee of the company for at least five preceding years.

3. An independent member of the Board of Management must notify the Board of Management that such member no longer satisfies all the conditions stipulated in clause 2 of this article; and such member shall automatically no longer be an independent member of the Board of Management from the date of failure to satisfy all the conditions. The Board of Management must provide a notice of the case where an independent member of the Board of Management no longer satisfies all the conditions at the next General Meeting of Shareholders or must convene a meeting of the General Meeting of Shareholders to elect an additional member or to replace such independent member of the Board of Management within six months from the date of receipt of the notice from the related independent member of the Board of Management.

### **Article 152. Chairman of Board of Management**

1. The Board of Management shall elect a member of the Board of Management to act as the chairman.

The chairman of the Board of Management may act concurrently as the director or general director of the company except for the case stipulated in clause 2 of this article and unless otherwise stipulated in the charter of the company and the law on securities.

2. In a shareholding company in which the State holds more than fifty (50) per cent of the total number of votes, the chairman of the Board of Management is not permitted to act concurrently as the director or general director.

3. The chairman of the Board of Management has the following rights and obligations:

(a) To prepare working plans and programs of the Board of Management;

(b) To prepare the program, agenda and documents for meetings of the Board of Management; to convene and preside over meetings of the Board of Management;

(c) To organize for resolutions of the Board of Management to be passed;

(d) To monitor the implementation of resolutions of the Board of Management;

(dd) To chair meetings of the General Meetings of Shareholders and meetings of the Board of Management;

(e) Other rights and obligations in accordance with this Law and the charter of the company.

4. Where the chairman of the Board of Management is absent or is not able to perform his or her duties, he or she shall authorize in writing another member to exercise the rights and perform the obligations of the chairman of the Board of Management in accordance with the principles stipulated in the charter of the company. Where no person is authorized, the remaining members shall select one of them to temporarily hold the position of the chairman of the Board of Management in accordance with the principle of a majority.

5. If considered necessary, the chairman of the Board of Management shall recruit a secretary for the company to assist the Board of Management and the chairman of the Board of Management in

performing the obligations within their authority in accordance with law and the charter of the company. The secretary of the company have the following rights and obligations:

- (a) To assist the convention of meetings of the General Meeting of Shareholders or of the Board of Management; to record minutes of meetings;
- (b) To assist members of the Board of Management to exercise the assigned rights and perform the assigned obligations;
- (c) To assist the Board of Management to apply and implement the corporate governance principles;
- (d) To assist the company to build up the relationship with the shareholders and protect the lawful rights and interests of the shareholders;
- (dd) To assist the company to properly comply with the obligations to provide and disclose information and comply with administrative procedures.
- (e) Other rights and obligations as stipulated in the charter of the company.

6. The chairman of the Board of Management may be removed in accordance with a decision of the Board of Management.

#### **Article 153. Meetings of Board of Management**

1. The chairman of the Board of Management shall be elected at the initial meeting of a term of the Board of Management within a time-limit of seven working days from the date of completion of the election of the Board of Management for that term. Such meeting shall be convened and chaired by the member who obtains the highest number of votes or the highest percentage of votes. If two or more members obtain the same highest number of votes or the same highest percentage of votes, the members shall elect by a majority vote to select a person amongst them to convene the meeting.

2. Meetings of the Board of Management may be held on a regular basis or extraordinary meetings may be held. The Board of Management may meet at the head office of the company or at another location.

3. The chairman of the Board of Management may convene a meeting of the Board of Management when considered necessary, but there must be at least one meeting every quarter.

4. The chairman of the Board of Management must convene a meeting of the Board of Management in any of the following circumstances:

- (a) Upon request of the Inspection Committee or an independent member;
- (b) Upon request of the director or general director or upon request of at least five other managers;
- (c) Upon request of at least two executive members of the Board of Management;
- (d) In other circumstances as stipulated in the charter of the company.

The request must be made in writing and must specify the objectives and issues which require to be discussed, and decisions within the authority of the Board of Management.

5. The chairman of the Board of Management must convene a meeting of the Board of Management within a time-limit of seven working days from the date of receipt of a request stipulated in clause 4 of this article. If the chairman fails to convene a meeting of the Board of Management pursuant to a request, the chairman shall be liable for loss caused to the company; the person making the request has the right to convene a meeting of the Board of Management in place of the Board of Management.

6. The chairman of the Board of Management or the convenor of the meeting of the Board of Management must send a notice of invitation to attend the meeting at least three working days prior to the date of meeting, unless otherwise stipulated in the charter of the company. The notice of invitation must specify the time and location of the meeting, the agenda and issues to be discussed, and decisions. The notice must enclose documents to be used at the meeting and voting forms for the members.

The notice of invitation shall be sent by post, fax, electronic mail or other method guaranteed to reach the contact address of each member of the Board of Management as registered with the company.

7. The chairman of the Board of Management or the convenor shall send the notice of invitation to attend the meeting together with the enclosed documents to all inspectors in the same manner as to the members of the Board of Management.

Inspectors have the right to attend meetings of the Board of Management and to discuss issues but not to vote.

8. A meeting of the Board of Management shall be conducted where three quarters (3/4) or more of the total members are in attendance. If the meeting convened in accordance with this clause does not have sufficient attending members as stipulated, it shall be convened for a second time within seven days from the intended date of the first meeting, except where the charter stipulates some other shorter time-limit. In this case, the meeting shall be conducted if more than half of the number of members of the Board of Management attend the meeting.

9. A member of the Board of Management shall be deemed to attend and vote at the meeting in the following cases:

- (a) Such member attends and votes at the meeting in person;
- (b) Such member authorizes another person to attend the meeting in accordance with clause 10 of this article;
- (c) Such member attends and votes [at the meeting] via an online conference or other similar forms;
- (d) Such member sends his or her written vote to the meeting by mail, fax or email.

Where a written vote is sent to the meeting by mail, it must be enclosed in a sealed envelope and delivered to the chairman of the Board of Management at least one hour prior to the opening of the meeting. Written votes shall be opened only in the presence of all persons attending the meeting.

Except where the charter of the company provides for any other higher percentage, a resolution of the Board of Management shall be passed when it is agreed by the majority of the members in attendance; in the case of a tied vote, the final decision shall be made in favour of the vote of the chairman of the Board of Management.

10. Members must participate in all meetings of the Board of Management. A member may authorize another person to attend a meeting if the majority of members of the Board of Management agree.

#### **Article 154. Minutes of meetings of Board of Management**

1. All meetings of the Board of Management must be minuted and may be sound recorded, recorded and stored in other electronic forms. Minutes must be prepared in Vietnamese and may also be in a foreign language, and must include the following main contents:

- (a) Name, address of the head office, and enterprise code number;
- (b) Purpose, program and agenda of meeting;
- (c) Time and location of meeting;
- (d) Full names of each member attending the meeting or other persons authorized to attend the meeting and method of attending the meeting; full names of members not attending the meeting and reasons for not attending;
- (dd) Issues discussed and voted on in the meeting;
- (e) Summary of opinions of each member attending the meeting during the process of the meeting;
- (g) Result of voting, indicating members who agree, who do not agree and who abstain from voting;
- (h) Approved matters;
- (i) Full names and signatures of the chairman [of the meeting] and the person writing the minutes. The chairman and the person writing the minutes must be responsible for the accuracy and truthfulness of the minutes of meetings of the Board of Management.

2. Minutes of meetings of the Board of Management and documents used in the meetings must be archived in the head office of the company.

3. Minutes prepared in Vietnamese and foreign languages shall have equal validity. In the case of any difference in the contents of the minutes between the Vietnamese text and the foreign language text, the contents in the Vietnamese text shall prevail.

#### **Article 155. Rights of members of Board of Management to be provided with information**

1. A member of the Board of Management may demand the director, deputy director or general director, deputy general director, and the managers of units in the company provide information and documents on the financial situation and business operations of the company and of units in the company.

2. A manager receiving such a demand must provide all information and documents promptly, completely and accurately as demanded by a member of the Board of Management. The sequence and procedures for requesting for and providing information shall be as stipulated in the charter of the company.

#### **Article 156. Dismissal, removal and addition of members of Board of Management**

1. A member of the Board of Management shall be discharged in the following cases:

- (a) Failure to satisfy the criteria and conditions stipulated in article 151 of this Law;
  - (b) Failure to participate in activities of the Board of Management for six consecutive months, except in the case of an event of force majeure;
  - (c) Upon written notice of resignation;
  - (d) Other cases as stipulated in the charter of the company.
2. A member of the Board of Management may be removed pursuant to a resolution of the General Meeting of Shareholders.
3. The Board of Management must convene a meeting of the General Meeting of Shareholders to elect additional members of the Board of Management in the following cases:
- (a) The number of members of the Board of Management is reduced by more than one third (1/3) of the number stipulated in the charter of the company. In this case, the Board of Management must convene a meeting of the General Meeting of Shareholders within sixty (60) days from the date on which the number of members is reduced by more than one third (1/3);
  - (b) The number of independent members of the Board of Management is reduced and does not ensure the percentage stipulated in article 134.1 of this Law.

In other cases, the next meeting of the General Meeting of Shareholders shall elect new members of the Board of Management to replace members of the Board of Management who have been removed or discharged.

#### **Article 157. Director or general director of company**

1. The Board of Management shall appoint one of its members or employ another person as the director or general director.
2. The director or general director shall manage the day-to-day business operations of the company; shall be supervised by the Board of Management, and is responsible to the Board of Management and before the law for the exercise of his or her delegated powers and the performance of his or her delegated obligations.

The term of the director or general director shall not exceed five years; [a director or general director] may be re-appointed for an unlimited number of terms.

The criteria and conditions for a director or general director shall be as stipulated in article 65 of this Law.

3. The director or general director has the following powers and obligations:
  - (a) To make decisions on all issues relating to the day-to-day business operations of the company not requiring decisions of the Board of Management;
  - (b) To organize the implementation of resolutions of the Board of Management;
  - (c) To organize the implementation of business plans and investment plans of the company;
  - (d) To make recommendations with respect to the organizational structure and the rules on internal management of the company;

- (dd) To appoint, remove and discharge managerial positions in the company, except for those under the scope of authority of the Board of Management;
- (e) To make decisions on salary and other benefits for employees of the company, including managers who may be appointed by the director or general director;
- (g) To recruit employees;
- (h) To make recommendations on methods of paying dividends and of dealing with business losses;
- (i) Other powers and obligations in accordance with provisions of the law, the charter of the company and resolutions of the Board of Management.

4. The director or general director must manage the day-to-day business operations of the company strictly in accordance with law, the charter of the company, the employment contract signed with the company and the resolutions of the Board of Management. Where such management is inconsistent with this provision and causes loss to the company, the director or general director shall be responsible before the law and shall compensate the company for the loss.

#### **Article 158. Remuneration, salary and other benefits of members of Board of Management and director or general director**

1. The company is entitled to pay remuneration to members of the Board of Management and salary to the director or general director and other managers based on the business results and efficiency.
2. Unless otherwise stipulated in the charter of the company, the remuneration, salary and other benefits of members of the Board of Management and the director or general director shall be paid in accordance with the following provisions:
  - (a) Members of the Board of Management are entitled to remuneration for work and bonuses. Remuneration for work shall be calculated on the basis of the working days which are necessary to fulfil the duties of the members of the Board of Management and the daily rate of remuneration. The Board of Management shall estimate the remuneration for each member on the principle of agreement. The total amount of remuneration for the Board of Management shall be decided by the General Meeting of Shareholders at the annual meeting;
  - (b) Members of the Board of Management are entitled to reimbursement of expenses for meals, accommodation and travel and other reasonable expenses they have incurred in order to fulfil their delegated duties;
  - (c) The director or general director is entitled to salary and bonus. The salary of the director or general director shall be decided by the Board of Management.
3. The remuneration of members of the Board of Management and the salary of the director or general director and other managers shall be included in the business expenses of the company in accordance with the law on corporate income tax and shall be presented as a separate item in the annual financial statements of the company and shall be reported to the General Meeting of Shareholders at its annual meeting.

#### **Article 159. Public disclosure of relevant interests**

If the charter of the company does not provide any other stricter provisions, the public disclosure of relevant interests and related persons of a company shall be implemented in accordance with the following provisions:

1. The company must gather and update a list of related persons of the company in accordance with article 4.17 of this Law and corresponding transactions between them and the company;
2. Members of the Board of Management, inspectors, the director or general director and other managers of the company must declare their relevant interests to the company, including:
  - (a) Names, enterprise code numbers, head office addresses, business lines of enterprises in which they own contributed capital or shares; ratio and period of such ownership of contributed capital or shares;
  - (b) Names, enterprise code numbers, head office addresses, business lines of enterprises in which their related persons jointly own or separately own contributed capital or shares of more than ten (10) per cent of charter capital;
3. The declaration stipulated in clause 2 of this article must be made within seven working days from the date of a relevant interest arising; any amendment and addition shall be notified to the company within seven working days from the date of amendment or addition;
4. The public disclosure, review, extract and copy of the list of related persons and relevant interests as declared in accordance with clauses 1 and 2 of this article shall be implemented as follows:
  - (a) The company must report such list to the General Meeting of Shareholders at its annual meeting;
  - (b) The list shall be retained in the head office of the enterprise; in necessary cases, part or all of the contents of the list mentioned above may be retained at branches of the company;
  - (c) Shareholders, authorized representatives of shareholders, members of the Board of Management or the Inspection Committee, the director or general director, and other managers have the right to review, make an extract and copy part or all of the contents declared during working hours;
  - (d) The company must facilitate the persons stipulated in sub-clause (c) of this clause to access, sight, make an extract and copy the list of related persons of the company and other contents in the fastest and most convenient manner, and the company is not permitted to prevent them from or cause difficulties to them in exercising such rights. The sequence and procedures for reviewing, making an extract and copying the declarations of related persons and relevant interests shall be implemented in accordance with the charter of the company.
5. [Each] member of the Board of Management and the director or general director must, if performing any form of work on behalf of himself or herself or on behalf of others within the scope of business operations of the company, report the nature and content of that work to the Board of Management, Inspection Committee and shall only be permitted to perform [this work] if the majority of the remaining members of the Board of Management approve; if the work is performed without reporting or without the approval from the Board of Management, all income arising from such activity shall belong to the company.

#### **Article 160. Responsibilities of managers of company**

1. Each member of the Board of Management, the director or general director and other manager [of a company] has the following responsibilities:

(a) To exercise his or her delegated powers and perform his or her delegated obligations strictly in accordance with this Law, in relevant laws, the charter of the company, and the resolutions of the General Meeting of Shareholders;

(b) To exercise his or her delegated powers and perform his or her delegated obligations honestly and prudently to their best ability in order to assure the maximum legitimate interests of the company;

(c) To be loyal to the interests of the company and shareholders; not to use information, know-how, business opportunities of the company, [not to abuse] his or her position and powers and not to use assets of the company for his or her own personal benefit or for the benefit of other organizations or individuals;

(d) To notify the company in a timely manner, and fully and accurately of enterprises in which he or she or his or her related persons own or have contributed capital or controlling shares; this notice shall be displayed at the head office and branches of the company.

2. Other obligations in accordance with this Law and the charter of the company.

**Article 161. Right to initiate legal action against members of Board of Management, director or general director**

1. A shareholder or a group of shareholders owning at least one per cent of the number of ordinary shares for six consecutive months has the right, on its own behalf or on behalf of the company, to initiate a legal action regarding civil liability against a member of the Board of Management or the director or general director who:

(a) Commit a breach of the obligations of managers of the company in accordance with article 160 of this Law;

(b) Fail to implement correctly their assigned rights and obligations; or fail to implement or fail to implement completely and promptly resolutions of the Board of Management;

(c) Implement their assigned rights and obligations contrary to the provisions of law, the charter of the company or resolutions of the General Meeting of Shareholders;

(d) Use information, know-how or business opportunities of the company for their own personal benefit or for the benefit of other organizations or individuals;

(dd) Abuse their positions and powers and use assets of the company for their own personal benefit or for the benefit of other organizations or individuals;

(e) Other cases in accordance with law and the charter of the company.

2. The sequence and procedures for initiating a legal action shall be implemented in accordance with the corresponding provisions of the law on civil proceedings. The expenses for initiating a legal action by a shareholder or group of shareholders in the name of the company shall be included in expenses of the company, except where a petition initiating legal action by a member is rejected.

## **Article 162. Contracts and transactions subject to approval by General Meeting of Shareholders or Board of Management**

1. Contracts and transactions between the company and the following parties must be approved by the General Meeting of Shareholders or the Board of Management:

- (a) Shareholders or authorized representative of shareholders holding more than ten (10) per cent of the ordinary shares of the company and their related persons;
- (b) Members of the Board of Management, director or general director and their related persons;
- (c) Enterprises stipulated in article 159.2 of this Law.

2. Any contract or transaction valued at less than thirty five (35) per cent of the total value of assets recorded in the most recent financial statements of the company, or a smaller percentage as stipulated in the charter of the company, shall be approved by the Board of Management. In this case, the person representing the company to sign the contract must notify members of the Board of Management and/or inspectors of entities involved in such contract or transaction, and concurrently enclose the draft of the contract or main contents of the transaction. The Board of Management shall make a decision on approval of the contract or transaction within fifteen (15) days from the date of receipt of the notice, except where the charter of the company stipulates some other time-limit; members with related interests shall not have the right to vote.

3. Contracts and transactions other than those stipulated in clause 2 of this article shall be approved by the General Meeting of Shareholders. In this case, the person representing the company to sign a contract must notify the Board of Management and inspectors of entities involved in such contract or transaction, and concurrently enclose the draft of the contract or the notice of main contents of the transaction. The Board of Management shall submit the draft contract or explain the main contents of the transaction at the General Meeting of Shareholders or collect written opinions from shareholders. In this case, shareholders with related interests shall not have the right to vote; contracts and transactions shall be approved where shareholders representing sixty five (65) per cent of the total remaining votes agree, unless otherwise stipulated in the charter of the company.

4. Any contracts and transactions which have been signed or performed without the approval stipulated in clauses 2 and 3 of this article, [thereby] causing loss to the company shall be invalid and dealt with in accordance with law. The person signing the contract, shareholders, members of the Board of Management or the director or general director concerned must jointly compensate for the loss caused and must return to the company any benefits gained from the performance of such contract and transaction.

## **Article 163. Inspection Committee**

1. The Inspection Committee shall have from three to five members; the term of an inspector shall be not more than five years, and inspectors may be re-appointed for an unlimited number of terms.

2. Inspectors shall elect one of them to be the head of the Inspection Committee on the principle of majority. The rights and obligations of the head of the Inspection Committee shall be stipulated in the charter of the company. More than half of the members of the Inspection Committee must reside permanently in Vietnam. The head of the Inspection Committee must be a professional accountant or auditor and must work full-time in the company except where the charter of the company provides for any other higher standards.

3. If the term of office of inspectors expires at the same time and if inspectors of the new term of office have not been elected, the inspectors the term of which has expired shall retain its rights and obligations until inspectors of the new term of office are elected and take over the duties.

#### **Article 164. Criteria and conditions for inspectors**

1. Inspectors must satisfy the following criteria and conditions:

(a) Having full capacity for civil acts, and not falling within the scope of subjects not permitted to establish and manage enterprises in accordance with this Law;

(b) Not being the spouse, natural father, adoptive father, natural mother, adoptive mother, child, adopted child, sibling of any member of the Board of Management, the director or general director or other managers;

(c) Not permitted to hold managerial positions in the company; and not required to be a shareholder or an employee of the company, unless otherwise stipulated in the charter of the company;

(d) Other criteria and conditions in accordance with other relevant laws and the charter of the company.

2. Inspectors of a listed shareholding company or a company in which the State holds more than fifty (50) per cent of the charter capital must be accountants or auditors.

#### **Article 165. Rights and obligations of Inspection Committee**

1. To supervise the Board of Management and the director or general director with respect to management and administration of the company.

2. To inspect the reasonableness, legality, truthfulness and prudence in management and administration of business activities; and the systematic nature, consistency and appropriateness of statistic and accounting work and preparation of financial statements.

3. To evaluate the completeness, lawfulness and truthfulness of reports on business, half-yearly and annual financial statements and reports on evaluation of the management of the Board of Management; and to submit evaluation reports at annual meetings of the General Meeting of Shareholders.

4. To review, inspect and evaluate the effectiveness and efficiency of systems of internal control, internal audit, risk management and early warning of the company.

5. To review books of account, records of accounts and other documents of the company, and the management and administration of the operations of the company if deemed necessary or pursuant to a resolution of the General Meeting of Shareholders or as requested by a shareholder or group of shareholders as stipulated in article 114.2 of this Law.

6. Upon request by a shareholder or group of shareholders as stipulated in article 114.2 of this Law, the Inspection Committee shall carry out an inspection within a period of seven working days from the date of receipt of the request. The Inspection Committee must submit a report on results of the inspection of the issues required to be inspected to the Board of Management and the requesting shareholder or group of shareholders within a period of fifteen (15) days from the date of completion of the inspection.

Inspections stipulated in this clause may not disrupt the normal activities of the Board of Management and shall not interrupt the administration of the business operations of the company.

7. To recommend to the Board of Management or the General Meeting of Shareholders any changes and improvements in the organizational and management structure, supervision and administration of the business operations of the company.

8. Upon discovery of a member of the Board of Management or a director or general director who is in breach of the provisions in article 160 of this Law, to give immediate written notice to the Board of Management and request the person in breach to cease the breach and take measures to remedy any consequences.

9. To have the right to attend and participate in discussions at meetings of the General Meeting of Shareholders and of the Board of Management and other meetings of the company.

10. To use an independent consultant or the internal audit department of the company to perform the assigned duties.

11. The Inspection Committee may consult the Board of Management prior to submission of reports, conclusions and recommendations to the General Meeting of Shareholders.

12. To perform other rights and obligations as stipulated in this Law, the charter of the company and resolutions of the General Meeting of Shareholders.

#### **Article 166. Rights of Inspection Committee to be provided with information**

1. The notice of invitation to a meeting, written opinion form to obtain opinion from members of the Board of Management and enclosed documents must be sent to inspectors at the same time and in the same manner as to members of the Board of Management.

2. Resolutions and minutes of meetings of the General Meeting of Shareholders or of the Board of Management must be sent to inspectors at the same time and in the same manner as to shareholders and members of the Board of Management.

3. Reports of the director or general director for submission to the Board of Management or other documents issued by the company shall be sent to inspectors at the same time and in the same manner as to members of the Board of Management.

4. Inspectors have the right to access files and documents of the company retained in the head office, branches and other locations; have the right to access the workplace of managers and employees of the company during working hours.

5. The Board of Management, members of the Board of Management, the director or general director and other managers must provide in full, accurately and on time all information and documents relating to the management, administration and business operations of the company upon demand by members of the Inspection Committee or by the Inspection Committee.

#### **Article 167. Salaries and other benefits of inspectors**

Unless otherwise stipulated in the charter of the company, salaries and other benefits of inspectors shall be implemented in accordance with the following provisions:

1. Inspectors shall be paid salaries or remuneration and be entitled to other benefits as decided by the General Meeting of Shareholders. The General Meeting of Shareholders shall decide on the total salaries or remuneration and annual operating budget of the Inspection Committee;
2. Inspectors shall be reimbursed for expenses for meals, accommodation, travel and for use of independent consultancy services at reasonable rates. The total amount of such remuneration and expenses shall not exceed the total annual operating budget of the Inspection Committee approved by the General Meeting of Shareholders, unless otherwise decided by the General Meeting of Shareholders;
3. Salaries and operating costs of the Inspection Committee shall be included in business expenses of the company in accordance with the law on corporate income tax and other relevant laws, and must be presented in a separate item in the annual financial statements of the company.

#### **Article 168. Responsibilities of inspectors**

1. To comply with law, the charter of the company, resolutions of the General Meeting of Shareholders and professional ethics during the exercise of delegated rights and obligations.
2. To exercise delegated rights and perform delegated obligations honestly, prudently and to the best of their ability in order to assure the maximum lawful interest of the company.
3. To be loyal to the interests of the company and shareholders; not to use information, know-how, business opportunities of the company, or [not to abuse] their position and powers and to use assets of the company for their personal benefit or for the benefit of other organizations or individuals.
4. Other obligations as stipulated in this Law and in the charter of the company.
5. In the case of breaching the provisions in clauses 1, 2, 3 and 4 of this article causing loss to the company or to other persons, inspectors must bear personal or joint responsibility for compensating for such loss. All income and other benefits which an inspector gains must be returned to the company.
6. Where it is discovered that an inspector commits a breach during the exercise of delegated rights and obligations, the Board of Management must notify the Inspection Committee in writing, requesting the person in breach to cease the breach and take measures to remedy any consequences.

#### **Article 169. Removal and discharge of inspectors**

1. An inspector shall be removed in the following cases:
  - (a) No longer meeting the criteria and conditions to be an inspector as stipulated in article 164 of this Law;
  - (b) Not exercising his or her rights and obligations in six consecutive months, except in force majeure;
  - (c) Written resignation notice which is approved;
  - (d) Other cases as stipulated in the charter of the company.
2. An inspector shall be discharged in the following cases:
  - (a) Failing to fulfil his or her assigned duties or work;

- (b) Committing a material breach or committing a number of breaches of the obligations of inspectors as stipulated in this Law and the charter of the company;
- (c) Pursuant to a decision of the General Meeting of Shareholders.

#### **Article 170. Submission of annual reports**

1. At the end of a fiscal year, the Board of Management must prepare the following reports and documents:
  - (a) Report on the business results of the company;
  - (b) Financial statements;
  - (c) Reports on the evaluation of the management and administration of the company.
2. In respect of shareholding companies which are required by law to be audited, the annual financial statements of such shareholding companies must be audited before submission to the General Meeting of Shareholders for consideration and approval.
3. The reports and documents stipulated in clause 1 of this article must be sent to the Inspection Committee for evaluation no later than thirty (30) days before the opening day of the annual meeting of the General Meeting of Shareholders unless otherwise stipulated in the charter of the company.
4. Reports and documents prepared by the Board of Management; evaluation reports of the Inspection Committee and audited reports must be available at the head office and branches of the company no later than ten (10) days before the opening day of the annual meeting of the General Meeting of Shareholders if the charter of the company does not provide for any other longer period.

A shareholder owning shares in a company for a consecutive [period of] at least one year has the right to review directly the reports stipulated in this article in a reasonable period of time by himself or herself or together with a lawyer or an accountant or auditor having a practising certificate.

#### **Article 171. Public disclosure of information on shareholding companies**

1. Shareholding companies must submit annual financial reports as approved by the General Meeting of Shareholders to competent State agencies in accordance with the law on accounting and relevant laws.
2. A shareholding company shall publish the following information on its website (if any):
  - (a) Charter of the company;
  - (b) Curricula vitae, educational qualifications and work experience of members of the Board of Management, inspectors, and the director or general director of the company;
  - (c) Annual financial reports approved by the General Meeting of Shareholders;
  - (d) Annual reports on evaluation of operational results of the Board of Management and the Inspection Committee.
3. A shareholding company not being a listed company must provide a notice to the business registration office in the locality where the company has its head office no later than three days after it obtains or changes the following information: full name, nationality, passport number, permanent

residential address, number of shares and classes of shares in respect of a shareholder being a foreign individual; name, enterprise code number, head office address, number of shares and classes of shares and full name, nationality, passport number and permanent residential address of the authorized representative in respect of a shareholder being a foreign organization.

4. Public shareholding companies shall publicly announce and disclose information in accordance with the law on securities. Shareholding companies in which the State holds more than fifty (50) per cent of charter capital shall publicly announce and disclose information in accordance with articles 108 and 109 of this Law.

## **CHAPTER VI**

### **Partnerships**

#### **Article 172. Partnerships**

1. A partnership is an enterprise in which:

(a) There must be at least two members being co-owners of the company jointly conducting business under one common name (hereinafter referred to as unlimited liability partners). In addition to unlimited liability partners, the company may also have limited liability partners<sup>12</sup>;

(b) Unlimited liability partners must be individuals who shall be liable for the obligations of the company to the extent of all of their assets;

(c) Limited liability partners shall only be liable for the debts of the company to the extent of the amount of capital they have contributed to the company.

2. A partnership shall enjoy legal entity status as from the date of issuance of the enterprise registration certificate.

3. Partnerships may not issue any type of securities.

#### **Article 173. Capital contribution and issuance of capital contribution certificates**

1. Unlimited liability partners and limited liability partners must contribute capital in full and on time as undertaken.

2. Where an unlimited liability partner fails to contribute capital in full and on time as undertaken causing loss to the company, such partner must be liable to compensate the company for the loss.

3. Where a limited liability partner fails to contribute capital in full and on time as undertaken, the unpaid amount shall be considered as a debt owed by that partner to the company; in this case, the relevant limited liability partner may be excluded from the partnership in accordance with a decision of the Partners' Council.

4. Upon payment in full of capital contribution as undertaken, the partner shall be issued with a capital contribution certificate. A capital contribution certificate must contain the following main details:

- (a) Name, enterprise code number, head office address of the partnership; (b) Charter capital of the partnership;
  - (c) Name and permanent residential address, nationality and number of citizen's identity card, people's identify card, passport or other lawful personal identification of the partner; type of partner;
  - (d) Value of capital contribution and types of assets contributed as capital by such partner;
  - (dd) Number and date of issuance of the capital contribution certificate;
  - (e) Rights and obligations of the holder of the capital contribution certificate;
  - (g) Full names and signatures of the owner of the capital contribution certificate and of unlimited liability partners of the company.
5. Where a capital contribution certificate is lost, ruined, damaged or otherwise destroyed, the partner shall be re-issued by the company with a capital contribution certificate.

#### **Article 174. Assets of partnership**

Assets of a partnership comprise:

1. Assets contributed as capital by partners the ownership of which has been transferred to the company;
2. Assets created in the name of the company;
3. Assets derived from business activities conducted by unlimited liability partners in the name of the company and from business activities of the company conducted by unlimited liability partners in their personal name;
4. Other assets as stipulated by law.

#### **Article 175. Restrictions of rights applicable to unlimited liability partners**

1. An unlimited liability partner is not allowed to act as the owner of a private enterprise or as an unlimited liability partner of another partnership, unless he or she obtains the consent from other unlimited liability partners.
2. An unlimited liability partner is not allowed to conduct in his or her own name or in the name of another person the same line of business as the partnership for his or her personal benefit or to serve the benefit of another organization or individual.
3. An unlimited liability partner is not allowed to transfer all or part of its share of capital contribution in the company to another person without the consent of other unlimited liability partners.

#### **Article 176. Rights and obligations of unlimited liability partners**

1. An unlimited liability partner has the following rights:
  - (a) To attend meetings, to discuss and vote on matters of the company; each unlimited liability partner shall have one vote or another number of votes as stipulated in the charter of the company;

- (b) To conduct business activities in the name of the company in the lines of business of the company; to negotiate and sign contracts, agreements or covenants [MOUs] on terms that such unlimited liability partner considers most favourable for the company;
- (c) To use the seal and assets of the company for the business activities in the lines of business of the company; if such partner advances his or her own money in order to conduct the business activities of the company, he or she shall be entitled to require the company to refund the principal and interest at the market rate of interest on the amount of principal advanced;
- (d) To claim compensation from the company for loss arising from the business activities within his or her authority if such loss is not caused by a personal mistake of such partner;
- (dd) To request the company and other unlimited liability partners to provide information on the business of the company; to inspect assets, books of account and other documents of the company where he or she considers necessary;
- (e) To be distributed with profit in proportion to his or her share of capital contribution or as agreed in the charter of the company;
- (g) Upon dissolution or bankruptcy of the company, to be distributed with part of the remainder of the value of assets of the company in proportion to his or her share of capital contribution in the company unless the charter of the company provides for another ratio;
- (h) Where an unlimited liability partner dies, his or her heir may enjoy the share of the value of the assets in the company after deduction of debts for which such partner is responsible. The heir may become an unlimited liability partner if the Partners' Council so approves;
- (i) Other rights in accordance with this Law and the charter of the company.

2. An unlimited liability partner has the following obligations:

- (a) To manage and conduct business activities honestly, prudently to the best of his or her ability in order to assure the best lawful interests of the company;
- (b) To manage and conduct business activities of the company strictly in accordance with law, the charter of the company and resolutions of the Partners' Council; he or she shall be responsible for compensation for loss caused by his or her breach of the provision of this clause;
- (c) Not to use the assets of the company for his or her personal benefit or for the benefit of another organization or individual;
- (d) To return to the company any amount of money or assets received and compensate for any loss caused to the company in the case where he or she receives such money or assets from the business activities of the company in the name of the company or in his or her name or in the name of another person, but fails to pay [such money or assets] to the company;
- (dd) To be jointly liable to pay in full outstanding debts of the company in the case where the assets of the company are insufficient for the discharge of its debts;
- (e) To bear losses in proportion to his or her share of capital contribution in the company or as agreed in the charter of the company in the case where the company suffer losses during its business;

- (g) To submit regular truthful and accurate reports on his or her business operations and results to the company on a monthly basis; to provide information on his or her business and business results to any partner who so requests;
- (h) Other obligations in accordance with this Law and the charter of the company.

#### **Article 177. Partners' Councils**

1. All partners shall constitute the Partners' Council. The Partners' Council shall elect an unlimited liability partner to be the chairman of the Partners' Council who may concurrently act as the director or general director of the company, unless otherwise stipulated in the charter of the company.

2. An unlimited liability partner has the right to request that a meeting of the Partners' Council be convened to discuss and resolve the business affairs of the company. The requesting partner must prepare the program, agenda and documents for the meeting.

3. The Partners' Council has the right to resolve all of business affairs of the company. Unless regulated by the charter of the company, the decisions on the following issues shall require the approval of at least three-quarters of the total number of unlimited liability partners:

- (a) Developmental direction of the company;
- (b) Amendments of or additions to the charter of the company;
- (c) Admission of a new unlimited liability partner;
- (d) Approval for an unlimited liability partner to withdraw from the company or decision on exclusion of a partner;
- (dd) Decisions on investment projects;
- (e) Decisions on borrowing and raising capital in other forms or providing loans valued at fifty (50) per cent or more of the charter capital of the company, unless a higher percentage is stipulated in the charter of the company;
- (g) Decisions on sales or purchases of assets valued equal to or more than the charter capital of the company, unless a higher percentage is stipulated in the charter of the company;
- (h) Decisions to approve annual financial statements, total profit distributable and amount of profit to be distributed to each partner;
- (i) Decisions on dissolution of the company.

4. Decisions on other matters not covered by clause 3 of this article shall be adopted by the agreement of at least two-thirds (2/3) of the total number of unlimited liability partners; the specific percentage shall be stipulated in the charter of the company.

5. The right to vote of limited liability partners shall be subject to the provisions of this Law and the charter of the company.

#### **Article 178. Convening meetings of Partners' Council**

1. The chairman of the Partners' Council may convene a meeting of the Partners' Council where necessary or at the request of an unlimited liability partner. If the chairman of the Partners'

Council does not convene a meeting at the request of an unlimited liability partner, such partner shall convene a meeting.

2. Notification of a meeting shall be in the form of written invitations, telephone, facsimile or other electronic means. Notification of a meeting must clearly stipulate the purpose, requirement and agenda of the meeting; the program and location of the meeting and the name of the partner who requests to convene the meeting.

Discussion documents to be used to resolve the matters stipulated in article 177.3 of this Law must be forwarded to all the partners in advance; such prior period shall be stipulated in the charter of the company.

3. The chairman of the Partners' Council or the requesting partner shall chair the meeting. The meeting shall be recorded in the minutes of the company. Contents of the minutes of the meeting must include the following main contents:

- (a) Name, enterprise code number, head office address;
- (b) Purpose, program and agenda of the meeting;
- (c) Time and location of the meeting;
- (d) Full names of the chairman [of the meeting] and participant members of the meeting;
- (dd) Opinions of the participant members;
- (e) The passed resolutions, number of members voting in favour and main contents of such resolutions;
- (g) Full names and signatures of the participant members.

#### **Article 179. Management of business of partnership**

1. Unlimited liability partners are entitled to be legal representatives and to organize management of the day-to-day business of the partnership. Any restriction on unlimited liability partners with respect to the conduct of the day-to-day business of the partnership shall be effective against a third party only if such [third] party knows of such restriction.

2. In management of business activities of the partnership, unlimited liability partners shall allocate amongst themselves the tasks of management and control of the partnership.

Where a number of or all unlimited liability partners together carry out a number of business operations, decisions shall be passed by a majority.

Activities carried out by an unlimited liability partner beyond the scope of business activities of the partnership shall not fall within the scope of liability of the partnership, unless such activities are approved by the other partners.

3. The partnership may open an account or a number of accounts at banks. The Partners' Council shall appoint the partner authorized to deposit or withdraw money from such accounts.

4. The Chairman of the Partners' Council, director or general director has the following duties:

- (a) To manage and operate the day-to-day business activities of the partnership in the capacity of an unlimited liability partner;
- (b) To convene and organize meeting of the Partners' Council; to sign resolutions of the Partners' Council;
- (c) To allocate tasks, co-ordinate business activities among the unlimited liability partners;
- (d) To organize, arrange and store fully and truthfully books of account, invoices, vouchers and other documents of the partnership in accordance with law;
- (dd) To represent the partnership in its dealings with State agencies, to represent the partnership as defendant or plaintiff in legal proceedings, commercial disputes or other disputes;
- (e) To perform other obligations as stipulated in the charter of the partnership.

**Article 180. Termination of status as unlimited liability partner**

1. Status as an unlimited liability partner shall terminate in the following cases:

- (a) Voluntarily withdrawing capital from the partnership;
- (b) On death, or having been declared by a court as missing or having restricted capacity for civil acts or having lost capacity for civil acts;
- (c) Having been excluded from the partnership;
- (d) Other cases as stipulated in the charter of the partnership.

2. An unlimited liability partner is entitled to withdraw capital from the partnership if the Partners' Council so agrees. In such case, the partner who wants to withdraw capital from the partnership must give written notice of the capital withdrawal request no later than six months prior to the date of withdrawal. He or she may withdraw capital only at the end of the financial year after the financial report of such year has been approved.

3. An unlimited liability partner shall be excluded from the partnership in the following cases:

- (a) Being unable to contribute capital or failing to contribute capital as undertaken after the partnership makes its request for the second time;
- (b) Breaching provisions of article 175 of this Law;
- (c) Not carrying out business activities truthfully and prudently, or carrying out other inappropriate acts causing serious loss and damage to the interests of the partnership and other partners;
- (d) Not performing properly the obligations of an unlimited liability partner.

4. In the case of termination of status as partner of a partner who has restricted capacity for civil acts or has lost capacity for civil acts, the contributed capital of such partner shall be refunded fairly and equitably.

5. During a period of two years from the date of termination of status as an unlimited liability partner as stipulated in clauses 1(a) and 1(c) of this article, such individual shall remain jointly liable

to the extent of all of his or her assets for any debts of the partnership arising prior to the date of termination of status as a partner.

6. After termination of status as a partner, if the name of the terminating partner has been used as a part or all of the name of the partnership, such individual or his or her heir or legal representative has the right to request the company to cease use of such name.

#### **Article 181. Admission of new partners**

1. A partnership may admit new unlimited liability partners or limited liability partners; admission of new partners shall be approved by the Partners' Council.

2. An unlimited liability partner or limited liability partner must contribute capital in full as undertaken to the partnership within fifteen (15) days from the date of approval, unless the Partners' Council decides on a different time-limit.

3. The new unlimited liability partner must be jointly liable for the debts and other property obligations of the partnership to the extent of all his or her assets, unless such partner and other partners have otherwise agreed.

#### **Article 182. Rights and obligations of limited liability partners**

1. A limited liability partner has the following rights:

(a) To attend meetings of the Partners' Council, to discuss and vote on amendments of and additions to the charter of the partnership; amendments of and additions to the rights and obligations of limited liability partners, on re-organization and dissolution of the partnership and other contents of the charter of the partnership directly relating to his or her rights and obligations;

(b) To be distributed with annual profit in proportion to his or her share of capital contribution in the charter capital of the partnership;

(c) To be provided with the annual financial report of the partnership; to request the chairman of the Partners' Council and the unlimited liability partners to provide complete and truthful information on the business and business results of the partnership; to check books of account, minutes, contracts, transactions, files and other documents of the partnership;

(d) To transfer his or her contributed capital in the partnership to another person;

(dd) To conduct business activities in the lines of business of the partnership in his or her own name or in the name of another person;

(e) To dispose of his or her contributed capital by way of bequest, gift, mortgage, pledge and other forms in accordance with law and the charter of the partnership; in the event that he or she dies, his or her heir shall replace him or her as a limited liability partner of the partnership;

(g) To be distributed with part of the remainder of the value of assets of the partnership in proportion to his or her share of capital contribution in the charter capital of the partnership upon dissolution or bankruptcy of the partnership;

(h) Other rights in accordance with this Law and the charter of the partnership.

2. A limited liability partner has the following obligations:

- (a) To be liable for the debts and other property obligations of the partnership to the extent of his or her contributed capital as undertaken;
- (b) Not to manage the partnership, not to conduct business activities in the name of the partnership;
- (c) To comply with the charter and internal rules of the partnership and the decisions of the Partners' Council;
- (d) Other obligations in accordance with this Law and the charter of the partnership.

## **CHAPTER VII**

### **Private Enterprises**

#### **Article 183. Private enterprises**

1. A private enterprise is an enterprise owned by one individual who shall be liable for all activities of the enterprise to the extent of all his or her assets.
2. Private enterprises may not issue any type of securities.
3. Each individual may only establish one private enterprise. The owner of a private enterprise must not concurrently act as the head of a business family household or a member of a partnership.
4. Private enterprises are not permitted to contribute capital to establish or purchase shares or shares of capital contribution in partnerships, limited liability companies or shareholding companies.

#### **Article 184. Invested capital of enterprise owners**

1. The invested capital of the owner of a private enterprise shall be registered by himself or herself.

The owner of a private enterprise is obliged to declare accurately the total invested capital, specifying the amount of capital denominated in Vietnamese Dong, in freely convertible foreign currency, in gold or in other assets; in respect of capital denominated in other assets, the types of asset, quantity and residual value of each type of assets must be specified.

2. All capital and assets, including loans and leased assets, used for the business operations of an enterprise shall be recorded fully in its books of account and financial statements of the enterprise in accordance with law.
3. In the course of operation, the owner of a private enterprise may increase or reduce the capital invested in the business operations of the enterprise. The increase or reduction of the invested capital of the enterprise owner must be recorded fully in the books of account. The owner of a private enterprise may only reduce the invested capital below the amount of invested capital registered after registration with the business registration office.

### **Article 185. Management of enterprises**

1. The owner of a private enterprise shall have total discretion in making all business decisions of the enterprise; and in deciding on the use of profit after payment of taxes and performance of other financial obligations as stipulated by law.
2. The owner of a private enterprise may manage and administer the business operations or employ other persons to do so. Where another person is employed as the director managing the enterprise, the owner of a private enterprise shall remain liable for all business activities of the enterprise.
3. The owner of a private enterprise shall be the plaintiff, defendant, or person having related interests and obligations in arbitration or court proceedings in disputes relating to the enterprise.
4. The owner of a private enterprise shall be the legal representative of the enterprise.

### **Article 186. Lease of enterprises**

The owner of a private enterprise may lease his or her whole enterprise provided that a written notice and a notarized copy of the lease contract must be submitted to the business registration office and the tax office within three working days from the effective date of the lease contract. During the term of the lease, the owner of the private enterprise shall remain responsible before the law as the owner of the enterprise. The rights and responsibilities of the owner and the lessee with respect to the business activities of the enterprise shall be stipulated in the lease contract.

### **Article 187. Sale of enterprises**

1. The owner of a private enterprise may sell his or her enterprise to another person.
2. After the enterprise is sold, the owner of the private enterprise shall remain liable for all debts and other property obligations of the enterprise which arose prior to the date of transfer of the enterprise, unless otherwise agreed by the purchaser, the seller and creditors of the enterprise.
3. The purchaser and seller of an enterprise must comply with the provisions of the law on labour.
4. The purchaser of an enterprise must register any change to the owner of the private enterprise in accordance with the provisions of this Law.

## **CHAPTER VIII**

### **Corporate Groups**

### **Article 188. Economic groups and corporations**

1. An economic group or corporation in any economic sector means a group of companies having relations with each other through ownership of shares, shares of capital contribution or [through] other [forms of] association. Economic group or corporation is not a form of enterprise, does not have legal entity status, and is not required to be registered for establishment in accordance with this Law.
2. An economic group or corporation shall have a parent company, subsidiary companies and other member companies. The parent company, subsidiary companies and each member company in one

economic group or corporation shall have the same rights and obligations as applicable to independent enterprises in accordance with law.

#### **Article 189. Parent companies and subsidiary companies**

1. A company shall be deemed to be the parent company of another company if it falls into one of the following cases:

(a) It owns more than fifty (50) per cent of the charter capital or the total number of ordinary shares of such [another] company;

(b) It has the right to directly or indirectly make decisions on appointment of the majority or all members of the Board of Management, the director or general director of such [another] company;

(c) It has the right to make decisions on amendment of and addition to the charter of such [another] company.

2. Subsidiary companies are not permitted to invest in contribution of capital to or purchase of shares of the parent company. Subsidiary companies of the same parent company are not permitted to jointly contribute capital or purchase shares in order to have mutual cross ownership.

3. Subsidiary companies having the same parent company which is an enterprise with ownership of at least sixty five (65) per cent of State capital are not permitted to jointly contribute capital to establish an enterprise in accordance with this Law.

4. The Government shall provide detailed regulations on clauses 2 and 3 of this article.

#### **Article 190. Rights and responsibilities of parent company to subsidiary company**

1. Depending on the legal form of a subsidiary company, the parent company shall exercise its rights and perform its obligations as a member, owner or shareholder in the relation with the subsidiary company in accordance with the relevant provisions of this Law and other provisions of relevant laws.

2. Contracts, transactions and other relations between the parent company and a subsidiary company shall be made and performed independently and equally in accordance with the conditions applicable to independent legal subjects.

3. Where the parent company interferes beyond the authority of the owner, member or shareholder and compels a subsidiary company to conduct business operations inconsistently with normal business practices or conduct non-profitable activities without reasonable compensation in a relevant fiscal year which causes loss to the subsidiary company, the parent company shall be responsible for such loss.

4. The managers of the parent company which is responsible for the interference compelling the subsidiary company to conduct the business operations specified in clause 3 of this article are jointly liable with the parent company for such loss.

5. Where the parent company fails to compensate the subsidiary company in accordance with clause 3 of this article, the creditors or members or shareholders holding at least one per cent of the charter capital of the subsidiary company may on their own behalf or on behalf of the subsidiary company require the parent company to compensate the subsidiary company.

6. Where the business operations referred to in clause 3 of this article and conducted by the subsidiary company provide any benefit to another subsidiary company of the same parent company, such

beneficial subsidiary company and the parent company shall be jointly responsible for returning such benefit to the subsidiary company suffering loss.

**Article 191. Financial statements of parent companies and subsidiary companies**

1. At the end of a fiscal year, in addition to the statements and documents specified by law, a parent company must prepare the following statements:

- (a) Consolidated financial statements of the parent company in accordance with the law on accounting;
- (b) General report on annual business results of the parent company and subsidiary companies;
- (c) General report on management and administration of the parent company and subsidiary companies.

2. The person who is responsible for preparing the statements specified in clause 1 of this article is not allowed to prepare and submit such statements if he or she has not received all of the financial statements from the subsidiary companies.

3. Upon the request of the legal representative of the parent company, the legal representative of the subsidiary company must provide stipulated reports, documents and information necessary for preparation of the consolidated financial statement and general reports of the parent company and subsidiary companies.

4. The managers of the parent company may use such statements to prepare the consolidated financial statement and general reports of the parent company and subsidiary companies if there is no doubt that the statements prepared and submitted by the subsidiary companies do not contain any wrong, incorrect or forged information.

5. Where the managers of the parent company have taken all necessary measures within their authority, but have not received the necessary reports, documents and information as stipulated from a subsidiary company, they shall prepare and submit the consolidated financial statements and general reports of the parent company and the subsidiary company. Such statements may or may not include information from such subsidiary company, but must contain necessary explanatory statements to avoid any misunderstanding or incorrect understanding.

6. Reports and final annual financial statements of the parent company, of subsidiary companies and consolidated statements and general reports of the parent company and subsidiary companies shall be retained at the head office of the parent company. Copies of statements and documents specified in this clause must be available at branches of the parent company in the territory of Vietnam.

7. With respect to subsidiary companies, in addition to statements and reports stipulated by law, they must prepare a general report on purchases, sales and other transactions with their parent company.

**CHAPTER IX**

**Re-organization, Dissolution and Bankruptcy of Enterprises**

## **Article 192. Division of enterprises**

1. Limited liability companies and shareholding companies may split their shareholders, members and assets in order to establish two or more new companies in one of the following cases:

(a) Part of capital contribution or shares of members or shareholders together with assets corresponding to the value of the share of capital contribution or shares shall be distributed to new companies in accordance with the ratio of ownership in the company being divided and corresponding to the value of assets transferred to new companies;

(b) All of capital contribution or shares of one or more members or shareholders together with assets corresponding to the value of their shares or capital contribution shall be transferred to new companies;

(c) Combination of two cases in sub-clauses (a) and (b) of this clause.

2. Procedures for division of limited liability companies and shareholding companies shall be as follows:

(a) The Member's Council, the company owner or the General Meeting of Shareholders of the company being divided shall pass a resolution on division of the company in accordance with the provisions of this Law and the charter of the company. The resolution on division of the company shall have the following main details: the name and address of the head office of the company being divided; names of companies to be established; the principles, methods and procedures for division of assets of the company; the plan for employment of employees; methods of distribution, the time-limit and procedures for transfer of shares of capital contribution, shares and bonds of the company being divided to the newly-established companies; the principles for dealing with the obligations of the company being divided; and the time-limit for implementing the division of the company. The resolution on division of the company shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing;

(b) Members, company owner or shareholders of newly-established companies shall pass the charter, elect or appoint the chairman of the Member's Council, chairman of the company, the Board of Management, director or general director and carry out enterprise registration in accordance with this Law. In this case, the application file for enterprise registration for new companies shall include the resolution on division of the company referred to in sub-clause (a) of this clause.

3. The number of members or shareholders and the number and ratio of ownership of shares or capital contribution of members or shareholders and charter capital of new companies shall be stated accordingly in accordance with methods of division and transfer of capital contribution or shares of the company being divided to new companies respectively in the cases stipulated in clause 1 of this article.

4. The company being divided shall cease to exist after the new companies are issued with an enterprise registration certificate. The new companies must be jointly liable for unpaid debts, labour contracts and other property obligations of the company being divided or shall agree with creditors, customers and employees in order for one of such companies to perform such obligations.

5. The business registration office shall update the legal status of the company being divided on the national enterprise registration database upon issuance of enterprise registration certificates to new companies. If the head office address of a new company is located outside the province or city under central authority where the company being divided has its head office, the business registration office in

the locality where the new company has its head office must notify the enterprise registration for the new company to the business registration office in the locality where the company being divided has its head office in order to update the legal status of the company being divided on the enterprise registration database.

### **Article 193. Separation of enterprises**

1. Limited liability companies and shareholding companies may be separated by transferring part of the assets or rights and obligations of the existing company (hereinafter referred to as the company being separated) to establish one or more new limited liability companies or shareholding companies (hereinafter referred to as the separate company) without terminating the existence of the company being separated.

2. The separation of companies may be implemented by one of the following methods:

(a) Part of capital contribution or shares of members or shareholders together with assets corresponding to the value of capital contribution or shares shall be transferred to new companies in accordance with the ratio of ownership in the company being separated and corresponding to the value of assets transferred to new companies;

(b) All of capital contribution or shares of one or more members or shareholders together with assets corresponding to the value of their shares or capital contribution shall be transferred to new companies;

(c) Combination of two cases in sub-clauses (a) and (b) of this clause.

3. The company being separated must register any change to the charter capital and the number of members corresponding to their shares of capital contribution or shares and the number of members reduced, and at the same time, implement enterprise registration for new companies.

4. Procedures for separation of limited liability companies and shareholding companies shall be as follows:

(a) The Member's Council, the company owner or the General Meeting of Shareholders of the company being separated shall pass a resolution on separation of the company in accordance with the provisions of this Law and the charter of the company. The resolution on separation of the company shall have the following main details: the name and address of the head office of the company being separated; the names of separate companies to be established; the plan for employment of employees; method of separation of the company; the value of assets, rights and obligations to be transferred from the company being separated to the separate company(ies); and the time-limit for implementing the separation of the company. The resolution on separation of the company shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing;

(b) Members, company owners or shareholders of the separate companies shall pass a charter, elect or appoint a chairman of the Member's Council, chairman of the company, the Board of Management, director or general director; and implement enterprise registration in accordance with this Law. In this case, the application file for enterprise registration shall include the resolution on separation of the company referred to in sub-clause (a) of this clause.

5. After enterprise registration, the company being separated and the separate company(ies) must be jointly liable for unpaid debts, labour contracts and other property obligations of the company being

separated, unless otherwise agreed among the company being separated, newly-established companies, creditors, customers and employees of the company being separated.

#### **Article 194. Consolidation of enterprises**

1. Two or more companies (hereinafter referred to as companies being consolidated) may be consolidated into a new company (hereinafter referred to as the consolidated company) and at the same time, terminate the existence of the companies being consolidated.

2. Procedures for consolidation of companies shall be as follows:

(a) Companies being consolidated shall prepare a consolidation contract. The consolidation contract shall have the following main details: the names and offices of the companies being consolidated; the name and address of the head office of the consolidated company; the procedures and conditions for consolidation; the plan for employment of employees; the time-limit, procedures and conditions for conversion of assets, for conversion of shares of capital contribution, shares and bonds of the companies being consolidated into shares of capital contribution, shares and bonds of the consolidated company; the time-limit for implementing the consolidation, and the draft charter of the consolidated company;

(b) Members, owners or shareholders of companies being consolidated shall pass the consolidation contract and the charter of the consolidated company, elect or appoint the chairman of the Member's Council, chairman of the company, the Board of Management, the director or general director of the consolidated company and implement enterprise registration for the consolidated company in accordance with this Law. The consolidation contract shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing.

3. In the case of consolidation whereby the consolidated company holds a market share of between thirty (30) per cent and fifty (50) per cent of the relevant market, the legal representatives of the companies being consolidated must notify the administrative agency for competition before carrying out the consolidation, unless otherwise stipulated by the *Law on Competition*.

Cases of consolidation of companies whereby the consolidated company holds a market share of fifty (50) per cent or more of the relevant market shall be prohibited, unless otherwise stipulated by the *Law on Competition*.

4. The application file and sequence for enterprise registration for a consolidated company shall be in accordance with corresponding provisions of this Law and must enclose copies of the following papers:

(a) Consolidation contract;

(b) Resolutions and minutes of meetings of the companies being consolidated on approval of the consolidation contract.

5. Companies being consolidated shall cease to exist after enterprise registration. The consolidated company shall assume the lawful rights and interests and be liable for unpaid debts, labour contracts and other property obligations of the companies being consolidated.

6. The business registration office shall update the legal status of companies being consolidated on the national enterprise registration database upon issuance of an enterprise registration certificate to the consolidated company. If the head office address of a company being separated is located outside the

province or city under central authority where the consolidated company has its head office, the business registration office of the consolidated company must notify the enterprise registration to the business registration office in the locality where the company being consolidated has its head office in order to update the legal status of the company being consolidated on the national enterprise registration database.

#### **Article 195. Merger of enterprises**

1. One or more companies (hereinafter referred to as merging companies) may be merged into another company (hereinafter referred to as the merged company) by way of transfer of all lawful assets, rights, obligations and interests to the merged company and, at the same time, terminate the existence of the merging companies.

2. Procedures for merger of companies shall be stipulated as follows:

(a) Related companies shall prepare a merger contract and a draft charter of the merged company. The merger contract must have the following main details: the name and address of the head office of the merged company; the name(s) and addresses of the head office(s) of the merging company(ies); the procedures and conditions for the merger; the plan for employment of employees; the methods, procedures, time-limit and conditions for conversion of assets, for conversion of shares of capital contribution, shares and bonds of the merging company(ies) to shares of capital contribution, shares and bonds of the merged company; and the time-limit for implementing the merger;

(b) Members, company owners or shareholders of related companies shall pass the merger contract and the charter of the merged company and implement enterprise registration for the merged company in accordance with this Law. The merger contract shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing;

(c) After enterprise registration, the merging companies shall cease to exist; the merged company shall assume the lawful rights and interests and be liable for unpaid debts, labour contracts and other property obligations of the merging companies.

3. In the case of merger whereby the merged company holds a market share of between thirty (30) per cent and fifty (50) per cent of the relevant market, the legal representative of the company notifies the administrative agency for competition before carrying out the merger, unless otherwise stipulated by the *Law on Competition*.

Cases of merger of companies whereby the merged company holds a market share of fifty (50) per cent or more of the relevant market shall be prohibited, unless otherwise stipulated by the *Law on Competition*.

4. The application file and sequence for enterprise registration of a merged company shall be in accordance with corresponding provisions of this Law and must enclose copies of the following documents:

(a) Merger contract;

(b) Resolution and minutes of meeting of the merged company on approval of the merger contract;

(c) Resolutions and minutes of meetings of the merging companies on approval of the merger contract, except where the merged company is a member or shareholder owning more than sixty five (65) per cent of the charter capital or voting shares of a merging company.

5. The business registration office shall update the legal status of companies being merged on the national enterprise registration database and shall make amendment to the contents of enterprise registration for the merged company.

If the head office address of a merging company is located outside the province or city under central authority where the merged company has its head office, the business registration office of the merged company shall notify the enterprise registration to the business registration office in the locality where the merging company has its head office in order to update the legal status of the merging company on the national enterprise registration database.

#### **Article 196. Conversion of limited liability companies into shareholding companies**

1. State owned enterprises shall be converted into shareholding companies in accordance with the law on conversion of State companies into shareholding companies.

2. A limited liability company may be converted into a shareholding company by the following methods:

(a) It shall be converted into a shareholding company without raising additional contributed capital from other organizations or individuals or without selling any share of capital contribution to other organizations or individuals;

(b) It shall be converted into a shareholding company by way of raising additional contributed capital from other organizations or individuals;

(c) It shall be converted into a shareholding company by way of selling all or part of capital contribution to one or more other organizations or individuals;

(d) Combination of the methods stated in sub-clauses (a), (b) and (c) of this clause.

3. A company must register its conversion with the business registration office within ten (10) days from the date of completion of the conversion. Within five working days from the date of receipt of an application file for conversion, the enterprise registration office shall issue a new enterprise registration certificate.

4. The converted company shall automatically inherit all lawful rights and interests of the company being converted, and is responsible for debts, including tax debts, labour contracts and other obligations of the company being converted.

5. Within seven working days from the date of issuance of the enterprise registration certificate, the business registration office must provide a notice to relevant State agencies in accordance with article 34.1 of this Law, and concurrently, update the legal status of the company on the national enterprise registration database.

#### **Article 197. Conversion of shareholding companies into one member limited liability companies**

1. A shareholding company may be converted into a one member limited liability company by the following methods:

(a) One shareholder receives an assignment of the entire corresponding shares or capital contribution of all remaining shareholders;

(b) One organization or individual not being a shareholder receives an assignment of the entire shares of all shareholders of the company;

(c) The company still has only one shareholder after expiry of the time-limit in which the minimum number of [shareholders] of a shareholding company is required in accordance with article 110 of this Law.

2. The assignment or receipt of an investment capital contribution by shares or shares of capital contribution stipulated in clause 1 of this article must be implemented on the basis of market price [and/or] price determined by the asset method, the discounted cash flow method or other methods.

3. Within fifteen (15) days from the date of completion of assignment of shares stipulated in clauses 1(a) and 1(b) of this article and from the date on which the case stipulated in clause 1(c) of this article happens, the company shall send or lodge an application file for conversion with the business registration office at the place where the enterprise implemented [business] registration. Within five working days from the date of receipt of the application file for conversion, the business registration office shall issue an enterprise registration certificate.

4. A converted company shall automatically inherit all the lawful rights and legal interests and is responsible for all debts including tax debts and labour contracts and other obligations of the company being converted.

5. Within a time-limit of seven working days from the date of issuance of the enterprise registration certificate, the business registration office must notify the relevant State agencies as stipulated in article 34.1 of this Law, and at the same time shall update the legal status of the company on the national enterprise registration database.

#### **Article 198. Conversion of shareholding companies into limited liability companies with two or more members**

1. A shareholding company may be converted into a limited liability company by the following methods:

(a) It shall be converted into a limited liability company without raising additional [capital] from or assigning shares to other organizations or individuals;

(b) It shall be converted into a limited liability company at the same time as it raises contributed capital from other organizations or individuals;

(c) It shall be converted into a limited liability company at the same time as it assigns all or part of shares to other capital contributing organizations or individuals;

(d) It shall be converted into a limited liability company by way of combination of the methods stipulated in sub-clauses (a), (b) and (c) of this clause.

2. A company must register its conversion with the business registration office within ten (10) days from the date of completion of the conversion. Within five working days from the date of receipt of an application file for conversion, the business registration office shall issue an enterprise registration certificate.

3. A converted company shall automatically inherit all lawful rights and interests of the company being converted, and is responsible for debts, including tax debts, labour contracts and other obligations of the company being converted.

4. Within seven working days from the date of issuance of the enterprise registration certificate, the business registration office must provide a notice to relevant State agencies in accordance with article 34.1 of this Law, and concurrently, update the legal status of the company on the national enterprise registration database.

#### **Article 199. Conversion of private enterprises into limited liability companies**

1. A private enterprise may be converted into a limited liability company pursuant to a decision of the owner of the private enterprise if it satisfies all the following conditions:

(a) It satisfies the conditions stipulated in article 28.1 of this Law;

(b) The owner of the private enterprise must be the company owner (in the case of conversion into a one member limited liability company owned by an individual) or a member (in the case of conversion into a limited liability company with two or more members);

(c) The owner of the private enterprise undertakes in writing to be personally responsible by all his own assets for all unpaid debts of the private enterprise and undertakes to pay all debts when due;

(d) The owner of the private enterprise agrees in writing with parties to contracts which have not yet been discharged that the converted limited liability company shall take over and perform such contracts;

(dd) The owner of the private enterprise provides written undertakings or enters into a written agreement with other capital contributing members on receipt and employment of existing employees of the private enterprise.

2. Within five working days from the date of receipt of an application file, the business registration office shall consider and issue an enterprise registration certificate if all the conditions stipulated in clause 1 of this article are satisfied.

3. Within seven working days from the date of issuance of the enterprise registration certificate as stipulated in clause 2 of this article, the business registration office must provide a notice to relevant State agencies in accordance with article 34.1 of this Law, and concurrently, update the legal status of the enterprise on the national enterprise registration database.

#### **Article 200. Temporary suspension of business**

1. An enterprise may temporarily suspend its business but must notify the business registration office in writing of the point of time and period of temporary suspension or resumption of its business no later than fifteen (15) days before the date of temporary suspension or of resumption of its business. This provision shall apply in a case where the enterprise resumes its business prior to the notified time- limit.

2. The business registration office or a competent State agency shall require an enterprise to suspend temporarily its business in any line of business subject to conditions when it discovers that the enterprise fails to satisfy all of the conditions stipulated by law.

3. During the period of any temporary suspension of business, the enterprise must pay any outstanding taxes, must continue to pay other debts and must complete performance of contracts signed

with customers and employees, unless otherwise agreed by the enterprise, creditors, customers and employees.

### **Article 201. Cases of and conditions for dissolution of enterprises**

1. An enterprise shall be dissolved in the following cases:

(a) The duration of operation stipulated in the charter of the company expires without a decision to extend;

(b) As decided by the enterprise owner in the case of a private enterprise, by all unlimited liability partners in the case of a partnership, by the members' council or the company owner in the case of a limited liability company, or by the general meeting of shareholders in the case of a shareholding company;

(c) The company does not have the minimum number of members stipulated in this Law for a period of six consecutive months and does not conduct procedures for conversion of the form of enterprise;

(d) The enterprise registration certificate is revoked.

2. An enterprise is only allowed to be dissolved when it ensures it will pay all debts and other property obligations and is not in the process of resolution of a dispute at a court or arbitration agency. The related manager and the enterprise stipulated in clause 1(d) of this article are jointly responsible for the debts of the enterprise.

### **Article 202. Sequence and procedures for dissolution of enterprises**

Dissolution of an enterprise in the cases stipulated in clauses 1(a), 1(b) and 1(c) of article 201 of this Law shall be carried out in accordance with the following provisions:

1. A decision on dissolution of the enterprise shall be passed. The decision on dissolution of the enterprise must have the following main details:

(a) Name and address of the head office of the enterprise;

(b) Reasons for dissolution;

(c) Time-limit and procedures for discharging contracts and paying debts of the enterprise; time-limit for paying debts and discharging contracts shall not exceed six months from the date on which the decision on dissolution is passed;

(d) Plan for dealing with obligations arising from labour contracts;

(dd) Full name and signature of the legal representative of the enterprise.

2. The owner of a private enterprise, the members' council or company owner or the board of management shall directly organize the liquidation of assets of the enterprise, except where the establishment of a separate liquidation organization is stipulated by the charter of the company.

3. Within seven working days after being passed, the decision on dissolution and the minutes of the meeting must be sent to the business registration office, the tax office, and employees in the

enterprise, and must be published on the national enterprise registration information portal, and must be displayed publicly at the head office, branches and representative offices of the enterprise.

Where the enterprise has unpaid financial obligations, then the enterprise must send a plan on settlement of debts together with the decision on dissolution to creditors and persons having related interests and obligations. The notice shall include the name and address of the creditor; the amount of the debt, the time-limit, location and method of payment of such debt; the method and time-limit for dealing with complaints of creditors.

4. The business registration office must make an announcement of the status of the enterprise which is currently conducting procedures for dissolution on the national enterprise registration information portal immediately after receiving the decision on dissolution from the enterprise, and must publish the decision on dissolution and the plan on settlement of debts (if any) together with the announcement.

5. Debts of the enterprise shall be paid in the following order:

(a) Unpaid wages, retrenchment allowances, and social insurance in accordance with law and other benefits of employees pursuant to signed collective labour agreement and labour contracts.

(b) Tax liabilities;

(c) Other debts.

6. After payment of all debts and costs of the dissolution proceeding of the enterprise, the remainder shall be distributed to the owner of the private enterprise, members, shareholders or company owner in proportion to their ratio of ownership of shares of capital contribution or shares.

7. The legal representative of the enterprise shall send a request for dissolution to the business registration office within five working days from the date of payment of all debts of the enterprise.

8. The business registration office shall update the legal status of the enterprise on the national enterprise registration database if upon expiry of the period of one hundred and eighty (180) days from the date of receipt of the decision on dissolution as stipulated in clause 3 of this article the business registration office does not receive any opinion on the dissolution from the enterprise or any objection from related parties, or [and also] within five working days from the date of receipt of an application file for dissolution.

9. The Government shall provide detailed regulations on the sequence and procedures for dissolution of enterprises.

#### **Article 203. Dissolution of enterprises in the case of revocation of enterprise registration certificates or pursuant to decisions of courts**

Dissolution of an enterprise in the case stipulated in clause 1(d) of article 201 of this Law shall be carried out in accordance with the following sequence and procedures:

1. The business registration office must make an announcement of the status of the enterprise which is currently carrying out the procedures for dissolution on the national enterprise registration information portal at the same time as it issues a decision revoking the enterprise registration certificate or immediately after receipt of the effective decision on dissolution from a court. The business registration

office must publish the decision revoking the enterprise registration certificate or the decision of the court together with the announcement;

2. Within ten (10) days from the date of receipt of the decision revoking the enterprise registration certificate or the effective decision of the court, the enterprise must convene a meeting to make a decision on dissolution. The decision on dissolution and the copy of the decision revoking the enterprise registration certificate or the effective decision of the court must be sent to the business registration office, the tax office, and employees in the enterprise and must be publicly displayed at the head office and branches of the enterprise. Where the law requires publication on a newspaper, the decision on dissolution must be published on at least one written or electronic newspaper in three consecutive issues.

Where the enterprise have unpaid financial obligations, it must send a plan on settlement of debts together with the decision on dissolution of the enterprise to creditors and persons having related interests and obligations. The notice shall include the name and address of the creditor; the amount of the debt, the time-limit, location and method of payment of such debt; the method and time-limit for dealing with complaints of creditors.

3. The payment of debts of the enterprise shall be made in accordance with article 202.5 of this Law.

4. The legal representative of the enterprise shall send a request for dissolution to the business registration office within five working days from the date on which all debts of the enterprise are fully paid.

5. The business registration office shall update the legal status of the enterprise on the national enterprise registration database if upon expiry of the period of one hundred and eighty (180) days from the date of notification of the dissolution of the enterprise as stipulated in clause 1 of this article the business registration office does not receive any written objection from the related parties, or [and also] within five working days from the date of receipt of an application file for dissolution.

6. The manager of the company concerned must be personally responsible for any loss caused by the failure to implement or failure to implement correctly the provisions of this article.

#### **Article 204. Application files for dissolution of enterprises**

1. An application file for dissolution of an enterprise shall comprise the following documents:

- (a) Notice of dissolution of the enterprise;
- (b) Report on liquidation of assets of the enterprise; list of creditors and amount of debts paid, including full payment of tax liabilities and payment of social insurance contributions [and/or] [list of] employees after the decision on dissolution of the enterprise is made (if any);
- (c) Seal and certificate of registration of the specimen seal (if any);
- (d) Enterprise registration certificate.

2. Members of the board of management of a shareholding company, members of the members' council of a limited liability company, the company owner, the owner of a private enterprise, the director or general director, unlimited liability partners, or the legal representative of the enterprise is liable for the truthfulness and accuracy of the application file for dissolution of the enterprise.

3. If the application file for dissolution is inaccurate or contains false materials, then the persons referred to in clause 2 of this article shall be jointly liable to pay all unpaid debts, to pay unpaid tax debts, and for interests of employees which remain unresolved; and they shall be personally liable before the law for any consequences arising during a period of five years as from the date of lodging the application file for dissolution of the enterprise to the business registration office.

#### **Article 205. Prohibited activities as from date of decision on dissolution**

1. As from the date of the decision on dissolution of an enterprise, the enterprise and managers of the enterprise shall be strictly prohibited from conducting the following activities:

- (a) Concealing, or dispersing any asset;
- (b) Waiving or reducing the right to claim any debt;
- (c) Converting any unsecured debts into debts secured by assets of the enterprise;
- (d) Signing any new contract except where [the signing of a new contract] is for the purpose of dissolution of the enterprise;
- (dd) Pledging, mortgaging, donating, giving or leasing out any assets;
- (e) Terminating the performance of any contract which has taken effect;
- (g) Raising capital in any other forms.

2. Depending on the nature and seriousness of the breach, the individual in breach of clause 1 of this article may be subject to administrative penalties or criminal prosecution, or must make compensation if any loss or damage is caused.

#### **Article 206. Termination of operation of branches and representative offices**

1. A branch or representative office of an enterprise may terminate its operation pursuant to a decision of such enterprise or pursuant to a decision revoking the certificate of registration of operation of the branch or representative office made by a competent State agency.

2. An application file for termination of operation of a branch or representative office shall comprise the following documents:

- (a) Decision of the enterprise on termination of operation of the branch or representative office or decision of the competent State agency revoking the certificate of registration of operation of the branch or representative office;
- (b) List of creditors and amount of debts unpaid including tax debts of the branch and outstanding social insurance contributions;
- (c) List of employees and current corresponding interests of the employees;
- (d) Certificate of registration of the operation of the branch or representative office; (dd) Seal of the branch or representative office (if any).

3. The legal representative of the enterprise and the head of the branch or representative office which is being dissolved are jointly liable for the truthfulness and accuracy of the application file for termination of operation of the branch or representative office.

4. An enterprise whose branch has terminated its operation is responsible to perform all contracts, to pay all debts including tax debts of the branch, and to continue to employ the employees or to fully resolve the legal interests of the employees who have worked in the branch in accordance with law.

5. Within a time-limit of five working days from the date of receipt of a complete file for termination of operation of the branch as stipulated in clause 2 of this article, the business registration office shall update the legal status of the branch or representative office on the national enterprise registration database.

#### **Article 207. Bankruptcy of enterprises**

The bankruptcy of enterprises shall be carried out in accordance with the law on bankruptcy.

### **CHAPTER X**

#### **Organization of Implementation**

#### **Article 208. Responsibilities of State administrative agencies**

1. The Government shall exercise uniform State administration of enterprises.
2. Ministries and ministerial equivalent agencies are responsible before the Government for performance of assigned duties during State administration of enterprises.
3. Within the scope of assigned duties and powers, ministries and ministerial equivalent agencies shall direct professional agencies to periodically send the following information to business registration offices in the localities where head offices of enterprises are located:
  - a) Information about business licence, certificate of satisfaction of business conditions, practising certificate, certificate or written approval of business conditions issued to the enterprise and decisions imposing penalties for administrative breaches of the enterprise;
  - b) Information about operational status and tax payment status of the enterprise from tax reports of the enterprise;
  - c) Co-operation and sharing of information about operational status of the enterprise in order to strengthen State administration.
4. People's committees of provinces and cities under central authority shall exercise State administration of enterprises within their respective localities.
5. People's committees of provinces and cities under central authority are, within their scope of assigned duties and powers, responsible to direct subsidiary professional agencies and district people's committees to periodically send the information stipulated in clause 2 of this article to business registration offices in the localities where head offices of enterprises are located.
6. The Government shall provide detailed regulations on this article.

#### **Article 209. Business registration offices**

1. A business registration office has the following duties and powers:

- (a) To carry out enterprise registration and to issue enterprise registration certificates in accordance with law;
  - (b) To co-operate to establish and manage a national system of information on enterprise registration; to provide information to State agencies, organizations and individuals upon demand in accordance with law;
  - (c) To require enterprises to report on their compliance with the provisions of this Law when considered necessary; to monitor the performance of the reporting obligation by enterprises;
  - (d) To examine directly, or request competent State agencies to examine, enterprises with respect to the matters in application files for enterprise registration;
  - (dd) To be responsible for the validity of application files for enterprise registration and not to be responsible for breaches committed by enterprises before and after enterprise registration;
  - (e) To deal with breaches of the regulations on enterprise registration in accordance with law. To revoke enterprise registration certificates and to request enterprises carry out procedures for dissolution in accordance with this Law;
  - (g) To exercise other powers and perform other duties in accordance with this Law and other provisions of relevant laws.
2. The Government shall provide for the organizational system of business registration offices.

#### **Article 210. Dealing with breaches**

1. Agencies, organizations and individuals committing breaches of the provisions of this Law shall, depending on the nature and seriousness of the breach, be subject to disciplinary action or administrative penalty, or must pay compensation if any loss or damage is caused, and individuals may be subject to criminal prosecution in accordance with law.
2. The Government shall provide detailed regulations on penalties for administrative offences stipulated in this Law.

#### **Article 211. Revocation of enterprise registration certificates**

1. The enterprise registration certificate of an enterprise shall be revoked in the following cases:
  - (a) Content stipulated in the application file for enterprise registration is false;
  - (b) The enterprise is established by persons who are prohibited from establishing enterprises as stipulated in article 18.2 of this Law;
  - (c) The enterprise ceases its business activities for one year without notifying the business registration office and the tax office;
  - (d) The enterprise fails to send reports as stipulated in clause 1(c) of article 209 of this Law to the business registration office within six months from the date of expiry of the period for sending reports or from the date of written demand;
  - (dd) Other cases pursuant to decisions of courts.

2. The Government shall regulate the sequence and procedures for revocation of enterprise registration certificates.

**Article 212. Effectiveness**

1. This Law is of full force and effect as from 1 July 2015. The *Law on Enterprises* 60-2005-QH11 dated 29 November 2005 and the *Law on Amendment of and Addition to Article 170 of the Law on Enterprises* 37-2013-QH13 dated 20 June 2013 shall no longer be effective as from the effective date of this Law, except for the following cases:

(a) With respect to limited liability companies which are established prior to the effective date of this Law, the time-limit for capital contribution shall be as stipulated in their charters;

(b) Enterprises in which the State holds charter capital must implement re-structure in order to ensure compliance with articles 189.2 and 189.3 of this Law prior to 1 July 2017;

(c) Companies in which the State does not hold shares or any share of capital contribution and which implements capital contribution or purchase of shares prior to 1 July 2015 are not required to comply with article 189.2 of this Law but are not permitted to increase the ratio of cross ownership.

2. Business households which employ ten (10) or more employees on a regular basis must register for establishment of an enterprise to operate in accordance with the provisions of this Law. Small scale business households shall carry out business registration and operate in accordance with Government regulations.

3. Pursuant to the provisions of this Law, the Government shall provide detailed regulations on organization, management and operation of State owned enterprises directly serving national defence and security or in combination of economy and national defence and security.

**Article 213. Detailed regulations**

The Government shall provide detailed regulations on the articles and clauses assigned to it in this Law.

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*This Law was passed by Legislature XIII of the National Assembly of the Socialist Republic of Vietnam at its 8th session on 26 November 2014.*

**Chairman of the National Assembly**

**NGUYEN SINH HUNG**