

NATIONAL ASSEMBLY
SOCIALIST REPUBLIC OF VIETNAM

Legislature XI, 4th Session
(from 21 October to 26 November 2003)

LAW ON STATE OWNED ENTERPRISES

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and added to by Resolution No. 51-2001-QH10 dated 25 December 2001 of the 10th Session of Legislature X of the National Assembly;

This Law governs State owned enterprises.

CHAPTER I

General Provisions

Article 1 *State owned enterprises*

State owned enterprise means an economic organization in which the State owns the entire charter capital or holds the controlling shareholding or controlling capital contribution, and which is organized in the form of a State company, shareholding company or limited liability company.

Article 2 *Governing scope and applicable entities*

1. The governing scope of this Law shall comprise:
 - (a) Decisions on new establishment, restructure¹, dissolution, conversion of ownership, and organization of management and operations of State companies;
 - (b) Regulation of the relationship between the State owner and the representative of the State's capital contribution portion in enterprises in which the State owns the entire charter capital or holds the controlling shareholding or controlling capital contribution.
2. This Law shall apply to the following entities:
 - (a) State companies;
 - (b) Representatives of the State's capital contribution portion in State shareholding companies, one member State limited liability companies, and State limited liability companies with two or more members;
 - (c) Representatives of the State's capital contribution portion in enterprises in which the State holds the controlling shareholding or controlling capital contribution.

Representatives of the State's capital contribution in enterprises with one State owned capital contribution portion shall act in accordance with regulations of the Government.
 - (d) This Law and specific regulations of the Government shall apply to special State companies directly servicing national defence and security.

¹ Phillips Fox Note: Alternative translation "re-organization", but "restructure" is used throughout in this translation.

Article 3 *Definition of terms*²

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 all the members are State companies or in which some members are State companies and other members are organizations authorized by the State to contribute capital, and which is organized and operates pursuant to the *Law on Enterprises*.
5. *Enterprise in which the State holds the controlling shareholding or controlling capital contribution* means an enterprise in which the State's shareholding or capital contribution accounts for more than 50% of the charter capital, and the State holds the right to control such enterprise.
6. *Enterprise with one State owned capital contribution portion* means an enterprise in which the State's capital contribution portion accounts for 50% or less of the charter capital.
7. *State company holding the controlling right in another enterprise* means a company owning the entire charter capital or holding shares or a capital contribution accounting for more than 50% of the charter capital of another enterprise, and the State holds the right to control such other enterprise.
8. *Controlling right in an enterprise* means the right to decide the operational charter of the enterprise; to appoint, suspend or dismiss key managerial positions in the enterprise; and to organize management and make important management decisions of such enterprise.
9. *Independent State company* means a State company which is not part of the organizational structure of a State corporation.
10. *Charter capital of a State company* means the amount of capital the State invests in the company and which is recorded in the company charter.
11. *Legal capital* means the minimum amount of capital required by law in order to establish an enterprise in a number of industries and trades.
12. *Public utility products and services* means products and services which are essential for the life, economy and social affairs of the country or of civilian communities in territorial zones, or which ensure national defence and security, while production and supply pursuant to the market mechanism would be difficult to cover the costs of enterprises producing and supplying such products and services which is why the State orders, assigns plans on, or holds tendering for the production of these products and/or for the provision of these services at prices or charges regulated by the State.

Article 4 *Applicability of Law on State owned enterprises and other relevant laws*

1. State companies shall operate pursuant to this Law and other relevant laws. If there is a difference between the provisions of this Law and those of another relevant law on the same issue within the

² Phillips Fox Note: Also see article 46 where "State corporation" is defined.

governing scope and applicable entities of such other relevant law, the provisions of such other law shall apply.

2. If there is a difference between the provisions of this Law and those of relevant laws on the rights and obligations of State owners of State companies with respect to State companies; or if the provisions on the relationship between the State owner and the authorized representative of the State's capital contribution portion are different in this Law, in the *Law on Enterprises*, in the *Law on Foreign Investment in Vietnam* and in equivalent laws on enterprises to which the State contributes capital, then this Law shall apply.

Article 5 *Political and socio-political organizations in State owned enterprises*

Political and socio-political organizations in State owned enterprises shall operate within the framework of the Constitution, the law and their own charters in accordance with law.

CHAPTER II

**Establishment of New State Owned Enterprises and
Business Registration of State Owned Enterprises**

Article 6 *Industries, sectors and [geographical] areas in which new State companies may be established*

1. New State companies may be established in the following industries, sectors and [geographical] areas:
 - (a) Industries and sectors which supply essential products and services for society;
 - (b) Industries and sectors which apply high-tech, which create the impetus for rapid development of other industries and sectors and for the entire economy, and which require a large investment;
 - (c) Industries and sectors which have a high competitive advantage;
 - (d) Areas with especially difficult socio-economic conditions in which other sectors of the economy do not invest.
2. The Government shall make decisions on the industries, sectors and areas stipulated in clause 1 of this article and shall periodically proclaim master plans for restructuring and developing State companies according to such industries, sectors and areas.

Article 7 *Proposals to establish new State companies*

1. Ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of people's committees of provinces and cities under central authority (hereinafter referred to as *chairmen of provincial people's committees*) shall be the people to propose establishment of new State companies (hereinafter referred to as *proposers*).
2. Proposers shall rely on the list of industries, sectors and areas for which consideration will be given to establishment of new State companies as stipulated in article 6 of this Law and on master plans for restructuring and developing State companies throughout the whole economy and in branches, provinces and cities under central authority as approved by the Government in accordance with the provisions in sub-clause (a) of clause 1 of article 65 of this Law in order to formulate plans and application files for establishment of new State companies and submit them to the Prime Minister of the Government for decision in accordance with the provisions in article 9 of this Law.
3. A plan for establishment of a new State company shall contain the following basic items:
 - (a) The necessity for establishment of the company; a list of the products and services to be supplied by the company; the market status, market demand and expectation for each type of

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;

- (b) Location for head office of the company or for constructing a production and business establishment and area of land to be used;
 - (c) Ability to supply labour, raw materials, supplies, energy and other conditions essential for the operation of the company after establishment;
 - (d) Total estimated investment capital; initial investment funding sources of the State; sources and forms of raising remaining capital; plan for repayment of capital raised; requirement for and measures to create working capital;
 - (dd) Feasibility statement on socio-economic efficiency and conformity of establishment of the company with the master plan and strategy for development of the industry, sector and economic zone;
 - (e) Environmental impact evaluation report and measures for environmental protection;
 - (g) Proposed model for company management organization, and duration of operation;
 - (h) In the case of a company which will need to carry out investment in construction after being established, the plan for new establishment shall also include new investment projects to be established. The contents of new investment projects in establishment of a new State company shall comply with the laws on investment.
4. An application file for establishment of a new State company shall comprise:
- (a) Submission proposing establishment of the company;
 - (b) Plan for establishment of a new company as stipulated in clause 3 of this article;
 - (c) Draft company charter;
 - (d) Application for land assignment or lease;
 - (dd) Application requesting any investment incentives in accordance with the laws on promotion of investment.
5. The company charter must contain at least the following items:
- (a) Names, addresses, telephone and fax numbers and e-mail addresses of head office of the company and of any branch or representative office;
 - (b) Objectives and business lines;
 - (c) Charter capital;
 - (d) Relationship between the company and the agency or organization authorized to be representative of the company owner;
 - (dd) Structure of managerial organization of the company;
 - (e) Legal representative of the company;
 - (g) Principles on use of profits of the company;
 - (h) Circumstances in which the company may be re-organized, dissolved, or ownership converted; procedures for liquidation of company assets;
 - (i) Procedures for amending or supplementing the company charter;

- (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 implementation of the project shall be conducted in accordance with the laws on investment.
6. At the same time as a decision on new establishment of a State company is made, the chairman of the board of management and members of the board of management shall be appointed, and a decision shall be made on appointment of or signing a contract with the director of a company without a board of management.

Article 10 *Business registration of State companies*

The procedures for business registration of State companies shall be provided for as follows:

1. Within a time-limit of sixty (60) days from the date of the decision on establishment, the company shall conduct business registration at the business registration office in accordance with the *Law on Enterprises*.
2. A State company shall have legal entity status as from the date of grant of its business registration certificate. Only after a State company is granted its business registration certificate shall it accept investment capital from the State budget or raise capital for investment in construction of the enterprise or for business operations; the company shall be permitted to conduct business in

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*

1. To preserve and develop State capital and capital which the company itself raises, and to be liable for debts and other asset obligations of the company within the scope of the company assets.
2. The representative of the State owner shall be liable for debts and other asset obligations of the company within the scope of the State capital invested in the company.
3. To periodically re-value company assets in accordance with regulations of the Government.

Article 15 *Business rights of State companies*

1. To take the initiative in organizing their production and business, to organize their management apparatus in accordance with business requirements, and to ensure business efficiency.
2. To conduct business in industries and trades which are not prohibited by law; to expand their business scale depending on the company's ability and demand from domestic and overseas markets.
3. To seek domestic and overseas markets and customers, and to sign contracts.
4. To make their own decisions on the prices for the sale and purchase of their products and services, except for public utility products and services and except for products and services for which the State fixes prices pursuant to a price level or price framework stipulated by the State.
5. To make decisions on investment projects in accordance with the laws on investment; to use capital and assets of the company for joint ventures and associations with, and for capital contribution to other enterprises in Vietnam; to lease or purchase part or the whole of other companies.
6. To use capital of the company or capital raised in order to invest in the establishment of one member State limited liability companies, and to invest together with other investors in the establishment of shareholding companies or limited liability companies with two or more members.
7. To open branches and representative offices in Vietnam and overseas.
8. To formulate and apply labour rates, materials rates, wage unit prices and other expenses on the basis of ensuring business efficiency and compliance with law.
9. To recruit, hire and employ labour; to train, discipline and retrench employees; to arrange staff; to choose methods of paying salary and bonuses consistent with business requirements, and to have other rights in accordance with the laws on labour.
10. To have other business rights depending on market demand and in compliance with law.

Article 16 *Business obligations of State companies*

1. To conduct business in the correct industry and trade for which the company has business registration; to ensure quality of products and services supplied by the company in accordance with registered standards.
2. To renew and modernize technology and management methods in order to raise efficiency and competitiveness.
3. To ensure the rights and interests of employees in accordance with the laws on labour, to ensure employees have the right to participate in management of the company as stipulated in section 3 of Chapter IV of this Law.
4. To comply with State regulations on national defence and security, culture, social order and safety, protection of the environment and natural resources.
5. To implement the regimes on accounting, auditing, and financial and statistical reporting in accordance with law and on request by the State owner.
6. To be subject to supervision and inspection by the State owner; to abide by inspection decisions by financial agencies and competent State agencies in accordance with law.
7. To be responsible before capital investors for the utilisation of capital to invest in establishment of other enterprises.
8. To fulfil other business obligations in accordance with law.

Article 17 *Financial rights of State companies*

1. To raise capital to conduct business in the form of issuance of company bonds, bills of exchange and promissory notes; to borrow loans from banking, credit and other financial organizations, and from individuals and organizations outside the company; to borrow loans from employees and to raise capital by other methods in accordance with law.

The raising of capital for business purposes shall be implemented on the principles of self-responsibility for loan repayment, assurance of efficiency in utilisation of the capital raised, and non-alteration of the form of ownership of the company.

If a company raises capital in order to convert its form of ownership, this shall be implemented in accordance with the provisions in Chapter VIII of this Law and other relevant laws.

The raising of capital from foreign individuals and organizations shall be implemented in accordance with regulations of the Government on control of foreign loans and debts.

2. To take the initiative in utilising capital for business operations of the company; to utilise and manage company Funds in accordance with law.
3. To make decisions on depreciation of fixed assets on the principle that minimum levels of depreciation must ensure they cover the cost of both tangible and intangible deterioration of fixed assets and are not less than the minimum depreciation rates stipulated by the Government.
4. To be entitled to State regimes on allowances and price subsidies and other preferential regimes when undertaking operations being public utility, national defence and security, and prevention of natural disaster; or when supplying products and services at State stipulated prices which do not offset production costs.
5. To be entitled to pay rewards for initiatives on renovation; for technical, management and technological improvements; for raising labour productivity; and for savings on materials and costs. These monetary rewards shall be accounted for in business expenses on the basis of ensuring business efficiency of the company from these initiatives.

6. To be entitled to the regimes on investment and reinvestment incentives pursuant to law.
7. To refuse and to denounce any request to provide resources not permitted by law from any individual, agency or organization, except for voluntary contributions for humanitarian and public utility purposes.
8. After discharging all tax obligations, transferring losses in accordance with the *Law on Corporate Income Tax*, completing other financial obligations in accordance with law and making deductions for financial reserves funds, remaining profits shall be distributed in accordance with State invested capital and capital sources the company has itself raised as follows:
 - (a) Profits divided in accordance with State invested capital shall be used to reinvest to increase State capital in the company or to form a concentrated Fund to invest in other State enterprises in sectors which the State needs to develop or control in accordance with regulations of the Government.
 - (b) Profits divided in accordance with capital sources the company has itself raised shall be used to establish Funds for investment and development in accordance with regulations of the Government; the company shall make its own decision on distribution of the remainder into reward funds and welfare funds.

If the company has not fully discharged debts which have matured and are payable, it may only raise wages or make deductions for rewards to staff including management personnel after it has fully discharged due debts.

In the case of State companies operating in monopoly sectors and newly established State companies, the distribution of after-tax profits to Funds for investment and development and to reward funds and welfare funds shall be implemented in accordance with regulations of the Government.

Article 18 *Financial obligations of State companies*

1. To conduct business profitably, ensuring the ratio of profit over State invested capital as assigned by the owner's representative.
2. To manage and efficiently use business capital including any capital invested in other companies, and natural resources, land and other resources assigned or leased by the State.
3. To use capital and other resources to perform other special tasks when the State so requests.
4. To comply fully with regimes on management of capital, assets and funds; regimes on accounting and auditing in accordance with law; and to be responsible for the honesty and legality of their financial operation.
5. To observe the regimes on annual financial reporting, making finances public and providing information necessary for an honest assessment of the efficiency of the company's operations.

Article 19 *Rights and obligations of State companies when participating in public utility operations*

In addition to the rights and obligations of State companies stipulated in articles 13 to 18 inclusive of this Law, State companies shall also have the following rights and obligations when they participate in public utility operations:

1. To produce and supply public utility products and services on the basis of tendering. Where such products and services are produced or supplied pursuant to a State order or plan assigned by the State, the company concerned shall be obliged to sell them to the stipulated entity at the prices and charges set by the State.
2. To be responsible before the State for the results of their public utility operations; to be liable to customers and before the law for the public utility products and services which the company produces or supplies.

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.
6. With respect to companies which are designed, established with investment and registered for business to achieve the objective of the main, regular and stable supply of public utility products and services, then:
 - (a) The State shall invest capital in them to form assets to service the objective of the supply of public utility products and services;
 - (b) When necessary the State shall transfer the capital portion or assets servicing the objective of the supply of public utility products and services by the company to achieve the objective of the supply of public utility products and services in other companies;
 - (c) They shall have the right to assign, lease out or mortgage assets servicing the objective of the supply of public utility products and services by the company and within the management right of the company when the person who made the decision on establishment of the company so permits. The mortgage of the value of land use rights and assets of a company which are attached to land use rights servicing the objective of the supply of public utility products and services shall comply with the laws on land;
 - (d) They shall be entitled to use the assigned resources to organize additional business operations when the person who made the decision on establishment of the company so agrees, but without effecting achievement of the main objective of the supply of public utility products and services;
 - (dd) To exercise other rights and discharge other obligations of a company participating in public utility operations in accordance with the provisions of this Law.

The Government shall provide regulations on industries and sectors with [which supply] public utility products and services; and specific guidelines on the mechanisms for tendering, placing orders and assigning plans, and on the financial and accounting mechanism applicable to public utility operations.

Article 20 *Rights and obligations of State companies holding the right to control other enterprises*

In addition to the rights and obligations of State companies stipulated in articles 13 to 19 inclusive of this Law, State companies holding the right to control other enterprises shall also have the rights and obligations stipulated in articles 57 to 59 inclusive of 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 professional³ 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;

³ 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 being dismissed or suspended, or has allowed the company to fall into the state described in point (a) of clause 3 of article 25 of 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 terminating contracts with deputy directors and the chief accountant of a State company on the proposal of the director.
2. Procedures for selection and appointment or signing a contract with a director shall be implemented in accordance with regulations of the Prime Minister of the Government. A director shall be appointed or sign a contract for a term not to exceed five years, but he/she may be re-appointed or renew his/her contract.
3. A director shall be dismissed or his contract terminated ahead of time in the following circumstances:
- (a) He allows the company to suffer a loss for two consecutive years, to fail to ensure the ratio of profit over State invested capital for two consecutive years, or to fall into an irremediable state of interwoven loss and profit, except for cases of a loss or reduction of profit ratio over State invested capital approved by the competent authority; [except for cases of] a loss or reduction of profit ratio over State invested capital for objective reasons and which has been explained to and approved by the competent authority; [and except for cases of] investment in expansion of production and renewal of technology;
 - (b) The company becomes insolvent but an application for bankruptcy is not submitted;
 - (c) The director fails to complete the tasks or achieve the norms assigned by the person who selected or recruited him, or fails to fulfil his contractual obligations;
 - (d) The director acts dishonestly in performing his duties or exercising his powers, or abuses his position and powers for his own or other people's profit; or provides an untruthful report on the financial status of the company;
 - (dd) The director is convicted in a legally effective court judgment or decision;
 - (e) The director loses capacity for civil acts or his capacity for civil acts is restricted.
4. A director shall be replaced in the following circumstances:
- (a) The director applies to resign;
 - (b) There is a decision transferring the director to other work, or a decision arranging other work for the director.

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.
4. If a director commits one of the following breaches which is not serious enough to warrant criminal prosecution, he shall not be entitled to a bonus, not be entitled to a salary increase and shall be disciplined depending on the seriousness of the breach:
 - (a) Allowing a State company to suffer a loss;
 - (b) Losing State capital;
 - (c) Making a decision on an ineffective investment project, failing to recover invested capital;
 - (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.
5. If a 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, the salary of the director shall be decreased and he must pay compensation for loss in accordance with law.
6. If the company has not fully paid debts which are due and payable and has not fully discharged other asset obligations, then:
 - (a) [The director] shall report to the person who made the decision on establishment of the company and provide a plan for debt repayment;
 - (b) The director shall not raise salaries for employees and management personnel nor make deductions from profits to pay bonuses to employees and management personnel;
 - (c) The director shall be personally liable for loss caused to creditors as a result of his failure to discharge the obligations in sub-clauses (a) and (b) above;
 - (d) The director shall make recommendations on measures to overcome the financial difficulties of the company.
7. If the company becomes insolvent but the director fails to lodge an application for bankruptcy, then the director shall be legally liable pursuant to law.
8. 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 director shall be dismissed or his contract shall be terminated ahead of time.
9. A director may only hold a managerial position in a limited liability company, shareholding company or foreign invested company when a competent State company or organization nominates such director for the managerial position or appoints him as representative of the State's capital contribution portion in such enterprise.

A spouse, parent, child or sibling of a director of a company may not hold the position of chief accountant or cashier in the same company. If a civil, labour or economic contract is signed on behalf of the company with the director of the company or with a spouse, parent, child or sibling of the director, then the director must notify the person who appointed him or signed the contract hiring him. If the person who appointed the director or signed the contract hiring the director detects a contract with a self-seeking aim, such person shall have the right to request the director not to sign such contract, but if the contract has already been signed it shall be deemed invalid and the director must pay compensation for loss to the company and shall be dealt with in accordance with law.

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 representative offices of the company; on approval of the charter of any one-member State limited liability company owned by the subject company;
 - (d) Selection, signing a contract with, deciding the salary level of, or suspending or dismissing the general director after obtaining approval from the person who made the decision on establishment of the company; selection, signing a contract with, deciding the salary level of, or suspending or dismissing a deputy general director or the chief accountant on the proposal of the general director; to pass decisions of the general director on appointment, salary levels, suspension or dismissal of directors and chief accountants of member companies or of professional entities in which the subject company owns the entire charter capital; on selection, appointment, salary level, suspension or dismissal of the chairman and members of the board of management of one-member State limited liability companies in which the subject company owns the entire charter capital; and decisions appointing the representative of the company's capital contribution portion in another enterprise;

- (dd) To exercise the powers and discharge the obligations of the owner of any limited liability company or shareholding company of which the subject company is the owner or co-owner; to make decisions on accepting an enterprise which volunteers to join the member companies of a corporation;
 - (g) To make decisions or to delegate the general director to make decisions on plans to raise capital for business operations but without altering the form of ownership;
 - (h) To pass the annual financial statements of the company, and the plan for use of after-tax profits or to deal with losses during the business process on the proposal of the general director; to pass the annual financial statements of any independent cost accounting member company of a State corporation;
 - (i) To inspect and supervise the general director and directors of member entities during implementation of their functions and duties in accordance with this Law;
 - (k) To make decisions on use of the company's capital to invest in establishment of member entities in which the subject company will own the entire charter capital but not to exceed the level of invested capital within the authority of the board of management to make decisions pursuant to sub-clause (b) of clause 2 of this article; and to make decisions on the dissolution or conversion of ownership of these entities.
3. To make recommendations to the person who made the decision on establishment of the company:
- (a) To approve the company charter and any amendments to it;
 - (b) On investment projects beyond the level delegated to the board of management to make decisions, and on plans for raising capital which will result in altering the form of ownership of the company;
 - (c) On replacing, dismissing, rewarding or disciplining any member of the board of management or on adding to the number of members;
 - (d) On decisions on investment projects, capital contribution, purchase of shareholding in other companies, and on sale of assets of the company valued at above 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;
 - (dd) On decisions on use of the company's capital to invest in establishment of member entities in which the subject company will own the entire charter capital and which exceed the level of invested capital within the authority of the board of management to make decisions pursuant to sub-clause (b) of clause 2 of this article; and to make recommendations on decisions on dissolution or conversion of ownership of these entities.
4. To request the general director to lodge an application for bankruptcy if the company becomes insolvent.
5. To perform other duties and exercise other powers pursuant to law and as prescribed in the company charter.

Article 31 *Criteria and conditions for members of the board of management*

Members of the board of management must satisfy the following criteria and conditions:

1. Being Vietnamese citizens and having permanent residence in Vietnam.
2. Having a university degree and capability for management and business. The chairman of a board of management must have at least three years' experience in management and administration of an enterprise in the main business lines of the company.

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 member of the board of management. The number of members of the board of management shall not exceed seven (7), and shall be decided by the person who made the decision on establishment of the company.
2. The person who made the decision on establishment of the company shall make decisions on appointment, dismissal, replacement, rewarding or disciplining the chairman and members of the board of management. The term of office of members of the board of management shall not exceed five years, but they may be re-appointed.
3. Members of the board of management shall be dismissed in the following circumstances:
 - (a) They are convicted in a legally effective court judgment or decision;
 - (b) They lack the capacity [and/or] qualifications to assume the work assigned to them; they lose capacity for civil acts or their capacity for civil acts is restricted;
 - (c) They act dishonestly in performing their duties or exercising their powers, or abuse their position and powers for their own or other people's profit; they provide an untruthful report on the financial status of the company;
 - (d) They breach the provisions in sub-clause (a) of clause 3 of article 25 of this Law.
4. Members of the board of management shall be replaced in the following circumstances:
 - (a) They apply to resign;
 - (b) There is a decision transferring them to other work, or a decision arranging other work for them.

Article 33 *Chairman of the board of management*

1. The chairman of the board of management may not concurrently hold the position of general director of the company.
2. The chairman of the board of management shall have the following duties and powers:
 - (a) To represent the board of management in signing receipt of capital, land, natural resources and other resources which the State owner invests in the company; to manage the company in accordance with decisions of the board of management;
 - (b) To organize research of strategies, long-term plans, large scale investment projects, and plans for change of organization or of key personnel structure within the company for submission to the board of management;
 - (c) To prepare programs and plans on operation of the board of management; to make decisions on agendas, contents of meetings and documents necessary to service meetings; to convene and chair meetings of the board of management;

- (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 board of management or above fifty (50) per cent of the total number of members of the board of management.
2. The chairman of the board of management or a member of the board of management authorized by the chairman shall convene and chair meetings of the board of management.
3. Meetings or a collection of [written] opinions of members of the board of management shall be valid when at least two-thirds of the total number of members of the board of management participate. Resolutions and decisions of the board of management shall be effective when above fifty (50) per cent of the total number of members of the board of management vote in favour; when the number of votes for and against is equal, the party with the vote of the chairman of the board of management shall carry the decision. Members of the board of management shall have the right to reserve their opinions.

When discussing company affairs which concern any important local issue, the board of management must invite representative/s from the relevant local authority/ies to attend the meeting; and if the company affairs concern the rights and obligations of workers in the company, the board of management must invite a representative from the trade union to attend the meeting. Representatives from agencies and organizations invited to attend meetings shall have the right to express their opinions but not to vote.

4. Matters discussed, opinions expressed, results of voting, decisions passed by the board of management and conclusions of meetings of the board of management shall be minuted. The person chairing a meeting and the meeting secretary shall be jointly responsible for the accuracy and truthfulness of the minutes of a meeting of the board of management. Resolutions and decisions of the board of management shall be mandatory and applicable to the entire company.
5. Members of the board of management shall have the right to request the general director, chief accountant and managerial staff in the company to provide information and data on the financial and operational status of the company pursuant to the information rules of, or a resolution of the board of management. The person requested to provide information must promptly provide the complete and accurate information and data requested by the member of the board of management, unless there is some other decision by the board of management.
6. Operational expenses of the board of management including wages, allowances and remuneration shall be accounted for in enterprise management expenses of the company.

Article 35 *Regime on wages, allowances and bonuses of full-time and part-time members of the board of management*

1. Full-time members of the board of management shall be entitled to a regime on annual salary and bonus corresponding to the production and business results and efficiency of the company.

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 or organization nominates such person for the managerial position or appoints him as the company's representative of the capital contribution portion in such enterprise.

A spouse, parent, child or sibling of a chairman of the board of management, a member of the board of management or the general director of a company may not hold the position of chief accountant or cashier in the same company. If a civil, labour or economic contract is signed on behalf of the company with a member of the board of management, the general director, or a spouse, parent, child or sibling of the member of the board of management or general director, then the contract must be notified to the person who appointed the member of the board of management or general director or to the person who signed the contract hiring the general director. If the person who appointed the member of the board of management or general director or the person who signed the contract hiring the general director detects an as yet unsigned contract with a self-seeking aim, such person shall have the right to request the member of the board of management or general director not to sign such contract; and if the contract has already been signed it shall be deemed invalid and the member of the board of management or general director must pay compensation for loss to the company and shall be dealt with in accordance with law.

Article 37 *Inspection committee*

1. The board of management shall establish an inspection committee to assist it in inspection and supervision of compliance with law, accuracy and honesty during management and administration of business operations, compilation of accounting books and financial statements; and of compliance with the company charter, resolutions and decisions of the board of management, and decisions of the chairman of the board of management.
2. The inspection committee shall perform the duties assigned to it by the board of management, and shall report to and be responsible before the board of management.
3. The inspection committee shall comprise a head being a member of the board of management and a number of other members as decided by the board of management. The trade union organization in the company shall elect a representative who satisfies the criteria and conditions stipulated in clause 4 of this article to be a member of the inspection committee.
4. Members of the inspection committee must satisfy the following criteria and conditions:
 - (a) Having permanent residence in Vietnam;
 - (b) Having good health and morals, being honest and incorruptible; having a sense of responsibility in observing the law;
 - (c) Having qualifications in economics, finance and economics, accounting or having other expert or professional qualifications;
 - (d) A full-time member of the inspection committee may not concurrently hold a position of leader in the State apparatus;

- (dd) A spouse, parent, child or sibling of a member of the inspection committee may not hold the position of member of the board of management, general director, chief accountant or cashier in the same company.
5. The company shall ensure the operational expenses of the inspection committee, including wages and working conditions.

Article 38 *General director, deputy general directors, chief accountant and assisting staff*

1. The general director shall be the legal representative, administering the daily operations of the company in accordance with objectives and plans, and in compliance with the company charter and resolutions and decisions of the board of management; he shall be liable to the board of management and shall be legally liable for the exercise of the rights and duties assigned to him.
2. The deputy general director(s) shall assist the general director in administering the company pursuant to delegation from and authorization by the general director; shall be answerable to the general director, and shall be legally liable for his/their delegated and authorized duties.
3. The chief accountant shall have the duty of organizing the accounting work of the company; shall assist the general director to supervise finances in the company in accordance with the laws on finance and accounting; shall be answerable to the general director, and shall be legally liable for his/her delegated and authorized duties.
4. The office and professional sections and committees shall have the function of advising and assisting the board of management and the general director in managerial and administrative work.

Article 39 *Criteria and conditions for selection of the general director*

The criteria and conditions for selection of the general director shall be the same as those applicable to directors as stipulated in article 24 of this Law.

Article 40 *Selection, appointment and dismissal, signing and termination of contracts with the general director, deputy general directors and chief accountant*

1. The board of management shall, after obtaining agreement from the person who made the decision to establish the company, select, appoint or dismiss, or sign or terminate a contract with the general director.
2. The board of management shall, on the proposal of the general director, select, appoint or dismiss, or sign or terminate contracts with the deputy general directors and chief accountant.
3. The general director, deputy general directors and chief accountant shall be appointed or shall sign contracts for a maximum term of five years, but they may be re-appointed or renew their contracts.
4. Procedures for selection, appointment and signing a contract with the general director shall be implemented in accordance with regulations of the Prime Minister of the Government.
5. The general director shall be dismissed or his contract shall be terminated ahead of time in the circumstances stipulated in clause 3 of article 25, and the general director shall be replaced in the circumstances stipulated in clause 4 of article 25 of this Law.

Article 41 *Duties and powers of the general director*

1. To formulate the annual plans of the company, plans for raising capital, investment projects, joint ventures plans, plans for organization of management of the company, internal management rules of the company, plans for training staff, and plans for business co-operation with any member companies or other companies for submission to the board of management [and/or] the chairman of the board of management.
2. To formulate eco-technical norms, product standards and wage unit prices consistent with State regulations for submission to the board of management for approval; and to inspect compliance by

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 management and pursuant to the company charter.
5. To sign civil and economic contracts pursuant to sub-clause (b) of clause 2 of article 30 of this Law and other civil and economic contracts in accordance with law.
6. To make decisions on selection, signing and termination of contracts or on appointment and dismissal, on rewarding or disciplining, and decisions on the salary and allowance level of the following positions:
 - (a) Director and chief accountant of independent cost accounting member companies and professional entities of a corporation, after obtaining approval from the board of management;
 - (b) Heads and deputy heads of sections (committees) of the corporation;
 - (c) Deputy director(s) of member companies and professional entities of a corporation on the proposal of the director of such member company or professional entity;
 - (d) Other managerial positions in the company as delegated by the board of management.
7. To organize implementation of business plans and investment plans; to make decisions on solutions for developing markets, marketing and technology; and to administer operations of the company aimed at implementation of resolutions and decisions of the board of management.
8. To report to the board of management on the operational and business results of the company; to publicly announce financial statements in accordance with regulations of the Government.
9. To be subject to supervision and inspection by the board of management, the inspection committee, and competent State administrative agencies with respect to implementation of his/her functions and duties in accordance with this Law and other laws.
10. To take necessary measures in emergency situations and to immediately report same to the board of management and the competent State agency.
11. To be entitled to the annual wage regime. Salary and bonus level shall correspond to the business efficiency of the company, as decided by the board of management or as stipulated in the signed contract.

The regime on payment and finalization of salary and bonus shall be the same as that for a director as stipulated in clause 10 of article 26 of this Law.
12. To exercise other rights and perform other duties in accordance with this Law, the company charter and decisions of the board of management.

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 management for the latter's consideration and amendment of the resolution or decision. The board of management must consider proposals from the general director. If the board of management does not amend the resolution or decision then the general director must continue to implement it, but he/she may reserve his/her opinion and make a recommendation to the person who made the decision on establishment of the company.
2. Within a time-limit of fifteen (15) days from the last day of each month, quarter and year, the general director shall provide a written report to the board of management on the status of the business operations of the company and on the direction for implementation in the coming period.
3. The chairman of the board of management shall attend, or appoint a member of the board to attend, meetings which are chaired by the general director being briefing meetings or preparatory meetings about plans for submission to the board. The chairman of the board or the person representing the board at such meetings shall have the right to express his/her opinion but not to formulate the conclusion of the meeting. A general director who is not a member of the board of management shall be invited to attend meetings of the board of management and shall have the right to address the meeting but not to vote.
4. Any delegation of powers or authorization from the board of management or from the chairman of the board of management to the general director must be provided for in the company charter.

Article 43 *Obligations and responsibilities of the chairman and members of the board of management, and of the general director*

1. The general director shall be responsible before the board of management and the law for administering the daily operations of the company, and for the exercise of the rights and duties assigned to him/her. Members of the board of management shall be jointly liable before the person who made the decision to appoint them and before the law for decisions of the board of management, and for the results and efficiency of the company operations.
2. The chairman of the board of management, members of the board of management and the general director shall have the following obligations:
 - (a) To perform the duties and powers assigned to them honestly, for the benefit of the company and the State, and to be responsible for such performance;
 - (b) Not to abuse their position and powers, not to use the company's capital and assets for their own or other people's profit; not to disclose company secrets during the term of membership of the board of management or general directorship or within three years from the end of such term or within any other period prescribed in the company charter, unless the board of management agrees;
 - (c) If the company fails to fully pay debts and other asset obligations which are due and payable, the general director must report to the board of management, seek measures to overcome the financial difficulties, and notify all creditors of the company's financial status; the chairman of the board of management, members of the board of management and the general director shall not raise salaries for employees and management personnel nor make deductions from profits to pay bonuses to employees and management personnel;
 - (d) If the company fails to fully pay debts and other asset obligations which are due and payable, and they fail to implement the provisions in sub-clause (c) above, they shall be personally liable for loss caused to creditors;
 - (dd) If the chairman of the board, a member of the board or the general director breaches the company charter, makes a decision which is ultra vires, or abuses his/her position and powers

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 and members of the board of management (if any), general director or director, deputy general directors or deputy directors and the chief accountant when requested by a competent State agency.
6. Workers shall have the right to debate and to vote on decisions on the following issues via the general assembly or the congress of delegates of staff and officials and via the trade union organization of the company:
 - (a) Contents of, or any amendments to the collective labour agreement in order for the representative of the labour collective to sign it with the general director or director of a State company;
 - (b) Regulations on use of welfare funds and reward funds, and planning criteria of the company which directly concern rights and obligations of workers, consistent with State regulations;
 - (c) Assessment of operational results and operational programs of the people's inspection board;
 - (d) Election of the people's inspection board.

CHAPTER V

State Corporations

Article 46 *State corporations*

A *State corporation* is a form of economic association on the basis of self-investment and capital contribution between State companies or between State companies and other enterprises, or a formation on the basis of organizing and aligning member entities which are closely connected in terms of economic interests, technology, markets and other business services, operating in one or a number of main specialized eco-technical industries aimed at strengthening business capacity and achieving benefits both for member entities and for the entire corporation.

Article 47 *Forms of State corporation*

1. A State corporation in which the State makes the decision on investment and establishment is a form of association and combination of independent cost accounting member companies with legal entity status, operating in one or a number of main specialized eco-technical industries aimed at strengthening capital agglomeration and concentration and business specialization of member entities and of the entire corporation.
2. A State corporation in which companies self-invest and which they establish is a form of association via investment and capital contribution between a large State company in which the State owns the entire charter capital with other enterprises, where the State holds the right to control such other enterprises.

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;
 - (b) Facilitating technological development, strengthening capital agglomeration and concentration, assigning specialization, and raising the competitiveness of member companies and the entire corporation;
 - (c) Having a mechanism to ensure the interests of and close connection of interests between member companies, to which mechanism the member companies agree.

Article 49 *Member entities of corporations in which the State makes the decision on investment and establishment*

Corporations in which the State makes the decision on investment and establishment may have the following member entities:

1. Entities in which the State invests the entire charter capital:
 - (a) Independent cost accounting member companies;
 - (b) Dependent cost accounting entities;
 - (c) Professional entities;
 - (d) One member State limited liability companies operating pursuant to the *Law on Enterprises*, either converted from the member entities prescribed in sub-clause (c) above or newly established;

(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.
4. The assets of independent cost accounting member companies are formed from their charter capital, and from loans borrowed by and other legally sourced investments in such companies.
5. State budget capital shall only be invested in corporations. Corporations shall have the right to make decisions on investing or not investing in their independent cost accounting member companies.
6. A corporation shall not transfer its capital and assets at member enterprises with legal entity status in which such corporation owns the entire charter capital 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 51 *Organization of management of corporations in which the State makes the decision on investment and establishment*

1. Corporations shall have the managerial structure of a board of management, an inspection committee, a general director, deputy general directors, chief accountant and assisting staff. The functions, duties, powers and operational organization of the board of management, inspection committee, general director, deputy general directors, chief accountant and assisting staff in the corporation and internal management of the corporation shall comply with section 2 of Chapter IV of this Law and regulations of the Government.
2. Independent cost accounting member companies shall have the managerial structure of a director, deputy directors, chief accountant and assisting staff. The functions, duties, powers and criteria for the director, deputy directors, chief accountant and assisting staff shall comply with section 1 of Chapter IV of this Law and guidelines of the Government. The relationship between the director, deputy directors and chief accountant with the corporation shall comply with clause 1 of article 52 of this Law.
3. One member State limited liability companies and State shareholding companies in which a corporation holds the controlling capital contribution shall have the structure of managerial organization stipulated in the *Law on Enterprises* and other laws.

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 the assets of the company;
 - (b) To implement the general business plans of the corporation; to perform duties of production and business assigned by the corporation on the basis of economic contracts; to bear liability for business activities [conducted] in co-ordination with the corporation;
 - (c) To enjoy autonomy in signing economic contracts, and to perform economic contracts assigned by the corporation;
 - (d) To make decisions on investment projects delegated by the corporation; to participate in forms of joint investment with the corporation or to carry out organization of investment projects delegated by the corporation pursuant to its planning on the basis of contracts signed with the corporation; to have the right to invest in or contribute capital to other companies;
 - (dd) To have the right to propose that the corporation make a decision or authorize the company to make a decision on establishment, restructure, dissolution or merger of subsidiary entities and a decision on the management apparatus for subsidiary entities;
 - (e) After discharging all tax obligations, transferring losses in accordance with the *Law on Corporate Income Tax*, completing other financial obligations in accordance with law and making deductions for financial reserves funds, remaining profits shall be distributed in accordance with capital invested by the corporation and capital sources the company has itself raised. Profits divided in accordance with State invested capital shall be used to reinvest to increase State capital in the company or to form a concentrated Fund of the corporation in accordance with regulations of the Government. Profits divided in accordance with capital sources the company has itself raised shall be used to pay additional sums into funds for investment and development of the company at ratios stipulated in regulations of the Government; the company shall make its own decision on distribution of the remainder into reward funds and welfare funds;
 - (g) A company shall have the rights and obligations stipulated in article 19 of this Law if the State assigns such company a plan for, or gives it a production order for public utility products and services, or if the company participates in tendering for public utility products and services;
 - (h) To be subject to supervision and inspection by the corporation; to periodically report accurately and fully information about the company and to report the company's financial statements to the corporation;
 - (i) In addition to the binding rights and obligations in respect to the corporation as stipulated in sub-clauses (a) to (h) inclusive of clause 1 of this article, independent cost accounting member companies shall have the right to business autonomy and shall also discharge the obligations of a State company pursuant to this Law.
2. Professional entities shall implement the regime on dividing responsibility for accounting as stipulated by the corporation; and shall be entitled to create revenue sources from the performance of contracts for provision of services, scientific research and training on technology transfer with entities both within and outside the corporation. Professional entities shall operate pursuant to regulations approved by the board of management of the corporation.

3. The relationship between the corporation with one member limited liability companies in which the corporation owns the entire charter capital shall comply with article 57 of this Law.
4. The relationship between the corporation with companies in which the corporation holds controlling capital shall comply with article 58 of this Law.

Article 53 *Conversion of a corporation in which the State made the decision on investment and establishment to the model of a corporation invested in and established by companies*

1. Corporations in which the State made the decision on investment and establishment and which satisfy the conditions stipulated in article 54 of this Law shall be permitted to convert to organization and operation pursuant to the provisions in articles 55 to 59 inclusive of this Law.
2. The Government shall regulate the principles, conditions and time-limit for conversion of corporations in which the State made the decision on investment and establishment to operation pursuant to the model of a corporation invested in and established by companies. During the period of conversion, corporations established pursuant to the provisions of the 1995 *Law on State Owned Enterprises* shall be permitted to operate pursuant to the provisions in section 1 of Chapter V of this Law.

Section 2

Corporations Invested In and Established by Companies

Article 54 *Cases of applicability of the provisions on corporations invested in and established by companies*

[The provisions on corporations invested in and established by companies shall apply to the following:]

1. Corporations defined in section 1 of Chapter V of this Law which are restructured or which themselves invest in other enterprises, [and] which satisfy the conditions on membership structure stipulated in article 55 of this Law.
2. Large scale State companies with financial potential and technological know-how or markets and which use their financial potential, technological know-how or markets, and which have invested in and control other enterprises, and which satisfy the conditions on membership structure stipulated in article 55 of this Law.

Article 55 *Structure of corporations invested in and established by companies*

The structure of corporations invested in and established by companies shall comprise:

1. The State company holding the right to control other enterprises (hereinafter referred to as the *parent company*).
2. Member companies (hereinafter referred to as *subsidiary companies*):
 - (a) One member State limited liability companies in which the State company owns the entire charter capital;
 - (b) Companies in which the State company holds the controlling capital contribution comprising limited liability companies with two or more members, shareholding companies, companies in joint venture with foreign parties, and companies overseas; and companies in which the State company holds the controlling capital contribution and which operate pursuant to the law corresponding to the particular form of such company.
3. Companies in which the State company holds a non-controlling capital contribution portion (hereinafter referred to as *associated companies*), organized in the form of limited liability companies with two or more members, shareholding companies, or companies in joint venture with foreign parties.

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 in which the State company invests and owns the entire charter capital*

A one member limited liability company in which a State company invests the entire charter capital shall operate pursuant to the *Law on Enterprises*. The State company is the owner of the one member limited liability company, and the State company shall exercise rights and discharge obligations of the owner of a one member limited liability company pursuant to the *Law on Enterprises*.

Article 58 *Relationship between a State company with the controlling right, and companies in which the State company holds the controlling capital*

A State company holding the right to control other enterprises shall manage its controlling shareholding or capital contribution as follows:

1. It shall exercise rights and discharge obligations of the controlling shareholders or controlling capital contributors via its representative at the enterprise pursuant to the *Law on Enterprises*, the *Law on Foreign Investment in Vietnam*, the law of the country in which the company makes its investment and the provisions in the charter of the controlled enterprise.
2. It shall elect, recall, reward, discipline and make decisions on allowances and benefits of the person representing the company at the controlled enterprise (hereinafter referred to as the *representative of the controlling capital contribution portion*).
3. It shall request the representative of the controlling capital contribution portion to provide periodical or one-off reports on the financial status, business results and contents of the enterprise in which the State company holds the controlling capital contribution.
4. It shall assign tasks to, and request the representative of the controlling capital contribution portion to obtain opinions on important issues at the controlled enterprise prior to voting thereon; and to report on the utilisation of the controlling shareholding or capital contribution in order to service the developmental orientation and objectives of the State company holding the controlling right.
5. It shall collect dividends from and bear the risks of its capital contribution portion at the controlled enterprise.
6. It shall supervise and inspect the utilisation of the capital it has contributed to the controlled enterprise.
7. It shall bear self-responsibility for the efficiency of utilisation, preservation and development of the capital it has contributed to the controlled enterprise.

Article 59 *Relationship between a State company, with an enterprise with one capital contribution portion owned by the State company*

1. An enterprise with one capital contribution portion owned by a State company shall exercise its right to business autonomy in accordance with law. The relationship between a State company with an enterprise with one capital contribution portion owned by the State company shall be implemented in accordance with law.
2. A State company shall exercise rights and discharge obligations of the capital contributing party via its representative at the enterprise in which it contributed capital, consistent with the law and with the charter of the enterprise in which the State company has the capital contribution portion.

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 section 2 of Chapter IV of this Law.
2. The structure, operational scope and rights and obligations of corporations making investment and conducting business with State capital shall be implemented in accordance with regulations of the Government.

CHAPTER VI

Rights and Obligations of the State Owner over State Companies and in respect of State Capital in Other Enterprises

Section 1

Owner and Representative of Owner of State Companies and of State Capital in Other Enterprises

Article 62 *Owner of State companies*

The State is the owner of State companies. The Government shall uniformly organize the exercise of rights and discharge of obligations of the owner over State companies in accordance with this Law and other relevant laws.

Article 63 *Representative of the owner of State companies and of State Capital in other enterprises*

1. The following organizations and individuals shall perform the function of representative of the owner of State companies:
 - (a) The Government shall directly exercise the rights and discharge the obligations of the owner of State companies as stipulated in clause 1 of article 65 of this Law; the Prime Minister of the Government shall himself directly, or shall delegate relevant ministries to implement a number of the rights and obligations of the owner of especially important State companies for which the Prime Minister of the Government made the decision on establishment;

- (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.
 3. A State company shall be the representative of the owner of the capital portion such company invests in other enterprises.
 4. The delegation and division of authority to perform rights and discharge obligations of the representative of the owner of State companies shall be implemented in accordance with section 2 of Chapter VI of this Law.

Section 2

Rights and obligations of the State Owner over State Companies

Article 64 *Rights and obligations of the State owner over State companies*

1. The State owner shall have the following rights over a State company:
 - (a) To make decisions on establishment, restructure, dissolution and conversion of ownership of the company; to decide the structure of managerial organization of the company; to make decisions on selection, appointment, dismissal of, and on the wage and bonus regime for the chairman and members of the board of management, general director or director of the company; to approve the contents of, or any amendments to the company charter;
 - (b) To make decisions on objectives, strategies and orientation of plans for development of the company; to make decisions 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 decisions 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 company having a board of management, or at a lower percentage if so stipulated in the company charter; to make decisions on lending, borrowing, leasing, leasing out and other economic contracts exceeding the charter capital of the company; to decide the regime on assigning plans, placing orders or tendering, selling prices and discrepancy subsidies for companies supplying public utility goods and services;
 - (c) To make decisions on the initial level of investment capital, on the level of charter capital of the company and on any amendments to the charter capital; to make decisions on borrowing and lending projects above the level for which authority has been delegated to the board of management or to the general director in the case of a company not having a board of management; to provide regulations on the financial regime of the company;
 - (dd) To inspect, supervise and assess the results of business operations of the company.
2. The State owner shall have the following obligations to a State company:
 - (a) To invest adequate charter capital in the company;

- (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:
 - (a) To approve plans for establishment, organization and restructure of State companies within the scope of the entire national economy, within industries, and within provinces and cities under central authority;
 - (b) To make decisions on investment projects of State companies or to delegate authority to make such decisions; to make decisions or to delegate authority to make decisions on issuance of initial investment capital, and on supplementary investment in or on raising or lowering the level of charter capital of State companies; to submit to the National Assembly for approval investment projects of State companies within the authority of the National Assembly;
 - (c) To uniformly organize implementation of the owner's duties and powers with respect to the State's investment capital portion in other companies. To make decisions or to delegate authority to make decisions on projects for contribution of capital or assets of the State or of State corporations to joint ventures with foreign parties, and on projects of State companies for investment overseas;
 - (d) To provide regulations on the financial regime of State companies;
 - (dd) To inspect and supervise utilisation of capital in State companies;
 - (e) To provide regulations on the regime on wages, allowances, bonuses and other benefits applicable to the chairman and members of the board of management, and to the general director or director of State companies;
 - (g) To provide regulations on the criteria for assessment of business results of State companies, including norms for ratio of profit over State invested capital;
 - (h) To provide regulations on the regime for inspection and supervision of State companies in their achieving the objectives and performing the duties assigned to them; to evaluate business results of companies, management performance of boards of management and administrative work of general directors or directors.
2. The Government shall delegate and divide authority to exercise rights and discharge obligations of the owner to the following agencies and organizations in their capacity as representative of the owner:
 - (a) Ministries and provincial people's committees as stipulated in article 66 of this Law;
 - (b) Boards of management of State companies as stipulated in article 30 of this Law;

- (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 decisions on approval of plans for the purchase of companies in other economic sectors.
6. To make decisions on proposals for the sale of assets valued at more than fifty (50) per cent of the total value of the remaining assets according to the accounting books of a State company having a board of management or at a lower percentage if so stipulated in the company charter; and for the sale of assets valued at more than thirty (30) per cent of the total value of the remaining assets according to the accounting books of a State company not having a board of management or at a lower percentage if so stipulated in the company charter; on borrowing, lending, leasing and leasing out capital and assets with a value exceeding the charter capital of a State company not having a board of management.
7. To make decisions on selection, appointment, dismissal, regime on wages or allowances and other benefits of the chairman and members of the board of management; and on selection, signing a contract with, or appointing, suspending or dismissing, and the salary level and other benefits of the director of an independent State company not having a board of management; and to organize evaluation of operational results [achieved] and company management by boards of management and directors in accordance with regulations of the Government.
8. To participate in inspection and supervision of management and utilisation of capital, distribution of income, deductions for and use of Funds of State companies.

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.
3. To participate in evaluation of operational results [achieved] and company management by boards of management and directors of State companies in accordance with regulations of the Government.
4. To organize inspection and supervision of management and utilisation of capital, distribution of income, deductions for and use of Funds of State companies.
5. To exercise other rights and discharge other obligations delegated by the Government.

Article 68 *Responsibilities of ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of provincial people's committees*

1. To fully exercise the rights and discharge obligations of a State owner as delegated or authorized.
2. To ensure the right of business autonomy and self-responsibility of the company; not to directly interfere in affairs of the company which are within the jurisdiction of the board of management, general director, director and managerial staff of the company.
3. To be administratively and materially liable for their decisions during the performance of duties and powers assigned to them; to be liable to invest adequate charter capital in companies.
4. To be liable or jointly liable pursuant to law in the following circumstances:
 - (a) When a company fails to correctly implement the objectives, duties, strategies and long-term developmental plans which have been prescribed;
 - (b) When there is corruption, bureaucracy or loss of State assets in State invested companies under their management;
 - (c) When management staff of a State company whom they appointed cause major damage to State assets or provide untruthful reports on the financial status of the company;
 - (d) When re-appointing or making a decision to transfer to an equivalent or higher position any chairman of a board, member of a board of management, general director, director or other management staff whom they appointed, after such appointee has breached the provisions in sub-clauses (a) to (d) inclusive of clause 3 of article 25, in sub-clause (d) of clause 5 and clauses 8 and 9 of article 27, and in sub-clauses (b) to (d) inclusive of clause 3 of article 32 of this Law.
5. To organize the restructure or conversion of State owned enterprises in accordance with overall planning and specific plans approved by the Government.

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 State's or State companies' investment in or capital contribution to other companies and which is used for re-investment in such other companies.
6. Other types of capital.

Article 70 *Rights and obligations in the management of State capital invested in the entire charter capital of other enterprises*

1. Ministries, provincial people's committees and boards of management of State corporations or State companies shall exercise the functions, duties, powers and responsibilities of the owner with respect to one member State limited liability companies in which they own the entire charter capital in accordance with the *Law on Enterprises*.
2. The functions, powers, obligations and responsibilities of the owner with respect to State limited liability companies with two or more members and State shareholding companies in which a State agency, organization or company directly invests or contributes capital shall be implemented in accordance with the *Law on Enterprises*.
3. Any representative of the owner who is elected to join a board of management or who is elected to be a member of a board of management, a general director or director of a one member State limited liability company, a State limited liability company with two or more members or a State shareholding company must satisfy the criteria and conditions stipulated in articles 24, 31, 36 and 39 of this Law.

Article 71 *Rights and obligations of a State company in the management of capital invested in other enterprises*

A State corporation or an independent State company shall have the following rights and obligations with respect to its portion of capital invested in another enterprise:

1. To make decisions on capital investment and capital contribution; on increasing or reducing investment or capital contribution in accordance with this Law and the charter of the company in which the State company has invested.
2. To elect, replace or dismiss the representative of the company's portion of capital investment in accordance with the charter of the company in which the investment is made and in accordance with the *Law on Enterprises*; to elect a company representative to join the board of management of a joint

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 rewarding or disciplining, and on allowances and other benefits relevant to the representative of the company's portion of capital investment. Expenses being responsibility allowances, bonuses and other benefits of the representative of the company's portion of capital investment shall be accounted for in business expenses or shall be paid from a Fund of the State company. Any representative of a State company who is elected to join a board of management or who is elected to be a member of a board of management or the director of a company in which State company holds the controlling shareholding or capital contribution must satisfy the criteria and conditions stipulated in articles 24, 31, 36 and 39 of this Law.

3. To request the representative of the company's portion of capital investment to provide periodical or one-off reports on the financial status, business results and other contents of the company in which the State company holds the controlling capital contribution.
4. To assign tasks to, and request the representative of the company's portion of capital investment to obtain opinions on important issues at the controlled company prior to voting thereon; and to report on the utilisation of the controlling shareholding or capital contribution in order to service the developmental orientation and objectives of the State.
5. To collect dividends from and bear the risks of its capital contribution portion at the controlled company. Any recovered capital portion or any profits distributed shall be used pursuant to a decision made by the company or organization making investment and conducting business with the capital, in order to service the business objectives of [such] company or organization. In a case of company restructure, management of this capital contribution portion shall comply with regulations of the Government.
6. To supervise and inspect the utilisation of the capital it has contributed to the company.
7. To be responsible for the efficient utilisation, preservation and development of the capital it has contributed to the company.

Article 72 *Rights and obligations of the representative of a State company's portion of capital investment in other enterprises*

The representative of a State company's portion of capital investment in other enterprises shall have the following rights and obligations:

1. To perform the duties and exercise the powers of a shareholder, capital contributing member or joint venture party in the company with State capital contribution or in the State company. Where a State company holds the controlling shareholding in another company, the representative of the State company's portion of capital contribution shall exercise the rights of the controlling shareholder or controlling contributor to direct such other company to achieve the objectives set by the State owner and assigned by the State company.
2. To stand for election or to elect someone else to act as representative of the State company on the management or executive team of the company receiving such capital contribution in accordance with the charter of such latter company.
3. To monitor and supervise the business operational status of the company with the State capital contribution.
4. To implement the regime on reporting to the board of management, general director or director of the State company on the efficiency of utilisation of the State capital contribution in the company.

If the representative fails to implement the regime on reporting, or abuses his rights as representative or is irresponsible thereby causing loss to the company and the State, he shall be liable and must pay compensation for loss in accordance with law.

5. To obtain opinions from the board of management, general director or director prior to voting at a general meeting of shareholders or at a meeting of the board of management or council of members

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.

CHAPTER VII

Restructure, Dissolution, and Bankruptcy of State Companies

Article 73 *Restructure of State companies*

Forms of restructure of State companies without alteration of the form of ownership of the company shall comprise:

1. Merger into other State companies.
2. Consolidation of State companies.
3. Division of a State company.
4. Demerger of a State company.
5. Conversion of a State company to a one member State limited liability company or to a State limited liability company with two or more members.
6. Conversion of a corporation in which the State made the decision on investment and establishment to a corporation in which other companies make the decision to invest and establish.
7. Contract management of or leasing out State companies.
8. Other forms in accordance with law.

Article 74 *Conditions for restructure of a State company*

1. Independent State companies conducting business operations and which are on the list of companies which the State will strengthen, develop [and/or] maintain 100% ownership may be permitted to convert to a one member State limited liability company or to a State limited liability company with two or more members.
2. The Government shall provide regulations on conditions for restructure of State companies in the form of merger, consolidation, division or demerger.
3. Any corporation established by the State pursuant to the provisions of the 1995 *Law on State Owned Enterprises* shall be permitted to convert to a corporation in which other companies make the decision to invest and establish pursuant to articles 54 to 59 inclusive of this Law if it satisfies the following conditions:
 - (a) Being on the list of State companies which the State will strengthen, develop [and/or] continue to maintain 100% ownership;
 - (b) Having a controlling capital contribution in many other companies or having plans on equitization or sale of member companies in the case of a corporation or of sections in the

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

- (c) Conducting business in many industries and trades of which there is one principal industry or trade, and having many subsidiaries both in Vietnam and overseas;
- (d) Having a large scale capital for investment in other companies;
- (dd) Having potential for development.

The Government shall provide regulations on principles and time-limits for conversion by State corporations.

Article 75 *Authority and procedures for restructure of State companies*

1. Authority to make decisions on restructure of State companies shall be provided for as follows:
 - (a) The person who made the decision on establishment of the State company shall organize formulation of a plan and shall make the decision on restructure of the company. In a case of merger or consolidation of State companies between ministries, between provinces and cities under central authority, or between a State company for which a ministry made the decision on establishment and a State company for which a province or city under central authority made the decision on establishment, whichever agency is agreed upon to exercise the powers and discharge the obligations of the owner of the merged or consolidated company shall issue the decision on merger or consolidation of the companies. If the parties are unable to agree, the agencies which have the merging or consolidating companies may be co-owners of a State limited liability company with two or more members.
 - (b) In the case of restructure or conversion of a corporation, after the Evaluation Council has provided its opinion, the Prime Minister of the Government shall approve the plan on restructure of the corporation and the person who made the decision on establishment of the corporation shall make the decision on restructure of the corporation.
 - (c) The Prime Minister of the Government shall make decisions on restructure of important State companies directly servicing national defence and security.
2. Any decision on restructure of a company must be sent to creditors and notified to employees within a time-limit of thirty (30) days from the date of issuance of the decision on restructure.
3. If restructure of a company results in alteration of the legal form or of the objectives, business lines or charter capital of the company, the company must re-register or make additional registration with the business registration office.

Article 76 *Responsibilities of restructured companies*

1. In the case of division of a company, the existence of the company which was divided shall terminate and the new companies shall be jointly liable for unpaid debts, labour contracts and other asset obligations of the company which was divided.
2. In the case of demerger of a company, the existence of the company which was demerged shall terminate and the new companies shall be jointly liable for unpaid debts, labour contracts and other asset obligations of the company which was demerged.
3. In the case of consolidation of companies, the existence of the former companies shall terminate and the new consolidated company shall enjoy the legal rights to and be liable for unpaid debts, labour contracts and other asset obligations of the former companies.
4. In the case of merger of companies, the company receiving the merger shall enjoy the legal rights to and be liable for unpaid debts, labour contracts and other asset obligations of the company which was merged.

Article 77 *Dissolution of State companies*

1. State companies shall be considered for dissolution in the following circumstances:
 - (a) On expiry of duration for operation as recorded in the decision on establishment and the company does not apply for extension;
 - (b) A company suffers prolonged business losses but without becoming insolvent;
 - (c) A company fails to perform the duties assigned by the State after it [the company] has taken necessary measures;
 - (d) It is unnecessary to maintain the company's existence.
2. A corporation organized and established by the State which fails to achieve the objectives stipulated in article 6 of this Law shall have its management apparatus dissolved and shall convert to a corporation established by independent State companies.

Article 78 *Decision on dissolution of a State company*

1. The person who made the decision on establishment of the State company shall have the right to make a decision on dissolution of such company. A decision on dissolution must be forwarded to the business registration office, creditors, people with related rights and interests and notified to workers in the company within a time-limit of seven (7) days from the date of the decision on dissolution.
2. The person making the decision on dissolution of a company shall establish a Dissolution Council which shall have the function of advising such person on the decision to dissolve the company and on organizing its implementation. The order and procedures for dissolution of a company shall be implemented in accordance with regulations of the Government.
3. Complaints and denunciations relating to dissolution of a company and their resolution shall be implemented in accordance with the laws on complaints and denunciations.

CHAPTER VIII

Conversion of Ownership of State Companies

Article 80 *Forms of conversion of ownership*

Ownership of State companies shall be converted by the following forms:

1. Equitization of a State company.
2. Sale of the whole of a State company.
3. Sale of a section of a State company in order to establish a State limited liability company with two or more members, one of which shall be the representative of the owner of the State's capital contribution portion.
4. Assignment of a State company to the labour collective for conversion to a shareholding company or co-operative.

Article 81 *Types of State companies whose ownership may be converted*

1. The forms of conversion of ownership stipulated in article 80 of this Law shall apply to State companies operating in branches and sectors in which the State need not hold 100% charter capital.
2. The Government shall provide regulations on criteria for determining the industries and sectors in which the State [must] hold 100% charter capital in enterprises; hold the controlling shareholding or

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. To raise further investment capital from individuals and organizations both inside and outside the company in order to form a company with various sources of owners' capital to expand production, renew technology, and raise competitiveness of the company.
3. To create conditions for the workers to contribute capital and to become the real owners of the company and to have jobs.

Article 83 *Authority to select companies, approve plans on conversion of ownership, approve value of companies and make decisions on conversion of ownership*

1. Relying on the provisions in article 81 of this Law, ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of people's committees of provinces and cities under central authority shall select and make decisions on forms of conversion of ownership of State companies.
2. Ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of provincial people's committees shall organize valuations of companies, make decisions on valuation of companies, and approve plans for conversion of ownership of companies under their management. The Government shall provide guidelines on adjustment of value of a company to below the value recorded in the accounting books of the company.
3. The order and procedures for conversion of ownership of State companies shall be regulated by the Government.

Article 84 *Rights of companies whose ownership is converted*

1. To be entitled to the incentives applicable to newly established companies in accordance with the laws on promotion of investment.
2. To be exempt from registration tax on conversion from ownership of assets of a State company to ownership by a purchaser of shares or a purchaser of a company.
3. To be entitled to continue land lease contracts of the former company in accordance with the laws on land.
4. To be entitled to continue to borrow loans from commercial banks, financial companies and other credit organizations of the State pursuant to the regime and interest rates applicable to a State company for the terms stipulated by the Government.
5. Purchasers of a State company which has suffered prolonged business losses shall be entitled to a reduced price if they continue to maintain the company for production and business, and employ all the workers in the company and ensure work for them for the term stipulated by the Government except for employees who voluntarily terminate their labour contracts. The level of price reduction shall be stipulated by the Government.
6. Other rights and incentives in accordance with law.

Article 85 *Rights of workers in State companies whose ownership is converted*

Workers in State companies whose ownership is converted shall have the following rights:

1. To maintain and develop welfare funds in kind owned by the labour collective and managed by the trade union organization in the company.
2. To be entitled to use the welfare fund and reward fund in money (if any) by dividing it amongst the workers to buy shareholding.
3. To be entitled to priority in buying shareholding or in purchasing the company in accordance with regulations of the Government.
4. Other benefits in accordance with law.

Article 86 *State guarantee applicable to purchasers of shareholding and purchasers or assignees of a State company*

The State shall protect in accordance with law the ownership rights and other legitimate interests of organizations and individuals who purchase shareholding in an equitized company, or who purchase or receive an assignment of a State company.

CHAPTER IX

State Administration of State Owned Enterprises

Article 87 *Contents of State administration of State owned enterprises*

1. Formulation and organization of implementation of legal instruments on State owned enterprises and of other related legal instruments.
2. Formulation of master planning and strategies for the development of State companies in accordance with the orientation, strategical objectives, and master plans for socio-economic development and for development of branches and the territory.
3. Organization of business registration of State companies; formulation and retention of basic information on State companies; monitoring and supervision of business activities of State companies after registration; ensuring State companies operate pursuant to the conditions stipulated in their establishment decisions and in their business registration in accordance with law.
4. Formulation of master planning on and organizing professional training, aimed at raising business ethics of managerial personnel in State companies; at raising political, ethical and professional standards of State administrators of State companies; and at building up a skilled workforce.
5. Promulgation of lists of products, methods of financial management of, and preferential policies on public utility products and services from time to time.
6. Conducting inspections of implementation of laws, policies and regimes of the State at State companies; resolution of complaints and denunciations, and dealing with breaches of the laws in accordance with law.

Article 88 *State administrative agencies of State owned enterprises*

1. The Government shall uniformly exercise State administration of State companies; decide delegation of authority to and co-ordination between ministries, ministerial equivalent bodies and Government bodies, as well as decide delegation of authority to and co-ordination between all level people's committees in undertaking State administration of State companies.

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.

A one-off inspection shall only be conducted when there are grounds [proving] a breach of law by the company.

There must be an inspection decision from an authorized person when an inspection is conducted, and at the end of the inspection there must be minutes and a conclusion, for both of which the head of the inspecting group shall be responsible.

Any person issuing an incorrect inspection decision or anyone taking advantage of an inspection to harass for bribes or to make trouble for the operations of a company shall, depending on the nature and seriousness of the breach, be disciplined or be subject to criminal prosecution; and if they cause loss and damage then they must compensate for it in accordance with law.

Article 90 *State administration of other State owned enterprises*

1. State administration of one member State limited liability companies, State limited liability companies with two or more members, and State shareholding companies shall be implemented in accordance with the *Law on Enterprises* and regulations of the Government.
2. State administration of shareholding companies, and of limited liability companies in which the State holds the controlling shareholding or controlling capital contribution shall be implemented in accordance with the *Law on Enterprises*.

CHAPTER X

**Commendations and Rewards,
Dealing with Breaches**

Article 91 *Commendations and rewards*

Organizations, individuals and State companies having outstanding achievements in business, in raising the efficiency and competitiveness of companies, and in contributing to the construction, protection and development of the country shall be commended and rewarded in accordance with law.

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.

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