

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

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DECREE

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

GOVERNMENT

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

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

On the proposal of the Minister of Planning and Investment,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of application

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

Article 2. Subjects of application

1. This Decree shall apply to:

- a) Independent State owned companies;
- b) General corporations that are invested and established by the State (hereinafter referred to as the “*State general corporations*”);
- c) State owned companies include parent companies in a parent-subsidary structure; and holding company of a business group that is formed on the basis of a State general corporation;

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

đ) State owned companies that are designated to directly serve national defence and security in accordance with Decree No. 31/2005/ND-CP of the Government dated 11 March 2005.

2. State Capital Investment and Finance Corporation shall be converted to operate under the Enterprise Law subject to relevant regulations of the Government.

Article 3. Owner of one-member limited liability companies and owner of State capital contributions to limited liability companies with more than one member

1. The State Capital Investment and Finance Corporation shall be the owner of one-member limited liability companies and State capital contributions to limited liability companies with more than one member that are converted from independent State owned companies providing no direct services to national defence and security and are established by ministries, provincial People’s Committees.

2. One-member limited liability companies with 100% of State owned capital that are converted from State owned companies, or parent companies in a parent-subsidiary structure, or holding companies of business groups that are formed on the basis of State general corporations shall be the owner of:

a) One-member limited liability companies that are converted from member companies with independent accounting system of State owned companies or subsidiaries that are entirely owned by parent companies or holding companies;

b) State capital contributions to limited liability companies with more than one member that are formed from a conversion of or contribution of an entire member of a general corporation or a subsidiary, or an affiliate of a parent company or a holding company.

3. Determination of owners of those State general corporations or State owned companies that are not mentioned in clauses 1 and 2 of this Article when converting into one-member limited liability companies; and owner of State capital contributions when converting these State general corporations and State owned companies into limited liability companies with more than one member and the exercise of State owner’s rights to State general corporations and State owned companies before their conversion shall be in accordance with relevant laws, or authorisations delegated by the Government in respect of the exercise of ownership rights to State owned companies and State capital contributions to enterprises.

Article 4. Costs of conversion

1. Costs relating to conversion into one-member limited liability companies shall be recorded as a reduction of the companies' equity.
2. Costs relating to conversion into limited liability companies with more than one member shall be deducted from the State capital contribution to the converted enterprises.
3. Specific purposes and amount of conversion costs shall be in accordance with the Ministry of Finance's guidance.

Article 5. Inheriting rights and obligations of enterprises before conversion

The limited liability companies shall be responsible for inheriting all rights and legitimate interests and obligations of the converting enterprises in accordance with provisions of this Decree and other relevant laws and regulations.

Article 6. Principle underlying the conversion of enterprises into limited liability companies that operate in a parent-subsidiary structure

In respect of enterprises that are converted into limited liability companies and are to operate in a parent-subsidiary structure:

1. Procedures for converting into limited liability companies shall be in accordance with this Decree;
2. Procedures for converting into a parent-subsidiary structure shall be in accordance with Decree No.153/2004/ND-CP of the Government dated 9 August 2004 concerning the organisational structure of State general corporations and conversion of State owned companies and independent State owned companies to operate in a parent-subsidiary structure.
3. Conversion of enterprises into limited liability companies shall only be permitted after the plan for reorganisation of these enterprises in form of a parent-subsidiary structure has been approved. Authority for approving such a plan shall be in accordance with Decree No.153/2004/ND-CP of the Government dated 9 August 2004 concerning the organisational structure of State general corporations and conversion of State owned companies and independent State owned companies to operate in a parent-subsidiary structure.

CHAPTER II**CONVERTING STATE OWNED COMPANIES INTO ONE-MEMBER LIMITED LIABILITY COMPANIES****Article 7. Conditions for converting State owned companies into one-member limited liability companies**

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

2. In respect of State general corporations:

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

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

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

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

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

In case where the head office of the general corporations is dissolved or the parent company is divested, the conversion of member companies that are required to be entirely owned by the State (i.e. are not yet converted to operate under the Enterprise Law) shall be in accordance with Article 9 of this Decree.

4. Dependent accounting units of the general corporations may only be converted into one-member limited liability companies if the general corporations meet all conditions prescribed in paragraph a, clause 3 of this Article and the dependent accounting units are able to meet the following conditions:

a) The scope and area of operations and size of capital are eligible for the dependent accounting units to be entirely retained by the State;

b) A possible split of the dependent accounting units from the general corporations for such a conversion will not hamper or adversely affect the business performance of the general corporations or the remaining units of the State general corporations.

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

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

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

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

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

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

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

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

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

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

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

Article 10. Responsibilities of enterprises for preparing conversion plans

1. State general corporations that are entitled to approve the list of enterprises to be reorganised in a parent-subsidiary structure in which the parent company will be converted into a one-member limited liability company shall be responsible for:

a) Reviewing each member unit and the entire general corporation against eligible conditions for conversion; determining the structure and preparing a plan for the formation of the parent company in form of a one-member limited liability company; preparing plans for the formation of subsidiaries in form of one-member limited liability companies to be owned by such a parent company being a one-member limited liability company;

b) Taking inventory of, classifying, and determining various types of capital, assets, liabilities and the current work force of the entire corporation, each member unit and other affiliates that are formed by the parent company; preparing financial statements as of the date of such a conversion including investments and capital contributions of the general corporation and its member units to other businesses;

c) Preparing plans for dealing with assets, financial problems, debts and employment; plans for transfer of interests, obligations, assets, capital, liabilities and employees to the parent company being a one-member limited liability company; determining the specific amount of capital to be registered as the chartered capital of the parent company; co-operating with relevant State agencies to deal with remaining problems relating to capital, financial conditions and employment of the parent company upon conversion subject to Article 11 of this Decree;

d) Drafting the charter of the parent company as a one-member limited liability company;

2. Parent companies under a parent-subsidiary structure or a business group structure shall, when converting into one-member limited liability companies be responsible for:

a) Complying with conversion conditions, determining corporate structure and preparing plans for the formation of the parent company as a one-member limited liability company; preparing plans for the formation of subsidiaries as one-member limited liability companies (in respect of non-converting enterprises);

b) Taking inventory of, classifying, and determining various types of capital, assets, liabilities and the current work force of the parent company; preparing financial statements as of the date of such a conversion including investments and capital contributions of the parent company to other businesses;

c) Preparing plans for dealing with assets, financial problems, debts and employment; plans for transfer of interests, obligations, assets, capital, liabilities

and employees to the parent company being a one-member limited liability company; determining the specific amount of capital to be registered as the chartered capital of the parent company; co-operating with relevant State agencies to deal with remaining problems relating to capital, financial conditions and employment of the parent company upon conversion subject to Article 11 of this Decree;

d) Drafting the charter of the parent company as a one-member limited liability company;

3. Independent State owned companies, members of State general corporations and parent companies that are converted into one-member limited liability companies shall be responsible for:

a) Taking inventory of, classifying, and determining various types of capital, assets, liabilities and the current work force of the companies; preparing financial statements as of the date of such a conversion including investments and capital contributions of the companies to other businesses;

b) Preparing plans for dealing with assets, financial problems, debts and employment; plans for transfer of interests, obligations, assets, capital, liabilities and employees to the one-member limited liability company; determining the specific amount of capital to be registered as the chartered capital of the companies; co-operating with relevant State agencies to deal with remaining problems relating to capital, financial conditions and employment of the companies upon conversion subject to Article 11 of this Decree;

c) Drafting the charter of the one-member limited liability company.

Article 11. Principles to be followed in handling capital, assets, financial issues and employment upon conversion

1. Capital, assets, financial issues and employment of the State general corporations that are organised in a parent-subsidiary structure in which the parent company will be converted into a one-member limited liability company shall be dealt with subject to the following underlying principles:

a) All assets of the State general corporations and their member units shall, upon conversion be measured in term of value;

b) All assets that are currently managed or used by member units of the State general corporations to be converted into a one-member limited liability company shall be taken inventory, classified, quantified and assessed for being transferred to the one-member limited liability company;

c) In respect of assets that are leased out, borrowed, entrusted or consigned, the converting enterprises may continue their lease, borrow, entrusting and consignment as may be agreed upon with the lessor, lender or consignor;

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

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

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

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

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

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

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

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

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

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

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

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

3. Financial statements that are approved by owner's representatives shall be updated to the point of time when the one-member limited liability companies are granted with business registration certificates.

Article 12. Determining chartered capital

1. Chartered capital of parent company being one-member limited liability companies that are converted from State general corporations shall be the amount of State invested capital that is recorded in the parent company's charter including: [i] actually State paid up capital as recorded in the accounting books effective upon conversion and concentrated at the head office of the State general corporations after being handled in conformity with Article 11 of this Decree; [ii] chartered capital of the one-member limited liability companies that are owned by the State general corporations; State capital that are invested in joint stock companies, limited liability companies with more than one member, foreign joint ventures and outward investment projects by the State general corporations; additional capital that is invested to the parent company by the State (if any); and after tax profit that is re-invested and added to the chartered capital.

2. The chartered capital of one-member limited liability companies that are converted from parent company being State owned companies in a parent-subsidary structure, independent State owned companies or member companies with independent accounting system affiliating to State general corporations shall be the amount of owner's equity that is invested and recorded in the company's charter including:

a) Owner's equity that is actually paid and recorded in the accounting books of the parent company, independent State owned companies or member companies with independent accounting system that are affiliating to State general corporations after being dealt with subject to Article 11 of this Decree;

b) Chartered capital of one-member limited liability companies that are owned by parent companies, independent State owned companies or member companies with independent accounting system of State general corporations;

c) State capital that is contributed to joint stock companies, limited liability companies with more than one member, foreign joint ventures and outward investment projects by parent companies being State owned companies, or member companies with independent accounting system of State general corporations;

d) Owner's equity that is committed to be added to the companies (if any);

đ) After tax profit that is re-invested and added to the chartered capital.

3. Chartered capital of one-member limited liability companies shall not be lower than those prescribed for each category of State general corporations and State owned companies as may be approved from time to time by the Prime Minister.

In respect of industries or areas of business operations that are required by the law to have legal capital, the chartered capital of the companies shall not be less than the legal capital.

4. In case where the chartered capital is determined to be larger than the owner's actually paid up capital or owner's added capital, a written approval of the Ministry of Finance must be obtained that specifies clearly the amount of added capital and the time limit for such an added capital to be injected. Owner shall be responsible for contributing sufficient amount of the chartered capital to the companies within the committed time limit. In case of failing to make sufficient and timely contributions of the committed amount of capital, the owner shall be held liable subject to clause 1 of Article 65 of the Enterprise Law.

5. When increasing the chartered capital, companies shall properly revise their balance sheets and complete business registration formalities with competent authorities.

Article 13. Charter of one-member limited liability companies

Charter of one-member limited liability companies shall be approved by the owner and include the following main contents and particulars:

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

2. Business objectives and scope of operations;

3. Charter capital and methods of increasing chartered capital;

4. Name(s), address(es), rights and obligations of owner(s) or individuals that are appointed to be authorised representatives in exercising rights and performing obligations of the company's owner;

5. Organisational structure of the company;

6. Legal representative of the company;

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

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

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

Article 15. Decision to convert

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

Article 16. Business registration

Converting enterprises shall change their business registration details and make public announcements [of such a conversion] in mass media as prescribed by the Enterprise Law. The application documents for business registration shall include converting decision and other items as may be provided for in the Enterprise Law.

Article 17. Re-registration of property ownership

After obtaining a new business registration certificate, the one-member limited liability company shall re-register their ownership rights to assets that are transferred from the converting enterprise to the company at a State body that is empowered to handle such a property registration. The re-registration shall be free from any registration fees.

CHAPTER III

CONVERTING STATE OWNED COMPANIES INTO LIMITED LIABILITY COMPANIES WITH MORE THAN ONE MEMBER

Article 18. Conditions for converting State owned companies into limited liability companies with more than one member

1. Independent State owned companies must meet the following conditions:

- a) Not being required to be entirely owned by the State;
- b) Not being subject to dissolution or liquidation; [and]
- c) Having an estimated number of 50 members and below.

2. For State general corporations:

a) In case where State general corporations are approved to be reorganised in a parent-subsidiary structure, the parent company must meet the following conditions: not being required to be entirely owned by the State; the plan for conversion into a limited liability company with more than one member has been approved; and having an estimated number of 50 members and below.

b) In case where the State general corporations are not eligible to be reorganised in a parent-subsidiary structure but are required to dissolve their corporate structure, only those members that are eligible under clause 1 of this Article may be converted into limited liability companies with more than one member.

3. In respect of members of State general corporations, apart from conditions stated in clause 1 of this Article, any possible conversion of these units shall not hamper or produce any harmful impacts on the business performance of the State general corporations or their remaining sections; member units with dependent accounting system must be eligible to be

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

Article 19. Forms of converting State owned companies into limited liability companies with more than one member

1. Selling out State-held stakes in the enterprises to employees and investors in order to convert the State owned companies into limited liability companies with more than one member. Depending on the percentage of State shareholdings in the chartered capital and size of the chartered capital, one of the following forms of conversion may be adopted:

- a) Maintaining State-held capital and raising additional capital;
- b) Selling part of the currently State-held capital or a mixture of selling part of the currently State held capital and raising additional additional capital;
- c) Selling the entire amount of State-held capital or a mixture of selling the entire amount of State-held capital and raising additional capital;

2. Using the entire State owned company as a capital contribution to establish a limited liability company with more than one member together with other enterprise(s) or outside investors.

Article 20. Eligible buyer of capital contributions or eligible capital contributors

1. In case where a conversion is made in the form described in clause 1 of Article 19 of this Decree, the eligible buyers of such capital contributions shall include: Vietnamese and foreign organisations and individuals (hereinafter referred to as *the investors*) except those entities or individuals prescribed in clause 4 of Article 13 of the Enterprise Law.

2. In case where a conversion is made in the form described in clause 2 of Article 19 of this Decree, the entire State owned company shall be used as a capital contribution with other organisations and/or individuals of all economic sectors (except employees of the same company) to establish a limited liability company with more than one member.

Foreign organisations and individuals may, subject to statutory ceiling limits and international commitments by the Vietnamese Government be entitled to purchase capital contributions in the converting enterprises that operate in the accepted list of industries.

Article 21. Approving the list of [converting enterprises] and conversion plans

1. The list of enterprises to be converted into limited liability companies with more than one member shall be selected among the list of to-be-divested SOEs subject to the Prime Minister approved master plan for reorganisation and

renovation of SOEs and subject to conditions laid out in Article 18 of this Decree.

2. The Prime Minister shall determine the list [of converting enterprises] and plans for conversion into limited liability companies with more than one member in respect of enterprises that are to be established by the Prime Minister.

3. Ministers and chairmen of provincial people's committees shall determine the list [of converting enterprises] and plans for conversion into limited liability companies with more than one member in respect of enterprises that are to be established by these key officials.

4. In case of contributing the entire State owned company to establish a limited liability company with more than one member with other enterprises or other investors, the Ministers or chairmen of provincial people's committees shall obtain Prime Minister's approval on a case by case basis; Ministers and chairmen of provincial people's committees shall determine the conversion plans in respect of the approved enterprises.

Article 22. Procedures for converting into a limited liability company with more than one member

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

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

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

4. Organising the sales of capital contributions or organising capital contributions;

5. Issuing capital contribution certificates; completing procedures for business registration and property registration.

Article 23. Responsibilities of enterprises for preparing conversion plans

1. Holding a general meeting of employees and sending notices to all employees and potential investors so that eligible buyers as determined under

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

Employees of the converting enterprises shall enjoy benefits stipulated in Articles 35 and 36 of this Decree. They may at their sole discretion assign (sell) preferential purchasing options to other investors or assign (sell) their capital contributions that were acquired under preferential conditions before the establishment of the limited liability company with more than one member. By exercising such right, the employees shall be no longer entitled to become members of the limited liability company with more than one member.

2. Taking inventory, determining the amount of existing assets including fixed assets, long-term investments, current assets, short-term investment, and assets that are leased out, rented, consigned or occupied; classifying these assets into: those that may continue to be used, those that can no longer be used and those that are derived from the bonus fund and welfare fund; comparing and classifying various types of liabilities, preparing a list of creditors; determining the amounts of payables and receivables that are further classified into recoverables and irrecoverables; recovering receivables; preparing financial reports for the latest quarter before the conversion takes place.

3. Preparing plans for dealing with assets, financial problems, and debts. Co-operating with relevant State agencies to deal with remaining financial problems before evaluating the converting enterprises and during the conversion process subject the relevant regulations;

4. Preparing a list of and classifying the existing employees of enterprises upon conversion; preparing a plan for rearrangement of the existing employees.

5. Organising a conference for employees to discuss the conversion plan.

Article 24. Principles to be followed in dealing with assets, capital and financial problems

1. Assets that are leased, borrowed or taken as capital contributions to joint ventures and other assets not belonging to the enterprises shall not be imputed to the value of the enterprises upon their conversion. Before converting into a limited liability company with more than one member, the converting enterprise shall liquidate its contracts or reach an agreement with the property owner so that the limited liability company with more than one member may assume previous contracts or enter into new contracts.

2. In respect of unused, idle or to-be liquidated assets, the enterprises may liquidate, sell, assign or report to competent authorities in order to transfer the assets to other enterprises subject to relevant regulations. If, upon the evaluation of the enterprises, these aforesaid assets are not yet dealt with, the assets shall not be imputed to the value of the enterprises. During the conversion process, the enterprises shall continue to deal with these assets. If

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

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

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

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

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

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

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

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

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

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

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

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

b) In respect of reserves for job losses, if any, the enterprises may use to provide allowances to redundant labourers during the conversion process. Any remaining amounts shall be accounted to the overall business results of the enterprises.

c) Other risk reserves, technical reserves of banks, insurance companies and other financial institutions shall be handed over to limited liability companies with more than one member for their continued management.

d) Financial reserve funds for losses (if any), losses of property, and irrecoverable debts shall be deducted from the remaining value of the State capital at the converting enterprises.

đ) Profits may be generated to cover the losses in previous years (if any), or loss of property, unused or to-be-liquidated assets, depreciation of property values, irrecoverable debts. The remaining amount shall be distributed subject to applicable laws and regulations before determining the value of the converting enterprises.

Article 25. Determining the enterprises' value

1. The actual value of an enterprise shall be determined taking into account the following factors:

a) Figures recorded in the accounting books of the converting enterprises upon their conversion;

b) Materials that are prepared to document the inventory, classification and evaluation of asset quality of the enterprises upon their conversion;

c) Market prices of the assets upon conversion;

d) Current situation of debts and liabilities, business efficiency of the enterprise;

đ) Value of the land use right and goodwills.

2. The value of enterprises that are to be converted into limited liability companies with more than one member shall be determined subject to current laws and regulations concerning conversion of State owned companies into joint stock companies.

3. The valuation of enterprises that are converted into limited liability companies with more than one member shall be organised as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 29. Methods of selling State-held capital

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

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

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

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

b) In case where the State is required to retain capital: after deducting the amount of capital held by the State member as may be determined by the maximum State-held limit, the remaining portion of the chartered capital shall be sold at public auction that is also open to employees of the enterprises in order to determine other members of the limited liability company with more than one member subject to a selection of successful bidders who are arranged in high-to-low order.

Employees stipulated in paragraph a and b, clause 2 of this Article shall be entitled to pecuniary incentives that are similar to selling of shares at discount rate to employees of the equitised enterprises.

3. In case where State-held capital are sold without a limitation of the number of bid winners, the following rules shall apply:

Based on the approved structure of the chartered capital, the estimated percentage of State held capital (if any) and the percentage of capital to be sold to the employees shall be determined; the remaining portion shall be sold at public auction to investors. Procedures for such a public auction sale shall be subject to Article 30 of this Decree.

If the number of members who intend to purchase State capital contributions including employees and the State (in case of retaining State capital) exceed 50, the converting enterprise shall report to the competent authority for its further consideration and decision subject to the following procedures:

a) Determining 50 members who make capital contributions in order to establish a limited liability company with more than one member including: State member (in case of retaining State capital); members being employees of the enterprise; the remaining number of members shall be determined by the high-to-low order of bid winners. Members who are employees may themselves decide whether to sell/transfer to other investors their options to purchase at preferential prices or transfer/sell their capital contributions that are acquired at preferential prices before the establishment of the limited liability company with more than one member; the employees shall then be no longer entitled to become a member of the limited liability company with more than one member.

b) In case where the number of members still exceed 50 despite a full compliance with paragraph a, clause 3 of this Article, the State owned companies shall be converted into joint stock companies subject to the procedures for converting State owned companies into joint stock companies

without repeating the completed steps in converting the State owned companies into limited liability companies with more than one member.

Article 30. Sales of State-held capital

1. Converting enterprises whose capital contributions to be sold exceed VND 1 billion shall organise public auction sales by financial intermediaries.

Bodies that are authorised to make conversion decisions shall select and hire professional organisers of public auction sales.

In case where the converting enterprises are situated in remote areas where no financial intermediary may be found to organise such a public auction sale, the bodies that are authorised to make conversion decisions shall seek an agreement with the Ministry of Finance on an acceptable selling method.

2. Procedures for public auction sales shall be subject to the following principles:

a) At least 20 days before the public auction sales, the auctioneer shall make public announcement at the enterprise, place of auction sales and through mass media of the timing, places, selling methods, bidding conditions, and estimated value of the capital contributions to be sold and other issues relating to such a the sales of capital contributions.

b) Organising the public auction sales of capital contributions to investors subject to formats prescribed in this Decree.

c) Determining the average bid price in order to calculate the preferential prices for employees.

d) Organising the distribution and sales of the capital contributions to each investor.

đ) Within 4 months from the approval of the conversion plan, the converting enterprises must complete their sales of capital contributions. In case where investors fail to purchase all capital contributions, the remaining portion shall be added to the amount of State capital invested in the limited liability companies or the chartered capital of the companies shall be adjusted accordingly.

3. The Ministry of Finance shall provide detailed guidelines on the organisation of capital contribution sales as part of a process whereby State owned companies are converted into limited liability companies with more than one member.

Article 31. Determining the value of capital contributions in case where an entire State owned company is used as a capital contribution with other enterprises or investors

The value of the enterprise as may be determined in accordance with Article 25 of this Decree shall be used as the basis for determining the value of capital contributions made by the State owned company to establish a limited liability company with more than one member. Any valuation of the contributed assets by the State owned company and other enterprises or investors upon the formation of a limited liability company with more than one member shall be in accordance with Article 30 of the Enterprise Law.

Article 32. Making capital contributions and issuing capital contribution certificates

1. Members shall make full and timely capital contributions using such type of assets that is committed in the registered list of members.

2. Capital contributions and issue of capital contribution certificates shall be in accordance with the Enterprise Law.

3. Companies shall establish a registry of their members after completing business registration formalities. The main contents of such a registry shall be in compliance with the Enterprise Law.

Article 33. Business registration

After company's members have completed their capital contributions, the enterprises shall change their business registration and make public announcement in mass media subject to relevant provisions of the Enterprise Law. The application documents for business registration as required by the Enterprise Law shall be enclosed with a conversion decision.

Article 34. Re-registration of property ownership

Limited liability companies with more than one member shall, after obtaining their business registration certificates, re-register their ownership to properties that are transferred from the converting enterprises to the companies at a State agency that is competent for issuing business registration certificates. Such a re-registration of property ownership shall be free from registration fees.

CHAPTER IV

POLICIES RELATING TO ENTERPRISES TO BE CONVERTED INTO LIMITED LIABILITY COMPANIES WITH MORE THAN ONE MEMBER AND THEIR EMPLOYEES

Article 35. Policies relating to converting enterprises

Limited liability companies with more than one member that are converted from State owned companies or dependent units of State general corporations shall enjoy such benefits as those available under laws and regulations governing conversion of State owned companies.

Article 36. Policies relating to employees of converting enterprises

Employees of State owned companies or members of general corporations that are converted into limited liability companies with more than one member shall enjoy the following benefits:

1. To continue their social security contributions and related benefits subject to relevant regulations if these employees continue their employment with the limited liability companies with more than one member.

2. To be entitled to pension benefits and other benefits available under the existing regulations provided eligible conditions are met upon the conversion.

3. If the employees lose their jobs or are severed from their jobs upon the conversion, they will be paid with unemployment or job severance allowances as required by the laws.

4. Benefits that are available when State capital contributions are acquired or an entire enterprise is used as a capital contribution:

a) In case where State capital contributions are sold subject to Article 19.1 of this Decree, those employees who are listed as regular employees of the enterprise upon conversion shall be entitled to purchase up to VND 1 million of the chartered capital for each year working in the State sector at a 40% discount rate in comparison with the average bid prices offered by other investors.

b) In case where State capital contributions are sold subject to Article 29.2 of this Decree or an entire State owned company is used as a capital contribution with other enterprises or investors of other economic sectors (i.e. other than the 100% State owned entities) as specified in Article 19.2 of this Decree, those employees who are listed as regular employees of the enterprise shall be entitled to pecuniary incentives as in the case of employees who are entitled to such discounted purchases specified in paragraph a, clause 4 of this Article, provided that the employees shall not become members of the company. These financial incentives for employees shall be deducted from the State capital.

CHAPTER V

IMPLEMENTING PROVISIONS

Article 37. Effectiveness

1. This Decree shall be of full force and effect after 15 days from the date of its publication in the official gazette.

2. This Decree shall replace Decree No. 63/2001/ND-CP of the Government dated 14 September 2001 concerning conversion of state owned enterprises, enterprises that belong to political organisations, and socio-political organisations into one-member limited liability companies and Decree No. 145/2005/ND-CP of the Government that amends and supplements a number of articles of Decree No. 63/2001/ND-CP.

Article 38. Responsibilities for implementation of this Decree

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

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

3. Ministry of Planning and Investment, Ministry of Finance, Ministry of Labour, War Invalids and Social Affairs, Ministry of Interior and Ministry of Natural Resources and Environment shall, in co-operation with relevant authorities be responsible for providing further guidance on the implementation of this Decree.

4. Ministers, heads of ministerial and governmental bodies, chairmen of provincial people's committees, chairmen of the Board of Management of State general corporations shall be responsible for the implementation of this Decree.

Minister of Planning and Investment shall be responsible for monitoring the implementation of this Decree.

Copies to:

- Secretariat of the Central Standing Committee,
- Prime Minister and Deputy Prime Ministers
- Ministries, ministerial and governmental bodies,
- Provincial people's committees and provincial people's councils,
- Council of Ethnicity and Committees of the National Assembly,
- Office of the National Assembly,
- Office of the President,
- Office of the Central Standing Committee and Party committees,
- Supreme People's Procuracy,
- Supreme People's Court,
- Central agencies of mass organisations,
- VCCI;
- Corporations 90 and Corporations 91,
- Official Gazette,
- Government's Office: Minister-Chairman, Vice Chairmen, Head of the Advisory Board, Spokesperson of the Prime Minister, relevant departments,
- Recording: Enterprise Reform Committee (8 copies), offices.

**ON BEHALF OF THE
GOVERNMENT
PRIME MINISTER**

Phan Van Khai