

*Law No. 69/2014/QH13*

*Hanoi, November 26, 2014*

**LAW**

**ON MANAGEMENT AND UTILIZATION OF STATE CAPITAL INVESTED IN THE  
ENTERPRISE'S MANUFACTURING AND BUSINESS ACTIVITIES**

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

*The National Assembly hereby promulgates the Law on management and utilization of state capital invested in the enterprise's manufacturing and business activities.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of application**

This Law shall govern the investment of state capital in an enterprise; the management and utilization of state investments in an enterprise's manufacturing and business activities as well as the supervision of investment, management and utilization of state capital used as financing for an enterprise.

**Article 2. Applicable entities**

1. Representatives of state ownership.
2. Enterprises of which 100% charter capital is held by the State shall comprise:
  - a) Single-member limited liability companies whose charter capital is wholly owned by the State are the parent companies of state-owned economic groups, state-owned corporations, and those that belong to parent - subsidiary group;
  - b) Independent single-member limited companies whose charter capital is wholly owned by the State.
3. Representative of a portion of state capital used as financing for joint-stock companies and multiple-member limited liability companies.

4. Other regulatory bodies, organizations and individuals relating to the investment, management and utilization of state capital used as financing for an enterprise.

### **Article 3. Interpretation of terms**

In this Law, the following terms shall be construed:

1. *The owner's representative agency* refers to regulatory bodies or organizations that the Government has assigned to acquire the rights and become obligated to perform the duties of the representative of state ownership in the enterprise established under its decision, or to manage and accept the rights and assume the duties to a portion of the state capital invested in joint-stock companies and multiple-member limited liability companies.

2. *Financial regulatory authorities* consist of the Ministry of Finance and the Department of Finance located in centrally-affiliated cities and provinces.

3. *Investment of state capital in an enterprise* refers to the use of such capital assets allocated from the State budget or those derived from funds managed by the State for the purpose of investing in financing for such enterprise.

4. *Representative of direct ownership in an enterprise of which 100% charter capital is held by the State (hereinafter referred to as representative of direct ownership)* refers to the person who competent authorities have appointed to the Board of Members or as the President of that enterprise in order to acquire the rights and perform the duties of a representative of state ownership retained in such enterprise.

5. *Representative of the capital share of an enterprise of which 100% charter capital is held by the State in a joint-stock company or limited liability company (hereinafter referred to as the representative of an enterprise's capital share)* refers to the person delegated in writing by that enterprise in order to accept the rights and assume the duties of a representative of such enterprise's capital share invested in such a joint-stock company or limited liability company.

6. *Representative of the capital share that the State invests in a joint-stock company or multiple-member limited liability company (hereinafter referred to as representative of state capital share)* refers to the person delegated in writing by the owner's representative agency in order to accept the rights and assume the duties of a representative of such enterprise's capital share invested in such a joint-stock company or limited liability company.

7. *Management of an enterprise* comprises the Chairperson and membership of the Board of Members, the President, General Director or Director, Deputy General Director or Vice Director, Chief Accountant of that enterprise.

8. *State capital used as financing for an enterprise (hereinafter referred to as state capital in an enterprise or enterprises)* consist of capital assets and grants derived from the state budget; the

enterprise's capital coming from the fund for investment, development, assistance in organizing an enterprise; loans guaranteed by the Government, and loans granted by the State for the purpose of investment and development as well as other types of capital asset invested by the State in an enterprise.

9. *Capital share of the enterprise of which 100% charter capital is held by the State* includes the equity capital of such enterprise and capital mobilized by that enterprise.

#### **Article 4. Objectives for investment, management and utilization of state capital in an enterprise**

1. Orientate, regulate and stabilize strategic macroeconomic matters for respective periods, and promote the socialist-oriented socio-economic growth.
2. Reform and improve investment, management and utilization of state capital in an enterprise.
3. Enhance the efficiency in manufacturing and business activities of an enterprise.

#### **Article 5. Principles of investment, management and utilization of state capital in an enterprise**

1. Comply with laws on investment, management and utilization of state capital in an enterprise.
2. Conform to the strategy and proposal for socio-economic growth as well as the planning for sector development.
3. Make state capital investment in creation and maintenance of important stages and processes of the enterprise getting involved in several sectors or domains that other economic entities are not involved in or of which 100% charter capital is held by the State, and sustain the proportion of stocks and paid-in capital in accordance with regulations laid down in Article 10 and 16 hereof.
4. The owner's representative agency and regulatory bodies shall not directly get involved in manufacturing and business activities of an enterprise, and administrative work of the enterprise's management.
5. Management of state investments in an enterprise must be carried out through the representative of direct ownership or of state capital share; ensure that manufacturing and business activities of that enterprise adhere to principles of market, equality, cooperation and lawful competition.
6. The owner's representative agency, representative of direct ownership and representative of state capital share shall be responsible for managing and using state capital in an enterprise, ensure the efficiency, safety and promote the value of state investments in that enterprise;

prevent and combat mismanagement, misuse and loss of capital assets of the State and that enterprise.

7. Public disclosure and transparency in investment, management and utilization of state capital invested in an enterprise must be respected.

8. It must comply with the international agreements to which the Socialist Republic of Vietnam is a signatory.

#### **Article 6. Form of state investment in an enterprise**

1. Make state investment in establishment of the enterprise of which 100% charter capital is held by the State.

2. Make state investment in supplementation to the charter capital of the existing enterprise of which 100% charter capital is held by the State.

3. Make supplementary state investment for the purpose of sustaining the expected ratio of state shares and paid-in capital in joint-stock companies and multiple-member limited liability companies.

4. Make state investment in repurchase of a part or the whole of an enterprise.

#### **Article 7. Representative of state ownership**

1. The Government shall unanimously accept the rights and perform the duties of a representative of state ownership for the investment of state capital in an enterprise and the management of state capital in that enterprise in accordance with regulations laid down in Article 40 hereof.

2. The Prime Minister and the owner's representative agency shall acquire the rights and become obligated to perform the duties of the representative of state ownership in the enterprise established under their decision, or shall be assigned to manage and accept the rights and assume the duties to a share of the state capital invested in joint-stock companies and multiple-member limited liability companies in accordance with regulations set forth in Article 41, 42 and 43 hereof as well as other relevant laws.

3. The representative of direct ownership shall acquire the rights and become obligated to perform the duties of the representative of state ownership in an enterprise in accordance with regulations set out in Article 44 hereof and relevant laws.

#### **Article 8. State administration of the investment, management and utilization of state capital in an enterprise**

1. Introduce and implement the legislative documents on investment, management and utilization of state capital retained in an enterprise.
2. Draw up the strategy for corporate investment and development in conformity with the strategy for socio-economic development and the planning for sector development.
3. Set up and store basic information about an enterprise; monitor, supervise corporate activities.
4. Release the list and modality of financial management and incentive policy for public products and services for respective periods.
5. Supervise, examine and inspect the compliance of an enterprise with governmental policies and laws; handle any complaints and denunciations; offer rewards and handle violations.

**Article 9. Prohibited acts of the investment, management and utilization of state capital in an enterprise**

1. Make a decision to invest state capital assets in an enterprise, which falls outside of authority, scope, process and procedure.
2. Influence the management and utilization of capital assets of the enterprise of which 100% charter capital is held by the State, which stays beyond their delegated authority.
3. Falsely accept the rights and perform the duties of a representative of state ownership for the investment of state capital assets in an enterprise.
4. Falsely implement regulations on management and utilization of capital assets of the enterprise of which 100% charter capital is held by the State as well as management of state investments in joint-stock companies and multiple-member limited liability companies.
5. Monitor, examine and inspect the enterprise in violation of assigned tasks, duties or delegated powers, which must conform to legal regulations.
6. Provide information and report in incorrect, insufficient and untimely manner as prescribed in laws.
7. Reveal and use illegal information that an enterprises or regulatory body provides.

**Chapter II**

**INVESTMENT OF STATE CAPITAL IN AN ENTERPRISE**

**Section 1: STATE INVESTMENT IN ESTABLISHMENT OF THE ENTERPRISE OF WHICH 100% CHARTER CAPITAL IS HELD BY THE STATE**

## **Article 10. Scope of state investment in business establishment**

1. State investment in business establishment shall be made within the following scopes:

- a) Enterprise providing basic public products and services;
- b) Enterprises operating in the direct auxiliary sector for the purpose of national defense and security;
- c) Enterprises operating in the natural monopoly sector;
- d) Hi-tech enterprises, and those making large-scale investment in and serving as the driving force behind the fast growth of different industries, sectors as well as the entire economy.

2. The Government shall provide specific regulations on state investment in business establishment and order placement mechanism of the State, applicable to the enterprise that plays its significant roles in regulating the national macro-economy and maintaining the social security in accordance with provisions laid down in Clause 1 of this Article.

## **Article 11. Decision-making authority over state investment in business establishment**

1. The Prime Minister shall be vested with the authority to grant a decision to make state investment in business establishment as follows:

- a) Enterprises having operating capital acquired from the implementation of national important projects approved under the decision on investment policies granted by the National Assembly;
- b) Parent companies of state-owned economic corporations and enterprises specializing in the investment and trading of state capital.

2. The owner's representative agency shall have the authority to decide to invest state capital in establishment of enterprises which are not governed by regulations enshrined in Clause 1 of this Article.

3. In case state investment in business establishment can meet requirements the same as those applied to national important projects, the Prime Minister shall grant an investment decision after the National Assembly's consent to investment policies.

## **Article 12. Procedure for state investment in business establishment**

1. The owner's representative agency shall prepare the proposal for business establishment. The proposal must comprise the main information as follows:

- a) Objectives and necessity for business establishment;
- b) Name, organization model and operational time; main scope of business;

- c) Total investment sum; charter capital; mobilized capital sources;
  - d) Assessment of socio-economic impacts caused by the business establishment upon the planning and proposal for development of sectors, domains and economic regions;
  - dd) Economic and social efficiency.
2. The proposal for business establishment must be evaluated by the competent authorities.
  3. In respect of business establishment stipulated in Clause 1 Article 11 hereof, the owner's representative agency shall submit their proposal to the Prime Minister for consideration and establishment decision.
  4. In respect of business establishment stipulated in Clause 2 Article 11 hereof:
    - a) The owner's representative agency shall submit the proposal for business establishment to the Prime Minister.
    - b) The Prime Minister shall consider and decide to approve the intention to establish an enterprise;
    - c) The owner's representative agency shall decide to establish an enterprise.
  5. The Government shall adopt specific regulations on procedures for state investment in business establishment.

**Section 2: SUPPLEMENTARY INVESTMENT IN THE CHARTER CAPITAL OF  
EXISTING ENTERPRISES OF WHICH 100% CHARTER CAPITAL IS HELD BY THE  
STATE**

**Article 13. Scope of supplementary investment in the charter capital of an existing enterprise**

1. Supplementary investment in charter capital shall be applied to enterprises specified in the cases stipulated in Clause 1 Article 10 hereof and classified as one of the cases stipulated in Clause 2 of this Article.
2. Cases in which supplementary investment in charter capital takes effect shall include:
  - a) Enterprises operating in an efficient manner but short of charter capital for their core business after obtaining the approval granted by the competent authorities;
  - b) Enterprises operating in the direct auxiliary sector for the purpose of national defense and security, but short of charter capital for the purpose of performing tasks assigned by the State.

**Article 14. Decision-making authority over supplementary investment in charter capital for an existing enterprise**

1. The Prime Minister shall grant the decision to make supplementary investment in the charter capital of the enterprise established under his establishment decision.
2. The owner's representative agency shall decide to make supplementary investment in the charter capital of the enterprise established under their establishment decision or managed within their delegated authority in accordance with regulations laid down in this Law, except for those stipulated in Clause 1 of this Article.
3. In case the amount of supplementary investment in the charter capital of an existing enterprise is equivalent to the amount of operating capital of national important projects, the Prime Minister shall grant the decision on such supplementation after obtaining the National Assembly's consent to investment policies.

**Article 15. Procedure for supplementary investment in the charter capital of an existing enterprise**

1. The enterprise shall set up the plan for supplementary investment in charter capital. Such plan must consist of the major contents as follows:
  - a) Evaluate financial status and business outcome of the enterprise;
  - b) Objective, importance, economic and social efficiency of such supplementation to charter capital;
  - c) Determination of charter capital after capital supplementation.
2. The enterprise shall submit the plan for supplementary investment in charter capital to the owner's representative agency.
3. The owner's representative agency shall preside over and cooperate with regulatory finance bodies of the same level in carrying out the evaluation of such plan.
4. In respect of supplementary investment in charter capital stipulated in Clause 1 Article 14 hereof, the owner's representative agency shall submit their plan for such supplementation to the Prime Minister for his consideration and decision.
5. In respect of supplementary investment in charter capital stipulated in Clause 2 Article 14 hereof:
  - a) The owner's representative agency shall submit the plan for supplementary investment in charter capital;



- b) The Prime Minister shall consider and decide to approve the intention to make supplementary investment in charter capital;
  - c) The owner's representative agency shall decide to make supplementary investment in charter capital.
6. The Government shall adopt specific regulations on evaluation criteria for outcome, necessary process of supplementary investment in charter capital of that existing enterprise.

### **Section 3: STATE SUPPLEMENTARY INVESTMENT IN JOINT-STOCK COMPANIES AND MULTIPLE-MEMBER LIMITED LIABILITY COMPANIES**

#### **Article 16. Scope of state supplementary investment in joint-stock companies and multiple-member limited liability companies**

1. The investment of state capital in supplement to charter capital for the purpose of sustaining the expected ratio of state shares and paid-in capital in joint-stock companies and multiple-member limited liability companies shall be carried out in two following cases:
  - a) Be incapable of attracting Vietnamese and foreign investors in enterprises providing basic public products and services;
  - b) Realize the necessity of maintaining that ratio for the purpose of national defense and security.
2. The Government shall adopt specific regulations on supplementary state investment for the purpose of sustaining the expected ratio of state shares and paid-in capital in joint-stock companies and multiple-member limited liability companies as stipulated in Clause 1 of this Article.

#### **Article 17. Decision-making authority over supplementary investment of state capital in joint-stock companies and multiple-member limited liability companies**

1. Authority to grant a decision to make supplementary investment of state capital in joint-stock companies and multiple-member limited liability companies transformed from the enterprise established under his establishment decision.
2. The owner's representative agency shall decide to make supplementary investment of state capital in joint-stock companies and multiple-member transformed from the enterprise established under his establishment decision or managed within his delegated authority in conformity with this Law, except for those stipulated in Clause 1 of this Article.
3. In case the amount of state supplementary capital in joint-stock companies and multiple-member limited liability companies is equivalent to the amount of operating capital of national

important projects, the Prime Minister shall grant the decision on such supplementation after obtaining the National Assembly's consent to investment policies.

**Article 18. Procedure and process for supplementary investment of state capital in joint-stock companies and multiple-member limited liability companies**

1. The representative of state capital share shall report the plan to make supplementary investment of state capital for the purpose of sustaining the expected ratio of state shares and paid-in capital in joint-stock companies and multiple-member limited liability companies. Such plan must consist of the major contents as follows:

- a) Evaluate the financial status, operating and business outcome of these joint-stock companies and multiple-member limited liability companies;
- b) Plan for an increase in the charter capital of joint-stock companies and multiple-member limited liability companies;
- c) Objective, importance, economic and social efficiency of such supplementary investment;
- d) The amount of supplementary investments used for sustaining the expected ratio of state shares and paid-in capital.

2. The owner's representative agency shall preside over and cooperate with finance agencies of the same level in carrying out the assessment of supplementary investment of state capital in joint-stock companies and multiple-member transformed from the enterprise established under the Prime Minister's establishment decision or their own establishment or managed within their delegated authority.

3. In respect of supplementary investment of state capital in joint-stock companies and multiple-member limited liability companies as prescribed in Clause 1 Article 17 hereof, the owner's representative agency shall submit their plan therefor to the Prime Minister for his consideration and decision.

4. In respect of supplementary investment of state capital in joint-stock companies and multiple-member limited liability companies as prescribed in Clause 2 Article 17 hereof, the owner's representative agency shall be vested with the authority to consider and make their decision on this matter.

5. The Government shall introduce specific regulations on procedure and process for supplementary investment of state capital in joint-stock companies and multiple-member limited liability companies.

**Section 4: INVESTMENT OF STATE CAPITAL IN THE REPURCHASE OF A PART  
OR THE WHOLE OF AN ENTERPRISE**

**Article 19: Scope of investment of state capital in the repurchase of a part or the whole of an enterprise**

1. Investment of state capital in the repurchase of a part or the whole of an enterprise shall be made when the following cases occur:

- a) Restructure the economy;
- b) Directly serve the purpose of national defense and security;
- c) Provide basic public products and services for the society.

2. The investment of state capital used for the repurchase of a part or the whole of an enterprise as stipulated in Clause 1 of this Article must conform to the strategy and proposal for socio-economic growth as well as the planning for sector development for respective periods.

**Article 20: Decision-making authority over investment of state capital invested in repurchase of a part or the whole of an enterprise**

1. The Prime Minister shall have the authority to grant the decision to make investment of state capital in the repurchase of a part or the whole of an enterprise that adhere to criteria the same as those for national important projects and Class-A projects in accordance with the Law on Public Investment.

2. The owner's representative agency shall have the authority to grant the decision to make investment of state capital in the repurchase of a part or the whole of an enterprise that adhere to criteria the same as those for Class-B and Class-C projects in accordance with the Law on Public Investment.

3. The Prime Minister shall have the authority to grant the decision to make investment of state capital after obtaining the National Assembly's approval for investment policy in the following cases:

- a) Repurchase a part or the whole of an enterprise of which the investment capital is equivalent to that of national important projects;
- b) Repurchase the whole of enterprises that adhere to criteria similar to the ones for national important projects.

**Article 21: Procedure and process for investment of state capital in repurchase of a part or the whole of an enterprise**

1. The owner's representative agency shall prepare the plan to make investment of state capital in repurchase of a part or the whole of an enterprise. Such plan must consist of the major contents as follows:

- a) Evaluate financial status and business outcome of that enterprise;
- b) Objective, necessity, economic and social efficiency of such investment in repurchase of a part or the whole of that enterprise;
- c) Investment capital amount.

2. The owner's representative agency shall preside over and cooperate with finance bodies of the same level in carrying out the assessment of the plan to make investment of state capital in repurchase of a part or the whole of an enterprise.

3. In respect of repurchase of a part or the whole of an enterprise as stipulated in Clause 1 Article 20 hereof, the owner's representative agency shall submit the aforementioned plan to the Prime Minister for his consideration and decision.

4. In respect of repurchase of a part or the whole of an enterprise as stipulated in Clause 2 Article 20 hereof, the owner's representative agency shall consider and make a decision on the plan.

5. The Government shall adopt specific regulations on procedure and process for investment of state capital in repurchase of a part or the whole of an enterprise.

### **Chapter III**

#### **MANAGEMENT AND UTILIZATION OF CAPITAL AND ASSETS IN THE ENTERPRISE OF WHICH 100% CHARTER CAPITAL IS HELD BY THE STATE**

##### **Article 22. Charter capital**

1. Rules for determining the charter capital:

- a) The amount of charter capital must not be lower than the amount of legal capital required for manufacturing activities and business scope in accordance with laws;
- b) The amount of charter capital must correspond to the size and output designed for the enterprise's manufacturing activities and business scope;
- c) The amount of charter capital must be appropriate for the strategy and proposal for the enterprise's investment and development, and core business lines of the enterprise approved by the competent authority;

- d) The amount of charter capital must accord with the manufacturing and business plan.
- 2. The owner's representative agency shall assume responsibility for approving the charter capital and investing a sufficient amount of charter capital in an enterprise as prescribed in regulations laid down in Clause 1 of this Article.
- 3. Investments in charter capital for the purpose of business establishment and supplementary investments in the charter capital of an existing enterprise shall be funded by sources of state capital acquired by such enterprise.

### **Article 23. Capital mobilization**

- 1. Enterprises have the right to take out loans granted by credit institutions, financial institutions, any organization or individual outside of such enterprises, and employees; issue corporate bonds and other types of capital mobilization permitted by laws.
- 2. Principles of capital mobilization:
  - a) This plan must rely on the 5-year strategy and plan for investment and development, and annual plan for production and business of an enterprise;
  - b) The plan for capital mobilization must ensure the solvency;
  - c) The approver of capital mobilization plan must bear full responsibility for carrying out supervision and inspection to ensure that the amount of mobilized capital is used for the right purpose and in an efficient manner;
  - d) Capital mobilization shall be performed in the form of a binding contract between domestic organizations and individuals as stipulated by laws; in case loans are derived from the State's investment and development credit, legal regulations on investment and development credits and other relevant laws must be observed;
  - dd) Capital mobilization of foreign organizations and individuals, borrowing or issuance of Government-guaranteed bonds shall comply with legal regulations on public debt management and other relevant laws;
  - e) Capital mobilization performed in the form of corporate bond issuance shall comply with laws.
- 3. Authority over capital mobilization:
  - a) Board of Members or the President of an enterprise must decide on the capital mobilization plan for each project that requires the mobilization rate of less than 50% of equity capital recorded in quarterly or yearly financial statements at the latest period compared with the date on which the capital mobilization occurs, but is restricted to the amount of mobilization capital that

does not exceed the amount of capital mobilization for Class-B projects in accordance with the Law on Public Investment.

The mobilization of capital used for production and business activities must ensure that total liabilities, inclusive of pledges given by the subsidiary companies in accordance with Clause 4 of this Article, are not allowed to be three times more than total equity capital recorded in quarterly or yearly financial statements of the enterprise at the latest period compared with the date on which the capital mobilization occurs.

Board of Members or the President of that enterprise must delegate the General Director or Director to make a decision on the capital mobilization plan in accordance with regulations laid down in the charter or internal financial rules of such enterprise;

b) In case the capital is mobilized in excess of the permitted amount stipulated at Point a of this Clause, or from foreign organizations and individuals, the Board of Members or the President of the enterprise must send a report to the owner's representative agency for their consideration and approval.

4. Enterprises are entitled to offer pledges for the subsidiary company's loans at credit institutions behind the following principles:

a) Total value of pledges on loans, given by a subsidiary company of which 100% charter capital is held by the enterprise, shall not be permitted to exceed the equity capital of such subsidiary company with reference to the quarterly or yearly financial statement released at the latest period compared with the date on which the offer of such pledges takes place;

b) Total value of pledges on loans, given by a subsidiary company of which 50% charter capital is held by the enterprise shall not be permitted to exceed the actual value of paid-in capital of the enterprise recorded at the date on which the offer of such pledges occurs;

5. In case that enterprise use mobilized capital to serve the wrong purpose, or the capital is mobilized in excess of the permitted amount, which is not approved by the competent authority, the owner's representative agency shall consider, make a decision or send a report to the competent authority to identify which responsibility the Board of Members or the President of that enterprise must bear in accordance with legal regulations.

#### **Article 24. Investment, construction, purchase and sale of fixed assets**

1. Authority over investment, construction, purchase and sale of fixed assets in an enterprise:

a) Given the 5-year strategy and plan for investment and development as well as the annual plan for production and business of that enterprise, the Board of Members or the President of that enterprise shall have decision-making authority over each project for investment, construction, purchase and sale of fixed assets that are worth less than 50% of equity capital recorded in

quarterly or yearly financial statements of such enterprise at the latest period compared with the date on which the decision on such projects is obtained, but are not permitted to exceed the amount of capital invested in Class-B projects in accordance with regulations laid down in the Law on Public Investment.

The Board of Members or the President of that enterprise shall delegate the General Director or Director to make a decision on projects for investment, construction, purchase, sale of fixed assets in accordance with regulations laid down in the charter or internal financial rules of such enterprise;

b) In respect of projects for investment, construction, purchase and sale of fixed assets of which the value is greater than the amount stipulated at Point a of this Clause, the Board of Members or the President of the enterprise shall submit a report to the owner's representative agency for their consideration and approval.

2. Procedures and processes for investment, construction, purchase and sale of fixed assets shall comply with legal regulations.

3. The decision maker of projects for investment, construction, purchase and sale of fixed assets must bear legal responsibility for granting decisions beyond their delegated authority or for any fixed asset therefrom that is unusable or may be used in an insufficient manner.

#### **Article 25. Management and utilization of fixed assets**

1. The enterprise can set, introduce and implement the rules and regulations on management and utilization of fixed assets.

2. The enterprise shall be vested the right to lease, mortgage and pawn fixed assets on principle that the capital derived therefrom must be preserved, developed and used in an efficient manner; sell or dispose of fixed assets that have been damaged, outdated, or have not been being used for some reasons, or have been used in an efficient manner to serve the purpose of capital recovery.

#### **Article 26. Management of receivables**

1. The enterprise shall manage receivables as follows:

a) Formulate, issue and implement the rules and regulations on management of receivables. The rules and regulations on management of receivables must identify responsibilities that a collective or individual must assume when carrying out the debt management and collection;

b) Manage receivables, depending on equivalent types of receivables;

c) Frequently classify debts and expedite debt collection.

2. The enterprise shall be entitled to sell overdue receivables, receivables difficult to collect, and uncollectible debts. The enterprise shall be only entitled to sell debts to economic institutions licensed to trade debts, and shall not be allowed to directly sell debts to indebted entities. The selling price shall be agreed by contracting parties and these parties shall be also held responsible for their decisions.

3. Where debt management possibly leads to losses on the equity capital, or debt sale results in the enterprise's losses, capital loss, insolvency, dissolution or bankruptcy, the Board of Members or the President of the enterprise, or related persons, must make up for such losses and, shall be subject to penalties under the legal regulations and the enterprise's charter, depending on the nature and severity of violations.

### **Article 27. Management of payables**

1. The enterprise shall manage payables as follows:

a) Formulate, issue and implement the rules and regulations on management of payables. The rules and regulations on management of payables must identify responsibilities that a collective or individual must assume when carrying out the monitoring, collation, confirmation and payment of debts;

b) Monitor payables, depending on different types of payables; frequently classify debts; design the plan for debt repayment, cash flow balancing, which serves the purpose of debt repayment; make the debt repayment by the due date.

2. The Board of Members or the President of the enterprise, the General Director or Director shall be responsible for regularly considering, assessing and analyzing the debt repayment capability of the enterprise, early detecting difficulty in debt repayment in order to take remedial measures on time and prevent any overdue debts.

3. Where debt management possibly leads to overdue debts or uncollectible debts, depending on the nature and severity of violations, the Board of Members or the President of the enterprise, or related persons, must make up for losses and, shall be subject to penalties under the legal regulations and the enterprise's charter.

### **Article 28. External investment of the enterprise**

1. Utilization of capital, assets and land title of the enterprise as external investments must conform to regulations enshrined herein, the law on investment, legislation on land and other related legal regulations; 5-year strategy and plan for investment and development, and annual plan for production and trading of the enterprise.

2. Type of external investment of the enterprise:



- a) Contribute capital to set up joint-stock companies and limited liability companies; make capital contribution through business cooperation contract without forming a new legal status;
- b) Purchase stocks of joint-stock companies, and purchase a portion of contributed capital of limited liability companies and partnerships;
- c) Purchase the whole of other enterprises;
- d) Purchase bonds or government bonds.

3. Cases in which the external investment is prohibited shall include:

- a) Contribute capital, purchase stocks, or the whole of other enterprises of which the manager or representative is the spouse, natural parent, foster parent, natural or adopted son or daughter, sibling or sibling-in-law of the Chairperson and members of the Board of Members, the President, Auditor, General Director or Director, Deputy Director General or Vice Director and Chief Accountant of that enterprise;
- b) Contribute capital to subsidiary companies for the purpose of setting up joint-stock companies and limited liability companies or executing the business cooperation contract.

4. Decision-making authority over the enterprise's external investment:

- a) The Board of Members or the President of that enterprise shall have decision-making authority over each project for external investment that are worth less than 50% of equity capital recorded in quarterly or yearly financial statements of such enterprise at the latest period compared with the date on which the decision on such project is obtained, but are not permitted to exceed the amount of capital invested in Class-B projects in accordance with regulations laid down in the Law on Public Investment.

The Board of Members or the President of that enterprise shall delegate its General Director or Director to make a decision on external investment projects in accordance with regulations enshrined in the charter or internal financial rules of such enterprise;

- b) In case the enterprise is running external investment projects of which the value is greater than the amount stipulated at Point a of this Clause, venture projects funded by the enterprise and foreign investors in Vietnam or those developed by means of making investment in other enterprises to serve the purpose of providing public products and services, the Board of Members or the President of the enterprise shall submit a report to the owner's representative agency for its consideration and approval.

**Article 29. Outward investment of the enterprise**

1. Utilization of capital or assets of the enterprise for the purpose of making outward investments must comply with provisions enshrined herein, regulations on investment, foreign exchange management as well as other relevant laws.

2. The Board of Members or the President of the enterprise shall submit a report to the owner's representative agency for their consideration and decision on the intention to carry out the outward investment projects.

In case these projects are subject to the consent to investment intention from the National Assembly within its delegated decision-making authority, the Prime Minister shall rely on such consent to make his decision on outward investment; in case these projects are subject to the consent to investment intention from the Prime Minister within his delegated decision-making authority, the owner's representative agency shall rely on such consent to make its decision on outward investment.

3. Responsibility of the Board of Members or the President of the enterprise:

a) Ensure that outward investment projects are likely to achieve the pre-determined aim, prove the efficiency and take all potential risks or threats into account, all of which shall be submitted to the owner's representative agency for its consideration and approval;

b) Issue the operation regulations, and manage, utilize capital and assets of the enterprise invested in overseas countries, which must comply with the governing laws enforced in the host country and pay close attention to strictly managing and preventing any loss on such capital and assets;

c) Regularly supervise, assess and assume their responsibility for the efficiency in the enterprise's outward investment activities;

d) Submit a periodic report every 06 months to the owner's representative agency on the progress in executing projects under development, and on the investment efficiency that such investment projects may achieve;

dd) Timely report and propose solutions to any difficulty that can cause severe impacts on the enterprise's outward investment activities to the owner's representative agency;

e) Remittance of profits, other incomes and capital divestment upon completion of these projects from overseas countries to home countries, or continuation of such outward investment projects shall conform to the charter, financial rules of the enterprise, provisions enshrined in this Law, and legislation on investment and other relevant laws.

**Article 30. The enterprise's management of subsidiary companies of which 100% charter capital and paid-in capital in joint-stock companies and limited liability companies are held by that enterprise**

1. With regard to subsidiary companies of which 100% charter capital is held by the enterprise, the enterprise shall manage them in the following manners

a) Make a decision on establishment and charter capital when establishing such subsidiary companies, objectives, tasks and business scope, and possible adjustments to the charter capital during their operations, restructuring, ownership transfer, dissolution and petition for bankruptcy;

b) Issue the financial rules of these subsidiary companies;

c) Decide on policies on appointing, reappointing, dismissing, commending, rewarding and imposing penalties on the Chairperson and members of the Board of Members or the President, General Director or Director, Auditor of subsidiary companies;

d) Approve the 5-year strategy and plan for investment and development, and annual plan for production and business of these subsidiary companies;

dd) Approve and revise the charter of these subsidiary companies;

e) Approve the capital mobilization plan, projects for investment, construction, purchase and sale of fixed assets that either are worth more than 50% of equity capital recorded in quarterly or yearly financial statements of these subsidiary companies at the latest period compared with the capital mobilization period, or else equal the rate lower than the one stipulated in their charter;

g) Approve financial statements, distribute profits and set up annual funds at these subsidiary companies.

2. With regard to the enterprise's paid-in capital invested in joint-stock companies and multiple-member limited liability companies, it shall be managed in the following manners:

a) Decide or request the competent management to decide on an increase or decrease in capital or capital divestment or disposal of the rights to purchase or contribute capital from/to joint-stock companies and multiple-member limited liability companies in accordance with legal regulations and the charter of the enterprise;

b) Adopt regulations on requirements, appointment, dismissal, commendation, reward and punitive actions, and decide on salary, wage, allowance, bonus and other benefits that the representative of the enterprise's capital share is entitled to in accordance with regulations laid down in Article 46, 47, 49 and 50 hereof;

c) Assign the representative of the enterprise's capital share with the task of protecting the enterprise's lawful rights and interests in joint-stock companies and multiple-member limited liability companies;

d) Assign the representative of the enterprise's capital share to request joint-stock companies and multiple-member limited liability companies to transfer distributable profits and dividends or divest invested capital to the enterprise; monitor the divestment of invested capital and collection of distributable profits and dividends;

dd) Request the representative of the enterprise's capital share to report how the representative exercises their powers and performs their tasks to orientate enterprises of which stocks and paid-in capital shares make up more than 50% of charter capital in order to reach expected objectives and conform to the strategy of the enterprise;

e) Request the representative of the enterprise's capital share to make periodic or on-demand reports on financial status, manufacturing and business performance of joint-stock companies and multiple-member limited liability companies;

g) Examine and manage the performance of the representative of the enterprise's capital share in order to prevent and handle any of the representative's mistakes or faults.

### **Article 31. Transfer of invested capital out of the enterprise**

#### 1. Principles of invested capital transfer:

a) Comply with legal regulations on enterprises, securities and other relevant laws;

b) Comprehensively mirror the actual value of the enterprise, inclusive of the value of land title in accordance with the law on land;

c) Stick to the principles of market, disclosure and transparency.

#### 2. Modalities of invested capital transfer:

a) Transfer of the enterprise's invested capital in limited liability companies shall conform to legal regulations on enterprises;

b) Transfer of the enterprise's invested capital in joint-stock companies whose stocks are listed on the stock exchange market shall conform to legal regulations on securities;

c) Transfer of the enterprise's invested capital in joint-stock companies whose stocks have yet to be listed on the stock exchange market shall be carried out through the open auction. In case the open auction is not successful, the competitive bidding shall be in place. In case the competitive bidding is not successful, the method agreed by interested parties shall be in place.

3. The Board of Members or the President of the enterprise shall be vested with the decision-making authority over transfer of the enterprise's invested capital in joint-stock companies and limited liability companies after obtaining the consent to investment intention from the owner's representative agency. In case the transferred value stays lower than the book value after making

up or deducting provisions for any loss on invested capital, the Board of Members or the President of a company shall submit a report to the owner's representative agency for their consideration and decision.

### **Article 32. Salary and bonus paid to employees**

1. Principles of determining employee's salary and bonus:

- a) Comply with legal regulations on employment;
- b) Conform to agreements specified in employment contracts;
- c) Adhere to the productivity and efficiency of employees.

2. Bonuses for employees shall be determined on the basis of their productivity and significant contribution, and shall be funded by the enterprise's after-tax profit. The Board of Members or the President of the enterprise shall issue the scheme for employee rewards.

### **Article 33. Salary, remuneration and bonus paid to the enterprise's managers**

1. Principles of determining the salary and remuneration paid to the enterprise's managers appointed by the competent management:

- a) Comply with legal regulations on employment, officials and public officers;
- b) Rely on the annual manufacturing and business outcome of the enterprise;
- c) Adhere to the performance of such managers; remuneration paid to part-time managers shall be determined by workload and working time but is restricted to less than 20% of salary paid to full-time managers of the enterprise.

2. Bonuses for the enterprise's managers shall be approved by the owner's representative agency on the basis of the efficiency in manufacturing and business activities, enterprise rating, performance of managers, and shall be extracted from the enterprise's after-tax profit.

### **Article 34. Principles of the enterprise's after-tax profit distribution**

1. Set aside less than 30% of after-tax profit used for the purpose of developing core business sectors of the enterprise.

2. Set aside a part of the enterprise's after-tax profit to establish the reward and welfare fund for employees and bonus fund for the enterprise's managers, auditors on the basis of efficiency in the enterprise's operating activities and performance of tasks assigned by the State.

3. The State shall collect the remaining portion of after-tax profits after setting up the above-mentioned funds as prescribed in Clause 1 and 2 of this Article in order to ensure that the State receives the benefit from the investment of state capital in the enterprise.

### **Article 35. Preservation and development of the corporate capital**

1. Preservation and development of the corporate capital shall be carried out according to the following methods:

- a) Manage, utilize capital and assets in compliance with this Law and other relevant regulations;
- b) Purchase the asset insurance;
- c) Handle any loss on assets and irrecoverable debts;
- d) Set up provision against devaluation of inventories, bad debts, depreciation of long-term investments, warranty of products, goods and construction works.

2. The Board of Members or the President of the enterprise shall assume the following responsibilities:

- a) Preserve the corporate capital;
- b) Report on the change in the corporate equity capital to the owner's representative agency.

## **Chapter IV**

### **RESTRUCTURING OF STATE CAPITAL IN THE ENTERPRISE**

#### **Article 36. Restructuring of state capital in the enterprise**

1. Pursuant to the scope of investment of state capital in business establishment stipulated in Article 10 hereof, the Government shall regulate the roadmap for the divestment of state capital out of the enterprise, which must conform to the strategy and plan for socio-economic development and sector development.

2. The enterprise of which 100% charter capital is not held by the State shall be required to restructure the state capital in that enterprise in accordance with regulations laid down in Article 37, 38 and 39 hereof.

3. Divesting the State capital of the enterprise must serve the purpose of reinvestment and enhancement of efficiency in the operating activities of the enterprise of which 100% charter capital is held by the State.

4. Domestic or foreign investors shall be attracted to get involved in the enterprise's manufacturing and business activities when the restructuring of such enterprise occurs.

5. The restructuring of state capital in the enterprise shall be carried out in the following forms:

- a) Ownership transformation and corporate rearrangement;
- b) Transfer of the right to act as the representative of state ownership in the enterprise;
- c) Disposal of state investment in joint-stock companies and multiple-member limited liability companies.

#### **Article 37. Ownership transformation and corporate rearrangement**

1. The enterprise shall be entitled to transform its ownership in the following forms:

- a) Equitization;
- b) Sale of the whole of the enterprise;
- c) Sale of a part of state investment in joint-stock companies and multiple-member limited liability companies.

2. The restructuring of the enterprise shall be carried out in the following forms:

- a) Corporate consolidation, merger and separation;
- b) Corporate dissolution and bankruptcy.

#### **Article 38. Transfer of the right to act as the representative of state ownership in the enterprise;**

1. Transfer principles:

- a) Do not cause any impact on manufacturing and trading activities of the enterprise's core businesses;
- b) Maintain payment capability and secure obligations to pay debts of the enterprises;
- c) Do not make a reduction in the charter capital of the enterprise that carries out the ownership transfer of a part of capital and assets between enterprises.

2. Cases in which such transfer shall be carried out shall include:

- a) Transfer occurring between the owner's representative agencies;
- b) Transfer of a part of capital and assets between enterprises;

c) Transfer of public investment projects and works from project management units to enterprises;

d) Transfer of state investment in the enterprise occurring between the owner's representative agency and enterprises specializing in state capital investment and business.

**Article 39. Disposal of state investment in joint-stock companies and multiple-member limited liability companies.**

1. Disposal principles:

a) Conform to classification requirements stipulated by laws;

b) Stick to the principles of market, disclosure and transparency;

c) Disposal of capital pertaining to land title must comply with the law on land.

2. Modalities of this disposal:

a) Disposal of state investment in multiple-member limited liability companies shall be carried out in compliance with legal regulations on enterprises;

b) Disposal of state investment in joint-stock companies whose stocks are listed on the stock exchange market shall conform to legal regulations on securities;

c) Disposal of state investment in joint-stock companies whose stocks have yet to be listed on the stock exchange market shall be carried out through the open auction. In case the open auction is not successful, the competitive bidding shall be in place. In case the competitive bidding is failed, the method agreed by interested parties shall be in place.

## **Chapter V**

### **POWERS AND RESPONSIBILITIES OF THE REPRESENTATIVE OF STATE OWNERSHIP**

**Article 40. Powers and responsibilities of the Government**

1. Adopting regulations on the form, content, process and procedure pertaining to the restructuring of state capital in the enterprise.

2. Issuing the charter and revise that charter for enterprises which have their whole charter capital held by the State and are established under the Prime Minister's decision.

3. Regulating the financial management, applied to enterprises of which 100% charter capital is held by the State, including: method of determining the charter capital; capital mobilization;



investment, development, sale, purchase, management and utilization of fixed assets; management of receivables and payables; external investment and disposal of capital out of the enterprise; distribution of after-tax profit, setting up and use of corporate funds; preservation and development of corporate capital; authority over the introduction of financial rules in enterprises of which 100% charter capital is held by the State.

4. Setting criteria for evaluating the result of working towards pre-determined objectives, assigned tasks, operating outcome, efficiency in manufacturing and business activities at enterprises of which 100% charter capital is held by the State as well as the performance of the enterprise's managers and auditors; regulating supervision and inspection over activities pertaining to investment, management and utilization of state investment in the enterprise; regulating the disclosure of information about corporate business activities.

5. Introducing policies on recruitment, appointment, re-appointment, dismissal, commendation, reward and penalties for corporate managers, auditors and representative of state capital share in the enterprise.

6. Adopting policies on salary, wage, remuneration, bonus and other benefits paid to enterprise managers, auditors and representatives of state capital.

7. Adopting regulations on activities of auditors working for enterprises of which 100% charter capital is held by the State.

8. Adopting regulations on recruitment, salary, bonus and other benefits for employees working for enterprises of which 100% charter capital is held by the State in accordance with legal regulations on employment.

9. Report on the prior year's nationwide investment, management and utilization activities of state capital in enterprises to the National Assembly at the year-end plenary session.

#### **Article 41. Powers and responsibilities of the Prime Minister**

1. Granting the decision on investment of state capital in corporate establishment as prescribed in Clause 1, 3 Article 11 hereof.

2. In respect of enterprises established under the Prime Minister's decision:

a) Granting the decision on ownership transfer and corporate rearrangement;

b) Granting the decision on charter capital for corporate establishment and adjustment to charter capital during their operations;

c) Granting the approval for the strategy and plan for investment and development, and the plan for production and business within the period of 5 years;

d) Granting the decision on appointment, re-appointment, dismissal, commendation, reward and penalties for the Chairperson of the Board of Members.

3. Granting the approval for the proposal for corporate establishment, general arrangement and reform for enterprises established under the decision made by the owner's representative agency.

4. Granting the decision to approve intention to transfer state investment in the enterprise between the owner's representative agencies, and between the owner's representative agencies and enterprises specializing in state capital investment and business.

**Article 42. Powers and responsibilities of the owner's representative agency for enterprises of which 100% charter capital is held by the State**

1. Granting the decision on investment of state capital in corporate establishment as prescribed in Clause 2 Article 11 hereof.

2. With regard to enterprises established under the decision made by the owner's representative agency:

a) Granting the decision on the restructuring, ownership transfer, dissolution and bankruptcy;

b) Granting the decision on transfer of state investment in the enterprise between the owner's representative agencies and enterprises specializing in state capital investment and business after obtaining the Prime Minister's consent to such intention or policy;

c) Introducing and revising the charter; deciding and adjusting the charter capital.

d) Granting the approval for the 5-year strategy and plan for investment and development, and the annual plan for production and business;

dd) Granting the decision on appointment, re-appointment, dismissal, commendation, reward, penalties, salary, remuneration, bonus and other benefits for the Chairperson and members of the Board of Members, the President of the enterprise, auditors, representatives of state capital share; granting the decision on funds for salary, remuneration annually paid to corporate managers and auditors.

Approving the request of Board of Members or the enterprise's President for appointment, re-appointment, dismissal, commendation, reward, penalties for the General Director or Director;

e) Approving the plan for capital mobilization and projects for investment, development, purchase and sale of fixed assets, external investment projects, outward investment projects of the enterprise as prescribed in Article 23, 24, 28 and 29 hereof;

g) Funding the investment of state capital in enterprises after obtaining the competent management's consent; deciding the disposal of invested capital in joint-stock companies and

multiple-member limited liability companies if the value of disposed capital stays lower than its book value recorded on the enterprise's accounting books after setoff or deduction of provisions against any loss on invested capital;

h) Deciding policies on capital contribution, increase, reduction in capital amount, disposal of the enterprise's invested capital in joint-stock companies and multiple-member limited liability companies; deciding the intention to acquire joint-stock companies and multiple-member limited liability companies to become subsidiary companies and associate companies of the enterprise;

i) Approving financial statements, plan to distribute profits and set up annual funds for the enterprise;

k) Supervising, examining and inspecting the management, utilization, preservation and development of capital, implementing the strategy and plan for investment and development, and policies on recruitment, payroll, bonus; advising on the supervision, examination and inspection conducted by other competent agencies or organizations over the investment, management and utilization of state capital in enterprises;

l) Evaluating the operating outcome, efficiency in manufacturing and trading activities of the enterprise; evaluating the performance of the enterprise's managers and auditors.

3. In respect of enterprises assigned to practise their management authority, the owner's representative agency shall exercise their rights and assume their responsibilities stipulated in Clause 1 and 2 of this Article, except for those regulated in Article 41 hereof.

4. The Government shall adopt specific regulations on rights and responsibilities that must be accepted and assumed by the owner's representative agency.

**Article 43. Rights and responsibilities of the owner's representative agency for the state investment in joint-stock companies and multiple-member limited liability companies**

1. Adopting regulations on appointment, dismissal, discharge, commendation, reward, penalties and deciding on salary, responsibility allowance, bonus and other benefits for the representative of state capital share.

2. Exercising their delegated decision-making authority over an increase in capital, disposal of stocks and state investments in joint-stock companies and multiple-member limited liability companies.

3. Controlling the divestment of invested capital, collection of distributable profits and dividends from joint-stock companies and multiple-member limited liability companies.

4. Requesting the representative of state capital share to perform their assigned tasks regulated in Article 48 hereof; giving written advice on issues that the representative is responsible to report and advise on.

5. Examining, monitoring and evaluating the performance of the representative of state capital share.
6. Bearing responsibility for the efficiency in utilization, preservation and development of state capital.
7. Exercising other powers and performing other duties in accordance with regulations laid down in the Enterprise Law, the charter of enterprises and other relevant laws.

**Article 44. Powers and responsibilities of the Board of Members or the President of the enterprise at enterprises of which 100% charter capital is held by the State**

1. The Board of Members or the President of the enterprise shall have the right to request the corporate management stipulated in Article 40, 41 and 42 to decide any adjustment, modification and supplementation to the charter; restructuring, ownership transformation, dissolution and bankruptcy.

The Board of Members shall be vested the right to request the corporate management stipulated in Article 40, 41 and 42 hereof to appoint, re-appoint, dismiss, reward, impose penalties on, pay salary, remuneration and bonuses as well as other benefits to the Chairperson and members of the Board of Members.

2. The Board of Members or the President of the enterprise shall have the right to grant their decisions after obtaining the consent from the owner's representative agency on the following contents:

- a) 5-year strategy and plan for investment and development, and annual plan for production and business of the enterprise;
- c) Appointment, re-appointment, dismissal, commendation, reward, penalties for the General Director or Director;
- c) Capital mobilization, investment, development, purchase and sale of fixed assets, external investment projects out of the enterprise, outward investment projects of the enterprise in accordance with Article 23, 24, 28 and 29 hereof;
- d) Capital contribution, increase, decrease in contributed capital, disposal of invested capital of the enterprise in joint-stock companies and multiple-member limited liability companies;
- dd) Acquisition of joint-stock companies and multiple-member limited liability companies as subsidiary companies and associate companies of the enterprise;
- e) Financial statements; distribution of profits and setting up of annual funds in the enterprise.

3. The Board of Members or the President of the enterprise shall have the right to grant their decisions on the following contents:

a) Internal rules and regulations of the enterprise;

b) Salary, remuneration, bonus and other benefits paid to the General Director or Director, or others appointed by the Board of Members;

c) Appointment, re-appointment, dismissal, commendation, reward, penalties, salary, remuneration, bonus and other benefits for the Deputy Director General or Vice Director, Chief Accountant;

d) Grant of decisions on or delegated decision-making authority to the General Director or Director over the plan for capital mobilization and projects for investment, construction, purchase and sale of fixed assets managed under his/her authority.

4. The Board of Members or the President of the enterprise shall be vested with the right to manage and control the enterprise in accordance with laws and decision made by the owner's representative agency.

5. The Board of Members or the President of the enterprise shall be held accountable to the owner's representative agency for management, utilization, preservation and development of invested capital; submit on-time reports to the owner's representative agency whenever that enterprise makes losses and does not have payment capability or fails to fulfill assigned tasks as well as commits other violations.

6. The Board of Members or the President of the enterprise shall be legally responsible for any violation causing any loss on or damage to the capital and assets of the enterprise.

7. The Board of Members, Chairperson and members of the Board of Members or the President of the enterprise shall exercise their rights or assume their responsibilities in accordance with regulations laid down in the Enterprise Law, the enterprise's charter and other relevant laws.

#### **Article 45. Auditor of enterprises of which 100% charter capital is held by the State**

1. Auditors shall be appointed, re-appointed and dismissed by the owner's representative agency and competent authorities.

2. Criteria, requirements, working regime, rights and responsibilities of Auditors must conform to legal regulations on enterprises and other relevant laws.

3. With regard to salary, remuneration and bonus paid to Auditors:

a) Salary, remuneration and bonus of Auditors shall be determined on the basis of performance of assigned tasks or efficiency in manufacturing and business activities of the enterprise;

b) Salary, wage, remuneration and bonus shall be decided and paid to Auditors by the owner's representative agency or the competent authority.

## **Chapter VI**

### **REPRESENTATIVE OF STATE CAPITAL SHARE AND REPRESENTATIVE OF CORPORATE CAPITAL SHARE**

#### **Article 46. Eligibility of the representative of state capital share and representative of corporate capital share**

The representative of state capital share and representative of corporate capital share must conform to the following requirements:

1. Vietnamese citizens residing in Vietnam;
2. Possess right political qualities and good personality, and be fully capable of performing civil acts as well as be healthy enough to fulfill assigned tasks;
3. Have a good command of laws and show their strong willingness in complying with laws;
4. Have appropriate working capability and proper professional qualifications or skills as well as working experience that match requirements for taking up the position as a representative;
5. Be not banned from holding certain posts, or subject to disciplinary measures, investigation, prosecution, judicial trial and imprisonment and disciplinary decisions;
6. Be not the spouse, parent, foster parent, natural son or daughter, adopted son or daughter, full sibling, sibling-in-law of the Chairperson and members of the Board of Members, the Chairperson and members of the Board of Directors, President, auditors, Director General or Director, Deputy Director General or Vice Director, Chief Accountant of the enterprise;
7. Conform to other criteria as stipulated by legal regulations on enterprises and other relevant laws.

#### **Article 47. Appointment of a representative of state capital share and representative of corporate capital share**

1. Pursuant to requirements set out in Article 46 hereof, the owner's representative agency, enterprises of which 100% charter capital is held by the State shall be entitled to choose and appoint the representative of state capital share or corporate capital share. Appointment of such representatives must be clarified in a document in which rights and responsibilities of these representatives must be clearly stated.

2. Time limit for appointment of representatives of state capital and corporate capital is determined for the period which does not exceed the term of Board of Members, Board of Directors in office.
3. Full-time representatives shall get involved in the work of representation at enterprises.
4. Those representatives, who are not working full time, shall be able to get involved in the work of representation at less than three enterprises, and the number of representatives of this type at an enterprise shall not be allowed to exceed 30% of total membership of the Board of Members and Board of Directors.

Those representatives who are not working full time shall be entitled to serve as representatives at one or several enterprise(s) in accordance with regulations laid down in the charter of enterprises.

#### **Article 48. Rights and responsibilities of the representative of state capital share**

1. Ask for the advice from the owner's representative agency before raising opinions, casting votes and making decision at the Shareholders' General Council, meeting of the Board of Directors, Board of Members, on the following issues:
  - a) Scope of businesses, objectives, tasks, strategy and plan for investment and development, and plan for production and business;
  - b) Introduction and revision of the charter; increase or reduction in the charter capital; election, dismissal, discharge, commendation, reward and penalties for members of the Board of Directors, Board of Members, General Director or Director, Deputy Director General or Vice Director;
  - c) Distribution of profits and setting up of annual funds in the enterprise;
  - d) Reorganization, dissolution or bankruptcy;
  - dd) Other issues managed under the delegated authority of the Shareholders' General Council, Board of Directors and Board of Members.
2. Make on-time reports on any loss incurred by joint-stock companies or multiple-member limited liability companies during their operations, failure to ensure payment competence, to complete assigned tasks as well as other violations.
3. Submit the quarterly, annual and on-demand reports on manufacturing and business activities, financial status, and recommend solutions at the request of the owner's representative agency and the representative of state capital share.

4. Request joint-stock companies and multiple-member limited liability companies to pay in their distributable profits and dividends in proportion to the share of state capital invested in such companies to the State Budget.
5. Be deprived of the right to continue to act as the representative if that person does not fully exercise the delegated powers or assume the delegated responsibilities or does not meet the requirements for a representative any more.
6. Bear legal responsibility for any violation causing any loss on or damage to the state capital.
7. Exercise the rights and assume the responsibilities in accordance with regulations laid down in the charter of joint-stock companies and multiple-member limited liability companies, the enterprise law and other relevant laws.

#### **Article 49. Powers and responsibilities of the representative of corporate capital share**

1. Ask for the advice from the enterprise who appoints such representative before raising opinions, casting votes and making decision at Shareholders' General Council, meeting of the Board of Directors, Board of Members, on the following issues;
  - a) Business scope, objectives, tasks, strategy, plan for investment and development, and the plan for production and business;
  - b) Introduction and revision of the charter; increase or reduction in the charter capital; appointment, dismissal, discharge, commendation, reward and imposition of penalties for members of the Board of Directors, Board of Members, General Director or Director, Deputy Director-General or Vice Director;
  - c) Distribution of profits, setting up of annual funds for enterprises;
  - d) Reorganization, dissolution and bankruptcy;
  - dd) Other issues managed under their delegated authority of the Shareholders' General Council, Board of Directors and Board of Members.
2. Make on-time reports on any loss incurred by joint-stock companies or multiple-member limited liability companies during their operations, failure to ensure payment competence, complete assigned tasks and other violations.
3. Submit the quarterly, annual and on-demand reports on manufacturing and business activities, financial status and suggest solutions at the request of enterprises.
4. Be deprived of the right to continue to act as the representative if that person does not fully exercise the delegated powers or assume the delegated responsibilities or does not meet the requirements for a representative any more.



5. Bear legal responsibility for any violation causing any loss on or damage to the capital and assets of the enterprise.

6. Exercise the rights and assume the responsibilities in accordance with regulations laid down in the Enterprise Law, the charter of enterprises and other relevant laws.

**Article 50. Salary, remuneration, bonus and other benefits for the representative of state capital share and the representative of corporate capital share**

1. The full-time representative of state capital share and the full-time representative of corporate capital share invested in joint-stock companies and multiple-member limited liability companies shall be paid salary, responsibility allowance, bonus and other benefits by these companies.

2. The part-time representative of state capital share and the part-time representative of corporate capital share invested in joint-stock companies and multiple-member limited liability companies shall be paid salary, remuneration, bonus and other benefit as follows:

- a) Remuneration paid by joint-stock companies or multiple-member limited liability companies;
- b) Salary, responsibility allowance, bonus and other benefit paid by the owner's representative agency and enterprises of which 100% charter capital is held by the State.

**Chapter VII**

**SUPERVISION AND INSPECTION OF THE INVESTMENT, MANAGEMENT AND UTILIZATION OF STATE CAPITAL IN ENTERPRISES**

**Section 1: SUBJECT-MATTERS OF SUPERVISION AND INSPECTION OF THE INVESTMENT, MANAGEMENT AND UTILIZATION OF STATE CAPITAL IN ENTERPRISES**

**Article 51. Supervision and inspection of state investment in an enterprise**

- 1. Issuance of policies and laws on state investment in an enterprise.
- 2. Investment of state capital in an enterprise that must adhere to objectives, principles and scopes stipulated by this Law.
- 3. Determination of invested capital, balancing of invested capital spending and revenue as well as utilization of capital sources as state investments in enterprises.

4. Economic and social efficiency in investment of state capital in enterprises.
5. Decision on investment intention, application process and procedure for the decision on investment of state capital in enterprises.
6. Exercising of powers or performance of duties of the owner's representative agency towards the state investment in enterprises.

**Article 52. Supervision and inspection of the management and utilization of capital and assets of enterprises of which 100% charter capital is held by the State**

1. Issuance of policies and laws on management and utilization of capital and assets in enterprises.
2. Exercise of powers or assumption of responsibilities of the owner's representative agency towards the management and utilization of capital and assets in enterprises.
3. Implementation of the plan for production, business, and the financial plan and strategy for corporate development, and performance of tasks in providing public products and services according to the purchase order placed by the State or as planned.
4. Capital mobilization and utilization of mobilized capital, management of receivables, payables, and implementation of projects for investment, purchase and sale of fixed assets, and preservation and development of corporate capital.
5. Introduction of internal rules and regulations of the enterprise.
6. External and outward investment activities of the enterprise.
7. Disposal and divestment of capital, and collection of distributable profit and dividends on the enterprise's external investments.
8. Management of the enterprise's paid-in capital invested in joint-stock companies and multiple-member limited liability companies.
9. Implementation of regulations on salary, wage, remuneration, bonus, responsibility allowance, and other benefits paid to employees, managers, auditors and representatives of corporate capital share.
10. Fulfillment of obligations to the State budget, distribution of profits, setting up and utilization of corporate funds.

**Article 53. Supervision and inspection of management of state capital invested in joint-stock companies and multiple-member limited liability companies**

1. Introduction of policies and laws on management of state capital invested in joint-stock companies and multiple-member limited liability companies.
2. Exercise of powers and assumption of responsibilities of the owner's representative agency for the state investment in joint-stock companies and multiple-member limited liability companies.
3. Maintenance of the accepted ratio of stocks and contributed capital in joint-stock companies and multiple-member limited liability companies, which must conform to criteria for rating enterprises as stipulated by laws.
4. Appointment, exercise of powers, assumption of responsibilities, payroll, remuneration, bonus, responsibility allowance and other benefits for a representative of state capital share.
5. Implementation of the plan for the divestment of state capital, collection of distributable profits and dividends from joint-stock companies and multiple-member limited liability companies.

**Article 54. Supervision and inspection of restructuring of state capital in enterprises**

1. Introduction of policies and laws on restructuring of state capital invested in an enterprise.
2. Exercise of powers or assumption of responsibilities of the owner's representative agency towards the restructuring of state capital invested in an enterprise.
3. Preparation, approval and implementation of the plan to restructure state capital invested in an enterprise.

**Section 2: ARRANGEMENT FOR SUPERVISION AND INSPECTION OF THE INVESTMENT, MANAGEMENT AND UTILIZATION OF STATE CAPITAL IN ENTERPRISES**

**Article 55. Supervisory role of the National Assembly**

1. The National Assembly, its Standing Committee, Ethnic Council, Committees of the National Assembly, Delegation of the National Assembly and its delegates shall take control of investment, management and utilization of state capital in enterprises in accordance with legal regulations and laws on the National Assembly's supervision activities.
2. The National Assembly must review the report of the Government on the current status of investment, management and utilization of state capital in enterprises that take place in the prior year at the National Assembly's year-end plenary session.

3. For the interval between two plenary sessions, the Standing Committee of the National Assembly shall have the right to request the Government, Prime Minister and other governmental cadres to clarify and answer any question about investment, management and utilization of state capital invested in enterprises.

#### **Article 56. The Government's inspection and supervision**

1. The Government and Prime Minister, within their powers and duties, shall organize the inspection and supervision of the following operations:

- a) Formulation, issuance and implementation of policies and laws on investment, management and utilization of state capital in enterprises;
- b) Exercise of powers and assumption of responsibilities of the owner's representative agency;
- c) Outcome of manufacturing, business activities, and preservation and development of state capital invested in enterprises.

2. The Ministry of Finance:

- a) Advise the owner's representative agency on solutions or measures to investment, management and utilization of state capital invested in enterprises;
- b) Annually collect, propose and suggest solutions and measures to investment, management and utilization activities of state capital in enterprises throughout the country, which shall be then reported to the Government.

3. Ministries, ministerial-level bodies shall carry out the inspection and supervision of investment, management and utilization of state capital invested in enterprises within their powers and duties.

#### **Article 57. Inspection and supervision carried out by the owner's representative agency**

1. Inspection and supervision carried out by the owner's representative agency:

- a) Investment, management and utilization of state capital invested in enterprises; efficiency in manufacturing, business activities, and preservation of development of state capital invested in enterprises;
- b) Exercise of powers and assumption of responsibilities of managers, auditors and representatives of state capital share;
- c) Compliance with the enterprise's policies and laws;
- d) Investment, capital divestment, collection of distributable profits and dividends in joint-stock companies and multiple-member limited liability companies;

dd) Conformance to any requests and alerts from State management agencies, inspection and audit agencies, and the owner's representative agency in relation to investment, management and utilization of state capital invested in enterprises.

2. Given the result of such supervision and inspection stipulated in Clause 1 of this Article, the owner's representative agency shall take the following actions:

a) Warning of and handling any problem that has been detected during supervision, examination and inspection process;

b) Requesting the full implementation, and send the timely petition and warning pertaining to investment, management and utilization of state capital invested in enterprises to state management agencies, inspection and audit agencies;

c) Imposing or requesting, within its delegated authority, imposition of penalties for managers, auditors and representatives of state capital share, who have committed violations against regulations on investment, management and utilization of state capital invested in enterprises;

d) Submit to the Ministry of Finance annual summary reports on investment, management and utilization of state capital in enterprises established under their decision or managed under their delegated authority.

**Article 58. Internal supervision of the enterprises of which 100% charter capital is held by the State**

1. The enterprise shall carry out the internal supervision over the followings:

a) Outcome of manufacturing and business activities, and preservation and development of state capital invested in enterprises;

b) Exercise of powers and assumption of responsibilities of managers, auditors and representatives of corporate capital share;

c) Capital investment and divestment, and collection of distributable profits and dividends in joint-stock companies and multiple-member limited liability companies;

d) Compliance with policies and laws on enterprises;

dd) Other contents as requested by the owner's representative agency.

2. The Board of Members or the President of the enterprise shall timely take preventive measures against any risk to the safety of management of capital and assets in enterprises with reference to the result of internal supervision; strictly follow requests and warnings from supervision and inspection agencies.

## Chapter VIII

### EVALUATION, RATING, REPORTING AND DISCLOSURE OF ACTIVITIES OF ENTERPRISES OF WHICH 100% CHARTER CAPITAL IS HELD BY THE STATE

#### **Article 59. Evaluation and rating of enterprises, assessment of enterprise's managers and auditors**

1. Evaluation and rating of the enterprise shall be based on the following criteria:

- a) The rate of plan implementation of the enterprise in terms of revenue, profit and return on equity;
- b) Capability of repaying debts and overdue payables;
- c) Implementation of duties to provide public products and services according to the State's purchase order or as planned;
- d) Compliance with policies and laws on investment, management, utilization of state capital in enterprises as well as other relevant regulations.

2. Evaluation and rating of the performance of managers and auditors must rely on the result of assessing and rating enterprise, exercising their delegated powers and performing their assigned duties.

#### **Article 60. Report on the enterprise's activities**

1. The enterprise must inform the owner's representative agency of the followings:

- a) Plan for investment and development, and plan for production and business, and annual financial plan of the enterprise;
- b) Quarterly and annual report on the outcome of plan implementation;
- c) Half-year and annual financial statements;
- d) Resolution and decision of the Board of Members;
- dd) Investment projects, progress in implementing investment projects;
- e) Any issue that can cause impacts on the result of implementing the plan for investment, development, plan for production, business and financial proposal of the enterprise;
- g) Result of internal supervision;
- h) Other contents stipulated by the law on enterprises.

2. The enterprise must carry out the auditing of annual financial statement of the enterprise. Before and after being audited, annual financial statements must be sent to the owner's representative agency, finance department of the same level and competent authorities in accordance with laws.

3. The Board of Members, Chairperson and members of the Board of Members or the President of the enterprise shall be legally responsible for accuracy and truth of reported contents in accordance with Clause 1 of this Article.

#### **Article 61. Disclosure of information about the enterprise's activities**

1. The enterprise must publicly and timely post relevant information about the enterprise's operations on their websites in accordance with regulations laid down in Clause 1 Article 60 hereof.

2. The owner's representative agency must publicly and timely post relevant information about investment, management and utilization of state investment in enterprises established or managed under their delegated authority on the website of such agency.

3. The Ministry of Finance must publicly and timely post reports on investment, management and utilization of state capital in enterprises across the country on the website administrated by the Ministry of Finance after these activities have been reported to the National Assembly by the Government.

### **Chapter IX**

#### **REWARD AND HANDLING OF VIOLATIONS**

##### **Article 62. Reward**

1. Any organization or individual fulfilling the following tasks shall be rewarded:

a) Meet objectives and targets for investment, management and utilization of state capital in enterprises;

b) Exceed agreed objectives; invent essential measures and initiatives for management and utilization of capital and assets of the enterprise;

c) Promptly detect and take controlling measures against misuse and mismanagement of state capital and the enterprise's capital and assets.

2. Funding for commendation and reward shall come from:

a) Reward or bonus sum stipulated by the law on competitive efforts and rewards;

b) Different reserve funds used for conferring rewards and bonuses to employees, enterprise's managers and auditors.

### **Article 63. Violation settlement**

Regulatory bodies, organizations and individuals who commit violations against regulations laid down in this Law, depending on the nature and severity of such violations, shall be subject to administrative penalties or liable to a criminal prosecution; if any damage is caused, proper compensation must be paid in accordance with laws.

## **Chapter X**

### **IMPLEMENTARY PROVISIONS**

#### **Article 64. Transitional provisions**

1. As from the effective date of this Law, enterprises of which 100% charter capital is held by the State shall be responsible for requesting competent regulatory bodies to issue the charter, financial rules of enterprises in accordance with regulations laid down in this Law; the introduction of this Law must be completed before January 01, 2016.

The charter and financial rules of enterprises of which 100% charter capital is held by the State, which are issued prior to the effective date of this Law, shall remain effective to be implemented till the end of December 31, 2015.

2. Projects for investment of state capital in enterprises that have been approved or decided by the relevant management before the public announcement of this Law shall be continued as planned.

3. Handling of any issue relating to management and utilization of capital and assets in enterprises of which 100% charter capital is held by the State, management of state capital in joint-stock companies and multiple-member limited liability companies that has arisen before the effective date of this Law, shall conform to applicable regulations till the end of December 31, 2015.

#### **Article 65. Effect**

This Law shall take effect from July 01, 2015.

#### **Article 66. Specific provisions**

The Government and competent authority shall adopt specific binding provisions enshrined in the Law.

*This Law has been passed by the National Assembly of the Socialist Republic of Vietnam (Tenure XIII) in the 8<sup>th</sup> plenary session on November 26, 2014.*



**THE CHAIRMAN OF THE  
NATIONAL ASSEMBLY**

**Nguyen Sinh Hung**