

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

No. 139-2007-ND-CP

Independence - Freedom - Happiness

Hanoi, 05 September 2007

**DECREE
PROVIDING DETAILED GUIDELINES FOR IMPLEMENTATION OF A NUMBER OF
ARTICLES OF THE LAW ON ENTERPRISES**

The Government

- Pursuant to the *Law on Organization of the Government* dated 25 December 2001;
- Pursuant to the *Law on Enterprises* No. 60-2005-QH11 dated 29 November 2005;

Having considered the proposal of the Minister of Planning and Investment;

Decrees:

Article 1 *Governing scope*

This Decree provides detailed guidelines on implementation of a number of articles of the *Law on Enterprises* relating to the establishment, managerial organization and operation, restructuring and dissolution of enterprises.

Article 2 *Applicable entities*

This Decree shall apply to:

1. Limited liability companies, shareholding companies, partnerships and private enterprises including limited liability companies [and] shareholding companies after conversion from 100% State owned enterprises, enterprises of Party organizations and of socio-political organizations, and to joint venture enterprises and enterprises with 100% foreign owned capital (hereinafter all referred to as *enterprises*).
2. Joint venture enterprises and enterprises with 100% foreign owned capital which have not re-registered pursuant to Decree 101-2006-ND-CP of the Government dated 21 September 2006 on re-registration, conversion and re-registration for replacement with investment certificates by enterprises with foreign owned capital pursuant to the *Law on Enterprises* and the *Law on Investment* (hereinafter abbreviated to *Decree 101*).
3. Individual family households.

4. Other organizations and individuals involved in the establishment, managerial organization and operation, restructuring and dissolution of enterprises.

Article 3 *Applicability of the Law on Enterprises, international treaties and [other] relevant laws*

1. The *Law on Enterprises* shall apply to the establishment, managerial organization and operation of enterprises, except for the cases stipulated in clauses 2 and 3 of this article.

2. In a case where an international treaty of which the Socialist Republic of Vietnam is a member contains other provisions on application files, order and procedures, and conditions for establishment, business registration, ownership structure and the right to autonomy in business, then the provisions of such international treaty shall apply.

In this case, if bilateral commitments contain different items from multilateral commitments, then the undertakings which contain the more favourable benefits to enterprises and investors shall apply.

3. If there are differences between the provisions in the *Law on Enterprises* and the following laws on application files, order and procedures and conditions for establishment and business registration; on the structure of managerial organization, on the authority of internal management bodies within an enterprise, on the right to autonomy in business, and on restructuring and dissolution of enterprises, then the provisions of these following laws shall apply:

(a) *Law on Credit Institutions*;

(b) *Law on Petroleum*;

(c) *Law on Civil Aviation of Vietnam*;

(d) *Law on Publishing*;

(dd) *Law on Press*;

(e) *Law on Education*;

(g) *Law on Securities*;

(h) *Law on Insurance Business*;

(i) *Law on Lawyers*;

(k) *Law on Notarization*;

(l) Any law amending one of the laws stipulated in this clause and any other special law which the National Assembly passes after this Decree takes effect.

Article 4 *Prohibited lines of business*

1. The list of prohibited lines of business shall comprise:

(a) Business in weapons, military equipment and technical facilities, ammunition and specialized facilities for the army and police; military paraphernalia (including badges, medals and insignia of the army and police); military supplies for the armed forces; and spare parts, accessories, and materials and technology used to manufacture the former items;

- (b) Business in all types of drugs of addiction;
- (c) Business in List I chemicals (stipulated in international treaties);
- (d) Business in products of reactionary culture and pornographic products; products serving superstitious purposes or products which are harmful to aesthetic education and personal development;
- (dd) Business in all types of firecrackers;
- (e) Business in all types of games and toys which are dangerous or harmful to the personal development and health of children or to the security, order and safety of society;
- (g) Business in all types of rare wild animals and plants, including both living animals and processed matter taken from animals, on the lists in international treaties of which Vietnam is a member, and all types of rare wild animals and plants on the lists prohibiting the use and exploitation of such animals and plants;
- (h) Brothel businesses, organizing prostitution, trafficking in women and children;
- (i) Business services being organized gambling or keeping a gambling house in any form;
- (k) Business services being investigation [private detective] services into infringement of State rights or the rights and legitimate interests of organizations and citizens;
- (l) Business services being marriage broking involving a foreign element;
- (m) Business services for foster parents or adoption involving a foreign element;
- (n) Business in all types of imported scrap causing environmental pollution;
- (o) Business in all types of products, goods and equipment which are prohibited from circulation or use, or not yet permitted to be circulated or used in Vietnam;
- (p) Other lines of business which are prohibited by specialized branch laws, ordinances and decrees.

2. Business in the lines stipulated in clause 1 above in a number of specific cases shall be applicable pursuant to the relevant specialized branch law, ordinance or decree.

Article 5 *Lines of business which are subject to conditions, and business conditions*

1. The provisions of specialized branch laws, ordinances and decrees or relevant decisions of the Prime Minister of the Government (hereinafter all referred to as *specialized branch laws*) shall apply to lines of business which are subject to conditions and to the business conditions which are applicable.

2. Business conditions shall be expressed in the following forms:

- (a) Business licences;
- (b) Certificates of satisfaction of business conditions;
- (c) Practising certificates;

(d) Certificates of professional indemnity insurance;

(dd) Certification of legal capital;

(e) Other approvals from competent State authorities;

(g) Other requirements which an enterprise must implement or satisfy before it shall have the right to conduct business in such line of business without the need for any certification or approval in any form from a competent State authority.

3. All provisions regarding the types of lines of business subject to conditions and such business conditions in other legal instruments other than those mentioned in clause 1 of this article shall no longer be effective as from 1 September 2008.

Article 6 *Lines of business which require a practising certificate*

1. A practising certificate as referred to in article 7.2 of the *Law on Enterprises* means a document which is issued by a competent State authority of Vietnam or by an occupational -professional association to which the State delegates authority to issue practising certificates to individuals with the professional qualifications and experience required for a certain industry or profession.

A practising certificate issued overseas shall not be effective in Vietnam, unless a specialized branch law or an international treaty of which Vietnam is a member contains a different provision.

2. Whether any one line of business requires a practising certificate and the conditions for issuing such practising certificate shall be decided by application of the relevant specialized branch law.

3. In the case of an enterprise conducting business in a line for which the law requires a practising certificate, then business registration or registration of such additional line of business shall be conducted in accordance with the following provisions:

(a) The director of the enterprise or the head of the business establishment must have a practising certificate if the enterprise conducts business in a line for which the law requires that the director or head of the business establishment have such practising certificate;

(b) The director of the enterprise and at least one other specialized senior staff member as stipulated by the relevant specialized branch law must have practising certificates if the enterprise conducts business in a line for which the law requires the director and another person to have practising certificates;

(c) At least one specialized senior staff member as stipulated by the relevant specialized branch law must have a practising certificate if the enterprise conducts business in a line for which the law does not require the director or the head of the business establishment to have a practising certificate.

Article 7 *Lines of business which require legal capital*

1. The provisions of specialized branch laws shall apply to lines of business requiring legal capital, to the specific levels of such legal capital, to the State body with authority regarding legal capital, to the body or organization authorized to certify legal capital, and to the application file, conditions and method of certifying legal capital.

2. The chairman of the members' council or the chairman of the company and the director (general director) in the case of a limited liability company; the chairman of the board of management and the director (general director) in the case of a shareholding company; all partners in the case of a partnership; and the owner in the case of a private enterprise shall be liable for the truthfulness and accuracy of the amount certified as legal capital when establishing

the enterprise. The enterprise shall be responsible to ensure that the actual level of charter capital is no lower than the certified legal capital during the entire process of the business operation of the enterprise.

3. When an enterprise conducts business registration for a line of business requiring legal capital or conducts registration of an additional line of business requiring legal capital, then there must also be certification from the authorized body or organization about the legal capital, unless the amount of equity recorded in the list of overall assets of the enterprise on the most recent occasion is more than or equal to the stipulated level of legal capital.

4. The person who directly certifies legal capital shall be jointly liable for the accuracy and truthfulness of the amount of such capital as at the time of making the certification.

Article 8 *Right to business registration and right to carry out business activities*

1. Enterprises shall have the right to take the initiative in conducting business registration and in conducting business activities without applying for permission or approval, and without seeking the opinion of any State body, if such line of business:

(a) Is not on the list of prohibited lines of business;

(b) Is not on the list of lines of business which are subject to conditions pursuant to a provision of a specialized branch law.

2. In the case of a line of business which is subject to conditions, an enterprise shall have the right to conduct business in such line as from the time it satisfies all the stipulated conditions.

If an enterprise conducts business when it fails to satisfy all the stipulated conditions, then the following persons shall be jointly liable for such businesses: the chairman of the members' council or the chairman of the company and the director (general director) in the case of a limited liability company; the chairman of the board of management and the director (general director) in the case of a shareholding company; all partners in the case of a partnership; and the owner in the case of a private enterprise.

Article 9 *Right to establish enterprises*

1. All organizations being legal entities including enterprises with foreign owned capital in Vietnam irrespective of the place of registration of their head office and all individuals irrespective of their place of residence and nationality, so long as they are not in the categories stipulated in article 13.2 of the *Law on Enterprises*, shall have the right to establish and to participate in the establishment of an enterprise in Vietnam in accordance with the provisions of the *Law on Enterprises*.

2. Any one individual shall only have the right to register the establishment of one private enterprise or one individual family household business, or to be a partner of one partnership unless the other partners have some other agreement. An individual owner of a private enterprise or an individual household business shall have the right to establish [and] to participate in the establishment of a one member limited liability company, a limited liability company with two or more members, [and/or] a shareholding company.

3. Any foreign organization or individual investing for the first time in the establishment of an enterprise in Vietnam must comply with the following provisions:

(a) If more than 49% of the charter capital of the enterprise proposed to be established will be owned by a foreign investor, then there must be an investment project and registration of the investment shall be conducted together with establishment of an economic institution in accordance with the law on investment. In this case the enterprise shall be issued with an investment certificate which shall concurrently be the business registration certificate (hereinafter referred to as the *investment certificate*).

(b) If the foreign investor will not own more than 49% of the charter capital in the enterprise proposed to be established, then establishment of the enterprise shall be implemented in accordance with the provisions of the *Law on Enterprises* and Decree 88-2006-ND-CP of the Government dated 29 August 2006 on business registration (hereinafter referred to as

Decree 88). In this case the same regulations which apply to domestic investment projects shall apply to registration of the investment.

Article 10 *Right to contribute capital and to purchase shareholding*

1. All organizations being legal entities including enterprises with foreign owned capital irrespective of the place of registration of their head office, and all individuals irrespective of their place of residence and nationality, so long as they do not belong to the entities in the categories stipulated in article 13.4 of the *Law on Enterprises*, shall have the right to contribute capital and to purchase shareholding at an unrestricted amount in an enterprise pursuant to the corresponding provision of the *Law on Enterprises*, except for the following cases:

(a) The ownership ratio of foreign investors in listed companies shall be implemented in accordance with the *Law on Securities*;

(b) The ownership ratio of foreign investors in special cases shall be implemented in accordance with the laws specified in article 3.3 of this Decree and other relevant specialized branch laws;

(c) The ownership ratio of foreigners in 100% State owned enterprises undergoing equitization or otherwise converting their form shall be implemented in accordance with the law on equitization and conversion of 100% State owned enterprises;

(d) The ownership ratio of foreigners in business services enterprises shall be implemented in accordance with the list of specific commitments on commercial services (in the appendix to the Decree on Vietnam's WTO accession).

2. Any foreign investor contributing capital to a limited liability company or receiving an assignment of the capital contribution portion of a member or owner of the company shall implement the regulations on capital contribution or assignment of capital contribution portion; and shall register change of membership in accordance with the corresponding provisions of the *Law on Enterprises* and Decree 88.

Registration of change of membership of a company which has been issued with an investment certificate shall be conducted at the competent State body for administration of investment.

Registration of change of membership in other cases shall be conducted at the competent business registration office.

3. A foreign investor purchasing newly issued shares or receiving an assignment of shares shall do so in accordance with the regulations on purchase of shareholding and assignment of shareholding, and shall register as a shareholder or shall register a change of share ownership in the register of shareholders in accordance with the corresponding provision of the *Law on Enterprises*.

In a case of receipt of the shareholding contribution of a founding shareholder as stipulated in article 84.3 of the *Law on Enterprises* or an assignment of shares of a founding shareholder as stipulated in article 84.5 of the *Law on Enterprises*, then there must also be registration of change of a founding shareholder in accordance with Decree 88 at the competent business registration office or State body for administration of investment.

Article 11 *Prohibition on State bodies and units of the people's armed forces using State capital and assets to contribute capital, purchase shareholding and establish enterprises in order to earn private profit*

1. It shall be strictly prohibited for any State body or unit of the people's armed forces to use State assets or public funds to establish an enterprise, or to contribute capital or to purchase shareholding in an enterprise in order to earn private profit for such body or unit.

2. State assets and public funds as stipulated in this article shall comprise:

- (a) Assets procured with State budget funds or with capital sourced from the State budget;
- (b) Funding issued by the State budget;
- (c) Land allocated for use in order to exercise functions and discharge duties stipulated by law;
- (d) Other assets and revenue created from the use of the above -mentioned assets and funding.

3. Private profit for a body or unit means using revenue in any form which was earned from business activities, from a capital contribution or from the purchase of shareholding, for at least one of the following purposes:

- (a) Distribution in any form to one or a number of senior officials or staff of such body or unit;
- (b) Supplementing the operational budget of such body or unit contrary to the law on the State budget;
- (c) Establishing or supplementing a fund which services the private interests of such body or unit.

Article 12 *Supplementary guidelines on a number of rights and obligations of members of a limited liability company*

1. In a case where an individual member of a limited liability company is subject to temporary detention or imprisonment, sentenced by a court to a term of imprisonment or has his or her right to practise withdrawn by a court for a crime of smuggling, making counterfeit goods, illegally conducting business, evading tax, cheating customers or any other crime as stipulated by law, then such member shall have the right to appoint another person to participate in the members' council managing the company.

2. In the case of a limited liability company with two members, if one of the members is an individual who is the legal representative of the company and is subject to temporary detention or imprisonment, hides from his or her place of residence, loses capacity for civil acts or has his or her capacity for civil acts restricted, or has his or her right to practise withdrawn by a court for a crime of smuggling, making counterfeit goods, illegally conducting business, evading tax, cheating customers or any other crime as stipulated by law, then the other member shall automatically become legal representative of the company until there is a new decision made by the members' council.

3. In a case where a company fails to redeem a capital contribution portion, fails to pay for such redeemed portion or fails to agree on a price for the redemption as stipulated in article 43 of the *Law on Enterprises*, then the member which demanded that the company redeem [its capital contribution portion] shall have the right to assign such portion to another person. In this case, it shall not be mandatory for the assignment to be implemented in accordance with article 44 of the *Law on Enterprises*.

4. Any capital contributing member who fails to fully pay up and on time the amount of capital as undertaken must pay interest on the outstanding capital amount to the company at the highest loan interest rate of commercial banks until such time as the member fully pays up the capital amount undertaken, unless the company charter stipulates otherwise or the members have some other agreement.

Article 13 *Supplementary guidelines on director (general director) and members of the board of management*

1. The director (general director) of a shareholding company or limited liability company with two or more members must satisfy the following criteria and conditions:

(a) Have full capacity for civil acts and not be prohibited from establishing and managing an enterprise as stipulated in article 13.2 of the *Law on Enterprises*;

(b) A shareholder being an individual must own at least five (5) per cent of the ordinary shares (in the case of a shareholding company), or a member being an individual must own at least ten (10) per cent of the charter capital (in the case of a limited liability company), or in the case of any other person must have expert qualifications or actual experience in business management or in the principal line of business of the company.

If the company charter stipulates different criteria and conditions from the above, then the provisions of the company charter shall apply.

(c) In the case of a subsidiary company of a company which contributes capital or has shareholding owned by the State of more than 50% of the charter capital, then in addition to the criteria and conditions stipulated in sub-clauses (a) and (b) above, the director (general director) of such subsidiary company may not be the spouse, parent or foster parent, child, adopted child or sibling of a manager of the parent company or of the authorized representative of the State owned capital portion in the parent company.

2. The director (general director) of a one member limited liability company where such member is an organization must satisfy the following criteria and conditions:

(a) Have full capacity for civil acts and not be prohibited from establishing and managing an enterprise as stipulated in article 13.2 of the *Law on Enterprises*;

(b) Have expert qualifications in or actual experience in business management or in the principal line of business of the company, unless the company charter stipulates otherwise;

(c) If the owner of the company is a State body or enterprise with more than 50% State ownership, then in addition to the criteria and conditions stipulated in sub-clauses (a) and (b) above, the director (general director) may not be the spouse, parent or foster parent, child, adopted child or sibling of the head or deputy head of the State body or of the authorized representative of the State owned capital portion in such company.

3. The members of the board of management of a shareholding company must satisfy the following criteria and conditions:

(a) Have full capacity for civil acts and not be prohibited from establishing and managing an enterprise as stipulated in article 13.2 of the *Law on Enterprises*;

(b) A shareholder being an individual must own at least five (5) per cent of the total ordinary shares; or a shareholder must own at least five (5) per cent of the total shares [i.e. ordinary shares plus other classes of shares], or in the case of a person not a shareholder then he or she must have expert qualifications or actual experience in business management or in the principal line of business of the company.

If the company charter stipulates different criteria and conditions from those in this clause, then the provisions of the company charter shall apply.

4. Unless otherwise stipulated by the company charter, the chairman of the members' council, the chairman of the company, the chairman of the board of management and the director/general director of such company may concurrently be the chairman of the members' council, the company chairman, the chairman of the board of management or the director/general director (except the director/general director of a shareholding company) of another company.

5. Where a foreign individual is assigned to be legal representative of an enterprise, he or she must reside in Vietnam for the entire term of office and must register temporary residence in accordance with law. Where he or she exits Vietnam for over thirty (30) consecutive days, he or she must:

(a) Authorize another person in writing in accordance with the company charter to perform the rights and obligations of the legal representative of the company;

(b) Send, at least two days' prior to exiting Vietnam, a copy of such power of attorney to the Department of Planning and Investment or to the management committee of the industrial zone or economic zone where the enterprise has registered its head office.

Article 14 *Number of authorized representatives who may participate in the members' council or attend the general meeting of shareholders*

1. Unless otherwise stipulated by the company charter:

(a) An organization being a member of a limited liability company owning at least thirty -five (35) per cent of the charter capital shall have the right to appoint up to three authorized representatives to participate in the members' council.

(b) An organization being a shareholder of a shareholding company owning at least ten (10) percent of the total number of ordinary shares shall have the right to authorize up to three people to attend the general meeting of shareholders.

2. The company owner shall have the power to decide the number of members of the members' council of a one member limited liability company when such one member is an organization.

Article 15 *Founding shareholders*

1. *Founding shareholder* means a person contributing shareholding capital [and] who is involved in formulating, approving and signing the first charter of the shareholding company.

2. A newly established shareholding company must have a founding shareholder/s; a shareholding company which was converted from a 100% State owned enterprise or limited liability company which was divided or demerged from, or consolidated or merged into another shareholding company need not necessarily have a founding shareholder/s.

If there is no founding shareholder/s then the charter of the shareholding company in the application file for business registration must be signed by the legal representative of such company.

3. If after three years from the date of issuance of the business registration certificate the number of shares carrying the right to offer for sale as stipulated in article 84.4 of the *Law on Enterprises* is not fully sold, then the company must register an amendment being a reduction of the amount of capital the company is entitled to issue carrying the right to issue so that it is equal to the number of shares actually issued.

Article 16 *Establishment of branches and representative offices of an enterprise with foreign owned capital*

1. An enterprise with foreign owned capital established pursuant to the *Law on Investment* and the *Law on Enterprises* or which has registered conversion in accordance with law, shall have the right to establish a branch/es [and/or] representative office/s outside its head office. The establishment of a branch need not necessarily be associated with or be conducted simultaneously with conducting investment procedures in accordance with the law on investment. The application file, order and procedures for registering the operation of a branch or representative office shall be implemented in accordance with the corresponding provisions in Decree 88, and the registration of

the operation of the branch or representative office shall be conducted at the competent state body administering investment.

2. If registration of the operation of a branch is conducted simultaneously with registration of the investment project, then the application file shall include both the application file for registration of the operation of a branch stipulated in Decree 88 and an application file for registration of the investment in accordance with the law on investment.

In this case, the branch shall be established and issued with an investment certificate which will concurrently be the certificate of registration of the operation of the branch when the investment project is registered or evaluated for approval and the application file for registration of the operation of the branch is valid. In this case the contents of the investment certificate shall comprise items on registration of the operation of the branch and items on registration of the investment project in accordance with law.

Article 17 *Method of cumulative voting*

1. The method of cumulative voting stipulated in article 104.3(c) of the *Law on Enterprises* shall apply to all shareholding companies including listed companies, unless the law on securities otherwise provides.

2. Before and during the general meeting of shareholders, shareholders shall have the joint right to form a group in order to nominate a candidate/s and to cast cumulative votes for their candidate/s.

3. The number of candidates which each group shall have the right to nominate shall depend on the number of candidates decided by the general meeting and the share ownership ratio of each group.

Unless the company charter stipulates otherwise and unless the general meeting of shareholders decides otherwise, the number of candidates which a group shall have the right to nominate shall be regulated as follows:

(a) A shareholder or a group of shareholders holding from ten (10) to below twenty (20) per cent of the total voting shares shall have the right to nominate a maximum of one candidate;

(b) A shareholder or a group of shareholders holding from twenty (20) to below thirty (30) percent of the total voting shares shall have the right to nominate a maximum of two candidates;

(c) A shareholder or a group of shareholders holding from thirty (30) to below forty (40) per cent of the total voting shares shall have the right to nominate a maximum of three candidates;

(d) A shareholder or a group of shareholders holding from forty (40) to below fifty (50) per cent of the total voting shares shall have the right to nominate a maximum of four candidates;

(dd) A shareholder or a group of shareholders holding from fifty (50) to below sixty (60) per cent of the total voting shares shall have the right to nominate a maximum of five candidates;

(e) A shareholder or a group of shareholders holding from sixty (60) to below seventy (70) percent of the total voting shares shall have the right to nominate a maximum of six candidates;

(g) A shareholder or a group of shareholders holding from seventy (70) to below eighty (80) percent of the total voting shares shall have the right to nominate a maximum of seven candidates;

(h) A shareholder or a group of shareholders holding from eighty (80) to below ninety (90) percent of the total voting shares shall have the right to nominate a maximum of eight candidates.

Where the number of candidates nominated by a shareholder or group of shareholders is lower than the number of candidates they are entitled to nominate, then the remaining candidates shall be nominated by the board of management or by the inspection committee or by other shareholders.

4. Persons elected to be members of the board of management or of the inspection committee shall be verified on the basis of a count from the highest number down to the lowest number of votes, starting with the candidate with the highest number of votes and then moving to the candidate with the next highest number until all the number of members as required by the company charter have been elected.

Article 18 *Supplementary guidelines on meetings of the board of management*

1. The meeting of the board of management convened by the first notice convening a meeting shall be conducted when three-quarters or more of the total number of members are present.

2. Where the stipulated number of members are not present at the meeting convened as stipulated in clause 1 of this article, the meeting shall be convened for a second time within fifteen (15) days of the date of the intended first meeting. In this case, a meeting shall be conducted when there are more than one-half of the total number of members of the board of management present.

Article 19 *Conversion of a one member limited liability company into a limited liability company with two or more members*

1. A one member limited liability company shall be permitted to convert into a limited liability company with two or more members when the owner of the company has contributed the full amount of capital as undertaken. The company may convert by the following forms:

(a) The owner of the company assigns or donates a part of its ownership portion in the company to one or more other people; or

(b) The company raises additional capital contributions from one or more other people.

2. In a case of conversion as stipulated in clause 1(a) of this article, the application file for conversion shall comprise:

(a) Request for conversion;

(b) Charter of the converted company with the contents stipulated in article 22 of the *Law on Enterprises*;

(c) List of members containing the items stipulated in clauses 1 and 3 of article 23 of the *Law on Enterprises* and the equivalent capital contribution portion of each member;

(d) Contract on assignment, or document certifying the donation of a part of the ownership of the company.

3. In a case of conversion as stipulated in clause 1(b) of this article, the application file for conversion shall comprise:

(a) Request for conversion;

(b) Charter of the converted company with the contents stipulated in article 22 of the *Law on Enterprises*;

(c) List of members as stipulated in article 23 of the *Law on Enterprises*;

(d) Decision of the owner of the company on raising additional capital contributions.

4. Within a time-limit of fifteen (15) business days from the date the owner of the company assigns or donates a part of its ownership portion in the company to one or more other people, or from the date the company raises additional capital contributions, or from the date one or more other people undertake to make capital contribution portions, the company shall lodge or send the application file for conversion to the business registration office or to the competent State body administering investment which issued the investment certificate.

Within a time-limit of five business days from the date of receipt of an application file for conversion, the business registration office or the State body administering investment shall re-issue the equivalent business registration certificate or investment certificate; and at the same time it shall recover the previous business registration certificate or investment certificate of the company prior to its conversion.

5. Any converted company shall inherit all the rights and legal interests and shall be responsible for all debts including tax debts and labour contracts and other obligations of the company prior to conversion.

6. Within a time-limit of seven (7) business days from the date of issuance of the business registration certificate or investment certificate referred to in clause 4 above, the business registration office or the State body administering investment shall notify the relevant State bodies stipulated in article 27.1 of the *Law on Enterprises*, and at the same time shall delete the name of the company prior to conversion from the business register.

Article 20 *Conversion of a shareholding company or a limited liability company with two or more members into a one member limited liability company*

1. A shareholding company or a limited liability company with two or more members may convert into a one member limited liability company by the following methods:

(a) One shareholder or one member receives an assignment of the entire shares or entire capital contribution portions of all the other shareholders or members;

(b) One shareholder or member being a legal entity receives an investment capital contribution made by the entire shares or entire capital contribution portions of all of the other shareholders or members; or

(c) A person other than a member or a shareholder receives an assignment or receives an investment capital contribution by the entire shares or entire capital contribution portions of all of the shareholders or members of the company.

2. An application filed for conversion shall comprise:

(a) Request for conversion;

(b) Charter of the converted company;

(c) Contract of assignment of the shares or capital contribution portions, or agreement on receipt of investment capital contribution by shares or by capital contribution portions.

3. Within a time-limit of fifteen (15) business days from the date on which a shareholder or member receives an assignment as stipulated in clause 1(a), or receives an investment capital contribution as stipulated in clause 1(b), or on which another person receives an assignment or an investment capital contribution as stipulated in clause 1(c) of this article, the company shall send or lodge its application file for conversion with the business registration office at the place where the enterprise has such registration or with the State administrative body for investment which issued the investment certificate.

Within a time-limit of five business days from the date of receipt of the application file, the business registration office or the State administrative body for investment shall re-issue the business registration certificate or investment certificate; and at the same time shall also recover the business registration certificate or investment certificate which was issued to the company prior to conversion.

4. A converted company shall inherit all the rights and legal interests and shall be responsible for all debts including tax debts and labour contracts and other obligations of the company prior to conversion.

5. Within a time-limit of seven (7) business days from the date of issuance of the business registration certificate or investment certificate referred to in clause 3 above, the business registration office or the State body administering investment shall notify the relevant State bodies stipulated in article 27.1 of the *Law on Enterprises*, and at the same time shall delete the name of the company prior to conversion from the business register.

Article 21 *Conversion of a limited liability company into a shareholding company*

1. A limited liability company may convert into a shareholding company. If the limited liability company has less than three members, then attracting new members may take place at the same time as conversion of the company. A new member may be a person receiving an assignment of a capital contribution portion of a current member, or may be a person contributing additional capital to the company.

2. An application filed for conversion shall comprise:

(a) Request for conversion;

(b) Decision of the owner of the company or of the members' council approving conversion of the company;

(c) Charter of the shareholding company;

(d) List of founding shareholders (if any) or list of ordinary shareholders with the items required by article 19.3 of the *Law on Enterprises*;

(e) Contract/s on assignment of capital contribution portions, or agreement on investment capital contribution.

3. Within a time-limit of fifteen (15) business days from the date of the decision of the owner of the company or of the members' council approving conversion, the company shall lodge or send the application file for conversion to the competent business registration office or State body administering investment which issued the investment certificate.

Within a time-limit of five business days from the date of receipt of an application file for conversion, the business registration office or the State body administering investment shall re-issue the equivalent business registration certificate or investment certificate; and at the same time it shall recover the previous business registration certificate or investment certificate of the company prior to its conversion.

4. A converted company shall inherit all the rights and legal interests and shall be responsible for all debts including tax debts and labour contracts and other obligations of the company prior to conversion.

5. Within a time-limit of seven (7) business days from the date of issuance of the business registration certificate or investment certificate referred to in clause 3 above, the business registration office or the State body administering investment shall notify the relevant State bodies stipulated in article 27.1 of the *Law on Enterprises*, and at the same time shall delete the name of the company prior to conversion from the business register.

Article 22 *Basic contents of a request for conversion*

The request for conversion stipulated in articles 19, 20 and 21 of this Decree must contain at least the following particulars:

1. Name of the company to be converted;
2. Name of the converted company (if it is proposed that the company will change its name on being converted);
3. Head office address, telephone and fax numbers, and e-mail address (if any);
4. Line/s of business;
5. Current charter capital and proposed charter capital after raising additional capital contributions or shareholding;
6. Form of conversion;
7. Full name, permanent residential address, number of people's identity card or passport of the legal representative of the company;
8. Other items as stipulated in clauses 5 and 6 of article 21 of the *Law on Enterprises*.

Article 23 *Contents of a business registration certificate or of the business registration items in an investment certificate applicable to a case of conversion*

The business registration certificate in the case of a company converted pursuant to articles 19, 20 and 21 of this Decree shall contain the following basic particulars:

1. Name of the company prior to conversion, number and date of issuance of its business registration certificate or investment certificate, and charter capital.
2. Name of the converted company, number and date of its business registration certificate or investment certificate.
3. Head office address, address of any branch or representative office; telephone and fax numbers and e-mail trading address (if any) of the converted company.
4. Charter capital of the converted company in the case of a limited liability company; number of shares and value of shares already sold; and number of shares carrying the right to offer for sale in the case of a shareholding company.
5. Line/s of business.
6. Full name and permanent residential address or registered temporary address (in the case of a foreigner), nationality and number of people's identity card or passport (in the case of a foreigner) or other legal personal identification of the legal representative of the company.
7. Other items as stipulated in clause 3 of article 25 of the *Law on Enterprises*.

Article 24 *Conversion of a private enterprise into a limited liability company*

1. A private enterprise may convert into a limited liability company pursuant to the decision of the owner of the private enterprise if it satisfies all the following conditions:

- (a) It satisfies the conditions stipulated in article 24 of the *Law on Enterprises*;

(b) The owner of the private enterprise must be the owner of the company (in the case of conversion to a limited liability company with one member who is an individual), or must become a member (in the case of conversion to a limited liability company with two or more members) ;

(c) The owner of the company must provide a written undertaking to be personally liable to the extent of all assets owned by him or her to pay all unpaid debts of the private enterprise, and must undertake to pay all debts when they mature;

(d) The owner of the private enterprise must have written agreements with parties to unliquidated contracts that the converted limited liability company will accept and perform such contracts;

(dd) The owner of the private enterprise must have written undertakings or written agreements with other capital contributing members to take over and employ the current employees of the private enterprise..

2. An application file for conversion shall comprise:

(a) Company charter;

(b) Request for conversion and for business registration;

(c) List of creditors and amount of unpaid debts (including tax debts) and the period for payment; list of current employees; list of contracts not yet liquidated and the corresponding data as stipulated in sub -clauses (c), (d) and (dd) of clause 1 of this article;

(d) Business registration certificate of the private enterprise;

(dd) List of members stipulated in article 23 of the *Law on Enterprises* in the case of conversion into a limited liability company with two or more members.

4. Within a time-limit of ten (10) business days from the date of receipt of a file, the business registration office shall consider and issue a business registration certificate to the new limited liability company if all the conditions stipulated in clause 1 of this article are satisfied. In a case of refusal, the business registration office must provide a written response specifying its reasons, and including guidelines for amendments or additions to the application file.

5. Within a time-limit of seven (7) business days from the date of issuance of the business registration certificate referred to in clause 4 above, the business registration office or the State body administering investment shall notify the relevant State bodies stipulated in article 27.1 of the *Law on Enterprises*, and at the same time shall delete the name of the private enterprise prior to conversion from the business register.

Article 25 *Joint venture enterprises or enterprises with 100% foreign owned capital which do not register or which have not yet re-registered pursuant to Decree 101:*

1. They shall only have the right to conduct business in the line/s and for the duration stipulated in their investment licences; and shall not be permitted to expand the scope of business to other lines.

2. They shall have the right to implement new investment projects and open branches to operate in places other than their head office, but [only] within the scope of the line/s of business stipulated in their investment licences.

3. Internal managerial organization and the operation of the enterprise shall be implemented in accordance with the provisions in the charter; in a case where the charter does not contain provisions, the corresponding provisions of the *Law on Enterprises* and its implementing guidelines shall apply.

4. They shall have corresponding rights and obligations as stipulated in the *Law on Enterprises*, the *Law on Investment* and other relevant laws during the conduct of their business operation within the scope of the line/s of business stipulated in their investment licences.

Article 26 *Supplementary guidelines on economic groups*

1. An *economic group* means a group of companies which have independent legal entity status, formed on the basis of a conglomeration or association by means of investment, capital contribution, merger, acquisition, restructuring or other forms of association; such companies associating with each other on a long-term basis for their economic, technological and market interests and other economic services to form a business group with two or more levels of enterprise in the form of a parent - subsidiary company.

2. An economic group shall not have legal entity status and shall not be required to conduct business registration in accordance with the *Law on Enterprises*. The companies forming the economic group shall make their own decision on the operational organization of the economic group.

3. The parent company shall be organized in the form of a shareholding company or limited liability company which satisfies the conditions stipulated in article 4.15 of the *Law on Enterprises*. The subsidiary companies shall be organized in the form of shareholding companies or limited liability companies in accordance with the provisions in the *Law on Enterprises* or other relevant laws.

The parent company, subsidiary companies and other companies forming the economic group shall have rights and obligations, and the organizational structure of management and operation consistent with the form of organization of an enterprise as stipulated in the *Law on Enterprises*, [other] relevant laws and the company charter/s.

4. The expression "economic group" may be used as a subsidiary element of the discrete name of the parent company, in compliance with articles 31 to 34 inclusive of the *Law on Enterprises* on naming enterprises.

5. The Ministry of Finance shall provide guidelines on consolidated financial reporting by, and on supervision of the financial operation of economic groups, and of groups of parent - subsidiary companies within an economic group.

The Ministry of Industry and Trade shall provide guidelines on implementation by economic groups and groups of parent - subsidiary companies within an economic group of the provisions regarding restraint of competition, dominant market position and monopoly position.

Article 27 *Supervision by the business registration office of the order and procedures for conducting the general meeting of shareholders and of decisions of the general meeting of shareholders*

1. A shareholder or a group of shareholders stipulated in article 79.2 of the *Law on Enterprises* shall have the right to request the competent business registration office or State administrative body for investment to supervise the order and procedures for convening and conducting the general meeting of shareholders and the decisions of the general meeting of shareholders when the latter is convened pursuant to article 97.6 of the *Law on Enterprises*.

2. The request must be made in writing and contain at least the following main particulars:

(a) Name and head office address of the company;

(b) Number and date of issuance of business registration certificate;

(c) List of the shareholder or group of shareholders requesting the convening of the general meeting of shareholders, including full names of individuals and names and head office addresses of legal entities, number of ordinary shares and ownership ratio, and date and number of registration of shareholding in the register of shareholders;

(d) Reason for convening the general meeting of shareholders, and time and location of the meeting;

(dd) Signatures of all the shareholders or group of shareholders convening the meeting.

3. The request stipulated in clause 2 of this article must enclose the following documents:

(a) Request made to the board of management and to the inspection committee to convene the general meeting of shareholders as referred to in article 97.3(c) of the *Law on Enterprises*;

(b) Invitation to attend the general meeting of shareholders;

(c) Agenda and other data servicing the meeting.

4. The competent business registration office or State administrative body for investment shall appoint a representative to supervise the general meeting of shareholders if such office or body receives an application file complete in terms of the number and contents stipulated in clauses 2 and 3 of this article at least three days prior to the meeting, and if the shareholder or group of shareholders convening the meeting are registered in the register of shareholders of the company as owning the required ownership ratio stipulated in article 79.2 of the *Law on Enterprises*.

5. The representative of the business registration office or State administrative body for investment shall be responsible to supervise the order and procedures for conducting the meeting and for making a decision on issues relating to the agenda for the meeting in accordance with the provisions in the *Law on Enterprises* and its implementing guidelines.

If the chairman of the meeting so requests and if considered necessary, the representative of the business registration office or State administrative body for investment may explain guidelines on methods and procedures for conducting the meeting and for voting.

6. One day after the closure of the general meeting of shareholders, the representative of the business registration office or State administrative body for investment shall provide a written report on results of supervision of the meeting, including observations on the legality of the order and procedures for conducting the meeting.

Article 28 *Dissolution of enterprises*

1. An enterprise shall be dissolved in the cases stipulated in article 157.1 of the *Law on Enterprises*, and shall have its investment certificate revoked in the circumstances stipulated in article 68 of Decree 108 on implementation of the *Law on Investment* or if a court announces that the enterprise is dissolved.

2. The order and procedures for dissolution and for liquidation of assets of the enterprise shall be implemented in accordance with clauses 1 to 4 of article 158 of the *Law on Enterprises*.

3. Within a time-limit of seven (7) business days from completion of dissolution of the enterprise and full payment of all debts of the enterprise, the legal representative of the enterprise shall submit documents relating to the dissolution to the competent business registration office or State administrative body for investment. The file on dissolution stipulated in article 158.5 of the *Law on Enterprises* shall comprise:

(a) Decision on dissolution, or decision revoking the business registration certificate or decision revoking the investment certificate, or decision of the court pronouncing dissolution of the enterprise;

(b) List of creditors and amount of debts paid, including full payment of tax debts and payment of social insurance contributions;

- (c) List of current employees and interests of such employees which have been resolved;
 - (d) Business registration certificate or investment certificate;
 - (dd) Seal, certificate of registration of the specimen seal, and certificate of registration of the tax code of the enterprise;
 - (e) Unused value added tax invoices;
 - (g) Summarized report on conduct of the dissolution procedures, including an undertaking that all debts have been fully paid including tax debts, and that the lawful interests of employees have been resolved.
4. Members of the board of management, members of a limited liability company, the owner of a company, the owner of a private enterprise, the director (general director), and partners of a partnership shall be liable for the truthfulness and accuracy of the file on dissolution of the enterprise.
5. If the file on dissolution is inaccurate or contains false material, then the persons referred to in clause 4 of this article shall be jointly liable to pay all unpaid debts, to pay unpaid tax debts, and for interests of employees which remain unresolved; and they shall be personally liable for any consequences arising during a period of three years as from the date of lodging the file on dissolution of the enterprise to the competent business registration office or to the State administrative body for investment.
6. Within a time-limit of seven (7) business days, the body receiving the file on dissolution of the enterprise stipulated in clause 3 of this article shall notify the tax office and the police office about the dissolution and shall delete the name of the enterprise from the business register or from the investment register unless the tax office and the police office have some other requirements.
7. The dissolution of any enterprise or economic institution established and operating under a law referred to in article 3.3 of this Decree shall be implemented in accordance with the law on such specialized branch.

Article 29 *Dissolution of branches*

1. The branch of an enterprise shall be dissolved pursuant to the decision of such enterprise or pursuant to a decision revoking the operational certificate of the branch made by the competent State administrative body.
2. An application file for dissolution of a branch shall comprise:
- (a) Decision of the enterprise to dissolve its branch or decision of the competent State administrative body revoking the operational certificate of the branch;
 - (b) List of creditors and amount of debts to be paid including tax debts of the branch and outstanding social insurance contributions;
 - (c) List of employees and current corresponding interests of the employees;
 - (d) Certificate of registration of the operation of the branch;
 - (dd) Seal, certificate of registration of specimen seal, and certificate of registration of the tax code of the branch of the enterprise;
 - (e) Unused value added tax invoices.

3. The legal representative of the enterprise and the director of the branch which is being dissolved shall be jointly liable for the truthfulness and accuracy of the application file for dissolution of the branch.

4. An enterprise whose branch is dissolved shall be responsible to perform all contracts, to pay all debts including tax debts of the branch, and to continue to employ the employees of the branch or to fully resolve the legal interests of such employees in accordance with law.

5. Within a time-limit of seven (7) business days from the date of receipt of a complete file as stipulated in clause 2 of this article, the competent business registration office or State administrative body for investment shall notify the tax office and the police office about the dissolution of the branch of the enterprise, and shall delete the name of the branch from the business register of operational branches unless the tax office and the police office have some other requirements.

Article 30 *Effectiveness*

This Decree shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette.

Article 31

The Ministry of Planning and Investment shall be responsible to provide guidelines for implementation of this Decree.

For the Government
Prime Minister of the Government

NGUYEN TAN DUNG