



**Article 3**      *Definition of terms<sup>2</sup>*

In this Law, the following terms shall be construed as follows:

1.    *State company* means an enterprise in which the State owns the entire charter capital and which is established, and whose management is organized and operations registered pursuant to this Law. *State companies* shall be organized in the form of independent State companies or State corporations.
2.    *State shareholding company* means a shareholding company in which all shareholders are State companies or organizations authorized by the State to contribute capital, and which is organized and operates pursuant to the *Law on Enterprises*.
3.    *One member State limited liability company* means a limited liability company in which the State owns the entire charter capital, and whose management is organized and operations registered pursuant to the *Law on Enterprises*.
4.    *State limited liability company with two or more members* means a limited liability company in which



product and service supplied by the company; the ability to sell products and services and a feasibility statement on the competitiveness of the company's products and services;

- (k) Other provisions as decided by the agency or organization authorized to act as representative of the company, so long as they do not contravene the law.

**Article 8** *Conditions for establishing new State companies*

Any decision to establish a new State company must be based on the following conditions:

1. There must be a valid file pursuant to clause 4 of article 7 of this Law.
2. The conditions on capital must be fully satisfied, and the amount of charter capital must satisfy the conditions on legal capital when legal capital is required for a particular line of business.
3. The draft company charter must not contravene this Law or other laws.
4. The plan for establishment of the new company must be feasible and effective; it must satisfy the requirements on modern technological standards stipulated by the State; it must appertain to the industries, sectors and areas in which new State companies may be established; and it must comply with the State's strategy and master plan for socio-economic development, the State regulations on environmental protection and other relevant laws.

**Article 9** *Authority to make decisions on establishment of new State companies*

1. The Prime Minister of the Government shall make decisions on establishment of especially important new State companies which control key industries and trades, which act as the core in promoting economic growth and which make a large contribution to the State budget.
2. Ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of provincial people's committees shall make decisions on establishment of new State companies other than those stipulated in clause 1 of this article.
3. The person making the decision to establish a new State company shall set up an Evaluation Council to evaluate the plan for establishment of the new company. The Evaluation Council shall act as an advisory body to the person making the decision to establish the company; and the person making the decision to establish a new State company shall be liable for his decision.
4. A decision on new establishment of a State company shall concurrently serve as the decision on an investment project to establish the State company. The newly established State company shall be the investor in such project.
5. The evaluation of an investment project for the establishment of a State company and

conditional industries and trades when the competent State agency issues a business licence for such industry or trade or when the company satisfies the business conditions in accordance with law.

3. Announcement of the contents of business registration, any amendments to those contents, and provision of information about the contents of business registration shall be implemented in accordance with the *Law on Enterprises*.

**Article 11** *Establishment and business registration of new State shareholding companies, one member State limited liability companies, and State limited liability companies with two or more members*

1. The following entities shall be founding members of newly established State shareholding companies, one member State limited liability companies, and State limited liability companies with two or more members:
  - (a) Corporations in which the State made the decision on investment and establishment;
  - (b) Corporations making investment and conducting business with State capital;
  - (c) State companies holding the right to control other enterprises;
  - (d) Independent cost accounting member companies of a State corporation;
  - (dd) Independent State companies;
  - (e) Economic organizations with the right to use State capital for investment in business in accordance with law.
2. Founding members contributing capital to the establishment of new State shareholding companies, one member State limited liability companies, and State limited liability companies with two or more members outside the industries, sectors and areas stipulated in article 6 of this Law must be granted approval by the competent authority to their plan for capital contribution to the new establishment. Founding members which are enterprises shall request approval of the plan for capital contribution from whichever authority made the establishment decision for such enterprise. In the case of founding members which are members of a corporation, the board of management of the corporation shall approve the plan for capital contribution.
3. Procedures for business registration of State shareholding companies, one member State limited liability companies, and State limited liability companies with two or more members shall be implemented in accordance with the *Law on Enterprises*.

## CHAPTER III

### Rights and Obligations of State Companies

**Article 12** *Capital and assets of State companies*

1. Capital of companies shall comprise capital which the State invests in the company, capital which the company itself raises, and other capital sources in accordance with law.
2. Capital which the State invests in a company shall comprise capital from the State budget and accumulated capital added to State capital.
3. The value of land use rights shall be included in the calculation of company capital in accordance with the laws on land. The Government shall provide specific guidelines on determination of the value of land use rights, methods of calculation of and inclusion of the value of land use rights in capital depending on land use purpose and the special operational characteristics of each State company in any one industry, sector or area.
4. Assets of a State company shall include both fixed assets and liquid assets.

**Article 13** *Rights of State companies over capital and assets*

1. To possess and use capital and assets of the company in order to conduct business and to achieve legitimate benefits from such capital and assets.
2. To dispose of the capital and assets of the company pursuant to this Law and other relevant laws.
3. To use and manage assets being land or natural resources assigned or leased by the State in accordance with the laws on land and natural resources.
4. The State shall not transfer State capital for investment in a company or the capital and assets of a company by the method of non-payment, except in the case of a decision to re-organize the company or in implementation of the objective of supplying public utility goods and services.

**Article 14** *Obligations of State companies with respect to capital and assets*

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3. To be considered for additional investment corresponding to the public utility duties assigned to them; they must account for and shall be covered for their reasonable expenses of public utility operations, ensuring benefits to employees on the following principles:
  - (a) In the case of products and services produced or supplied after [winning a] tender, the company must itself cover its expenses at the tender price;
  - (b) In the case of public utility products and services which cannot be put out to tender but which are provided pursuant to orders placed by the State, the company may use charges or revenue from the supply of products and services pursuant to the order placed by the State to cover their reasonable expenses servicing the public utility operations and shall ensure benefits to employees. If revenue is insufficient to cover reasonable expenses then the State budget shall provide the balance and ensure appropriate benefits to employees.
4. To formulate and apply limits for expenses and wage unit prices within tender prices or within estimated budgets when the State places an order or assigns a plan for provision of products and services.
5. To exercise other rights and discharge other obligations of a State company in accordance with this Law.

## CHAPTER IV

### Organization of Management of State Companies

#### **Article 21** *Model for organization of management of State companies*

1. Management of State companies shall be organized on the model of having a board of management or of not having a board of management. The following State corporations and independent State companies shall have a board of management:
  - (a) Corporations where the State made the decision on investment and establishment;
  - (b) Corporations conducting investment and business with State capital;
  - (c) Independent State companies with large capital and holding the right to control other enterprises.
2. The person who made the decision to establish the new State company shall decide the structure of the organization of management of a State company stipulated in clause 1 of this article, based on the characteristics and size of the particular State company.

#### Section 1

### State Companies not having a Board of Management

#### **Article 22** *Organization of management of State companies not having a board of management*

State companies not having a board of management shall have the managerial structure of a director, deputy directors, chief accountant and assisting staff.

#### **Article 23** *Director, deputy directors, chief accountant and assisting staff*

1. The director shall be the person administering the company and shall be the legal representative of the company, shall be liable to the person who appointed him or to the person who signed the contract hiring him, and shall be legally liable for the exercise of the rights and duties assigned to him.
2. Deputy directors shall assist the director in administering the company pursuant to delegation from and authorization by the director; they shall be answerable to the director, and shall be legally liable for their delegated and authorized duties.
3. The chief accountant shall have the duty of organizing the accounting work of the company; shall assist the director to supervise finances in the company in accordance with the laws on finance and accounting; shall be answerable to the director, and shall be legally liable for his delegated and authorized duties.
4. The office and professional<sup>3</sup> sections and expert committees shall have the function of advising and assisting the director and deputy directors in managerial and administrative work.

#### **Article 24** *Criteria and conditions for selection of the director*

1. The criteria and conditions for selection of the director shall be:
  - (a) Having capability for business and for organization of company management; having a university degree, with expertise in the main business sectors of the company; having at least three year's experience in management and administration of an enterprise in the main business lines of the company;

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<sup>3</sup> Phillips Fox Note: Alternative translation "non-business", but "professional" is used throughout in this translation.

- (b) Having good health and morals, being honest and incorruptible; having a knowledge of law and a sense of responsibility in observing the law; having permanent residence in Vietnam.
2. The following people shall not be selected for appointment or shall not sign a contract to act as a director:
- (a) Anyone who has acted as a director of a State company and committed a breach of disciplinary rules to the extent of 4 Tw[4 T55 dismissed4 T55 or suspended, or has allowed the company to fall into the state described in point (a) of 4 clause 3 of article 25 of 4 this Law;
  - (b) Anyone prohibited by law from assuming a position as manager or administrator of an enterprise.

**Article 25** *Selection, appointment and dismissal, signing and termination of contracts with the director, deputy directors and chief accountant*

1. The person who made the decision to establish the company shall make decisions on selection in order to appoint or dismiss, to sign or terminate a contract with a director of a State company; and such person shall also make decisions on appointment or dismissal, and on signing or termination of contracts with the director.:

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## **Article 26** *Duties and powers of the director*

The director shall have the following duties and powers:

1. To receive and use efficiently State invested capital and assets, and land, natural resources and other resources assigned, lent or leased by the State.
2. To formulate developmental strategies and long-term plans of the company, investment projects, joint ventures and plans for organization of management of the company for submission to the person who made the decision to establish the company.
3. To make decisions on investment projects; on contracts for the sale of assets valued at up to thirty (30) per cent of the total value of the remaining assets of the company according to the accounting books or at a lower percentage if so stipulated in the company charter; on loan contracts, lease contracts, leasing out contracts, and other economic contracts stipulated in the company charter but not to exceed the charter capital of the company.
4. To administer the operations of the company; to organize implementation of developmental strategies, business plans, investment projects, and decisions of the owner stipulated in articles 64 to 67 inclusive of this Law; to represent the company in signing and directing implementation of economic and civil contracts.
5. To promulgate eco-technical norms, product standards and wage unit prices for internal application consistent with State regulations.
6. To make submissions to the person who made the decision on establishment of the company on selection for appointment, on dismissal, or on signing or terminating contracts with, and on rewarding or disciplining deputy directors and the chief accountant.
7. To report to the person who made the decision on establishment of the company and to the financial agency on the operational and business results of the company.
8. To make decisions on appointment, on dismissal, or on signing or terminating contracts with, and on rewarding or disciplining heads and deputy heads of sections, people in equivalent positions in the company, and representatives of the company's capital contribution portion in other enterprises; to make decisions on salaries and allowances for company employees including officials within the director's power of appointment.
9. To be subject to inspection and supervision by competent State agencies in accordance with law.
10. To be entitled to the annual wage regime. Salary and bonus levels shall correspond to the operational effectiveness of the company, as decided by the person who made the decision on the director's appointment or as prescribed in the signed contract. Salary shall be paid in advance each month and finalized annually. Annual bonus shall be calculated on the basis of annual business results of the company, with one part paid at the end of the year and the remainder paid at the end of the term; the annual bonus for the last year of the term shall be calculated on the basis of that year's annual results plus the results of growth throughout the whole term.
11. To perform other duties and exercise other powers prescribed in the company charter.

## **Article 27** *Obligations and responsibilities of the director*

1. To perform the duties and powers assigned to him honestly and responsibly and for the benefit of the company and the State; to organize implementation of law at the company.
2. Not to abuse his position and powers, not to use the company's capital and assets for his own or other people's profit; not to disclose company secrets during his term of directorship or within three years from the end of his directorship or within any other period prescribed in the company charter.

3. To pay compensation for loss in accordance with law and the company charter if he breaches the company charter, if he make decisions which are ultra vires, or if he abuses his position and powers causing loss to the company and the State.

## Section 2

### State Companies having a Board of Management

#### **Article 28** *Organization of management of State corporations and independent State companies having a board of management*

State corporations and independent State companies having a board of management shall have the managerial structure of a board of management, an inspection committee, a general director, deputy general directors, chief accountant and assisting staff.

#### **Article 29** *Board of management*

The board of management is the body directly representing the State owner in a State corporation or independent State company having a board of management, and shall have the right to act in the name of the company to decide all issues concerning determination and implementation of objectives, duties and powers of the company, except for issues within the authority and responsibility of owners which have been delegated to other agencies and organizations which [such other agencies and organizations] in their capacity as representative of the owner shall implement.

The board of management shall be liable to the person who made the decision on establishment of the State corporation or independent State company having a board of management, [and] to the person who appointed the board, and also shall be legally liable for all operations of the corporation or company.

#### **Article 30** *Duties and powers of the board of management*

[The board of management shall have the following duties and powers:]

1. To receive, manage and use efficiently capital, land, natural resources and other resources which the State owner invests in the company.
2. To make decisions on the following matters:
  - (a) Strategies, long-term plans, annual business plans and business plans for the business lines of the company or of any enterprise in which the company owns the entire charter capital;
  - (b) To make decisions or to delegate the general director to make decisions on investment projects, capital contribution, purchase of shareholding in other companies, and on the sale of assets of the company valued at up to fifty (50) per cent of the total value of the remaining assets according to the accounting books of the company or at a lower percentage if so stipulated in the company charter; on loan contracts, lease contracts, leasing out contracts and other economic contracts exceeding the charter capital of the company;
  - (c) Plans on organization of management, organization of business, organization of staff on the payroll and use of staffing, rules on company management, and plans for recruiting and training staff; decisions on establishment of branches and representatany;ion p(pr val of the cha)5.2(r

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3. Having good health and morals, being honest and incorruptible; having a knowledge of law and a sense of responsibility in observing the law.
4. Not belong to the category of people prohibited by law from assuming a position as manager or administrator of an enterprise.

**Article 32** *Structure of membership of the board of management; appointment, dismissal and replacement of members of the board of management*

1. The board of management shall comprise a chairman and members of the board of management. The board of management shall contain members who are full-time and may contain members who are part-time. Both the chairman of the board of management and the head of the inspection committee must be full-time members of the board of management. The general director may be a

- (d) To represent the board of management in signing resolutions and decisions of the board of management;
- (dd) To organize monitoring and supervision of implementation of resolutions and decisions of the board of management; to have the right to suspend decisions of the general director which are contrary to resolutions or decisions of the board of management;
- (e) To have other rights which are delegated or authorized by the board of management or by the person who made the decision on establishment of the company.

**Article 34** *Working regime of the board of management*

1. The board of management shall work by the collective method; it shall meet at least once quarterly in order to consider and decide issues within the ambit of its duties and powers; with respect to issues which do not require debate, the board of management may seek the opinion of members in writing. The board of management may hold an extraordinary meeting to resolve urgent company issues on the request of the general director, chairman of the

The regime on payment and finalization of salary and bonus for full-time members of the board of management shall be the same as that for general directors of State companies stipulated in clause 10 of article 26 of this Law.

2. Part-time members of the board of management shall be entitled to a responsibility allowance and to the regime on bonus the same as applicable to full-time members.
3. The Government shall provide guidelines on the regime on wages, bonuses and responsibility allowances of members of the board of management.

**Article 36** *Conditions for the chairman and members of the board of management and for the general director to participate in management of another company*

The chairman of the board of management, a member of the board of management and the general director may only hold a managerial position in a limited liability company, shareholding company or foreign invested company when a competent State company



entities within the company of the norms, standards and unit prices stipulated in the internal rules of the company.

3. To make proposals to the board of management on appointment, suspension or dismissal, or on signing or terminating contracts with, on rewarding or disciplining, and on deciding the wage level of the deputy general director(s) and the chief accountant of the company; to make decisions on appointing representatives of the company's capital contribution portion in other enterprises.

The general director shall, after obtaining approval from the board of management, recruit in order to appoint or sign a contract with (including terminating the contract of) the directors and chief accountants of member companies or of professional entities of a State corporation in which such corporation owns the entire charter capital.

4. To make decisions on investment projects; on contracts for the sale or purchase of assets; on contracts providing or taking loans; on lease contracts, on leasing out contracts, and on other economic contracts; on purchase and selling prices of company products and services pursuant to delegation from or authorization by the board of

**Article 42** *Relationship between the board of management and the general director in management and administration of the company*

1. If a non-profitable aspect for the company is detected during organization of implementation of a resolution or decision of the board of management, the general director shall report it to the board of

causing loss to the company and the State, then he/she must pay compensation for loss in accordance with law and the company charter.

3. If the chairman of the board, a member of the board or the general director commits one of the following breaches which is not serious enough to warrant criminal prosecution, he/she shall not be entitled to any bonus or to a salary increase and shall be disciplined depending on the seriousness of the breach:
  - (a) Allowing the company to suffer a loss;
  - (b) Losing State capital;
  - (c) Making a decision on an ineffective investment project, failing to recover invested capital, failing to repay debts;
  - (d) Failing to ensure wages and other regimes for workers in the company in accordance with the laws on labour;
  - (dd) Permitting errors in management of capital and assets, in the regimes on accounting, auditing and other matters as stipulated by the State.
4. If the chairman of the board of management is irresponsible and fails to correctly implement the provisions stipulated in clause 2 of article 33 of this Law leading to one of the breaches stipulated in clause 3 of this article, he/she shall be dismissed and depending on the seriousness of the breach and its consequences, the chairman must pay compensation for loss in accordance with law.
5. If the chairman of the board of management or the general director allows the company to fall into the state described in point (a) of clause 3 of article 25 of this Law, then depending on the seriousness of the breach and its consequences, his/her salary shall be reduced or he/she shall be dismissed and at the same time must pay compensation for loss in accordance with law.
6. If the company becomes insolvent but the general director fails to lodge an application for bankruptcy, then the director shall be dismissed or his/her contract terminated and he/she shall be legally liable pursuant to law; if the general director fails to lodge an application for bankruptcy in circumstances where the board of management does not request the general director to lodge such application, then the chairman of the board, all members of the board and the general director shall be dismissed or their contracts shall be terminated.
7. If a State company is in the category subject to restructure, dissolution or conversion of ownership but procedures are not conducted for such restructure, dissolution or conversion of ownership, then the chairman of the board, all members of the board and the general director shall be dismissed or their contracts shall be terminated.

### Section 3

#### **Forms and Contents of Workers' Participation in Management of State Companies**

##### **Article 44** *Forms of workers' participation in management of State companies*

Workers may participate in management of their companies through the following forms and organizations:

1. The general assembly or the congress of delegates of staff and officials organized from teams, groups, workshops, sections and committees to companies.
2. The trade union organization of the company.
3. The people's inspection board.
4. By exercising their right to make recommendations, complaints and denunciations pursuant to law.

**Article 45** *Contents of workers' participation in management of State companies*

Workers shall have the right to participate in discussions and to provide their opinions prior to the competent level making any decision on the following issues:

1. Orientation, planning tasks, and measures for developing production and business and for re-arranging production of the company.
2. Equitization plans and plans for diversification of ownership of the company.
3. Internal rules and regulations of the company which directly concern rights and obligations of workers.
4. Measures for protection of workers; for improving working conditions, material and spiritual life, and the hygienic environment; and for training and re-training company employees.
5. Casting votes of confidence on the chairman



3. A State corporation which invests and conducts business with State capital is a corporation established in order to exercise the owner's rights and obligations with respect to one member State limited liability companies converted from independent State companies and one member State limited liability companies established by such corporation; to perform the function of making investments and conducting business with State capital and to perform the owner's rights and obligations with respect to the State owned shareholding or capital contribution portion in enterprises whose ownership or legal form has been converted from independent State companies.

## Section 1

### **Corporations in which the State makes the Decision on Investment and Establishment**

**Article 48** *Conditions for organization of corporations in which the State makes the decision on investment and establishment*

A corporation in which the State makes the decision on investment and establishment must satisfy the following conditions:

1. Operate in key industries and trades, act as the core in promoting economic growth and make a large contribution to the State budget.
2. Its member companies operate in one or a number of main specialized eco-technical industries, and are closely connected in terms of technology, markets and capital.
3. Having at least two corporations in the one industry or trade, except for industries and trades where production technology does not permit the establishment of two or more corporations.
4. Satisfy the conditions for establishing a new State company stipulated in article 8 of this Law.
5. Achieve the objectives of establishment of corporations:
  - (a) Organization of services activities of seeking markets, information, training, research, marketing and other services activities in direct support of member companies;

(dd) Depending on business scale and demand, a corporation may have members being financial companies.

2. Shareholding companies and limited liability companies in which the corporation owns the controlling capital contribution.

**Article 50** *Capital and assets of corporations in which the State makes the decision on investment and establishment*

1. The charter capital of the corporation shall comprise State capital which is centrally accounted for at the corporation and State capital at independent cost accounting member companies.
2. State capital of independent cost accounting member companies is State capital invested therein by the corporation. The corporation shall be liable for the debts and other asset obligations of the independent cost accounting member companies within the scope of the charter capital of such companies.
3. The assets of a corporation are formed from its charter capital, and from loans borrowed by and other legally sourced investments in independent cost accounting member companies, professional entities and the office of the corporation.

**Article 52** *Relationship between a corporation in which the State makes the decision on investment and establishment, and its member entities*

1. Independent cost accounting member companies shall have legal entity status and business autonomy pursuant to this Law, other laws, and the company charter as approved by the board of management of the corporation; and they shall be bound to the corporation in the following rights and obligations:
  - (a) To manage and to initiate utilisation of capital of the company and of capital invested by the corporation; to be responsible before the corporation for the efficient use of capital and other resources invested by the corporation; to be financially autonomous and to be civilly liable to the extent of the whole of



**Article 56** *State companies holding the right to control other enterprises*

1. State companies holding the right to control other enterprises shall have the rights and obligations of State companies stipulated in Chapter III of this Law.
2. The management apparatus for State companies holding the right to control other enterprises shall be that of a corporation with the management structure, functions, duties, powers and obligations stipulated in section 2 of Chapter IV of this Law.

**Article 57** *Relationship between a State company and companies*

### Section 3

#### **Corporations Making Investment and Conducting Business with State Capital**

**Article 60** *Corporations making investment and conducting business with State capital*

1. Corporations making investment and conducting business with State capital are special economic organizations with the following functions:
  - (a) To exercise the State owner's rights and obligations with respect to one member State limited liability companies converted from independent State companies and with respect to the State owned capital contribution portion in shareholding companies or in limited liability companies with two or more members which have been converted from independent State companies or which are newly established;
  - (b) To exercise the function of making investment and conducting business with State capital at enterprises which have already undergone the conversion of ownership or legal form stipulated in clause 1 of this article.
2. The Prime Minister of the Government shall make the decision on establishment of a corporation making investment and conducting business with State capital.

**Article 61** *Organization of management, operational scope and rights and obligations of corporations making investment and conducting business with State capital*

1. The organization of management of corporations making investment and conducting business with State capital shall comply with sect

- (b) Ministries managing industries and provincial people's committees shall be the representatives of the owner of State companies not having a board of management as stipulated in article 66 of this Law;
  - (c) The Ministry of Finance shall implement a number of the rights and obligations of the representative of the owner of State companies as stipulated in article 67 of this Law;
  - (d) The board of management shall be the direct representative of the owner at State companies having a board of management and shall be the representative of the owner of companies in which it itself invests the entire charter capital pursuant to articles 29, 30 and 33 of this Law.
2. A corporation making investment and conducting business with State capital shall be the representative of the owner of a company in which it itself invests the entire charter capital and shall be the representative of the owner of the capital portion it itself invests in other enterprises pursuant to articles 60 and 61 of this Law.

- (b) To comply with the company charter;
- (c) To be liable for debts and other asset obligations of the company within the scope of the charter capital in the company;
- (d) To comply with the laws on contract in transactions of purchase, sale, borrowing, lending, leasing and leasing out between the company and the owner;
- (dd) To ensure the business autonomy and self-responsibility of the company; and not to directly interfere in the business operations of the company;
- (e) To discharge other obligations in accordance with law.

**Article 65** *Rights and obligations of the owner which shall be performed by the Government over State companies*

1. The Government shall directly exercise the following rights and discharge the following obligations of the owner with respect to State companies:



- (c) Corporations making investment and conducting business with State capital as stipulated in articles 60 and 61 of this Law.

**Article 66** *Rights and obligations of the owner which shall be performed by ministries managing industries and by provincial people's committees over State companies*

Ministries managing industries and provincial people's committees which are representatives of the owner of State companies for which such ministry or people's committee made the decision on establishment or for which the decision on establishment was made pursuant to their delegation of authority, shall exercise rights and discharge obligations and represent the owner as follows:

1. To formulate plans for restructuring independent State companies for which such ministry or people's committee made the decision on establishment, for submission to the Prime Minister of the Government for approval; and to organize the restructure of State companies pursuant to plans approved by the Prime Minister of the Government.
2. To make decisions on establishment, restructure, dissolution and conversion of ownership of State companies; and to approve the contents of, or any amendments to the company charters of State companies. To reach agreement with the Ministry of Finance on the initial level of charter capital of State companies and on any increases thereto.
3. To make decisions on the objectives, strategies and long-term plans of State companies not having a board of management.
4. To make decisions within their authority on investment projects with a value of more than fifty (50) per cent of the total value according to the accounting books of the remaining assets of a State company having a board of management, or at a lower percentage if so stipulated in the company charter; to make decisions within their authority on investment projects with a value of more than thirty (30) per cent of the total value according to the accounting books of the remaining assets of a State company not having a board of management, or at a lower percentage if so stipulated in the company charter; to make recommendations to the Government to approve investment projects which exceed their delegated authority.
5. To make decisions on approval of plans for utilisation of capital and assets of State companies in order to contribute capital to joint ventures with foreign investors, and on approval of projects of State companies for investment overseas; [to make decisions on approval of] plans for utilisation of capital and assets of companies in order to contribute capital or purchase shareholding in domestic companies above the limit of authority as stipulated in the company charter of a board of management or of a director in the case of a company not having a board of management; to make

9. To exercise other rights and discharge other obligations as delegated and authorized by the Government.

**Article 67** *Rights and obligations of the owner which shall be performed by the Ministry of Finance over State companies*

The Ministry of Finance shall implement a number of rights and obligations of the owner and of the representative of the owner over State companies as follows:

1. To submit to the Government for proclamation and to organize implementation of regimes on financial management and on business cost accounting, regimes on making public the financial reports of State companies and on consolidated financial statements of corporations.
2. To issue investment capital from the State budget in the following circumstances:
  - (a) Investment to establish a new State company after the Prime Minister of the Government has approved the plan for establishment;
  - (b) Investment to increase charter capital of a State company on the proposal of the person who made the decision on establishment of such State company.

6. To transfer the ownership right in corporations making investment and conducting business with State capital in accordance with regulations of the Government.

### Section 3

#### **Rights and Obligations of Representatives of the Owner over State Capital Invested in Other Enterprises**

##### **Article 69** *State capital invested in other enterprises*

State capital invested in other enterprises means the following types of capital invested in companies other than those stipulated in sub-clause (a) of clause 2 of article 2 of this Law:

1. Capital in money, the value of land use rights or land rental, and the value of tangible or intangible assets belonging to a State company which it invests in or contributes as capital to another company.
2. Capital from the State budget which has been invested in or contributed as capital to another company for which management is assigned to a State company.
3. The value of shares or the State's capital contribution to equitized State companies, one member State limited liability companies, or State limited liability companies with two or more members.
4. Capital borrowed by State companies for investment.
5. Dividends which have been distributed from the St

venture company operating under the *Law on Foreign Investment in Vietnam* (hereinafter referred to as the *representative of the company's portion of capital investment*); to make decisions on

of the company with a State company's capital contribution, on the following issues: business orientation, strategy or plans; amendments or additions to the charter; increasing or reducing charter capital; distribution of dividends; or sale of assets with a high value which requires a vote by shareholders or capital contributing members. If there are a number of representatives of a State company's portion of capital investment on the board of management of the company receiving such capital, the representatives must reach agreement amongst themselves and obtain an opinion from the State company prior to voting on important issues.

7. To bear responsibility before the board of management, or before the director in the case of a company not having a board of management, for the efficiency of utilisation of the State company's capital contribution portion in the company.

case of a State company in which however, the State holds the controlling shareholding or controlling capital contribution;



controlling capital contribution, hold a capital contribution portion; or need not hold State capital; and on the types of State companies to be assigned or sold to the labour collective of the company.

3. The Prime Minister of the Government shall make decisions on classification lists, plans and forms of conversion of ownership of State companies.

**Article 82** *Objectives of conversion of ownership of State companies*

The conversion of ownership of State companies is aimed at:

1. Restructure of ownership of a State company in which the State need not continue to hold 100% charter capital, in order to use more effectively the State assets which were invested in such company.





2. Ministries and ministerial equivalent bodies shall, within the scope of their respective functions, be responsible for State administration of State companies within the sectors for which responsibility is delegated to them.
3. People's committees of provinces and cities under central authority shall be responsible to:
  - (a) Undertake State administration of State companies in their localities in accordance with law;
  - (b) Organize business registration, inspection and supervision of State companies in their localities;
  - (c) Guide and direct people's committees of districts, towns and provincial cities to co-ordinate in State administration of State companies.

**Article 89** *Auditing and inspection of business activities of State companies*

1. The annual financial statements of State companies must be audited. The auditing regime shall be implemented in accordance with the laws on auditing.
2. Inspectorates shall, correctly in accordance with their functions and authority, inspect business activities of State companies and comply with the laws on inspections.

There shall only be one inspection per year of a State company in respect of any one case, such inspection not to last beyond thirty (30) days which may be extended a further maximum thirty (30) days in special cases by the competent State agency.

**Article 92** *Dealing with breaches by State companies and economic organizations*

1. Any State company which commits the following breaches shall, depending on the nature and seriousness of the breach, have its operation suspended or be subject to administrative penalties in accordance with law:
  - (a) Establishing a State company not in accordance with law;
  - (b) Failing to conduct business registration, or conducting business in an industry or trade for which it does not have business registration, or conducting business in an industry or trade for which it does not have permission from the competent State agency;
  - (c) Failing to perform the duties assigned or to achieve the objectives assigned by the State;
  - (d) Committing a serious breach of this Law.
2. Any economic organization operating in the name of a State company without a decision on establishment shall have its operation suspended and its assets shall be confiscated and remitted into the State budget.

**Article 93** *Dealing with breaches by individuals*

Any individual who commits the following breaches shall, depending on the nature and seriousness of the breach, be disciplined, be subject to administrative penalties or be subject to criminal prosecution; and if he/she causes loss and damage then they must compensate for it in accordance with law:

1. Failing to correctly fulfil the responsibilities and powers authorized by the owner of the State company, or making erroneous decisions causing loss to a company.
2. Making an ultra vires decision to establish a State company, or establishing a State company not in accordance with the correct order and procedures, or acting irresponsibly in evaluating establishment resulting in inefficiency in a company's operation.
3. Failing to implement regimes for workers in a company.
4. Interfering in affairs of a company which are not within the individual's jurisdiction; harassing for bribes or making a request to provide resources not permitted by law.
5. Committing a breach of other provisions of this Law.

CHAPTER XI

**Implementing Provisions**

**Article 94** *Effectiveness*

1. This Law shall be of full force and effect as from 1 July 2004.
2. This Law shall replace the 1995 *Law on State Owned Enterprises*.
3. State owned enterprises which were established and conducted business registration pursuant to the 1995 *Law on State Owned Enterprises* need not re-conduct procedures for establishment and business registration pursuant to this Law. If the operational charter of any State owned enterprise is inconsistent with the provisions of this Law, then within a time-limit of ninety (90) days from the date of effectiveness of this Law, it shall amend same for compliance.

State corporations and independent State owned enterprises which were established before the date of effectiveness of this Law and which fail to satisfy the conditions stipulated in this Law as applicable to State corporations and independent State owned enterprises, must be restructured, dissolved or have their ownership converted in accordance with regulations of the Government.

**Article 95**      *Implementing guidelines*

The Government shall provide detailed regulations and guidelines for implementation of this Law. The Government shall assign the competent State agencies to co-ordinate with the Vietnam Labour Federation to guide the organization and operation of assemblies of public servants in State companies and workers' participation in management of State companies in accordance with this Law.

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This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 4th session on 26 November 2003.

Chairman of the National Assembly  
NGUYEN VAN AN