

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

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DECREE

**on conversion of State owned companies into limited liability companies
that operate under the Enterprise Law**

GOVERNMENT

Pursuant to the Law on the Organisation of the Government No. 32/2001/QH10 dated 25 December 2001;

Pursuant to the Enterprise Law No. 60/2005/QH11 dated 29 November 2005;

On the proposal of the Minister of Planning and Investment,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of application

This Decree shall provide for conversion of State owned companies into one-member limited liability companies and limited liability companies with more than one member that operate under the Enterprise Law No. 60/2005/QH11 dated 29 November 2005 (hereinafter referred to as the "**Enterprise Law**").

Article 2. Subjects of application

1. This Decree shall apply to:

d) Member companies with independent accounting system and member units with dependent accounting system of State general corporations (hereinafter referred to as “*members of general corporations*”);

) State owned companies that are designated to directly serve national

1. In respect of independent State owned companies: to be entirely owned by the State subject to the master plan for reorganisation and renovation of SOEs as may be approved by the Prime Minister.

2. In respect of State general corporations:

a) The plan for reorganisation of the general corporations in form of a parent-subsidiary structure or the plan for conversion into a business group in which the holding company is to be entirely owned by the State.

b) Where State general corporations are not eligible to be reorganised in a parent-subsidiary structure or to be converted into a business group and are hence subject to a dissolution of the general corporations' head office, only those member units of the general corporations that are to be entirely owned by the State may be converted into one-member limited liability companies.

3. Member companies with independent accounting system that are belonged to general corporations, and member companies **that are not yet** converted to operate under the Enterprise Law and are part of a parent-subsidiary structure or of a business group may not be converted into one-member limited liability companies unless the following conditions are met:

a) The general corporations are on the approved list by the Prime Minister to be converted to operate in a parent-subsidiary structure in which the parent company is required to be entirely owned by the State; the parent company in a parent-subsidiary structure or a holding company of a business group that is required to be entirely owned by the State;

b) Member companies with independent accounting system or a member companies that are to be entirely owned by the State.

In case where the head office of the general corporations is dissolved or the parent company is divested, the conversion of member companies that are not yet converted to operate under the Enterprise Law shall be decided by the authority that is competent to set up the parent company as stipulated in Article 9 of this Decree.

5. State owned companies directly serving national defence or security that are to be converted into one-member limited liability companies shall be those companies that are intended, invested and established to directly perform stable and regular tasks in such areas and industries that help to serve national defence and secure national secret subject to State placed orders or an official recognition as defence industry.

Article 8. Procedures for converting a State owned company into a limited liability company

1. Preparation for a conversion including: preparing and approving a list of converting enterprises; making public of the conversion plan; establishing the conversion committee.

2. Preparing the conversion plan including: preparing all relevant documents and materials; inventory and classification of capital, assets, liabilities and employees of the enterprises; preparing plans for handling financial problems, reorganising the work force, and transforming the enterprises; formulating and proposing the organisational structure of one-member limited liability companies; drafting the charter and estimating chartered capital amount.

3. Submitting, appraising, approving and implementing the conversion plan.

4. Issuing a conversion decision and completing business registration formalities.

Article 9. Determining the list [of converting enterprises] and conversion plan

Based on the master plan for reorganisation and renovation of state owned enterprises that has been approved by the Prime Minister and subject to conditions listed in Article 7 of this Decree:

1. Ministers and chairmen of provincial people's committees shall determine a list [of converting enterprises] and plans for conversion of enterprises that are established by themselves.

2. The Prime Minister shall determine a list [of converting enterprises] and plans for conversion of enterprises that are established by himself.

Article 10. Responsibilities of enterprises for preparing conversion plans

d) In respect of unused assets or idle assets that are to be liquidated, the enterprises may sell out or dispose subject to relevant regulations;

) In respect of abundant assets, the enterprises may recognise as an increase in the enterprises' equity;

e) In respect of lost or damaged assets, the enterprises shall be required to determine causes and collective and individual responsibilities for such a loss or damage, and shall request for compensation by the responsible individuals subject to relevant regulations. The difference between the remaining value of the assets and the amount of compensation actually paid by responsible individuals or collective or insurance companies (if any) shall be covered by financial reserve fund. Any shortage shall be accounted in the business results. If due to such an accounting of shortage in their business results, the enterprises are found in losses, the equity of the enterprises shall be reduced accordingly to the extent of the loss;

g) In respect of receivables, the enterprises shall be responsible for assuming such amounts incurred in favour of the converting enterprises and recovering the due debts that may be recoverable.

In respect of irrecoverable debts, the enterprises shall, after determining causes and collective and individual responsibilities for such a loss or damage, and requesting for compensation by the responsible individuals subject to relevant regulations, use reserve fund for bad debts and financial reserve fund to cover the deficient amount. If these sources of funding are insufficient to cover the debts, any shortage shall be recognised as a reduction of owner's equity. If due to such an accounting of shortage in their business results, the enterprises are found in losses, the equity of the enterprises shall be reduced accordingly to the extent of the loss;

h) In respect of payables, enterprises shall be responsible for assuming debts to be payable to creditors including those owed to the tax office, State budget, and employees; and repaying due debts. Paybles that are not claimed by any party or assets whose owner could not be identified shall be included in the owner's equity. In case where companies run into solvency problems, overdue debts shall be dealt with subject to relevant regulations.

i) In respect of employment matters, enterprises shall be responsible for rearranging and using employees subject to labour laws and those concerning reorganisation of SOEs; inheriting all rights and obligations to employees subject to labour laws and regulations;

2. Capital, assets, financial issues and employees of independent State owned companies and member companies with independent accounting system of State general corporations, parent companies and holding companies shall,

upon conversion into one-member limited liability companies be dealt with subject to the following principles:

a) All assets belonging to the companies shall, upon conversion, be measured in value terms;

b) In respect of assets that are managed and used by the companies, there must be an overall inventory, classification and assessment of current conditions before transferring to one-member limited liability companies;

c) Principles stated in paragraphs c, d, , e, g, h and i of clause 1 of this

c) State capital that is contributed to joint stock companies, limited liability

7. Decision-making procedures; principles of internal dispute settlement;
8. Bases and methods of determining remunerations, wages and salaries for managers and controllers;
9. Distribution of after tax profits and handling of losses during the company's business operations;
10. Dissolution and liquidation of company's assets;
11. Amendments of company's charter;
12. Full name(s), signature(s) of the company's legal representative, owner and authorised representatives;
13. Other matters as may be determined by the company's owner provided that that are not inconsistent with the applicable laws and regulations.

Article 14. Submitting, approving and implementing plans for conversion into one-member limited liability companies

1. Enterprises that are intended to be converted into one-member limited liability companies shall submit to a person who is competent to determine their formation or an authorised person a conversion plan.
2. The person who is competent to determine their formation or an authorised person shall be the one who is empowered to approve the conversion plan.
3. The converting enterprises shall be responsible for the implementation of the approved conversion plans.

Article 15. Decision to convert

1. The person who is competent to determine their formation or an authorised person shall be the one who is empowered to decide to convert the enterprises into one-member limited liability companies.
 2. The converting decision shall include the following main details and particulars:
 - a) Name, address and bank account number of the converting enterprises; name and address of the one-member limited liability company;
 - b) Scope and areas of business operations;
 - c) Chartered capital of the company;
 - d) Name(s) and address(es) of owner(s) and individuals who are appointed to be authorised representatives in exercising rights and performing obligations to the company;
-) Responsibilities of the company for assuming rights and obligations and dealing with remaining problems of the converting enterprises.

Article 16. Business registration

Converting enterprises shall change their business registration details and make public announcements [of such a conversion] in mass media as prescribed

independent accounting units upon their conversion into limited liability companies with more than one member.

Article 19. Forms of converting State owned companies into limited

clause 1 of Article 20 may apply for a purchase of State capital contributions in the enterprises or for eligible investors to make capital contributions.

Employees of the converting enterprises shall enjoy benefits stipulated in Articles 35 and 36 of this Decree. They may at their sole discretion assign (sell) preferential purchasing options to other investors or assign (sell) their capital contributions that were acquired under preferential conditions before the establishment of the limited liability company with more than one member. By

upon the time when the value of the enterprises is to be announced, the assets are not yet dealt with, these assets shall be handed over to the State owned AMC for its dealing with subject to relevant laws and regulations.

3. Those assets that are represented in the form of welfare facilities such as kindergardens, clinics and other properties that are invested using the bonus fund or welfare fund shall be handed over to the limited liability company with more than one member for its management and usage to serve the company's employees.

Residential houses for employees including those invested from the State budget shall be handed over to the local land and house management authorities for their management or sales to current occupants subject to applicable laws and regulations.

4. Those assets that are invested from the bonus fund or welfare fund of the enterprise and are continued to be used for business and production purposes by the limited liability company with more than one member shall be imputed to the value of the converting enterprise and shall be repaid to the employees upon the conversion depending on the length of time in which each employee works for the enterprise.

5. Debts incurred by the enterprises that are converted into limited liability company with more than one member shall be dealt with subject to the following principles:

a) The converting enterprises shall compare, confirm, recover due receivable debts before the conversion. Upon the evaluation of the enterprises, any remaining irrecoverable debts shall be dealt with subject to relevant regulations.

Upon the announcement of their values, the converting enterprises shall hand over irrecoverable debts that are left out of the value of the converting enterprises (together with related documents) to the State-owned AMC to be handled subject to applicable laws and regulations.

Advanced payments made to the suppliers of goods and services such as house rentals, land rentals, purchasing costs and remuneration shall be verified and included in the value of the converting enterprises.

b) Converting enterprises shall use different sources of their funds to repay the due debts before conversion or reach an agreement with creditors on how to handle the debts or convert these debts into capital contributions. Any conversion of debts into capital contributions shall be determined through members' commitments to capital contributions.

During the conversion process, if the converting enterprises run into solvency problems relating to over due debts as a result of business losses, these debts shall be dealt with subject to relevant laws and regulations.

6. Other reserves and financial problems shall be dealt with subject to the following principles:

a) Reserves for depreciation of goods in stocks, irrecoverable debts, possible reductions of stock prices, differences in exchange rates shall be accounted to the overall business results of the enterprises.

b) In respect of reserves for job losses, if any, the enterprises may use to provide allowances to redundant labourers during the conversion process. Any

a) Converting enterprises whose book value exceed VND 30 billions shall be valued by organisations that are recognised as professional valuation entities such as domestic and foreign auditing firms, securities companies, and investment banks having evaluation capacity.

Bodies that are authorised to determine the value of the converting enterprises shall select a qualified evaluation organisation from a list that is announced by the Ministry of Finance.

The evaluation organisation shall, upon the valuation of an enterprise comply with existing regulations and perform contractual obligations in a timely manner; take full responsible for the accuracy and legitimacy of the valuation results.

b) Converting enterprises whose book values are below the VND 30 billion threshold shall not be necessarily required to engage a professional evaluation organisation to conduct the valuation of their enterprises. In this case, the enterprise shall conduct its own valuation of the enterprise and report to the authorities that are authorised to determine the value of the enterprise.

3. Documents relating to an enterprise's valuation must be submitted to the Ministry of Finance and the authorities that are authorised to determine the enterprise's value for their appraisal before deciding and announcing the value of the converting enterprises.

4. Final results of the enterprise's valuation shall be used as a basis for determining the size of the chartered capital, structure and share of each contributor.

Article 26. Determining the selling prices of State-held stakes

The prices at which State-held stakes are sold in circumstances that are prescribed in clause 1 of Article 19 of this Decree shall be determined subject to the following principles:

1. Employees of the enterprise shall enjoy a 40% discount rate compared with the average bid prices.

2. Prices at which other investors may purchase State-held stakes shall refer to the winning bid price of each investor.

Article 27. Charter of a limited liability company with more than one member

Charter of a limited liability company with more than one member shall be adopted by the members conference and shall include the following main contents:

1. Name and address of the head office of the company, branches and representative offices (if any);

2. Business objectives and scope of operations;
3. Charter capital and methods of increasing chartered capital;
4. Full names, addresses and other characteristics of company's members;
5. Amount and value of capital each member contributes to the company;
6. Rights and obligations of company's members;
7. Organisational structure of the company;
8. Legal representative of the company;
9. Decision-making procedures; principles of internal dispute settlement;
10. Bases and methods of determining remuneration, wages and salaries for managers and controllers;
11. Distribution of after tax profits and handling of losses during the company's business operations;
12. Dissolution and liquidation of company's assets;
13. Amendments of company's charter;
14. Full name(s), signature(s) of the company's members;
15. Other issues that are not contrary to the laws.

Article 28. Submitting, approving and implementing plans for conversion into multi-member limited liability company

1. Enterprises shall submit a conversion plan to a person who is competent to determine their formation or to an authorised person.
2. The person who is competent to determine the formation of the enterprises or an authorised person shall be empowered to approve the conversion plans.
3. The converting enterprises shall be responsible for the implementation of the approved conversion plans.

Article 29. Methods of selling State-held capital

1. Based on the percentage of State capital that is approved in the conversion plan and nature of the enterprise's business, the head of the agency that is empowered to determine the conversion of the enterprise may choose to sell State-held capital with or without a limitation of bid winners in acquiring the capital contributions.

2. In case where State-held capital are sold subject to a limitation of bid winners, the following rules shall apply:

a) In case where the State is not required to retain capital: the chartered capital [of the enterprise] shall be divided into 50 stakes for an open bidding

(that may be open to employees of the enterprise as well). Successful bidders shall be selected from high to low ends until the company's 50 members are determined.

b) In case where the State is required to retain capital: after deducting the amount of capital held by the State member as may be determined by the maximum State-held limit, the remaining portion of the chartered capital shall be sold at public auction that is also open to employees of the enterprises in order to determine other members of the limited liability company with more than one member subject to a selection of successful bidders who are arranged in high-: TJtimyoful0ia439 745rich7nSuploye324(essit)17ipulate(d)-26(inpae)-18rta, cltthwhul de o pecuniarys in-19c(en)-18(ivt)17(sf)-18(tam)18t mard smilahssfahun.
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The value of the enterprise as may be determined in accordance with Article 25 of this Decree shall be used as the basis for determining the value of

Article 36. Policies relating to employees of converting enterprises

Article 38. Responsibilities for implementation of this Decree

1. Within 4 years from the entry into force of this Decree, all entities that are provided for in Article 1 and are eligible under Article 7 and Article 17 of this Decree shall complete their conversions to operate under the Enterprise Law.

2. Enterprises that fail to complete their conversion as required in clause 1 of this Decree shall be dissolved; the management and relevant officers who are responsible for such a conversion shall be held liable before the laws.