

**LAW 59**  
**ON**  
**ENTERPRISES**

Dated 17 June 2020

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[Ha Noi, 17 June 2020]

# **LAW ON ENTERPRISES**

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly promulgates the *Law on Enterprises*.

## **CHAPTER 1**

### **General Provisions**

#### **Article 1** *Governing scope*

This Law regulates the establishment, organization of management, re-organization, dissolution and related activities of enterprises comprising limited liability companies [LLC]<sup>1</sup>, shareholding companies, partnerships and private enterprises; and regulates corporate groups.

#### **Article 2** *Applicable entities*

1. Enterprises.
2. Agencies, organizations and individuals involved in the establishment, organization of management, re-organization, dissolution and related activities of enterprises.

#### **Article 3** *Application of Law on Enterprises and other laws*

If any other law provides special regulations on the establishment, organization of management, re-organization, dissolution and related activities of enterprises, the provisions of such law shall apply.

#### **Article 4** *Interpretation of terms*

In this Law, the following terms are construed as follows:

1. *Copy* means a document which is copied from the original book or certified against the original by an authorized agency or organization or which has been verified against the original.
2. *Foreign individual* means a person holding a document which identifies his/her foreign nationality.
3. *Shareholder* means an individual or organization holding at least one share of a shareholding company.

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<sup>1</sup> Allens footnote: Square brackets contain translator's comments only.

4. *Founding shareholder* means a shareholder holding at least one ordinary share and signing the list of founding shareholders of a shareholding company.
5. *Dividend* means the net profit to be paid for each share in cash or other assets.
6. *Company* comprises limited liability companies [LLCs], shareholding companies and partnerships.
7. *Limited liability company* comprises one [single] member LLCs and LLCs with two or more members [multi-member].
8. *National enterprise registration information portal* means the electronic information portal to be used for enterprise registration via the electronic communication network, for announcement of information about enterprise registration and for access to information about enterprise registration.
9. *National enterprise registration database* means the collection of data on enterprise registration throughout the whole country.
10. *Enterprise* means an organization having its own name, having assets and a transaction office, and established or registered for establishment in accordance with law for business/trading purposes.
11. *State owned enterprises* comprise enterprises in which the State holds above fifty per cent (50%) of the charter capital and/or the total number of voting shares as prescribed in article 88 of this Law.
12. *Vietnamese enterprise* means an enterprise established or registered for establishment in accordance with the laws of Vietnam and having its head office in Vietnam.
13. *Contact address* means the registered head office address in the case of an organization; or the permanent residential address or the workplace address or any other address of an individual who registered such address with the enterprise as the contact address.
14. *Market price of a capital contribution portion or of a share* means the market trading price at the preceding time, the agreed price between a seller and a purchaser, or the price determined by a price evaluation organization.
15. *Enterprise registration certificate* means the paper or electronic document recording information about enterprise registration which is issued by the business registration office to the enterprise.
16. *Personal legal document* means any one of the following documents: citizen's identity card, people's identity card, passport and other lawful personal identification document.
17. *Organizational legal document* means any one of the following documents: establishment decision, enterprise registration certificate and other equivalent document.
18. *Capital contribution* means the contribution of assets [to a company] in order to form the charter capital of the company, comprising capital contribution for establishment of a company or additional contribution to the charter capital of a company already established.
19. *National system of information about enterprise registration* comprises the national enterprise registration information portal, the national enterprise registration database, relevant databases and systematic technical infrastructure.



20. *Valid file* means a file containing all documents stipulated in this Law and the contents of which contain complete declarations as required by law.
21. *Business* means the continuous conduct of one, several or of all of the stages of a process, from investment, production to sale of products or provision of services on the market for profit-making purposes.
22. *Person with a family relationship* comprises the spouse, natural or adoptive parent, father-in-law, mother-in-law, child, adopted child, son-in-law, daughter-in-law, sibling, brother-in-law and sister-in-law, and siblings of the spouse.
23. *Related person* means any individual or organization with a direct or indirect relationship with an enterprise in the following cases:
- (a) [*Related person*] means the parent company, a manager and the legal representative of the parent company, and any person with the authority to appoint the manager of the parent company;
  - (b) [*Related person*] means any subsidiary company, and any manager and the legal representative of the subsidiary company;
  - (c) An individual or organization, or a group of individuals or organizations with the ability to control activities of such enterprise via ownership or takeover of shares or capital contribution portions or via issuance of decisions of the company;
  - (d) A manager of the enterprise, the legal representative, and an inspector;
  - (dd) Spouse, natural or adoptive parent, father-in-law, mother-in-law, child, adopted child, son-in-law, daughter-in-law, sibling, brother-in-law or sister-in-law of any manager of the company, of the legal representative, of any inspector, or of any member and shareholder holding a controlling portion of capital contribution or controlling shares;
  - (e) An individual who is the authorized representative of any company or organization stipulated in sub-clauses (a), (b) and (c) of this clause;
  - (g) An enterprise in which any individual, company or organization stipulated in sub-clauses (a), (b), (c), (d), (dd) and (e) of this clause owns [shares] at a level entitling it to control issuance of decisions of the company.
24. *Manager of an enterprise* means a manager of a private enterprise or a manager of a company, comprising the owner of the private enterprise, unlimited liability partners, the chairman of the members' council, members of the members' council, the chairman of the company, the chairman of the board of management, members of the board of management, the director or general director, and individuals holding other managerial positions as stipulated in the charter of the company<sup>2</sup>.
25. *Founder of an enterprise* means an individual or organization establishing or contributing capital to establish the enterprise.
26. *Foreign investor* means an individual or organization stipulated in the *Law on Investment*.

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<sup>2</sup> Allens footnote: The Vietnamese term for 'company' covers each and all of private enterprise, partnership, limited liability company & shareholding company. Also in this Law, the Vietnamese text swaps between using 'company' and 'enterprise'.

27. *Capital contribution portion* means the total value of assets contributed or undertaken to be contributed by a member to a LLC or partnership. *Capital contribution ratio* means the ratio of the portion of capital contribution of a member to the charter capital of the LLC or the partnership.
28. *Public utility products or services* means products or services which are essential for the socio-economic life of the country, localities or civilian communities, which the State needs to ensure for the general interest or for national defence and security purposes, and for which it would be difficult to cover costs if production and supply were implemented in accordance with the market mechanism.
29. *Member of a company* means an individual or organization holding part or all of the charter capital of a LLC or partnership.
30. *Partner of a partnership*<sup>3</sup> comprises unlimited liability partners and limited liability partners<sup>4</sup>.
31. *Re-organization of an enterprise* means the division, separation, consolidation, merger or conversion of the type of the enterprise.
32. *Foreign organization* means an organization which is established overseas in accordance with foreign law.
33. *Voting capital* means the portion of capital contribution or shares entitling the owner to vote on matters which fall within the decision-making power of the members' council or general meeting of shareholders.
34. *Charter capital* means the total value of assets contributed or undertaken to be contributed by members of the company and/or the owner of the company when establishing a LLC or partnership; or means the total aggregate par value of shares sold or registered for subscription when establishing a shareholding company.

**Article 5** *State guarantees<sup>5</sup> for enterprises and owners of enterprises*

1. The State recognises the long term existence and development of the types of enterprise prescribed in this Law, ensures the equality of enterprises before the law irrespective of their form of ownership and economic sector; and recognises the lawful profit-making nature of business activities.
2. The State recognises and protects the ownership of assets, invested capital, income and other lawful rights and interests of enterprises and their owners.
3. Lawful assets and invested capital of enterprises and their owners shall not be nationalized or expropriated by administrative measures. In extremely necessary cases where the State compulsorily acquires or requisitions assets of an enterprise, the enterprise shall be paid or compensated in accordance with the law on compulsory acquisition and requisition of assets. The payment or compensation must ensure the interests of the enterprise without discrimination as between types of enterprise.

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<sup>3</sup> Allens footnote: The literal translation is "member of a partnership", however 'partner' has been adopted throughout this translation. The same Vietnamese term ("member" without "partnership") is used to denote a member of a LLC.

<sup>4</sup> Allens footnote: The literal translation is "capital contributing partners".

<sup>5</sup> Allens footnote: An alternative translation is "assurances".

**Article 6** *Political organizations, socio-political organizations and organizations representing employees at the grassroots level in enterprises*

1. Political organizations, socio-political organizations and organizations representing employees at the grassroots level in enterprises shall operate in accordance with the provisions of the Constitution, the law, and their charter.
2. An enterprise is obliged to respect and is not permitted to hinder or cause difficulties to the establishment of a political organization, socio-political organization or organization representing employees at the grassroots level in the enterprise; and is not permitted to hinder its employees from or cause difficulties to its employees in participating in activities of such organization.

**Article 7** *Rights of enterprises*

1. To freely conduct business in the industries and trades which are not prohibited by law.
2. To conduct business autonomously and select the form of organization of business; to take the initiative in selecting the lines of business, the area for and form of business, and to take the initiative in adjusting the scope and lines of business.
3. To select forms and methods of raising, allocating and utilizing capital.
4. To freely seek markets and customers and sign contracts.
5. To conduct import and export business.
6. To recruit, hire and employ labourers [employees] in accordance with the law on labour.
7. To take the initiative in applying science and technology to increase business efficiency and competitiveness; to have their intellectual property rights protected in accordance with the law on intellectual property.
8. To possess, use and dispose of assets of the enterprise.
9. To refuse requests from agencies, organizations and individuals not in accordance with law for provision of human resources.
10. To lodge complaints or participate in legal proceedings in accordance with law.
11. Other rights as stipulated by law.

**Article 8** *Obligations of enterprises*

1. To satisfy all business investment conditions when conducting business in the industries and trades for which business investment is subject to conditions [is conditional], or the industries and trades for which market approach is subject to conditions applicable to foreign investors in accordance with law, and to ensure maintenance of all such conditions during the process of business operation.
2. To fully and promptly perform the obligations regarding enterprise registration, registration of changes to contents of enterprise registration, public disclosure of information about establishment and operation of the enterprise, reporting and other obligations as stipulated in this Law.

3. To be responsible for the honesty and accuracy of declarations in the application file for enterprise registration and in reports; in the case of discovery of any information which was declared or reported inaccurately or incompletely, to promptly make amendment of or addition to such information.
4. To organize accounting work, to pay taxes and to perform other financial obligations as stipulated by law.
5. To ensure the lawful and legitimate rights and interests of employees in accordance with law; not to discriminate between and offend the honour and dignity of employees in the enterprise; not to mistreat labour, force labour or use labour being minors contrary to law; to support and facilitate its employees to participate in training to improve their qualifications and technical skills; to implement the policies and regimes on social insurance, job loss insurance, health insurance and other insurance for employees in accordance with law.
6. Other obligations stipulated by law.

**Article 9** *Rights and obligations of enterprises providing public utility products or services*

1. The rights and obligations of enterprises stipulated in articles 7 and 8 and in other relevant provisions of this Law.
2. To account for and to be covered for expenses at the price stipulated by the law on tendering, or to collect charges for provision of services in accordance with regulations of competent State agencies.
3. To be guaranteed an appropriate period for supply of products or provision of services in order to recover invested capital and gain reasonable profit.
4. To supply products or provide services in the correct quantity and quality and on time as committed at the price or charge rate stipulated by competent State agencies.
5. To ensure that equitable and favourable conditions are applicable to customers.
6. To be responsible before the law and customers for quantity, quality, terms of supply and prices, and charges for supply of products or provision of services.

**Article 10** *Criteria applicable to and rights and obligations of social enterprises*

1. A social enterprise must satisfy the following criteria:
  - (a) It is registered for establishment in accordance with this Law;
  - (b) Its operational objective is to resolve social or environmental issues in the interests of the community;
  - (c) It uses at least fifty one (51) per cent of its total annual after-tax profit to conduct re-investment for the purpose of implementing the registered objectives.
2. In addition to the rights and obligations of enterprises stipulated in this Law, a social enterprise has the following rights and obligations:
  - (a) The owner or the manager of the social enterprise shall be considered for and entitled to receive favourable conditions and assistance during issuance of relevant licences, [practising] certificates and certificates in accordance with law;

- (b) To be permitted to raise and receive funding [aid] from individuals, enterprises, non-governmental organizations and other organizations in Vietnam and overseas in order to cover managerial and operational expenses of the enterprise;
  - (c) To maintain the operational objectives and the conditions stipulated in clauses 1(b) and 1(c) of this article during the course of operation;
  - (d) Not to use funding raised for purposes other than the purpose of covering managerial and operational expenses in order to resolve social or environmental issues registered by the enterprise;
  - (dd) In the case of receipt of incentives or assistance, the social enterprise must annually make a report to the competent agency on its operational status.
3. The social enterprise must send a notice to the competent agency when it ceases to implement the social or environmental objectives or does not use profit for re-investment as prescribed in clauses 1(b) and 1(c) of this article.
  4. The State has policies to encourage, support and promote the development of social enterprises.
  5. The Government shall provide detailed regulations on this article.

#### **Article 11** *Document retention regime of enterprises*

1. Depending on the form of enterprise, an enterprise must retain the following documents:
  - (a) Charter of the company; rules on internal management of the company; and register of members or register of shareholders;
  - (b) Certificate of protection of industrial property rights; certificate of registration of quality of products, goods and services; and other licences and certificates;
  - (c) Documents and papers certifying ownership of assets of the company;
  - (d) Voting slips, vote counting minutes, minutes of meetings of the Members' Council, the General Meeting of Shareholders or the Board of Management; decisions of the enterprise;
  - (dd) Prospectus for offer for sale or listing of securities;
  - (e) Reports of the Inspection Committee, conclusions of inspection agencies and conclusions of auditing organizations;
  - (g) Books of accounts, accounting records and annual financial statements.
2. The enterprise must retain the documents stipulated in clause 1 of this article at its head office or another place stipulated in the charter of the company; the duration for retaining documents shall accord with law.

#### **Article 12** *Legal representatives of enterprises*

1. *Legal representative of an enterprise* means an individual representing the enterprise to exercise the rights and perform the obligations arising out of transactions of the enterprise, and representing the

enterprise to act as the person lodging a petition for resolution of a civil matter, as a plaintiff, defendant or person with related interests and obligations in arbitration proceedings or courts and to exercise other rights and perform other obligations in accordance with law.

2. LLCs and shareholding companies may have **one or more legal representatives**. **The charter of a company shall specify the number, managerial positions and rights and obligations of the legal representative(s) of the enterprise.** If the company has more than one legal representative, the charter of the company shall specify rights and obligations of each legal representative. If the allocation of rights and obligations of each legal representative has not yet been clearly stipulated in the charter of the company, each legal representative of the company will be a representative with full authority of the enterprise before a third party; **all the legal representatives must be jointly liable for any loss and damage to the enterprise in accordance with the civil law and other relevant laws.**
3. An enterprise must ensure that there is always at least one legal representative residing in Vietnam. If there remains only one legal representative residing in Vietnam, such person must, when exiting Vietnam, authorize in writing another individual residing in Vietnam ["*the attorney*"] to exercise the rights and perform the obligations of the legal representative. In such case, the legal representative shall remain responsible for the performance of the authorized rights and obligations.
4. If upon expiry of the term of authorization stipulated in clause 3 of this article, the legal representative of the enterprise has not yet returned to Vietnam and has not authorized another person, the following provisions shall apply:
  - (a) The attorney shall continue to perform the rights and obligations of the legal representative of the private enterprise until the legal representative of the enterprise returns to work at the enterprise;
  - (b) The attorney shall continue to perform the rights and obligations of the legal representative of a LLC, shareholding company or partnership until the legal representative of the company returns to work at the company or until the company owner, the Members' Council or the Board of Management makes a decision appointing another person to act as legal representative of the enterprise.
5. Except for the case prescribed in clause 6 below, if an enterprise has only one legal representative and this person is absent in Vietnam for a period of more than thirty (30) days without authorizing any person to perform the rights and obligations of the legal representative of the enterprise or is deceased, disappears [is missing], is prosecuted for criminal liability, is subject to temporary imprisonment, serves a prison sentence, is subject to administrative measures in a compulsory drug rehabilitation establishment or compulsory educational establishment, has his or her capacity for civil acts restricted or lost, has cognitive difficulties or difficulties with behavioural control, or is prohibited by a court from assuming a certain position, from practising or from doing certain work, then the company owner, the members' council or the board of management shall appoint another person to act as legal representative of the company.
6. In the case of a LLC with two members, if one member is an individual acting as the legal representative of the company who is deceased, disappears [is missing], is prosecuted for criminal liability, is subject to temporary imprisonment, serves a prison sentence, is subject to administrative measures in a compulsory drug rehabilitation establishment or compulsory educational establishment, absconds from his or her place of residence, has his or her capacity for civil acts restricted or lost, has cognitive difficulties or difficulties with behavioural control, or is prohibited by a court from assuming a certain position, from practising or from doing certain work, then the other member shall automatically become legal representative of the company until there is a new decision on the legal representative of the company made by the members' council.



7. Courts and other agencies authorized to perform legal proceedings have the right to appoint legal representatives to participate in legal proceedings in accordance with law.

**Article 13** *Responsibilities of legal representatives of enterprises*

1. A legal representative of an enterprise has the following responsibilities:
  - (a) To exercise the delegated rights and perform the delegated obligations honestly and prudently and to the best of his or her ability in order to assure the lawful interests of the enterprise;
  - (b) To be loyal to the interests of the enterprise; not to abuse his or her position and power and not to use information, know-how, business opportunities and other assets of the enterprise for his or her personal benefit or that of other organizations or individuals;
  - (c) To promptly notify the enterprise in a complete and accurate manner of any enterprise in which he or she or his or her related person is the owner or holds shares or a capital contribution portion in accordance with this Law.
2. A legal representative of an enterprise is personally liable for any loss and damage to the enterprise due to a breach of the responsibilities stipulated in clause 1 of this article.

**Article 14** *Authorized representatives of owners, members and shareholders of companies being organizations*

1. The authorized representative of an owner, member or shareholder of a company being an organization must be an individual authorized in writing to exercise the rights and perform the obligations stipulated in this Law in the name of such owner, member or shareholder.
2. The appointment of an authorized representative shall be implemented in accordance with the following provisions, unless otherwise stipulated by the company charter:
  - (a) An organization being a member of a LLC with two or more members and holding at least thirty five (35) per cent of the charter capital may authorize up to three authorized representatives;
  - (b) An organization being a shareholder of a shareholding company and holding at least ten (10) per cent of the total ordinary shares may authorize up to three authorized representatives.
3. If an owner, a member or a shareholder of a company being an organization appoints multiple authorized representatives, the capital contribution portion or number of shares must be specifically determined for each authorized representative. If such owner, member or shareholder fails to determine the capital contribution portion or number of shares corresponding to each authorized representative, then the capital contribution portion or number of shares shall be equally distributed to all the authorized representatives.
4. The letter appointing an authorized representative must be notified to the company and shall only be effective in respect of the company as from the date of receipt of the letter by the company. Such letter must contain the following particulars:
  - (a) Name, enterprise code number and head office address of the owner, member or shareholder;

- (b) Number of authorized representatives and ratio of ownership of shares or capital contribution portion corresponding to each authorized representative;
  - (c) Full name, contact address, nationality, serial number of the personal legal document of each authorized representative;
  - (d) Respective term of authorization applicable to each authorized representative, specifying the date of commencement of acting as [authorized] representative;
  - (dd) Full names and signatures of the legal representative of the owner, member or shareholder and of the authorized representatives.
5. An authorized representative must satisfy the following criteria and conditions:
- (a) Not fall into the category of entities prescribed in article 17.2 of this Law;
  - (b) A member or shareholder being a State owned enterprise as prescribed in article 88.1(b) of this Law must not appoint any person with a family relationship with a manager of the company or with a person with the authority to appoint the manager of the company to act as representative at another company;
  - (c) Other criteria and conditions stipulated by the charter of the company.

**Article 15** *Responsibilities of authorized representatives of owners, members and shareholders of company being organizations*

1. An authorized representative shall, in the name of an owner, a member or a shareholder of the company, perform the rights and obligations of such owner, member or shareholder at the Members' Council or the General Meeting of Shareholders in accordance with this Law. All restrictions imposed by the owner, member or shareholder on the authorized representative during performance of the rights and obligations of the owner, member or shareholder of the company respectively at the Members' Council or the General Meeting of Shareholders shall have no legal validity in respect of a third party.
2. An authorized representative is responsible to attend all meetings of the Members' Council or the General Meeting of Shareholders; and to perform the authorized rights and obligations honestly and prudently and to the best of his or her ability in order to protect the lawful interests of the appointing owner, member or shareholder.
3. An authorized representative is responsible before the appointing owner, member or shareholder for any breach of the responsibilities stipulated in this article. The appointing owner, member or shareholder is responsible before a third party for any liability arising in connection with the rights and obligations performed via the authorized representative.

**Article 16** *Strictly prohibited practices*

1. To issue or refuse to issue enterprise registration certificates; to request founders of enterprises to submit other additional documents contrary to the provisions of this Law; to cause any delay, trouble, obstruction or difficulty to founders of enterprises and to the business activities of enterprises.
2. To prevent owners, members or shareholders of an enterprise from exercising their rights and performing their obligations in accordance with this Law and the charter of the company.

3. To conduct business in the form of an enterprise without carrying out registration, or to continue to conduct business when the enterprise registration certificate was revoked or the business activities of the enterprise are being temporarily suspended.
4. To declare dishonestly or inaccurately the contents of the application file for enterprise registration and of the application file for registration of changes in the registered items of the enterprise.
5. To wrongly declare the charter capital or to fail to contribute the amount of charter capital in full as registered; to deliberately value assets contributed as capital.
6. To conduct business in the industries and trades for which business investment is prohibited, to conduct business in the industries and trades for which market approach is not yet permitted with respect to foreign investors, or to conduct business in the industries and trades for which business investment is subject to conditions without satisfying all of the business conditions stipulated by law or without ensuring maintenance of all business investment conditions during the course of operation.
7. Deceitful conduct, money laundering or terrorism financing activities.

## CHAPTER 2

### Establishment of Enterprises

**Article 17** *Right to establish, contribute capital to, purchase shares in, purchase capital contribution portions in and manage enterprises*

1. Organizations and individuals have the right to establish and manage enterprises in Vietnam in accordance with this Law, except for the cases stipulated in clause 2 of this article.
2. The following organizations and individuals do not have the right to establish and manage enterprises in Vietnam:
  - (a) State agencies and units of people's armed forces using State assets to establish business enterprises to make private profit for their own agencies or units;
  - (b) Cadres [senior employees], State officials and State employees in accordance with the *Law on Cadres and State Officials* and the *Law on State Employees*;
  - (c) Officers, non-commissioned officers, career servicemen and national defence workers and employees in agencies and units of the People's Army of Vietnam; officers, career non-commissioned officers and public security workers in agencies and units of the People's Public Security of Vietnam, except for persons appointed to be authorized representatives to manage the State capital contribution portions in enterprises or to be managers in State owned enterprises;
  - (d) Management personnel and professional management personnel in State owned enterprises as prescribed in article 88.1(a) of this Law, except for those appointed to be authorized representatives to manage the State capital contribution portions in other enterprises;
  - (dd) Minors; persons whose capacity for civil acts is restricted or lost; persons with cognitive difficulties or difficulties with behavioural control; organizations without legal entity status;

- (e) Persons who are prosecuted for criminal liability, are subject to temporary imprisonment, serve prison sentences, serve administrative measures at compulsory drug rehabilitation establishments or compulsory educational establishments or are prohibited by courts from assuming certain positions, practising or doing certain work ; other cases as stipulated by the *Law on Bankruptcy* and the *Law on Anti-corruption*.

If requested by the business registration office [BRO], the applicant for registration of establishment of the enterprise must submit a legal record to the BRO.

- (g) Organizations being commercial legal entities which are prohibited from conducting business or operating in certain sectors pursuant to the *Criminal Code*.
3. Organizations and individuals have the right to contribute capital to, purchase shares or purchase a capital contribution portion in shareholding companies, LLCs and partnerships in accordance with this Law, except for the following cases:
- (a) State agencies and units of the people's armed forces using State assets to contribute capital to enterprises to make private profit for their own agencies and units;
  - (b) Entities not permitted to contribute capital to enterprises as stipulated in *Law on Cadres and State Officials* and the *Law on State Employees* and the *Law on Anti-Corruption*.
4. *Private profit for an agency or unit* as stipulated in clauses 2(a) and 3(a) of this article means using revenue in any form which was earned from business activities, from a capital contribution or from the purchase of shareholding or the purchase of a capital contribution portion, for one of the following purposes:
- (a) Distributing in any form to some or all persons stipulated in clauses 2(b) and 2(c) of this article;
  - (b) Supplementing the operational budget of such agency or unit contrary to the law on the State budget;
  - (c) Establishing or supplementing a fund which services the private interests of such agency or unit.

#### **Article 18** *Contracts prior to enterprise registration*

1. The founder(s) of an enterprise may sign contracts for the purpose of establishing and operating the enterprise prior to and during enterprise registration.
2. Where the enterprise registration certificate is issued, the enterprise must continue to exercise the rights and perform the obligations arising from the signed contracts as stipulated in clause 1 of this article and the parties [concerned] must transfer the contractual rights and obligations in accordance with the *Civil Code*, unless otherwise agreed in the contracts.
3. Where the enterprise is not issued with an enterprise registration certificate, the person(s) who signed the contracts pursuant to clause 1 of this article shall be liable for the performance of such contracts; or shall be jointly liable for the performance of such contracts if there is any other person participating in establishment of the enterprise.

#### **Article 19** *Application file for registration of a private enterprise*

1. Request for enterprise registration.

2. Copy of the personal legal document with respect to the owner of the private enterprise.

**Article 20** *Application file for registration of a partnership*

1. Request for enterprise registration.
2. Charter of the partnership.
3. List of partners.
4. Copy of personal legal documents with respect to partners.
5. Copy of investment registration certificates with respect to foreign investors as stipulated in the *Law on Investment*.

**Article 21** *Application file for registration of a limited liability company [LLC]*

1. Request for enterprise registration.
2. Charter of the company.
3. List of members.
4. Copy of the following documents:
  - (a) Personal legal document in respect of a member being an individual and the legal representative;
  - (b) Organizational legal document in respect of a member being an organization and letter appointing an authorized representative; personal legal document in respect of the authorized representative of a member being an organization;  
  
In the case of a member being a foreign organization, the copy of the organizational legal document must have been consularized.
  - (c) Investment registration certificates with respect to foreign investors as stipulated in the *Law on Investment*;

**Article 22** *Application file for registration of a shareholding company*

1. Request for enterprise registration.
2. Charter of the company.
3. List of founding shareholders; list of shareholders being foreign investors.
4. Copy of the following documents:
  - (a) Personal legal documents with respect to founding shareholders and shareholders being foreign investors who are individuals, [and] the legal representative;

- (b) Organizational legal documents with respect to shareholders being organizations, and letters appointing authorized representatives; personal legal documents with respect to authorized representatives of founding shareholders and shareholders being foreign investors who are organizations.

In the case of a shareholder being a foreign organization, the copy of the organizational legal document of must have been consularized;

- (c) Investment registration certificates with respect to foreign investors as stipulated in the *Law on Investment*.

#### **Article 23** *Contents of request for enterprise registration*

A request for enterprise registration shall contain the following particulars:

1. Name of the enterprise
2. Address of the head office of the enterprise; telephone number, facsimile number, email (if any).
3. Lines of business.
4. Charter capital; investment capital of the owner of the private enterprise.
5. Classes of shares, par value of shares of each class and total number of shares of each class which may be offered for sale in the case of a shareholding company.
6. Information about registration of tax.
7. Proposed number of employees.
8. Full name, signature, contact address, nationality, details of the personal legal document with respect to the owner of the private enterprise or unlimited liability partners of the partnership.
9. Full name, signature, contact address, nationality and details of the personal legal document with respect to the legal representative of the LLC or shareholding company.

#### **Article 24** *Company charter*<sup>6</sup>

1. The charter of a company comprises the charter upon enterprise registration and the amended charter during the course of operation.
2. The charter of a company shall contain the following main contents:
  - (a) Name and head office address of the company; names and addresses of branches and representative offices (if any);
  - (b) Lines of business;
  - (c) Charter capital, total number of shares, classes of shares and par value of shares of each class in the case of a shareholding company;

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<sup>6</sup> Allens footnote: The Vietnamese term for "company" may also cover "partnership".



- (d) Full names, contact addresses and nationalities of unlimited liability partners in the case of a partnership; of the company owner or of members in the case of a LLC; of founding shareholders in the case of a shareholding company. Capital contribution portion and its value for each member in the case of a LLC or a partnership, number of shares, classes of shares, par value of shares of each class of founding shareholders in the case of a shareholding company;
  - (dd) Rights and obligations of members in the case of a LLC or a partnership; of shareholders in the case of a shareholding company;
  - (e) Organizational and managerial structure;
  - (g) Number, managerial positions and rights and obligations of legal representatives of the enterprise; allocation of rights and obligations of legal representatives in accordance with law where the company has more than one legal representative;
  - (h) Procedures for passing decisions of the company; rules for resolution of internal disputes;
  - (i) Bases and methods of determining wages, remuneration and bonuses of managers and inspectors;
  - (k) Circumstances in which a member or shareholder has the right to require the company to redeem its capital contribution portion in the case of a LLC or its shares in the case of a shareholding company;
  - (l) Rules for distribution of after-tax profit and dealing with losses in the business;
  - (m) Circumstances for dissolution, procedures for dissolution and procedures for liquidation of the assets of the company;
  - (n) Procedures for amendment of or addition to the charter of the company.
3. The charter of the company upon enterprise registration must contain full names and signatures of the following persons:
- (a) All unlimited liability partners in the case of a partnership;
  - (b) The company owner being an individual or the legal representative of the company owner being an organization in the case of a one [single] member LLC;
  - (c) The member(s) being individual(s) and the legal representative(s) or the authorized representative(s) of the member(s) being organization(s) in the case of a LLC with two or more members [multi-member];
  - (d) The founding shareholder(s) being individual(s) and the legal representative(s) or the authorized representative(s) of the founding shareholder(s) being organization(s) in the case of a shareholding company.
4. The amended charter of the company must contain full names and signatures of the following persons:
- (a) The chairman of the Partners' Council in the case of a partnership;

- (b) The owner, the legal representative of the owner or the legal representative in the case of a one member LLC;
- (c) The legal representative(s) in the case of a LLC with two or more members or a shareholding company.

**Article 25** *List of members of limited liability company or partnership and list of founding shareholders and shareholders being foreign investors in the case of shareholding company*

The list of members of a LLC or partnership and the list of founding shareholders and shareholders being foreign investors in the case of a shareholding company must contain the following main details:

1. Full names, signatures, nationalities and contact addresses of members being individuals in the case of a LLC or a partnership; of founding shareholders and shareholders being foreign investors who are individuals in the case of a shareholding company.
2. Names, enterprise code numbers and head office addresses of members being organizations in the case of a LLC or partnership; of founding shareholders and shareholders being foreign investors which are organizations in the case of a shareholding company.
3. Full names, signatures, nationalities and contact addresses of legal representatives or authorized representatives of members being organizations in the case of a LLC; and of founding shareholders and shareholders being foreign investors which are organizations in the case of a shareholding company.
4. Capital contribution portion and its value, ratio of ownership of the capital contribution portion, type of assets, quantity of assets, value of each type of asset contributed as capital, and time schedule for contribution of capital of each member in the case of a LLC or a partnership; number of shares, classes of shares, ratio of ownership of shares, types of assets, quantity of assets and value of each type of asset contributed as capital, and time schedule for contribution of capital of each founding shareholder and shareholder being a foreign investor in the case of a shareholding company.

**Article 26** *Sequence and procedures for enterprise registration*

1. The founder(s) of an enterprise or an authorized person conducts enterprise registration with the business registration office [BRO] in accordance with the following methods:
  - (a) Enterprise registration directly at the BRO;
  - (b) Enterprise registration via postal services;
  - (c) Enterprise registration via the electronic communication network [online].
2. *Online enterprise registration* means the founder(s) of an enterprise submits an application file for enterprise registration online at the national enterprise registration information portal. Such application file shall contain the data stipulated in this Law and shall be presented in the form of an e-document. An application file for enterprise registration conducted online has the equal legal validity as a paper application file.
3. Entities may choose to use digital signatures in accordance with the law on e-transactions or use business registration accounts in order to conduct enterprise registration online.

4. *Business registration account* means an account created by the national system of information about enterprise registration and issued to an individual to conduct enterprise registration online. The individual to be issued with an business registration account is legally liable for registration of issuance and use of the business registration account for the purpose of conducting enterprise registration online.
5. The BRO is responsible to consider the validity of the application file and shall issue an enterprise registration [certificate] within three working days from the date of receipt of the file. In a case where the file is invalid, the BRO must notify the founder(s) of the enterprise in writing of the items required to be amended or supplemented. In a case where the enterprise registration is rejected, a written notice specifying the reasons must be sent to the founder(s) of the enterprise.
6. The Government shall provide regulations on the application file, sequence, procedures and inter-service co-ordination for enterprise registration.

**Article 27** *Issuance of enterprise registration certificate*

1. An enterprise shall be issued with an enterprise registration certificate [ERC] when it satisfies all of the following conditions:
  - (a) Its registered line of business is not prohibited from business investment;
  - (b) The name of the enterprise complies with the provisions of articles 37, 38, 39 and 41 of this Law;
  - (c) It has a valid application file for enterprise registration;
  - (d) It has paid in full the enterprise registration fee as stipulated by the law on charges and fees.
2. If the ERC is lost, damaged or ruined in any other form, the enterprise shall be re-issued with an ERC and must pay fees in accordance with law.

**Article 28** *Contents of enterprise registration certificate [ERC]*

An ERC shall contain the following main contents:

1. Name of the enterprise and enterprise code number.
2. Head office address of the enterprise.
3. Full name, contact address, nationality and serial number of the personal legal document in respect of the legal representative of a LLC or shareholding company; and in respect of an unlimited liability partner of a partnership, and in respect of the owner of a private enterprise. Full names, contact addresses, nationalities, serial number of the personal legal documents in respect of members being individuals; names, enterprise code numbers and head office addresses of members being organizations in the case of a LLC.
4. Charter capital in the case of a company, and invested capital in the case of a private enterprise.

**Article 29** *Enterprise code numbers*

1. *Enterprise code number* means a row of numbers created by the national system of information about enterprise registration, issued to an enterprise upon establishment and stated in the ERC.

Each enterprise has one unique code number which shall not be re-used to be issued to another enterprise.

2. Enterprise code numbers are used for the purpose of performing tax obligations, administrative procedures and other rights and obligations.

**Article 30** *Registration of change to contents of enterprise registration certificates*

1. When an enterprise changes any content of its ERC as stipulated in article 28 of this Law, it must register [such change] with the BRO.
2. The enterprise is responsible to register such change within ten (10) days from the date of the change.
3. The BRO is responsible to consider the validity of the application file and issue a new ERC within three working days from the date of receipt of the file. In a case where the file is invalid, the BRO must send a written notice to the enterprise of the items required to be amended or supplemented. In the case of refusal to issue a new ERC, a written notice specifying the reasons must be sent to the enterprise.
4. The registration of change to any content of an ERC pursuant to a decision of a court or arbitrator shall be implemented in accordance with the following sequence and procedures:
  - (a) The person requesting registration of change to the content of the ERC shall send a request for registration of change to the competent BRO within fifteen (15) days from the legally effective date of the judgement or decision of the court or from the effective date of the award of the arbitrator. The file for registration must enclose a copy of the legally effective judgement or decision of the court or the effective award of the arbitrator;
  - (b) The BRO is responsible to consider and issue a new ERC in accordance with the contents stated in the legally effective judgement or decision of the court or in the effective award of the arbitrator within three working days from the date of receipt of the request for registration prescribed in sub-clause (a) above. In a case where the file [for registration] is invalid, the BRO must notify the requesting person in writing of the items required to be amended or supplemented. In the case of refusal to issue a new ERC, a written notice specifying the reasons must be sent to the requesting person.
5. The Government shall provide regulations on the application file, sequence and procedures for registration of change to contents of ERCs.

**Article 31** *Notice of change to contents of enterprise registration*

1. An enterprise is required to notify the BRO of change to any of the following contents:
  - (a) Lines of business;
  - (b) A founding shareholder or shareholder being a foreign investor in the case of a shareholding company, except in the case of a listed company;
  - (c) Other contents in the application file for enterprise registration.
2. The enterprise is responsible to provide a notice of change to the content of enterprise registration within ten (10) days from the date of such change.

3. A shareholding company must send a written notice to the BRO in the locality where the head office of the company is located within ten (10) days from the date of change to any shareholder being foreign investor who is registered in the register of shareholders of the company. Such notice must contain the following particulars:
  - (a) Name, enterprise code number, head office address;
  - (b) In the case of a shareholder being a foreign investor who transfers shares, [the following particulars must be stated]: name, head office address of the shareholder being an organization; full name, nationality, contact address of the shareholder being an individual; volume of shares and class of shares and ratio of ownership of its or his/her existing shares in the company; volume of shares and class of shares transferred;
  - (c) In the case of a shareholder being a foreign investor who receives an assignment of shares, [the following particulars must be stated]: name, head office address of the shareholder being an organization; full name, nationality, contact address of the shareholder being an individual; volume of shares and class of shares of which the shareholder receives assignment; volume of shares, class of shares and ratio of ownership of its or his/her respective shares in the company;
  - (d) Full name and signature of the legal representative of the company.
4. The BRO is responsible to consider the validity [of the application file] and make changes to the contents of enterprise registration within three working days from the date of receipt of the notice. In a case where the file is invalid, the BRO must notify the enterprise in writing of the items required to be amended or supplemented. In the case of refusal to amend or supplement information pursuant to the notice, a written notice specifying the reasons must be sent to the enterprise.
5. The notification of change to any content of enterprise registration pursuant to a decision of a court or an arbitrator shall be carried out in accordance with the following sequence and procedures:
  - (a) The organization or individual requesting change to the content of enterprise registration shall send a notice of change of registered items to the competent BRO within ten (10) days from the legally effective date of the judgement or decision of the court or from the effective date of the award of the arbitrator. Such notice must enclose a copy of the legally effective judgement or decision of the court or the effective award of the arbitrator;
  - (b) The BRO is responsible to consider and make change to the content of enterprise registration in accordance with the legally effective judgement or decision of the court or the effective award of the arbitrator within three working days from the date of receipt of the notice. In a case where the file is invalid, the BRO must notify the requesting person in writing of the items required to be amended or supplemented. In the case of refusal to amend or supplement information pursuant to the notice, a written notice specifying the reasons must be sent to the requesting person.

**Article 32** *Announcement of contents of enterprise registration*

1. Upon issuance of an ERC, the enterprise must make a public announcement on the national enterprise registration information portal and pay fees in accordance with law. The announcement must contain the contents of the ERC and the following information:
  - (a) Lines of business;

- (b) List of founding shareholders; list of shareholders being foreign investors (if any) in the case of a shareholding company.
- 2. Where any content of enterprise registration is changed, such change must be publicly announced on the national enterprise registration information portal.
- 3. The time-limit for public announcement of information about an enterprise as stipulated in clauses 1 and 2 of this article is thirty (30) days from the date of declaration.

**Article 33** *Provision of information about contents of enterprise registration*

- 1. Organizations and individuals have the right to request the State administrative agency for business registration and the BRO to provide information stored on the national system of information about enterprise registration and must pay fees in accordance with law.
- 2. The State administrative agency for business registration and the BRO are obliged to provide fully and promptly information stipulated in clause 1 of this article.
- 3. The Government shall provide detailed regulations on this article.

**Article 34** *Assets contributed as capital*

- 1. Assets contributed as capital may be Vietnamese Dong, freely convertible foreign currency, gold, land use rights, intellectual property rights, technologies, technical know-how and other assets which can be valued in Vietnamese Dong.
- 2. Only individuals and organizations who are lawful owners of or have the lawful right to use the assets prescribed in clause 1 above have the right to use such assets to contribute capital in accordance with law.

**Article 35** *Transfer of ownership of assets contributed as capital*

- 1. Members of a LLC or partnership or shareholders of a shareholding company must transfer ownership of assets contributed as capital to the company in accordance with the following provisions:
  - (a) With respect to assets over which ownership is registered or land use rights, the person contributing capital must carry out the procedures to transfer ownership of such assets or the land use rights to the company in accordance with law. Registration fees are not payable in respect of a transfer of ownership or transfer of the land use rights with respect to assets contributed as capital.
  - (b) With respect to assets without registered ownership, capital contribution must be made by handing over assets contributed as capital, as evidenced by minutes, except where it is made via an account.
- 2. The minutes of hand-over of assets contributed as capital must contain the following main contents:
  - (a) Name and address of the head office of the company;
  - (b) Full name, contact address, serial number of the personal legal document or serial number of the organizational legal document of the person contributing capital;



- (c) Type of asset and number of units of assets contributed as capital; total value of assets contributed as capital and percentage of the total value of such assets in the charter capital of the company;
  - (d) Date of hand-over; signatures of the person contributing capital or of the authorized representative of the person contributing capital and of the legal representative of the company.
- 3. Capital contribution shall be deemed to have been made only when the legal ownership of the assets contributed as capital has been transferred to the company.
  - 4. Procedures for transfer of ownership to the enterprise are not required where the asset is used for the business operations of the owner of a private enterprise.
  - 5. All payments for any purchase, sale or transfer of shares and capital contribution portions, receipt of dividends and remittance of profit overseas by foreign investors must be made via the accounts stipulated by the law on foreign exchange control, except for payment by assets and by other non-cash payment forms.

**Article 36** *Valuation of assets contributed as capital*

- 1. Assets contributed as capital which are not denominated in Vietnamese Dong, freely convertible foreign currency or gold must be valued by members, founding shareholders or price evaluation organizations, and must be denominated in Vietnamese Dong.
- 2. Assets contributed to an enterprise upon its establishment shall be valued by members or founding shareholders on the principle of consensus or shall be valued by a price evaluation organization. In the case of valuation by a price evaluation organization, the value of the assets contributed as capital must be approved by more than fifty (50) per cent of members or founding shareholders.

If the assets contributed as capital are valued at more than their actual value at the time of capital contribution, the members or founding shareholders must jointly make additional contribution in an amount equal to the difference between the valuation and the actual value of the assets contributed as capital at the time of completion of the valuation, and concurrently, are jointly liable for any loss and damage caused by the contributed assets being valued intentionally at more than their actual value.

- 3. Assets contributed as capital during the course of operations shall be valued on the basis of agreement between the owner or the members' council [or the partners' council] in the case of a LLC or partnership or the board of management in the case of a shareholding company [on the one hand] and the person making the capital contribution [on the other hand] or by a price evaluation organization. Where a price evaluation organization conducts the valuation, the value of the assets contributed as capital must be accepted by the person making the capital contribution and the owner, the members' council [or the partners' council] or the board of management.

Where the assets contributed as capital are valued at more than their actual value at the time of capital contribution, the person making the capital contribution, the owner or members of the members' council [or the partners' council] in the case of a LLC or partnership or members of the board of management in the case of a shareholding company shall jointly make additional contribution in an amount equal to the difference between the valuation and the actual value of the assets contributed as capital at the time of completion of the valuation, and concurrently, are jointly liable for any loss and damage caused by the contributed assets being valued intentionally at more than their actual value.

### **Article 37** *Name of enterprise*

1. The Vietnamese name of an enterprise contains two components in accordance with the following order:
  - (a) Type of enterprise;
  - (b) Proper name.
2. The type of the enterprise shall be written as "cong ty trach nhiem huu han" or "cong ty TNHH" in the case of a limited liability company; or written as "cong ty co phan" or "cong ty CP" in the case of a shareholding company; or written as "cong ty hop danh" or "cong ty HD" in the case of a partnership; or written as "doanh nghiep tu nhan", "DNTN" or "doanh nghiep TN" in the case of a private enterprise.
3. The proper name shall be written using the letters in the Vietnamese alphabet, letters F, J, Z, W, numerals and symbols.
4. The name of an enterprise must be affixed at its head office, branches, representative offices and business locations. The name of the enterprise must be printed or written on transaction papers, documents, materials and printed matter issued by the enterprise.
5. Pursuant to the provisions in this article and articles 38, 39 and 41 of this Law, the BRO has the right to refuse to accept the name proposed to be registered by an enterprise.

### **Article 38** *Prohibited practices in naming enterprises*

1. To use names which are identical to or cause confusion with the name of a registered enterprise as stipulated in article 41 of this Law.
2. To use the name of a State agency, a unit of the people's armed forces, a political organization, a socio-political organization, a socio-political occupational organization, a social organization, a socio-occupational organization as the whole or a part of the proper name of an enterprise, except where such agency, unit or organization so approves.
3. To use terms or symbols which are contrary to historical traditions, culture, ethics and fine customs of the people.

### **Article 39** *Names of enterprises in foreign languages and abbreviated names of enterprises*

1. The name of an enterprise in a foreign language shall be the name which is translated from Vietnamese into any of the foreign languages in the Latin lettering system. When [the name of the enterprise] is translated into a foreign language, its proper name may remain unchanged or may be translated into such foreign language with a corresponding meaning.
2. Where an enterprise has its name in a foreign language, then its name in the foreign language shall be printed or written in smaller size than that of its Vietnamese name at the head office, branches, representative offices and business locations of the enterprise or on transaction papers, documents, materials and printed matter issued by the enterprise.
3. The abbreviated name of an enterprise may be an abbreviation of its Vietnamese name or its foreign language name.

**Article 40** *Names of branches, representative offices and business locations*

1. The name of a branch, representative office or business location must be written using the letters in the Vietnamese alphabet, letters F, J, Z, W, and numerals and symbols.
2. The name of a branch, representative office or business location must include the name of the enterprise together with the words "Chi nhanh" in the case of a branch or "Van phong dai dien" in the case of a representative office or "Dia diem kinh doanh" in the case of a business location.
3. The name of a branch, representative office or business location must be written or affixed at the head office of the branch, representative office or business location respectively. The name of the branch or representative office shall be printed or written in smaller size than that of the Vietnamese name of the enterprise on transaction papers, documents, materials and printed matter issued by the branch or representative office.

**Article 41** *Identical names and names which cause confusion*

1. Identical names means that the Vietnamese name of an enterprise requesting registration, when written, is completely similar to the Vietnamese name of a registered enterprise.
2. The cases in which a name is considered to cause confusion with the name of a registered enterprise comprise:
  - (a) The Vietnamese name of an enterprise requesting registration is pronounced the same as the name of a registered enterprise;
  - (b) The abbreviated name of an enterprise requesting registration is identical to the abbreviated name of a registered enterprise;
  - (c) The foreign language name of an enterprise requesting registration is identical to the foreign language name of a registered enterprise;
  - (d) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by an ordinal number, a cardinal number, a letter in the Vietnamese alphabet, or letters F, J, Z or W written next to or spaced after the proper name of such enterprise;
  - (dd) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by the symbol "&" or "va [and]", ". ", "+", "-" and "\_";
  - (e) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by the word "tan" immediately preceding or the word "moi"<sup>7</sup> written next to or spaced after or before the proper name of a registered enterprise;
  - (g) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise of the same type only by one of the following expressions: "mien Bac [northern]", "mien Nam [southern]", "mien Trung [central]", "mien Tay [western]" and "mien Dong [eastern]";

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<sup>7</sup> Allens footnote: Both of these words mean "new", but "tan" is a Vietnamese-Chinese word and is usually placed before a noun (according to Chinese grammar) while "moi" is a pure Vietnamese word and is placed after the noun it complements.

- (h) The proper name of an enterprise is identical to the proper name of a registered enterprise.
3. The cases stipulated in sub-clauses (d), (dd), (e) (g) and (h) of clause 2 above shall not apply to subsidiary companies of registered companies.

**Article 42** *Head office of enterprise*

The head office of an enterprise is located in the territory of Vietnam, is the contact address of the enterprise and is positioned on the basis of administrative boundaries and units, and has telephone and facsimile numbers and an email address (if any).

**Article 43** *Seal of enterprise*

1. Seals consist of seals made at seal engraving establishments or seals in the form of digital signatures in accordance with the law on e-transactions.
2. An enterprise shall decide the type, quantity, form and contents of the seal of the enterprise, or of the seal of its branch, representative office or other unit.
3. The management and retention of the seal shall be implemented in accordance with the provisions of the company charter or rules which the enterprise or the branch, representative office or other unit of the enterprise having the seal issues. The enterprise shall use the seal in transactions in accordance with law.

**Article 44** *Branches, representative offices and business locations of enterprises*

1. A branch is a dependent unit of an enterprise with the task of performing all or some of the functions of the enterprise, including the function of authorized representative. The lines of business of the branch must be consistent with the lines of business of the enterprise.
2. A representative office is a dependent unit of an enterprise with the task of acting as the authorized representative in the interests of the enterprise and protecting such interests. A representative office is not permitted to conduct the business function of the enterprise.
3. A business location is a location where an enterprise carries out specific business activities.

**Article 45** *Registration of operation of branches and representative offices of enterprises; notification of business locations*

1. An enterprise has the right to establish branches and representative offices in Vietnam and overseas. An enterprise may locate one or more branches or representative offices within [the same] one locality [defined] on the basis of administrative boundaries and units.
2. In the case of establishment of a branch or representative office in Vietnam, the enterprise shall send an application file for registration of operation of the branch or representative office to the BRO in the locality where such branch or representative office of the enterprise is located. Such application file shall comprise:
  - (a) A notice of establishment of the branch or representative office;
  - (b) A copy of the establishment decision and a copy of the minutes of the meeting on establishment of the branch or representative office of the enterprise; and a copy of the personal legal document in respect of the head of the branch or representative office.

3. The business registration office [BRO] is responsible to consider the validity of the application file and issue a certificate of registration of operation of the branch or representative office within three working days from the date of receipt of the file; in a case where the file is invalid, the BRO must notify the enterprise in writing of the items required to be amended or supplemented. In the case of refusal to issue such a certificate, a written notice specifying the reasons must be sent to the enterprise.
4. The enterprise is responsible to register changes to the contents of the certificate of registration of operation of the branch or representative office within ten (10) days from the date of change.
5. The enterprise shall, within ten (10) days from the date of the decision on the business location, notify the BRO thereof.
6. The Government shall provide detailed regulations on this article.

## CHAPTER 3

### Limited Liability Companies

#### SECTION 1

#### Limited Liability Companies with Two or More Members

**Article 46** *Limited liability companies with two or more members [Multiple member LLC]*

1. A limited liability company [LLC] with two or more members [or multiple member LLC] is an enterprise which has two to fifty (50) members being organizations and individuals. **Members are liable for the debts and other property obligations of the enterprise to the extent of the amount of capital contributed to the enterprise, except for the case stipulated in article 47.4 of this Law.** The portion of capital contribution of a member may only be assigned in accordance with articles 51, 52 and 53 of this Law.
2. A multiple member LLC has legal entity status from the date of issuance of its ERC.
3. A multiple member LLC may not issue shares, except when it converts to become a shareholding company.
4. A multiple member LLC may issue bonds in accordance with this Law and other relevant laws.; the private placement of bonds must comply with articles 128 and 129 of this Law.

**Article 47** *Capital contribution for establishment of companies and issuance of capital contribution certificates*

1. The charter capital of a multiple member LLC when registering establishment of an enterprise shall be the total value of capital contribution portions which the members undertake to contribute to the company and shall be recorded in the charter of the company.
2. Members must contribute capital to the company in full and in the type of assets as undertaken when registering establishment of an enterprise, **within a period of ninety (90) days from the date of issuance of the ERC**, excluding the duration of transporting or importing assets contributed as capital and conducting administrative procedures for conversion of ownership of assets. Within such period, the members have the rights and obligations corresponding to their ratios of capital contribution as

undertaken. A member of the company is only permitted to contribute capital to the company by another type of assets different from the assets undertaken if more than fifty (50) per cent of other members so agree.

3. Where a member fails to contribute capital or fails to contribute [pay] in full the capital contribution portion as undertaken upon expiry of the period stipulated in clause 2 of this article, it shall be dealt with as follows:
  - (a) The member failing to contribute capital as undertaken automatically ceases to be a member of the company; you dont pay anything
  - (b) The member failing to pay in full its capital contribution portion as undertaken has the rights corresponding to the capital contribution portion already paid;
  - (c) The capital contribution portion not yet paid by a member shall be offered for sale in accordance with a resolution or decision of the Members' Council.
4. If any member fails to contribute capital or fails to contribute in full the amount of capital undertaken, the company must register change of its charter capital [and/or] capital contribution ratios of members equal to the amount of contributed capital within thirty (30) days from the last day on which the capital contribution portion is required to be fully paid as prescribed in clause 2 above. Any member failing to contribute or failing to contribute in full the amount of capital undertaken must be responsible for financial obligations of the company in proportion to the capital contribution ratio undertaken which arose prior to the date on which the company registers change of the charter capital and capital contribution ratios of members.
5. Except in the case prescribed in clause 2 above, a capital contributor becomes a member of the company as from the time it/he/she has made payment of the capital contribution portion and the information about such capital contributor as prescribed in sub-clauses (b), (c) and (dd) of article 48.2 of this Law is fully recorded in the register of members. Upon full payment of the capital contribution portion [by a member], the company must issue a capital contribution certificate to the member corresponding to the value of the capital portion which has been contributed.
6. A capital contribution certificate must contain the following main details:
  - (a) Name, enterprise code number and head office address of the company;
  - (b) Charter capital of the company;
  - (c) Full name, contact address, nationality, serial number of the personal legal document in respect of a member being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address of a member being an organization;
  - (d) Capital contribution portion of the member and its ratio;
  - (dd) Number and date of issuance of the capital contribution certificate;
  - (e) Full name and signature of the legal representative of the company.
7. Where a capital contribution certificate is lost, damaged or otherwise ruined, the member shall be re-issued by the company with a capital contribution certificate in accordance with the sequence and procedures stipulated in the charter of the company.



#### **Article 48** *Register of members*

1. A company must establish a register of members immediately after issuance of its enterprise registration certificate [ERC] which may be a paper document or a set of e-data recording information about capital contribution portions of members of the company.
2. A register of members must contain the following main details:
  - (a) Name, enterprise code number and head office address of the company;
  - (b) Full name, contact address, nationality, serial number of the personal legal document in respect of a member being an individual; name, enterprise code number or serial] number of the organizational legal document, and head office address of a member being an organization;
  - (c) Capital contribution portion and ratio of capital contribution paid, time of capital contribution; types of asset contributed as capital, quantity [and] value of each type of asset contributed as capital of each member;
  - (d) Signatures of members being individuals or of legal representatives of members being organizations;
  - (dd) Number and date of issuance of the capital contribution certificate of each member.
3. The company must promptly update changes to any member in its register of members as requested by the relevant member in accordance with the charter of the company.
4. The register of members shall be retained at the head office of the company.

#### **Article 49** *Rights of members of Members' Council*

1. A member of the Members' Council has the following rights:
  - (a) To attend meetings of the Members' Council, to discuss, make recommendations and vote on the matters within the authority of the Members' Council;
  - (b) To have the number of votes in proportion to its capital contribution portion, except for the case stipulated in article 47.2 of this Law;
  - (c) To have profit distributed to it in proportion to its capital contribution portion after the company has paid taxes in full and fulfilled all other financial obligations in accordance with law;
  - (d) To have distributed to it the remainder of the value of assets of the company in proportion to its capital contribution portion in the company upon dissolution or bankruptcy of the company;
  - (dd) To be given priority in making additional capital contributions to the company upon any increase of charter capital of the company;
  - (e) To dispose of its capital contribution portion by way of assignment of all or part [of its capital contribution portion], or by gift or other methods in accordance with law and the charter of the company;

- (g) To initiate legal action regarding civil liability by itself or in the name of the company against the chairman of the Members' Council, the director or general director, the legal representative or other managers in accordance with article 72 of this Law;
  - (h) Other rights as stipulated in this Law and in the charter of the company.
2. In addition to the rights stipulated in clause 1 of this article, any [one] member or a group of members holding ten (10) per cent or more of the charter capital or a smaller percentage as stipulated in the charter of the company or falling into the case stipulated in clause 3 below has the following rights:
- (a) To request that a meeting of the Members' Council be convened to deal with issues within its authority;
  - (b) To inspect, sight or consult transaction monitoring records, books of account and annual financial statements;
  - (c) To inspect, sight, consult or copy the register of members, minutes of meetings, resolutions and decisions of the Members' Council and other documents of the company;
  - (d) To request a court to cancel a resolution or decision of the Members' Council within ninety (90) days from the date of closing of a meeting of the Members' Council if the sequence, procedures and conditions [for holding] such meeting or the contents of such resolution or decision are inconsistent with or do not comply with this Law and the charter of the company.
3. Where any [one] member of the company holds more than ninety (90) per cent of the charter capital and the charter of the company does not stipulate a smaller percentage as provided in clause 2 of this article, the other group of members automatically has the rights stipulated in clause 2 of this article.

**Article 50** *Obligations of members of Members' Council*

- 1. To contribute in full and on time the amount of capital as undertaken and to be liable for the debts and other property obligations of the company to the extent of the amount of capital contributed to the company, except for the cases stipulated in articles 47.2 and 47.4 of this Law.
- 2. Not to withdraw its contributed capital from the company in any form, except for the cases stipulated in articles 51, 52, 53 and 68 of this Law.
- 3. To comply with the charter of the company.
- 4. To observe resolutions and decisions of the Members' Council.
- 5. To bear personal liability when performing the following acts in the name of the company:
  - (a) Breach of the law;
  - (b) Conduct of business or other transactions not in the interests of the company and [thereby] causing loss to other persons;
  - (c) Premature payment of debts in cases where the company is likely to be in financial danger.
- 6. Other obligations as stipulated in this Law.

#### **Article 51** *Redemption of capital contribution portions*

1. A member may demand that the company redeem its capital contribution portion if such member voted against a resolution or decision of the Members' Council on the following issues:
  - (a) Amendment of or addition to the provisions of the charter of the company relating to the rights and obligations of members and of the Members' Council;
  - (b) Re-organization of the company;
  - (c) Other cases as stipulated in the charter of the company.
2. The demand for redemption of capital contribution portions must be made in writing and sent to the company within fifteen (15) days from the date on which the resolution or decision stipulated in clause 1 above is passed.
3. Within fifteen (15) days from the date of receipt of the demand stipulated in clause 1 of this article, the company must redeem the capital contribution portion of such member at the market price or at the price determined on the principle stipulated in the charter of the company, except where the two parties reach agreement on the price. Payment may only be made if, after full payment for such redeemed capital contribution portion, the company will still be able to satisfy all debts and other property obligations.
4. Where the **company is unable to pay** the capital contribution portion demanded for redemption as stipulated in clause 3 of this article, **such member has the right to freely assign its capital contribution portion to another member or a non-member of the company.**

#### **Article 52** *Assignment of capital contribution portions*

1. Except in the cases stipulated in articles 51.4, 53.6 and 53.7 of this Law, a member of a multiple member LLC has the right to assign a part or all of its capital contribution portion to other persons in accordance with the following provisions:
  - (a) Offering such capital contribution portion for **sale to all other members in proportion to their respective capital contribution portions in the company on equal terms of offer;**
  - (b) Assigning to non-members on the same conditions as the offer applicable to other members as stipulated in sub-clause (a) above when the other members of the company do not purchase or do not purchase in **full within thirty (30) days** from the date of the offer.
2. An assigning member still has the rights and obligations owed to the company corresponding to its relevant capital contribution portion until the details of the purchaser as stipulated in clauses 2(b), 2(c) and 2(d) of article 48 of this Law are fully recorded in the register of members.
3. Where the assignment or change of capital contribution portions by members results in there being only one member in the company, the company must organize management in the form of a single member LLC and register the change to its enterprise registration within fifteen (15) days from the date of completion of the assignment.

#### **Article 53** *Dealing with capital contribution portions in some special cases*

1. If the member of a company being an individual dies, then his or her heir under a will or at law shall be a member of the company.

2. In the case of a member being an individual who is declared missing by a court, the rights and obligations of such member shall be performed by the person managing the property of such member as stipulated in the civil law.
3. In the case where a member has his or her capacity for civil acts restricted or lost or has cognitive difficulties or difficulties with behavioural control, the rights and obligations of such member in the company shall be exercised by his or her representative.
4. The capital contribution portion of a member shall be redeemed by the company or assigned in accordance with articles 51 and 52 of this Law in the following cases:
  - (a) An heir does not wish to become a member;
  - (b) A recipient of a gift as stipulated in clause 6 of this article is not approved by the Members' Council to become a member;
  - (c) A member of the company being an organization was dissolved or bankrupt.
5. Where the member of a company being an individual dies intestate or where his or her heir disclaims the inheritance or the right to inherit is forfeited, the capital contribution portion [of such member] shall be dealt with in accordance with the civil law.
6. Where a member makes a gift of a part or all of its capital contribution portion in the company to another person, the recipient of the gift shall become a member of the company in accordance with the following provisions:
  - (a) Where the recipient of the gift is an heir at law in accordance with the *Civil Code*, such recipient shall automatically become a member of the company;
  - (b) Where the recipient of the gift is not the entity stipulated in sub-clause (a) above, such recipient shall become a member of the company only upon approval of the Members' Council.
7. Where a member uses its capital contribution portion to pay a debt, the payee may use such capital contribution portion in either of the following methods:
  - (a) To become a member of the company upon approval of the Members' Council;
  - (b) To offer for sale and assign such capital contribution portion in accordance with article 52 of this Law.
8. If the member of a company being an individual is subject to temporary imprisonment, serves a prison sentence, or is subject to administrative measures in a compulsory drug rehabilitation establishment or compulsory educational establishment, then such member may authorize another person to perform some or all of his or her rights and obligations in the company.
9. If the member of a company being an individual is prohibited by a court from practising or doing certain work, or the member of a company being a commercial legal entity is prohibited by a court from conducting business or operating in certain sectors within the scope of business lines of the company, such member must not practise or do the prohibited work in such company or the company must temporarily suspend or terminate business of the relevant industries and trades pursuant to the decision of the court.

## **Article 54** *Organizational and management structure of companies*

1. A multiple member LLC shall have a Members' Council, a chairman of the Members' Council and a director or general director.
2. A multiple member LLC being a State owned enterprise as prescribed in article 88.1(b) of this Law and any subsidiary of a State owned enterprise as prescribed in article 88.1 of this Law must have an Inspection Committee; other cases shall be decided by the company.
3. The company must have at least one (1) legal representative holding the position of chairman of the Members' Council or director or general director. If the company charter does not contain any [relevant] provision, then the chairman of the Members' Council is the legal representative of the company.

## **Article 55** *Members' Council*

1. The Members' Council is the highest decision-making authority of the company and comprises all individual members of the company and authorized representatives of members being organizations of the company. The charter of the company shall make provisions on the frequency of meetings of the Members' Council, but the Members' Council shall meet at least once a year.
2. The Members' Council has the following rights and obligations:
  - (a) To make decisions on annual business plans and developmental strategies of the company;
  - (b) To make decisions on any increase or reduction of the charter capital and on the timing and method of raising additional capital; to make decisions on issuance of bonds;
  - (c) To make decisions on projects for investment and development of the company; on solutions for market development, marketing and technology transfer;
  - (d) To approve loan agreements<sup>8</sup>, contracts for sale of assets and other contracts as stipulated in the charter of the company and valued at fifty (50) or more per cent of the total value of assets recorded in the most recently published financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;
  - (dd) To elect, remove or discharge the chairman of the Members' Council; to make decisions on the appointment, removal, discharge, signing and termination of the contracts of the director or general director, the chief accountant, inspectors and other managers stipulated in the charter of the company;
  - (e) To make decisions on salary, remuneration, bonus and other benefits for the chairman of the Members' Council, the director or general director, the chief accountant and other managers stipulated in the charter of the company;
  - (g) To approve annual financial statements, plans for use and distribution of profits or plans for dealing with losses of the company;
  - (h) To make decisions on the organizational and managerial structure of the company;

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<sup>8</sup> Allens footnote: The literal translation is "agreements for obtaining loans, and for providing loans".

- (i) To make decisions on the establishment of subsidiary companies, branches and representative offices;
- (k) To make amendments of or additions to the charter of the company;
- (l) To make decisions on re-organization of the company;
- (m) To make decisions on dissolution or petition for bankruptcy of the company;
- (n) Other rights and obligations in accordance with this Law and the charter of the company.

**Article 56** *Chairman of Members' Council*

1. The Members' Council shall elect a member to be its chairman. The chairman of the Members' Council may concurrently act as the director or general director of the company.
2. The chairman of the Members' Council has the following rights and obligations:
  - (a) To prepare working programs and plans of the Members' Council;
  - (b) To prepare the program, agenda and documents for meetings of the Members' Council or for collecting opinions of members;
  - (c) To convene, preside over and chair meetings of the Members' Council or to organize the collection of opinions of members;
  - (d) To supervise or organize the supervision of implementation of resolutions and decisions of the Members' Council;
  - (dd) To sign resolutions and decisions of the Members' Council on its behalf;
  - (e) Other rights and obligations in accordance with this Law and the charter of the company.
3. The term of the chairman of the Members' Council shall be stipulated in the charter of the company but shall not exceed five years, and the chairman may be re-elected for an unlimited number of terms.
4. Where the chairman of the Members' Council is absent or is unable to perform his or her rights and obligations, he or she must authorize a member in writing to perform the rights and obligations of the chairman of the Members' Council in accordance with the principles stipulated in the charter of the company. Where no member is authorized, or the chairman of the Members' Council is deceased, disappears [is missing], is subject to temporary imprisonment, serves a prison sentence, is subject to administrative measures in a compulsory drug rehabilitation establishment or compulsory educational establishment, absconds from his or her place of residence, has his or her capacity for civil acts restricted or lost, has cognitive difficulties or difficulties with behavioural control, or is prohibited by a court from assuming a certain position, practising or doing certain work, then one of the members of the Members' Council shall convene a meeting with all other members to elect one person from the members to temporarily act as the chairman of the Members' Council on the principle that the majority of the other members agrees until there is a new decision of the Members' Council.

## **Article 57** *Convening meetings of Members' Council*

1. A meeting of the Members' Council may be convened at the request of the chairman of the Members' Council or at the request of a member or a group of members as stipulated in articles 49.2 and 49.3 of this Law. If the chairman of the Members' Council does not convene a meeting at the request of a member or a group of members within fifteen (15) days from the date of receipt of the request, such member or group of members shall convene a meeting of the Members' Council. Any reasonable expenses for convening and conducting the meeting of the Members' Council shall be reimbursed by the company.
2. The chairman of the Members' Council or the person convening the meeting shall prepare the program, agenda and documents of the meeting, and convene, preside over and chair the meeting of the Members' Council. A member has the right to make written recommendations on addition to the agenda. A recommendation must contain the following main details:
  - (a) Full name, contact address, nationality, serial number of the personal legal document in respect of the member being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address of the member being an organization; full name and signature of the member making recommendations or his/her/its authorized representative;
  - (b) Ratio of capital contribution, number and date of issuance of capital contribution certificate;
  - (c) Items recommended for inclusion in the agenda;
  - (d) Reason for recommendation.
3. The chairman of the Members' Council or the person convening the meeting must approve a recommendation and include it in the agenda of a meeting of the Members' Council if such recommendation contains all of the details stipulated in clause 2 of this article, and shall send [the recommendation] to the head office of the company at least one working day prior to the date of the meeting of the Members' Council; where a recommendation is submitted immediately prior to commencement of a meeting, it shall be approved if the majority of the attending members so agree.
4. The notice of invitation to a meeting of the Members' Council may be sent in the form of a letter of invitation or by telephone, fax, electronic means or any other method as stipulated in the charter of the company and shall be sent directly to each member of the Members' Council. The notice of invitation to the meeting must specify the time, venue and agenda of the meeting.
5. The agenda and documents for a meeting must be sent to members of the company prior to the meeting. Documents to be used in a meeting relating to decisions on amendment of or addition to the charter of the company, approval of the developmental strategies of the company, approval of annual financial statements, or re-organization or dissolution of the company must be sent to members no later than seven working days prior to the date of the meeting. The period for sending other documents shall be as stipulated in the charter of the company.
6. Unless otherwise stipulated in the charter of the company, the request to convene a meeting of the Members' Council as provided in clause 1 of this article must be in writing and contain the following main details:
  - (a) Full name, contact address, nationality, serial number of the personal legal document in respect of the member being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address of the member being an



organization; ratio of capital contribution, and number and date of issuance of capital contribution certificate of each requesting member;

- (b) Reason for request to convene a meeting of the Members' Council and issues to be dealt with;
- (c) Proposed agenda of the meeting;
- (d) Full name and signature of each requesting member or his/her/its authorized representative.

7. Where a request to convene a meeting of the Members' Council does not contain all of the details stipulated in clause 6 above, the chairman of the Members' Council must, within seven working days from the date of receipt of the request, notify the member or the group of members concerned in writing of not convening a meeting. In other cases, the chairman of the Members' Council must convene a meeting of the Members' Council within fifteen (15) days from the date of receipt of the request.
8. Where the chairman of the Members' Council fails to convene a meeting of the Members' Council in accordance with clause 7 above, he or she must bear personal liability for any loss arising to the company and to the relevant members of the company.

#### **Article 58** *Conditions and procedures for conducting meetings of Members' Council*

1. A meeting of the Members' Council shall be conducted where the attending members hold sixty five (65) per cent or more of the charter capital; the specific percentage shall be stipulated in the charter of the company.
2. If the first meeting does not satisfy the condition to be conducted stipulated in clause 1 of this article and the charter of the company does not otherwise stipulate, a meeting of the Members' Council shall be convened as follows:
  - (a) The notice of invitation to the second meeting must be sent within fifteen (15) days from the date on which the first meeting was intended to be conducted. The second meeting of the Members' Council shall be conducted where the attending members hold fifty (50) per cent or more of the charter capital;
  - (b) Where the second meeting of the Members' Council does not satisfy the condition stipulated in sub-clause (a) above, the notice of invitation to the third meeting must be sent within ten (10) days from the date on which the second meeting was intended to be conducted. The third meeting of the Members' Council shall be conducted irrespective of the number of attending members and of the amount of charter capital represented by attending members.
3. A member or an authorized representative of a member must attend and vote at meetings of the Members' Council. The procedures for conducting meetings of the Members' Council and the voting method shall be stipulated in the charter of the company.
4. Where a meeting which satisfies the conditions stipulated in this article fails to complete its agenda within the proposed time-limit, the time-limit may be extended but not exceeding thirty (30) days from the date of opening of such meeting.

#### **Article 59** *Resolutions and decisions of Members' Council*

1. The Members' Council shall pass resolutions and decisions within its authority by way of voting at meetings, collecting opinions in writing or in other forms as stipulated in the charter of the company.

2. Unless otherwise stipulated in the charter of the company, resolutions and decisions on the following issues must be passed by way of voting at meetings of the Members' Council:
  - (a) Amendment of or addition to the contents of the charter of the company;
  - (b) Decisions on the developmental direction of the company;
  - (c) Election, removal or discharge of the chairman of the Members' Council; appointment, removal or discharge of the director or general director;
  - (d) Approval of annual financial statements;
  - (dd) Re-organization or dissolution of the company.
3. Where the charter of the company does not stipulate another percentage, a resolution or decision of the Members' Council is [deemed] passed in a meeting in the following cases:
  - (a) It is agreed by the attending members who own sixty five (65) per cent or more of the aggregate contributed capital of all attending members, except for the cases stipulated in sub-clause (b) below;
  - (b) Agreement by the attending members who own seventy five (75) per cent or more of the aggregate contributed capital of all attending members is required for resolutions and decisions relating to the sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the most recent financial statement of the company, or a smaller percentage or value as stipulated in the charter of the company, [and] for amendment of and addition to the charter of the company, or for re-organization or dissolution of the company.
4. A member shall be deemed to attend and vote at a meeting of the Members' Council in the following circumstances:
  - (a) Such member attends and votes in person at the meeting;
  - (b) Such member authorizes another person to attend and vote at the meeting;
  - (c) Such member attends and votes via an online meeting, by casting an electronic vote or voting by other electronic forms;
  - (d) Such member sends its vote to the meeting by mail, fax or email.
5. A resolution or decision of the Members' Council is deemed passed by way of collection of written opinions if it is agreed by members holding sixty five (65) per cent or more of the charter capital; the specific percentage shall be stipulated in the charter of the company.

**Article 60** *Minutes of meetings of Members' Council*

1. Meetings of the Members' Council must be recorded in minutes and may be sound recorded or recorded and stored in other electronic forms.
2. Minutes of each meeting of the Members' Council must be passed immediately prior to the closing of the meeting. The minutes must include the following main details:

- (a) Time and venue of the meeting; purposes and agenda of the meeting;
  - (b) Full names, ratios of capital contribution, serial number and date of issuance of capital contribution certificates of members or their authorized representatives attending the meeting; full names, ratios of capital contribution, serial number and date of issuance of capital contribution certificates of members or their authorized representatives not attending the meeting;
  - (c) Matters discussed and voted on; summary of opinions of members on each of the matters discussed;
  - (d) Total number of votes which are valid or invalid; and [total number of votes] for, against or abstentions<sup>9</sup> on each matter voted on;
  - (dd) Decisions passed and corresponding percentage of votes;
  - (e) Full names and signatures of the person writing the minutes and the chairman of the meeting, except for the case stipulated in clause 3 of this article.
3. Where the chairman of the meeting or the person writing the minutes refuses to sign the minutes of the meeting, the minutes shall become effective if the minutes are signed by all other members of the Members' Council who attend the meeting and contain all the contents stipulated in sub-clauses (a) to (e) of clause 2 above. The minutes of the meeting shall clearly state the refusal to sign the minutes of the meeting by the chairman of the meeting or the person writing the minutes. The signatories of the minutes of the meeting are jointly responsible for the accuracy and truthfulness of the minutes of the meeting of the Members' Council.

**Article 61** *Procedures for passing resolutions and decisions of Members' Council by way of collection of written opinions*

If the charter of the company does not otherwise stipulate, the authority and procedures for collection of written opinions of members to pass a resolution or decision shall be implemented as follows:

- 1. The chairman of the Members' Council makes a decision on collection of written opinions of members of the Members' Council to pass the resolution or decision on the matters within his authority;
- 2. The chairman of the Members' Council is responsible to organize the preparation and delivery of reports and submissions on the issues to be decided upon, and draft resolution or decision and opinion forms [slips] to members of the Members' Council;
- 3. An opinion slip must contain the following main details:
  - (a) Name, enterprise code number and address of head office;
  - (b) Full name, contact address, nationality, serial number of the personal legal document, ratio of capital contribution of member of the Members' Council;
  - (c) Matters on which opinions are collected and corresponding responses in the order of for, against and abstention;

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<sup>9</sup> Allens note: The literal translation is "vote of no opinion".

- (d) Time-limit for sending the opinion slip to the company;
  - (dd) Full name and signature of the chairman of the Members' Council.
4. Opinion slips which contain complete details, which are signed by members of the Members' Council and sent to the company within the stipulated time-limit, shall be deemed to be valid. The chairman of the Members' Council shall organize the counting of opinion slips, prepare a report thereon and notify the results thereof and the passed resolution or decision to members within seven working days from the expiry date of the time-limit for opinion slips to be sent to the company by members. The report on results of counting slips shall have the same validity as the minutes of a meeting of the Members' Council and must contain the following main details:
- (a) Purposes and agenda of obtaining opinions;
  - (b) Full names, ratios of capital contribution, serial number and date of issuance of capital contribution certificates of members already returning valid opinion slips; full names, ratios of capital contribution, serial number and date of issuance of capital contribution certificates of members from whom the company did not receive opinion slips or who returned invalid opinion slips;
  - (c) Matters for which opinions are collected and which are voted on; summary (if any) of opinions of members on each of the matters for which opinions are collected;
  - (d) Total number of opinion slips which are valid, invalid or not received; and total number of valid opinion slips for, against or abstentions on each matter voted on;
  - (dd) Passed resolutions and decisions and corresponding percentage of votes;
  - (e) Full names and signatures of the person counting opinion slips and the chairman of the Members' Council. The person counting opinion slips and the chairman of the Members' Council are jointly responsible for the completeness, accuracy and truthfulness of the report on results of counting slips.

**Article 62** *Effectiveness of resolutions and decisions of Members' Council*

1. Unless otherwise stipulated in the charter of the company, a resolution or decision of the Members' Council is effective for implementation from the date on which it is passed or from the effective date stated in such resolution or decision.
2. A resolution or decision of the Members' Council which is passed by 100% of the total amount of charter capital shall be lawful and effective even if the sequence and procedures for passing such resolution or decision are not implemented properly in accordance with regulations.
3. Where a member or a group of members requests a court or an arbitrator to cancel a resolution or decision which was passed, such resolution or decision continues to be effective in accordance with clause 1 of this article until a decision on cancellation issued by the court or the arbitrator becomes legally effective, except where injunctive relief applies pursuant to a decision of a competent agency.

**Article 63** *Director or general director*

1. The director or general director is the person who manages the day-to-day business operations of the company and is responsible to the Members' Council for the exercise of his or her rights and the performance of his or her obligations.

2. The director or general director has the following rights and obligations:
- (a) To organize the implementation of resolutions and decisions of the Members' Council;
  - (b) To make decisions on all matters relating to the day-to-day business operations of the company;
  - (c) To organize the implementation of the business plan and investment plan of the company;
  - (d) To issue the rules on internal management of the company unless otherwise stipulated in the charter of the company;
  - (dd) To appoint, remove or discharge managers in the company, except for the positions within the authority of the Members' Council;
  - (e) To sign contracts in the name of the company, except for those within the authority of the chairman of the Members' Council;
  - (g) To make recommendations on the organizational structure of the company;
  - (h) To submit the annual financial statements to the Members' Council;
  - (i) To recommend the plan for use and distribution of profit or for dealing with losses in business;
  - (k) To recruit employees;
  - (l) Other rights and obligations as stipulated in the charter of the company, in resolutions and decisions of the Members' Council, and in the labour contract.

**Article 64** *Criteria and conditions to become director or general director*

1. Not fall in the category of entities stipulated in article 17.2 of this Law.
2. Having professional qualifications and experience in business management of the company and satisfying other conditions stipulated in the charter of the company.
3. The director or general director of a State owned enterprise [SOE] as prescribed in article 88.1 (b) of this Law or any subsidiary of a SOE as prescribed in article 88.1 of this Law must satisfy the criteria and conditions stipulated in clauses 1 and 2 above, and must not have a family relationship with any manager of the company or any inspector of the company and the parent company, or with the representative of capital portion of the enterprise or the representative of the State capital portion in the company or the parent company.

**Article 65** *Inspection Committee and inspectors*

1. The Inspection Committee comprises one (1) to five (5) inspectors. The term of an inspector shall not exceed five (5) years and inspectors may be reappointed for an unlimited number of terms. If the Inspection Committee has only one inspector, such inspector shall concurrently act as the head of the Inspection Committee and must satisfy the criteria applicable to the head of the Inspection Committee.

2. The head of the Inspection Committee and inspectors must satisfy the respective criteria and conditions prescribed in articles 168.2 and 169 of this Law.
3. Rights, obligations, responsibilities, removal, discharge and working regime of the Inspection Committee and inspectors shall be implemented respectively in accordance with articles 106, 170, 171, 172, 173 and 174 of this Law.
4. The Government shall provide detailed regulations on this article.

**Article 66** *Salary, remuneration, bonuses and other benefits of chairman of Members' Council, director, general director and other managers*

1. The company shall pay salary, remuneration, bonuses and other benefits to the chairman of the Members' Council, the director or general director and other managers in accordance with its business results and efficiency.
2. The salary, remuneration, bonuses and other benefits of the chairman of the Members' Council, the director or general director and other managers shall be included in business expenses in accordance with the law on corporate income tax and other relevant laws, and must be recorded as a separate item in annual financial statements of the company.

**Article 67** *Contracts and transactions which must be approved by Members' Council*

1. A contract or transaction between the company and the following entities must be approved by the Members' Council:
  - (a) A member or the authorized representative of a member; the director or general director or the legal representative of the company;
  - (b) A related person of any person prescribed in sub-clause (a) above;
  - (c) A manager of the parent company, [or] a person authorized to appoint managers of the parent company;
  - (d) A related person of any person prescribed in sub-clause (c) above.
2. The person entering into a contract or transaction in the name of the company must send to the members of the Members' Council [and/or] inspectors a notice of related entities and related interests in such contract or transaction; and must enclose the draft contract or the main contents of the transaction intended to be conducted. Unless otherwise stipulated in the charter of the company, the Members' Council must make a decision approving or not approving such contract or transaction within fifteen (15) days from the date of receipt of the notice, and comply with article 59.3 of this Law. Any member of the Members' Council related to the parties in such contract or transaction may not be included for voting.
3. A contract or transaction shall be void pursuant to a decision of a court and be dealt with in accordance with law where it is entered into not in accordance with the provisions in clauses 1 and 2 of this article. The signatory of the contract or transaction, the interested member and the related persons of such member involved in the contract or transaction must compensate for any loss arising and return to the company any benefits gained from the performance of such contract or transaction.

**Article 68** *Increase and reduction of charter capital*

1. A company may increase its charter capital in the following cases:
  - (a) Increasing the contributed capital<sup>10</sup> of members;
  - (b) Receiving additional contributed capital from new members.
2. In the case of increase of contributed capital of members, the additional contributed capital shall be allocated to each member in proportion to its portion of capital contribution in the charter capital of the company. A member may assign his/her right to contribute capital to another person in accordance with article 52 of this Law. Where any member fails to make contribution or only pays part of the additional contributed capital, the remaining amount of additional contributed capital of such member shall be divided amongst other members in proportion to their respective portions of capital contribution in the charter capital of the company, unless otherwise agreed by the members.
3. A company may reduce its charter capital in the following cases:
  - (a) Returning part of the contributed capital to members in proportion to their respective portions of capital contribution in the charter capital of the company if business operations have been carried out continuously for two years or more from the date of registration for establishment of the enterprise, and [but] ensuring that debts and other property obligations are able to be paid in full after returning [part of the contributed capital] to members;
  - (b) The company redeems portions of capital contribution from its members as stipulated in article 51 of this Law;
  - (c) The members fail to pay the charter capital in full and on time as stipulated in article 47 of this Law.
4. Except for the case prescribed in clause 3(c) above, within ten (10) days from the date of completion of payment for increase or reduction of the charter capital, the company must notify the business registration office [BRO] in writing of such increase or reduction. The notice must contain the following main details:
  - (a) Name, head office address, enterprise code number;
  - (b) Charter capital, amount of capital already increased or reduced;
  - (c) Timing and form of increase or reduction of capital;
  - (d) Full name and signature of the legal representative of the enterprise.
5. The notice prescribed in clause 4 of this article must be accompanied by a resolution or decision and the minutes of meeting of the Members' Council; in the case of a reduction of the charter capital in accordance with sub-clauses (a) and (b) of clause 3 above, the most recent financial statements are also required.
6. The BRO shall update information about the increase or reduction of charter capital within three working days from the date of receipt of the notice.

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<sup>10</sup> Allens footnote: This is the literal translation. An alternative translation is "equity".



**Article 69** *Conditions for distribution of profit*

The company may distribute profit to its members only after it has fulfilled its tax obligations and other financial obligations in accordance with law, and must ensure that due debts and other property obligations are able to be paid in full after distribution of profit.

**Article 70** *Recovery of returned capital contribution portions or distributed profit*

Where part of contributed capital is returned as a result of a reduction of charter capital not in accordance with article 68.3 of this Law or where profit is distributed to members not in accordance with article 69 of this Law, all members of the company must surrender to the company the amount of money or other assets they received; and must be jointly liable for all debts or other property obligations of the company in proportion to the amount or assets not yet returned in full until all monies or other assets they received are returned in full.

**Article 71** *Responsibilities of chairman of Members' Council, director, general director and other managers, legal representative, and inspectors*

1. The chairman of the Members' Council, director or general director or any other manager, legal representative or an inspector of a company has the following responsibilities:
  - (a) To exercise his or her rights and perform his or her obligations honestly and prudently and to the best of his or her ability in order to assure the maximum legitimate interests of the company;
  - (b) To be loyal to the interests of the company; not to abuse his or her position or power or not to use information, know-how, business opportunities or other assets of the company for his or her own personal benefit or for the benefit of other organizations or individuals;
  - (c) To promptly, fully and accurately notify the company of any enterprise in which he or she acts as the owner or holds shares or a capital contribution portion and of any enterprise in which his or her related person(s) acts as the owner, or jointly owns or separately owns shares or a capital contribution portion;
  - (d) Other responsibilities as stipulated by law and in the charter of the company.
2. The director or general director is not entitled to any increase in salary or bonus when the company is not able to pay all of its due debts.
3. The notice stated in clause 1(c) above must be in writing and comprise the following particulars:
  - (a) Name, enterprise code number and address of the head office of the enterprise in which they act as the owner or own a portion of capital contribution or shares; ratio of ownership of such capital contribution portion or shareholding and the time when they acted as the owner or acquired ownership;
  - (b) Name, enterprise code number and address of the head office of the enterprise in which their related persons act as the owner or jointly or separately own controlling shares or a controlling portion of capital contribution.
4. The notice stipulated in clause 3 above must be made within five working days from the date on which a related change arises or occurs. The company must collate and update the list of entities stipulated in clause 3 above and their contracts and transactions with the company. Such list must be

kept at the head office of the company. Members, managers, inspectors of the company and their authorized representatives have the right to sight, make an extract of or copy part or all of the information stipulated in clause 3 above during working hours in accordance with the sequence and procedures stipulated in the charter of the company.

**Article 72** *Initiation of legal action against managers*

1. A member of a company may, in its own name or in the name of the company, initiate a legal action regarding civil liability against the chairman of the Members' Council, director or general director, legal representative or other manager due to a breach of rights, obligations and responsibilities of managers in the following circumstances:
  - (a) They commit a breach of the provisions of article 71 of this Law;
  - (b) They fail to perform or fail to fully or promptly perform their delegated rights and obligations or perform their delegated rights and obligations contrary to law, the charter of the company or resolutions and decisions of the Members' Council;
  - (c) Other circumstances in accordance with law and the charter of the company.
2. The sequence and procedures for initiation of a legal action is implemented in accordance with the law on civil proceedings.
3. Where a member initiates a legal action in the name of the company, then any expenses for initiation of the legal action shall be included in the expenses of the company, except where the petition for institution of the legal action is rejected.

**Article 73** *Disclosure of information*

Multiple member LLCs prescribed in article 88.1(b) of this Law shall disclose information in accordance with the provisions in sub-clauses (a), (c), (dd) and (g) of article 109.1 and article 110 of this Law.

SECTION 2

**One Member Limited Liability Companies**

**Article 74** *One member limited liability companies [Single member LLCs]*

1. A one member limited liability company [*single member LLC*] is an enterprise owned by one organization or individual (hereinafter referred to as *company owner*). The company owner is liable for all debts and other property obligations of the company to the extent of the amount of the charter capital of the company.
2. A single member LLC has legal entity status from the date of issuance of the ERC.
3. A single member LLC may not issue shares, except in a case of conversion to become a shareholding company.
4. A single member LLC is permitted to issue bonds in accordance with this Law and other relevant laws; the private placement of bonds shall be in accordance with articles 128 and 129 of this Law.

#### **Article 75** *Contribution of capital for establishment of companies*

1. The charter capital of a single member LLC when registering for establishment of the enterprise shall be the total value of assets undertaken to be contributed by the company owner and stated in the charter of the company.
2. The company owner must make contribution of capital to the company in full and in the type of assets as undertaken when registering establishment of the enterprise, within ninety (90) days from the date of issuance of the ERC, excluding the duration of transportation or importation of assets contributed as capital, and the duration of implementation of administrative procedures for transfer of ownership of assets. During such period, the company owner has the rights and obligations in proportion to their capital contribution portion as undertaken.
3. In the case of failure to contribute in full to the charter capital within the period stipulated in clause 2 of this article, the company owner must register change of the charter capital equal to the value of the contributed capital within thirty (30) days from the last day on which the charter capital must be fully contributed. In this case, the owner must be responsible for the financial obligations of the company in proportion to the portion of capital contribution as undertaken, which arose before the last day on which the company registers change of the charter capital in accordance with this clause.
4. The company owner is responsible to the extent of all assets owned by him or her for financial obligations of the company, and for any loss and damage resulting from failure to contribute or failure to contribute in full and on time to the charter capital in accordance with this article.

#### **Article 76** *Rights of company owner*

1. A company owner being an organization has the following rights:
  - (a) To make decisions on the contents of the charter of the company, amendments of and additions to the charter of the company;
  - (b) To make decisions on developmental strategies and annual business plans of the company;
  - (c) To make decisions on the organizational and managerial structure of the company, and to appoint, remove or discharge managers and inspectors of the company;
  - (d) To make decisions on projects for investment and development;
  - (dd) To make decisions on solutions for market development, marketing and technology;
  - (e) To approve loan agreements, contracts for sale of assets and other contracts as stipulated in the charter of the company valued at fifty (50) or more per cent of the total value of the assets recorded in the most recent financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company;
  - (g) To approve the financial statements of the company;
  - (h) To make decisions on increase in charter capital of the company; on assignment of all or part of the charter capital of the company to other organizations or individuals; to make decisions on issuance of bonds;
  - (i) To make decisions on establishment of subsidiary companies or on capital contribution to other companies;

- (k) To organize supervision and assessment of the business operations of the company;
  - (l) To make decisions on use of profit after fulfilment of tax obligations and other financial obligations of the company;
  - (m) To make decisions on re-organization or dissolution and petition for bankruptcy of the company;
  - (n) To recover all of the value of assets of the company after the company completes dissolution or bankruptcy [procedures];
  - (o) Other rights in accordance with this Law and the charter of the company.
2. A company owner being an individual has the rights prescribed in sub-clauses (a), (h), (l), (m), (n) and (o) of clause 1 above; and [has the right to] make decisions on investment, business and internal management of the company, unless otherwise stipulated in the charter of the company.

**Article 77** *Obligations of company owner*

- 1. To contribute in full and on time to the charter capital of the company.
- 2. To comply with the charter of the company.
- 3. To identify and separate assets of the company owner from assets of the company. A company owner being an individual must separate his or her personal expenditure and the expenditure for his or her family from the expenditure for the chairman of the company and the director or general director.
- 4. To comply with the law on contracts and other relevant laws with respect to any purchase, sale, borrowing, lending, lease or rental and other contracts and transactions between the company and the company owner.
- 5. A company owner may withdraw capital only by way of assignment of a part or all of the charter capital to other organizations and individuals; in the case of withdrawal of all or part of its contributed charter capital from the company in another form, the company owner and the organization or individual concerned must be jointly liable for debts and other property obligations of the company.
- 6. The company owner may not withdraw profit in cases where the company has not paid in full all debts and other property obligations which are due.
- 7. Other obligations in accordance with this Law and the charter of the company.

**Article 78** *Exercise of rights of company owner in some special cases*

- 1. Where a company owner assigns or makes a gift of part of the charter capital to one or more other organizations or individuals or where a company admits new members, the company must organize management in the corresponding form of enterprise and register change to its enterprise registration within ten (10) days from the date of completion of the assignment or making the gift, or admission of new members.
- 2. Where a company owner being an individual is subject to temporary imprisonment, serves a prison sentence or is subject to administrative measures at a compulsory drug rehabilitation establishment

or compulsory educational establishment, the owner shall authorize another person to exercise part or all of the rights and perform the obligations of the company owner.

3. Where a company owner being an individual dies, then his or her heir(s) under a will or at law shall be the owner or a member of the company. The company must organize management in the corresponding form of enterprise and must register change to its enterprise registration within ten (10) days from the date of completion of resolution of inheritance. Where a company owner being an individual dies intestate or where his or her heir disclaims the inheritance or where the right to inherit is forfeited, the capital contribution portion of the owner is dealt with in accordance with civil law.
4. Where a company owner being an individual disappears [is missing], the owner's capital contribution portion shall be dealt with in accordance with the civil law.
5. Where a company owner being an individual has his or her capacity for civil acts restricted or lost or has cognitive difficulties or difficulties with behavioural control, the rights and obligations of the company owner shall be performed via his or her representative.
6. Where a company owner being an organization is dissolved or bankrupt, the person(s) receiving assignment of the capital contribution portion of the owner shall become the owner or member(s) of the company. The company must organize management in the corresponding form of enterprise and register change to its enterprise registration within ten (10) days from the date of completion of the assignment.
7. Where a company owner being an individual is prohibited by a court from practising or doing certain work, or where a company owner being a commercial legal entity is prohibited by a court from conducting business or operating in certain sectors within the scope of business lines of the enterprise, such individual must not practise or do such certain work in such company or the company must temporarily suspend or terminate business in the relevant industries or trades pursuant to the decision of the court.

**Article 79** *Organizational and managerial structure of single member LLC owned by an organization*

1. A single member LLC owned by an organization shall be organized, managed and operate in either of the following models:
  - (a) Chairman of the company, director or general director;
  - (b) Members' Council, director or general director.
2. A company of which the owner is a State owned enterprise as prescribed in article 88.1 of this Law must establish an Inspection Committee; other cases shall be decided by the company. The organizational structure, working regime, criteria, conditions, removal, discharge, rights, obligations and responsibilities of the Inspection Committee and inspectors are implemented respectively in accordance with article 65 of this Law.
3. The company must have at least one (1) legal representative being a person holding the position of the chairman of the Members' Council or the chairman of the company or the director or general director. If the charter of the company does not contain a [relevant] provision, the chairman of the Members' Council or the chairman of the company shall be the legal representative of the company.
4. Unless otherwise stipulated in the charter of the company, the organizational and operational structure, functions, rights and obligations of the Members' Council, the chairman of the company, the director or general director shall be as stipulated in this Law.

## **Article 80** *Members' Council*

1. The Members' Council shall consist of three (3) to seven (7) members. Members of the Members' Council shall be appointed or removed by the company owner and their term of office shall not exceed five years. The Members' Council shall, in the name of the company owner, implement rights and obligations of the company owner; and implement rights and obligations of the company in the name of the company except for the rights and obligations of the director or general director; and is responsible before the law and to the company owner for the implementation of delegated rights and obligations in accordance with the charter of the company, this Law and other provisions of relevant laws.
2. The rights, obligations and working regime of the Members' Council shall be as stipulated in the charter of the company, this Law and other relevant laws.
3. The chairman of the Members' Council shall be appointed by the company owner or elected by the members of the Members' Council on the principle of majority [vote] and in accordance with the sequence and procedures stipulated in the charter of the company. Unless otherwise stipulated in the charter of the company, the term of office and the rights and obligations of the chairman of the Members' Council shall be as stipulated in article 56 and in other relevant provisions of this Law.
4. The authority and methods to convene meetings of the Members' Council shall be as stipulated in article 57 of this Law.
5. A meeting of the Members' Council shall be conducted where at least two thirds ( $\frac{2}{3}$ ) of the total number of members of the Members' Council attend. Unless otherwise stipulated in the charter of the company, each member of the Members' Council shall have an equal vote. The Members' Council may pass a resolution or decision by way of collection of written opinions.
6. A resolution or decision of the Members' Council shall be passed when it is agreed by more than fifty (50) per cent of the attending members or when it is agreed by the attending members owning more than fifty (50) per cent of the total number of votes. Any amendment of or addition to the charter of the company, any re-organization of the company, or any assignment of a part or all of the charter capital of the company must be agreed by at least seventy five (75) per cent of the attending members or by the attending members owning seventy five (75) per cent or more of the total number of votes. A resolution or decision of the Members' Council takes effect from the date of passing or from the date stated in such resolution or decision, unless otherwise stipulated in the charter of the company.
7. Meetings of the Members' Council must be minuted, and may be sound recorded or recorded and stored in other electronic forms. The minutes of meetings of the Members' Council shall be as stipulated in article 60.2 of this Law.

## **Article 81** *Chairman of company*

1. The chairman of the company shall be appointed by the company owner. The chairman of the company shall, in the name of the company owner, implement rights and obligations of the company owner; and implement rights and obligations of the company in the name of the company except for the rights and obligations of the director or general director; and is responsible before the law and to the company owner for the implementation of delegated rights and obligations in accordance with the charter of the company, this Law and other relevant laws.

2. The rights, obligations and working regime of the chairman of the company shall be as stipulated in the charter of the company, this Law and other relevant laws.
3. A decision of the chairman of the company on implementation of the rights and obligations of the company owner shall take effect from the date of approval by the company owner, unless otherwise stipulated in the charter of the company.

**Article 82** *Director or general director*

1. The Members' Council or the chairman of the company shall appoint or employ a director or general director for a term not exceeding five years to manage the day-to-day business operations of the company. The director or general director is responsible before the law and to the Members' Council or to the chairman of the company for the implementation of his or her rights and obligations. The chairman of the Members' Council, other members of the Members' Council or the chairman of the company may concurrently act as the director or general director unless otherwise stipulated by law or the charter of the company.
2. A director or general director has the following rights and obligations:
  - (a) To organize the implementation of resolutions and decisions of the Members' Council or of the chairman of the company;
  - (b) To make decisions on all matters relating to the day-to-day business operations of the company;
  - (c) To organize the implementation of the business plan and investment plan of the company;
  - (d) To issue the internal management rules of the company;
  - (dd) To appoint, remove or discharge managers in the company, except for the positions falling within the authority of the Members' Council or of the chairman of the company;
  - (e) To sign contracts in the name of the company, except in cases falling within the authority of the chairman of the Members' Council or of the chairman of the company;
  - (g) To make recommendations with respect to the organizational structure of the company;
  - (h) To submit the annual financial statements to the Members' Council or to the chairman of the company;
  - (i) To recommend the plan for use of profit or for dealing with losses in business;
  - (k) To recruit employees;
  - (l) Other rights and obligations as stipulated in the charter of the company and in the labour contract.
3. A director or general director must satisfy the following criteria and conditions:
  - (a) Not fall into the category of entities stipulated in article 17.2 of this Law;
  - (b) Have professional qualifications and experience in business administration of the company, and [satisfy] other conditions stipulated in the charter of the company.



**Article 83** *Responsibilities of members of the Members' Council, chairman of company, director, general director and other managers, and inspectors*

1. To comply with the law, the charter of the company and the decisions of the company owner in the implementation of delegated rights and obligations.
2. To perform delegated rights and obligations honestly, prudently and to the best of their ability in order to assure the maximum legitimate interests of the company and the company owner.
3. To be loyal to the interests of the company and the company owner; not to abuse their positions and powers or not to use information, know-how, business opportunities and other assets of the company for personal benefit or for the benefit of other organizations or individuals.
4. To promptly notify the company owner in a complete and accurate manner of any enterprise in which they are the owner or hold controlling shares or a controlling portion of capital contribution, and of any enterprise in which their related person(s) is the owner or jointly or separately owns controlling shares or a controlling portion of capital contribution. The notice must be kept at the head office of the company.
5. Other responsibilities as stipulated in this Law and in the charter of the company.

**Article 84** *Salary, remuneration, bonuses and other benefits of managers of company and inspectors*

1. Managers of a company and inspectors are entitled to salary, remuneration, bonuses and other benefits in accordance with the business results and efficiency of the company.
2. The company owner shall decide on the rate of salary, remuneration, bonuses and other benefits of members of the Members' Council, the chairman of the company and inspectors. Salary, remuneration, bonuses and other benefits of managers of the company and inspectors shall be included in business expenses in accordance with the law on corporate income tax and relevant laws, and must be recorded as a separate item in annual financial statements of the company.
3. Salary, remuneration, bonuses and other benefits of inspectors may be directly paid by the company owner in accordance with the charter of the company.

**Article 85** *Organizational and management structure of single member limited liability company owned by an individual*

1. A single member LLC owned by an individual shall have a chairman of the company and a director or general director.
2. The owner of the company is the chairman of the company and may act concurrently or employ another person as the director or general director.
3. The rights and obligations of the director or general director shall be stipulated in the charter of the company and in the labour contract.

**Article 86** *Contracts and transactions of company with related persons*

1. Unless otherwise stipulated in the charter of the company, any contract or transaction between a single member LLC owned by an organization and the following persons must be approved by the Members' Council or the chairman of the company, the director or general director and inspectors:

- (a) The company owner and a related person of the company owner;
  - (b) A member of the Members' Council, the chairman of the company, the director or general director and the inspectors;
  - (c) A related person of the persons stipulated in sub-clause (b) of this clause;
  - (d) A manager of the company owner, the person authorized to appoint such manager;
  - (dd) A related person of the persons stipulated in sub-clause (d) of this clause.
2. The person entering into the contract or transaction in the name of the company must notify the Members' Council or the chairman of the company, the director or general director and the inspectors of related entities and related interests in such contract or transaction; and enclose the draft of such contract or main contents of such transaction.
  3. Unless otherwise stipulated in the charter of the company, members of the Members' Council or the chairman of the company, the director or general director and inspectors must make a decision approving the contract or transaction within ten (10) days from the date of receipt of the notice on the principle of majority. Each person has one vote. Persons related to the parties shall not have the right to vote.
  4. The contract or transaction stipulated in clause 1 above may be approved only upon satisfaction of the following conditions:
    - (a) The parties entering into the contract or performing the transaction are independent legal entities with separate rights, obligations, assets and interests;
    - (b) The price used in the contract or transaction is the market price at the time when the contract is entered into or when the transaction is performed;
    - (c) The company owner complies with the obligations stipulated in article 77.4 of this Law.
  5. A contract or transaction shall be void pursuant to a decision of a court and dealt with in accordance with law where it is not entered into in accordance with the provisions of clauses 1, 2, 3 and 4 of this article. The signatories to the contract or transaction and related persons being the parties to the contract or transaction must be jointly responsible for any loss arising and for returning to the company any benefit gained from the performance of such contract or transaction.
  6. A contract or transaction between a single member LLC owned by an individual and the company owner or a related person of the company owner must be recorded and retained as a separate file of the company.

**Article 87** *increase and reduction of charter capital*

1. A single member LLC increases its charter capital by way of the company owner contributing additional capital or raising additional capital contributed by other persons. The company owner shall decide on the form of increase and the amount of increase of charter capital.
2. Where the charter capital is increased by way of raising additional capital contributed by other persons, the company must organize management in the form of a multi member LLC or shareholding company. The management of the company shall be organized as follows:

- (a) In the case of organization of management in the form of a multi member LLC, the company must notify any change to its enterprise registration within ten (10) days from the date of completion of change of the charter capital;
  - (b) In the case of conversion to become a shareholding company, the company shall comply with article 202 of this Law.
3. A single member LLC reduces its charter capital in the following cases:
- (a) Return of part of contributed capital to the company owner if the company has conducted business continuously for two years or more from the date of registration for establishment of the enterprise, and ensures payment of all debts and other property obligations upon return to the company owner;
  - (b) The company owner fails to pay for the charter capital in full and on time in accordance with article 75 of this Law.

## CHAPTER 4

### State Owned Enterprises

#### **Article 88** *State owned enterprises [SOEs]*

1. State owned enterprises are organized and managed in the form of limited liability companies [LLCs] or shareholding companies, comprising:
  - (a) An enterprise in which the State holds 100% charter capital;
  - (b) An enterprise in which the State holds above 50% of the charter capital or the total number of voting shares, except for the enterprises prescribed in sub-clause (a) above.
2. Enterprises in which the State holds 100% charter capital as prescribed in clause 1(a) above comprise:
  - (a) A single member LLC in which the State holds 100% charter capital [and] being the parent company of a State economic group, parent company of a State corporation, or parent company in a parent company – subsidiary group;
  - (b) A single member LLC being an independent company in which the State holds 100% charter capital.
3. Enterprises in which the State holds above 50% charter capital or the total number of voting shares as prescribed in clause 1(b) above comprise:
  - (a) A multiple member LLC or shareholding company in which the State holds above 50% charter capital or the total number of voting shares [and] being the parent company of an economic group, parent company of a State corporation, or parent company in a parent company – subsidiary group;
  - (b) A multiple member LLC or shareholding company being an independent company in which the State holds above 50% charter capital or the total number of voting shares.

4. The Government shall provide detailed regulations on this article.

**Article 89** *Application of provisions to State owned enterprises*

1. Enterprises in which the State holds 100% charter capital as prescribed in article 88.1(a) of this Law shall be organized and managed in the form of a single member LLC in accordance with the provisions of this Chapter and other relevant provisions of this Law; if there is any difference among the provisions of this Law, the provisions of this Chapter shall apply.
2. Enterprises in which the State holds above 50% charter capital as prescribed in article 88.1(b) of this Law shall be organized and managed in the form of a multiple member LLC in accordance with the provisions of Section 1 of Chapter 3 or in the form of a shareholding company as stipulated in the provisions of Chapter 5 of this Law.

**Article 90** *Organizational and managerial structure*

The agency representing the owner shall make a decision on organization and management of a State owned enterprise in the form of a single member LLC in accordance with either of the following models:

1. The chairman of the company, the director or general director, and the Inspection Committee;
2. The Members' Council, the director or general director, and the Inspection Committee.

**Article 91** *Members' Council*

1. The Member's Council shall, in the name of the company, exercise the rights and perform the obligations of the company as stipulated in this Law and other provisions of relevant laws.
2. The Members' Council shall comprise a chairman and other members with the number not exceeding seven. Members of the Members' Council shall be appointed, removed, dismissed, rewarded or disciplined by the agency representing the owner.
3. The term of the chairman and other members of the Members' Council shall not exceed five years. Members of the Members' Council may be re-appointed. One individual shall be appointed as a member of the Members' Council for no more than two terms of office in one company, except where such individual has worked for a period of more than fifteen (15) consecutive years in such company before he or she is appointed for the first time.

**Article 92** *Rights and obligations of Members' Council*

1. The Members' Council shall, in the name of the company, implement the rights and obligations of the owner, shareholders and members with respect to companies in which the [former] company is the owner or holds shares or portion of capital contribution.
2. The Members' Council has the following rights and obligations:
  - (a) To make decisions on the contents as stipulated in the *Law on Management and Use of State Capital Invested in Production and Business in Enterprises*;
  - (b) To make decisions on establishment, re-organization and dissolution of branches, representative offices and dependent cost accounting units;

- (c) To make decisions on annual plans for production and business and guidelines for development of the market, marketing and technology of the company;
- (d) To organize internal audit activities and to make a decision establishing an internal audit unit of the company;
- (dd) Other rights and obligations as stipulated in the charter of the company, this Law and other relevant laws.

**Article 93** *Criteria and conditions applicable to members of Members' Council*

1. Not fall into the category of entities prescribed in article 17.2 of this Law.
2. Have professional qualifications and experience in business administration or in the operational sectors and industries of the enterprise.
3. Not be a person with a family relationship with the head or the deputy head of the agency representing the owner, a member of the Members' Council, the director, deputy director or general director, deputy general director or the chief accountant of the company, or an inspector of the company.
4. Not be a manager of a member enterprise.
5. Except for the chairman of the Members' Council, other members of the Members' Council may concurrently act as the director or general director of the company or of another company not being a member enterprise pursuant to a decision of the agency representing the owner.
6. Not ever have been dismissed from the position of the chairman of the Members' Council, a member of the Members' Council, the chairman of the company, the director, the deputy director or the general director, deputy general director of a State owned enterprise.
7. Other criteria and conditions in accordance with the charter of the company.

**Article 94** *Removal and dismissal of members of Members' Council*

1. The chairman or any other member of the Members' Council shall be removed in the following cases:
  - (a) The chairman or such member no longer satisfies the criteria and conditions stipulated in article 93 of this Law;
  - (b) The chairman or such member makes an application for resignation which is approved in writing by the agency representing the owner;
  - (c) The chairman or such member receives a decision on transfer, on arrangement of other work or retirement;
  - (d) The chairman or such member does not have sufficient capability or qualifications to assume the assigned work;
  - (dd) The chairman or such member is not in good health or is no longer creditworthy for holding the position of a member of the Members' Council.

2. The chairman or any other member of the Members' Council shall be dismissed in the following cases:
  - (a) The company fails to complete objectives or targets in annual plans, or fails to preserve and develop investment capital at the request of the agency representing the owner, and it is unable to provide explanations on objective causes or provides explanations on causes but they are not accepted by the agency representing the owner;
  - (b) The chairman or such member is sentenced by a court, and the judgment or decision of the court has become lawfully effective;
  - (c) The chairman or such member acts dishonestly in performing his or her rights and obligations or abuses his or her position and power and uses the property of the company for his or her own personal benefit or for the benefit of other organizations or individuals; or provides an untruthful report on the financial status and production and business results of the company.
3. Within sixty (60) days from the date of the decision on removal or dismissal of the chairman or any other member of the Members' Council, the agency representing the owner shall consider and make a decision selecting and appointing another person for replacement.

**Article 95** *Chairman of Members' Council*

1. The chairman of the Members' Council shall be appointed by the agency representing the owner in accordance with law. The chairman of the Members' Council is not permitted to concurrently act as the director or general director of the company and of other enterprises.
2. The chairman of the Members' Council has the following rights and obligations:
  - (a) To formulate quarterly and annual operational plans of the Members' Council;
  - (b) To prepare the program, agenda and documents for meetings of the Members' Council or to collect opinions from members of the Members' Council;
  - (c) To convene, preside over and chair meetings of the Members' Council or to organize collection of opinions from members of the Members' Council;
  - (d) To organize implementation of decisions of the agency representing the owner and resolutions of the Members' Council;
  - (dd) To organize supervision of, directly supervise and assess results of implementation of strategic objectives, operational results of the company and results of management and operation by the director or general director of the company;
  - (e) To organize announcement and disclosure of information about the company in accordance with law; to be responsible for the completeness, accuracy, truthfulness and systematic nature of disclosed information and for updating same.
3. In addition to the cases stipulated in article 94 of this Law, the chairman of the Members' Council may be removed or dismissed if he or she fails to perform the rights and obligations stipulated in clause 2 of this article.

**Article 96** *Rights and obligations of members of Members' Council*

1. To attend meetings of the Members' Council, and to discuss, make recommendations and vote on issues within the authority of the Members' Council.
2. To inspect, sight, consult, copy or make an extract of contract and transaction monitoring records, books of account, financial statements, the register of minutes of meetings of the Members' Council and other papers and documents of the company.
3. Other rights and obligations as stipulated in the charter of the company, this Law and other relevant laws.

**Article 97** *Responsibilities of chairman and other members of Members' Council*

1. To comply with the charter of the company and decisions of the company owner and the provisions of law.
2. To exercise their rights and perform their obligations honestly and prudently to the best of their ability in order to assure the maximum legitimate interests of the company and of the State.
3. To be loyal to the interests of the company and the State; not to abuse their positions and powers and not to use information, know-how, business opportunities and other assets of the company for their own personal benefit or for the benefit of other organizations or individuals.
4. To promptly notify the enterprise fully and accurately of any enterprise in which they are the owner or hold controlling shares or a controlling portion of capital contribution, and of any enterprise in which their related person(s) is the owner, or jointly or separately owns controlling shares or a controlling portion of capital contribution. This notice shall be compiled and kept at the head office of the company.
5. To comply with resolutions of the Members' Council.
6. To be personally liable for doing the following acts:
  - (a) Taking advantage of the good name of the company to commit a breach of law;
  - (b) To carry out business or other transactions not for the interests of the company and causing loss to other organizations and individuals;
  - (c) To pay debts prior to their maturity when the company may bear financial risks.
7. If a member of the Members' Council discovers that another member of the Members' Council has committed a breach when performing assigned rights and obligations, the former is responsible to make a written report to the agency representing the owner, and require the defaulting member to terminate the breach and remedy consequences.

**Article 98** *Working regime, conditions and procedures for conducting meetings of Members' Council*

1. The Members' Council shall work on a collective basis; and it shall meet at least once every quarter in order to consider and decide issues within the scope of its rights and obligations. With respect to issues which do not require discussion, the Members' Council may collect written opinions from members in accordance with the charter of the company. The Members' Council may hold an extraordinary meeting to resolve urgent issues at the request of the agency representing the



company owner or at the request of the chairman of the Members' Council or of above fifty (50) per cent of the total number of members of the Members' Council, or [at the request of] the director or general director.

2. The chairman of the Members' Council or a member authorized by the chairman of the Members' Council is responsible to prepare an agenda and documents and convene, preside over and chair meetings of the Members' Council. Members of the Members' Council may make written recommendations on the agenda of a meeting. The contents and documents of a meeting must be sent to the members of the Members' Council and persons invited to attend the meeting no later than three working days prior to the date of the meeting. The documents to be used in the meeting in relation to recommendations to the agency representing the company owner on amendment of and addition to the charter of the company, approval of developmental direction of the company, approval of annual financial statements, re-organization or dissolution of the company must be sent to the members no later than five working days prior to the date of the meeting.
3. The notice of invitation to a meeting of the Members' Council may be sent in the form of a letter of invitation, by telephone, by facsimile, by other electronic means or by other methods as stipulated in the charter of the company and shall be sent directly to each member of the Members' Council and persons invited to attend the meeting. The notice of invitation must specify the time, venue and agenda of the meeting. The form of an online meeting may be applied where necessary.
4. Meetings of the Members' Council shall be valid when at least two-thirds of the total number of members of the Members' Council participate. A resolution of the Members' Council is deemed passed when above half of the total number of attending members vote in favour; in the case of a tied vote, the content on which the chairman of the Members' Council or the person authorized by the chairman of the Members' Council to chair the meeting casted a vote in favour, shall be passed. Members of the Members' Council have the right to reserve their opinions and to make recommendations to the agency representing the company owner.
5. In the case of collection of written opinions from members of the Members' Council, a resolution of the Members' Council is deemed passed when above half of the total number of members of the Members' Council agree. A resolution may be passed by using a number of counterparts of the same document if each counterpart bears the signature of at least one member of the Members' Council.
6. Based on the contents and agenda of a meeting, when it considers it necessary, the Members' Council shall invite authorized representatives of related agencies and organizations to attend the meeting and discuss specific issues on the agenda of the meeting. The representatives of such agencies and organizations have the right to express their opinions but shall not participate in voting. Any opinion of the representatives invited to attend the meeting shall be fully recorded in the minutes of the meeting.
7. Contents of issues discussed, opinions expressed, results of voting, resolutions passed by the Members' Council and conclusions of meetings of the Members' Council shall be minuted. The chairman and the secretary of a meeting must be jointly responsible for the accuracy and truthfulness of the minutes of the meeting of the Members' Council. The minutes of the meeting of the Members' Council must be passed prior to the closing of the meeting. The minutes must contain the following main particulars:
  - (a) Time, venue, purpose and agenda of the meeting; list of attending members; issues discussed and voted on; and summary of opinions of the members and representatives invited to attend the meeting on each issue discussed;

- (b) Number of votes for and against in a case where the abstaining method is not applied; number of votes for, against and abstentions in a case where the abstaining method is applied;
  - (c) Decisions passed;
  - (d) Full names and signatures of attending members.
8. Any member of the Members' Council has the right to request the director, deputy director or general director, deputy general director, chief accountant and managers of company or of a subsidiary company in which the company holds 100% of the charter capital, and [request] the representative of capital contribution of the company in any other enterprise to provide information and data on the financial and operational status of the enterprise pursuant to the information rules of, or a resolution of the Members' Council. The person requested to provide information must promptly provide the complete and accurate information and data requested by the member of the Members' Council, unless otherwise decided by the Members' Council.
  9. The Members' Council shall use the managerial and executive apparatus and the assisting department of the company to perform its duties.
  10. Operational expenses of the Members' Council and wages, allowances and remuneration shall be included in management expenses of the company.
  11. In necessary cases, the Members' Council shall organize the collection of opinions from domestic and foreign consultants prior to making decisions on important matters within the authority of the Members' Council. Any expenses for collecting opinions from consultants shall be stipulated in the rules on financial management of the company.
  12. Resolutions of the Members' Council shall take effect from the date of passing or from the effective date stated in the resolution, except for cases in which the approval of the agency representing the owner is required.

#### **Article 99** *Chairman of company*

1. The chairman of a company shall be appointed by the agency representing the owner in accordance with law. The term of office of the chairman of the company shall not exceed five years, and [the chairman] may be re-appointed. One individual shall be appointed for no more than two terms of office, except where the appointed person has worked for a period of more than fifteen (15) consecutive years before he or she is appointed for the first time. The criteria and conditions for removal or dismissal of the chairman of the company and cases of removal or dismissal of the chairman of the company shall be in accordance with articles 93 and 94 of this Law.
2. The chairman of the company shall exercise the rights and perform the obligations of the representative of the owner directly in the company in accordance with the *Law on Management and Use of State Capital Invested in Production and Business in Enterprises*, and other rights, obligations and responsibilities as prescribed in articles 92 and 97 of this Law.
3. Salaries, allowances and remuneration of the chairman of the company shall be included in management expenses of the company.
4. The chairman of the company shall use the managerial and executive apparatus and the assisting department of the company to exercise his or her rights and perform his or her obligations. In necessary cases, the chairman of the company shall organize the collection of opinions from domestic and foreign consultants prior to making decisions on important matters within the authority

of the chairman of the company. Any expenses for collecting opinions from consultants shall be stipulated in the rules on financial management of the company.

5. Decisions within the authority stipulated in clause 2 of this article must be made in writing and signed with the title of the chairman of the company, including the case where the chairman of the company acts concurrently as the director or general director.
6. A decision of the chairman of the company shall take effect from the date of its signing or from the effective date stated in the decision, except for the case where approval of the agency representing the owner is required.
7. In a case where the chairman of the company exits Vietnam for a period of more than thirty (30) days, the chairman of the company must authorize another person in writing to perform a number of rights and obligations of the chairman of the company. Such authorization must be promptly notified in writing to the agency representing the owner. Other cases of authorization shall be as stipulated in the rules on internal management of the company.

**Article 100** *Director or general director and deputy director or deputy general director*

1. The director or general director shall be appointed or employed by the Members' Council or the chairman of the company in accordance with the personnel plan approved by the agency representing the owner.
2. The director or general director is responsible to manage the day-to-day operations of the company, and has the following rights and obligations:
  - (a) To organize implementation and assessment of results of implementation of business schemes and plans and investment plans of the company;
  - (b) To organize implementation and assess results of implementation of resolutions and decisions of the Members' Council, the chairman of the company and the agency representing the company owner;
  - (c) To make decisions on daily affairs of the company;
  - (d) To promulgate rules on internal management of the company as approved by the Members' Council or the chairman of the company;
  - (dd) To appoint, employ, remove, dismiss or terminate labour contracts of managers of the company, except for the positions within the authority of the Members' Council or the chairman of the company;
  - (e) To enter into contracts and transactions in the name of the company, except for those within the authority of the chairman of the Members' Council or the chairman of the company;
  - (g) To prepare quarterly and annual reports on results of implementation of objectives of business plans and financial statements and submit same to the Members' Council or the chairman of the company;
  - (h) To make recommendations on allocation and use of after-tax profit and other financial obligations of the company;
  - (i) To recruit employees;

- (k) To make recommendations on plans for re-organization of the company;
  - (l) Other rights and obligations in accordance with law and the charter of the company.
3. The company shall have one or more deputy directors or deputy general directors. The number of and authority to appoint deputy directors or deputy general directors shall be stipulated in the charter of the company. Rights and obligations of deputy directors or deputy general directors shall be stipulated in the charter of the company or in their labour contracts.

**Article 101** *Criteria and conditions applicable to director or general director*

- 1. Not fall into the category of entities prescribed in article 17.2 of this Law.
- 2. Have professional qualifications and experience in business administration or in the business sectors and lines of the company.
- 3. Not be a person with a family relationship with the head or deputy head of the agency representing the owner; a member of the Members' Council or the chairman of the company; the deputy general director, deputy director or chief accountant of the company; or an inspector of the company.
- 4. Not ever have been dismissed from the position of the chairman of the Members' Council, a member of the Members' Council, the chairman of the company, a director or general director, a deputy director or deputy general director in the company or in another State owned enterprise.
- 5. Not be permitted to act concurrently as the director or general director of another enterprise;
- 6. Other criteria and conditions stipulated in the charter of the company.

**Article 102** *Removal or dismissal of director, general director and other managers of company, and chief accountant*

- 1. A director or general director shall be removed in the following cases:
  - (a) He or she no longer satisfies the criteria and conditions stipulated in article 101 of this Law;
  - (b) He or she makes an application for resignation.
- 2. A director or general director shall be considered and dismissed in the following cases:
  - (a) The enterprise fails to maintain capital in accordance with law;
  - (b) The enterprise fails to complete objectives of annual business plans;
  - (c) The enterprise commits a breach of law;
  - (d) He or she is not qualified and capable of satisfying requirements of new developmental strategies and business plans of the enterprise;
  - (dd) He or she commits a breach of one of the rights, obligations and responsibilities of managers as stipulated in articles 97 and 100 of this Law;
  - (e) Other cases in accordance with the charter of the company.

3. Within sixty (60) days from the date of the decision on removal or dismissal, the Members' Council or the chairman of the company shall consider and decide to select or appoint another person for replacement.
4. Cases [justifying] removal or dismissal of deputy general directors, deputy directors, other managers of the company and chief accountant shall be stipulated in the charter of the company.

**Article 103** *Inspection Committee and inspectors*

1. On the basis of the scale of the company, the agency representing the owner shall make a decision establishing an Inspection Committee which comprises one to five inspectors, including the head of the Inspection Committee. The term of an inspector shall not exceed five years and [inspectors] may be re-appointed for no more than two consecutive terms of office in the company. If the Inspection Committee has only one inspector, such inspector shall also be the head of the Inspection Committee and must satisfy the criteria applicable to the head of the Inspection Committee.
2. One individual may be concurrently appointed as the head of the Inspection Committee or an inspector of no more than four State owned enterprises.
3. The head of the Inspection Committee and an inspector must satisfy the following criteria and conditions:
  - (a) Have a university or higher graduation degree specializing in economy, finance, accounting, auditing, law or business administration or in a specialized faculty appropriate for the business activities of the enterprise, and have at least three years of work experience; the head of the Inspection Committee must have at least five years of work experience;
  - (b) Not be a manager of the company or a manager in another enterprise; not be an inspector of an enterprise not being a State owned enterprise; and not be an employee of the company;
  - (c) Not be a person with a family relationship with the head or deputy head of the agency representing the owner of the company; a member of the Members' Council of the company; the chairman of the company, the director or general director; or the deputy director or deputy general director, chief accountant or any other inspector of the company;
  - (d) Other criteria and conditions stipulated in the charter of the company.
4. The Government shall provide detailed regulations on this article.

**Article 104** *Obligations of Inspection Committee*

1. The Inspection Committee has the following obligations:
  - (a) To supervise the organization of implementation of developmental strategies and business plans;
  - (b) To supervise and assess the actual status of business activities and the actual financial status of the company;
  - (c) To supervise and assess the implementation of rights and obligations by members of the Members' Council, by the Members' Council, by the chairman of the company and by the director or general director of the company;

- (d) To supervise and assess the effectiveness of and the level of compliance with internal auditing regulations, regulations on management and prevention of risks, reporting regulations and other rules on internal management of the company;
  - (dd) To supervise the lawfulness, systematic nature and truthfulness in accounting work, books of account, financial statements, appendices and related documents;
  - (e) To supervise contracts and transactions of the company with related parties;
  - (g) To supervise the implementation of large investment projects, purchase and sale contracts and transactions, other business contracts and transactions on a large scale, and abnormal business contracts and transactions of the company;
  - (h) To prepare and send reports on assessment of and recommendation on the contents stipulated in sub-clauses from (a) to (g) of this clause to the agency representing the owner and the Members' Council;
  - (i) To perform other obligations at the request of the agency representing the owner and in accordance with the charter of the company.
2. Salaries, remuneration, bonuses and other benefits of inspectors shall be decided and paid by the agency representing the owner.
  3. The Government shall provide detailed regulations on this article.

**Article 105** *Rights of Inspection Committee*

1. To attend meetings of the Members' Council, and official and unofficial consultations and discussions between the agency representing the owner and the Members' Council; to formally question the Members' Council, members of the Members' Council, the chairman of the company and the director or general director in relation to plans, projects or programs on investment in development and other decisions during management and operation of the company.
2. To review books of account, reports, contracts, transactions and other documents of the company; to inspect the management and operation work of the Members' Council, members of the Members' Council, the chairman of the company and the director or general director when they consider it necessary or at the request of the agency representing the owner.
3. To request the Members' Council, members of the Members' Council, the chairman of the company, the director, deputy director or general director, deputy general director, chief accountant and other managers to make reports on or provide information within their scope of management and on the business and investment activities of the company.
4. To request the managers of the company to make reports on the actual financial status and the results of business of subsidiary companies when they consider it necessary in order to carry out duties stipulated in law and the charter of the company.
5. To request the agency representing the owner to establish a unit which carries out auditing duties to provide advice to and directly assist the Inspection Committee in performing its delegated rights and obligations.
8. Other rights in accordance with the charter of the company.

#### **Article 106** *Working regime of Inspection Committee*

1. The head of the Inspection Committee shall formulate annual, quarterly and monthly working plans of the Inspection Committee, and shall assign specific duties and work to each inspector.
2. Inspectors shall on their own initiative and independently perform their assigned duties and work, and shall propose and recommend implementation of other inspection duties and work beyond the plans or scope assigned to them if considered necessary.
3. The Inspection Committee shall meet at least once every month in order to review, evaluate and pass reports on results of inspection in a month and submit same to the agency representing the owner, and shall discuss and pass the next operational plans of the Inspection Committee.
4. A decision of the Inspection Committee is passed when a majority of the number of attending members agree. Any opinion different from the contents of the passed decision must be fully and accurately recorded and must be reported to the agency representing the owner.

#### **Article 107** *Responsibilities of inspectors*

1. To comply with law, the charter of the company, decisions of the agency representing the owner and professional ethics during implementation of their rights and obligations.
2. To exercise their delegated rights and perform their delegated obligations honestly and prudently and to the best of their ability to protect the interests of the State and of the company and the legitimate interests of parties in the company.
3. To be loyal to the interests of the State and of the company; not to abuse their positions and powers and not to use information, know-how, business opportunities and other assets of the company for their own personal benefit or for the benefit of other organizations or individuals.
4. In the case of breach of the responsibilities stipulated in this article which causes loss to the company, the inspectors must be personally or jointly liable to compensate for such loss, and may also be disciplined or subject to administrative penalties or subject to criminal prosecution in accordance with law depending on the nature and seriousness of the breach and the loss; and must return the company all income and interests obtained from the breach of the responsibilities stipulated in this article.
5. To promptly report to the agency representing the owner, and also request an inspector to terminate any breach and remedy any consequences if such inspector is discovered to commit a breach of rights, obligations and responsibilities assigned to him or her.
6. To promptly report to the agency representing the company owner, other inspectors and the related individual, and also request such individual to terminate any breach and remedy any consequences in the following cases:
  - (a) It is discovered that a member of the Members' Council, the chairman of the company, the director or general director or any other manager contravenes the provisions on their rights, obligations and responsibilities or is likely to contravene such provisions;
  - (b) An act is discovered to breach the law or contravene the charter of the company or the internal management rules of the company.
7. Other responsibilities stipulated in this Law and the charter of the company.



**Article 108** *Removal and dismissal of head of Inspection Committee and inspectors*

1. The head of the Inspection Committee or an inspector shall be removed in the following cases:
  - (a) No longer satisfying the criteria and conditions as prescribed in article 103 of this Law;
  - (b) Making an application for resignation which is approved by the agency representing the owner;
  - (c) Being transferred or assigned to carry out other duties by the agency representing the owner or other competent agencies;
  - (d) Other cases as stipulated in the charter of the company.
2. The head of the Inspection Committee or an inspector shall be dismissed in the following cases:
  - (a) Failing to perform his or her delegated obligations, duties and work for a period of three consecutive months, except for cases of force majeure;
  - (b) Failing to complete his or her delegated obligations, duties and work for one year;
  - (c) Committing a breach on a number of occasions or committing a serious breach of the rights, obligations and responsibilities of the head of the Inspection Committee or of inspectors as stipulated in this Law and the charter of the company;
  - (d) Other cases stipulated in the charter of the company.

**Article 109** *Periodical disclosure of information*

1. A company must make periodical disclosure of the following information on the websites of the company and of the agency representing the owner:
  - (a) Basic information about the company and the charter of the company;
  - (b) General objectives, specific objectives and targets of annual business plans;
  - (c) [Annual financial] statements and summary of annual financial statements which were audited by an independent auditing organization within one hundred and fifty (150) days from the end of a financial year, including financial statements of the parent company and consolidated financial statements (if any);
  - (d) [Semi-annual financial] statements and summary of semi-annual financial statements which were audited by an independent auditing organization; the time-limit for disclosure must be prior to 31 July each year, including financial statements of the parent company and consolidated financial statements (if any);
  - (dd) Reports on evaluation of results of implementation of production and business plans for each year;
  - (e) Reports on results of implementation of public duties which are assigned in accordance with plans or subject to tendering (if any) and other social responsibilities;
  - (g) Reports on the actual status of management and the organizational structure of the company.

2. A report on the actual status of management of the company shall comprise the following information:
  - (a) Information about the agency representing the owner, the head and the deputy head of the agency representing the owner;
  - (b) Information about the managers of the company, including professional qualifications, work experience, managerial positions held, methods of appointment, managerial work assigned, amount and methods of payment of salaries, remuneration, bonuses and other benefits; related persons and related interests of managers of the company;
  - (c) Related decisions of the agency representing the owner; resolutions and decisions of the Members' Council or of the chairman of the company;
  - (d) Information about the Inspection Committee and inspectors and about their activities;
  - (dd) Reports on conclusions of the inspectorate agency (if any) and reports of the Inspection Committee and inspectors;
  - (e) Information about related persons of the company, and contracts and transactions of the company with related persons;
  - (h) Other information as stipulated in the charter of the company.
3. Information must be promptly disclosed in a complete and accurate manner in accordance with law.
4. The legal representative or the person authorized to disclose information shall make disclosure of information. The legal representative must be responsible for the completeness, update, honesty and accuracy of disclosed information.
5. The Government shall provide detailed regulations on this article.

**Article 110** *Extraordinary disclosure of information*

1. A company must publish on its website and in its printed matter (if any) and publicly display at its head office and business locations extraordinary information within thirty six (36) hours from the time of occurrence of one of the following events:
  - (a) An account of the company is blockaded or is permitted to resume operation after blockade;
  - (b) The business activities are partly or wholly suspended; or the ERC, the establishment licence, the licence for establishment and operation, the operational licence or any other licence relating to the operation of the company is revoked;
  - (c) Amendment or addition is made to the ERC, the establishment licence, the licence for establishment and operation, the operational licence or any other licence relating to the operation of the company;
  - (d) There is a change of any member of the Members' Council, the chairman of the company, the director, deputy director or general director, deputy general director, the chief accountant, the head of the finance and accounting department, the head of the Inspection Committee or any inspector;

- (dd) There is a decision on discipline, prosecution of, or there is a judgement or decision of a court with respect to, any manager of the enterprise;
  - (e) There is a conclusion of the inspectorate agency or of the tax administrative agency on a breach of law by the enterprise;
  - (g) There is a decision on change of the independent auditing organization, or the auditing of financial statements is refused;
  - (h) There is a decision on establishment, dissolution, consolidation, merger or conversion of a subsidiary company, branch or representative office; or there is a decision on investment, reduction of capital or de-investment in other companies.
2. The Government shall provide detailed regulations on this article.

## CHAPTER 5

### Shareholding Companies

#### **Article 111** *Shareholding companies*

1. A shareholding company is an enterprise in which:
- (a) The charter capital is divided into equal portions called shares;
  - (b) Shareholders may be organizations or individuals; the minimum number of shareholders is three (3) and there is no restriction on the maximum number;
  - (c) Shareholders are liable for the debts and other property obligations of the enterprise to the extent of the amount of capital contributed to the enterprise;
  - (d) Shareholders may freely assign their shares to other persons, except in the cases stipulated in article 120.3 and article 127.1 of this Law.
2. A shareholding company has legal entity status from the date of issuance of the ERC.
3. A shareholding company may issue shares, bonds and other types of securities of the company.

#### **Article 112** *Capital of shareholding companies*

1. Charter capital of a shareholding company means the total aggregate par value of shares of all classes which have been sold. The charter capital of a shareholding company when registering establishment of enterprise shall be the total aggregate par value of shares of all classes which have been registered for subscription and stated in the charter of the company.
2. *Shares which have been sold* means the shares entitled to be offered for sale for which the shareholders have paid in full to the company. When registering establishment of the enterprise, shares which have been sold shall be the total number of shares of all classes which have been registered for subscription.

3. *Shares entitled to be offered for sale of a shareholding company* means the total number of shares of all classes which the General Meeting of Shareholders decides to offer for sale in order to raise capital. The number of shares to be offered for sale of a shareholding company when registering establishment of the enterprise shall be the total number of shares of all classes which the company will offer to sell to raise capital, including shares which have been registered for subscription and shares which have not been registered for subscription.
4. *Unsold shares* means shares which may be offered for sale and have not been paid to the company. When registering establishment of the enterprise, unsold shares shall be the total number of shares of all classes which have not yet registered for subscription.
5. A company may reduce its charter capital in the following cases:
  - (a) Pursuant to a decision of the General Meeting of Shareholders, the company shall return part of the capital contribution to the shareholders in proportion to their ratio of ownership of shares in the company if the company has conducted business activities for two or more consecutive years from the date of registration for establishment of the enterprise, and must ensure payment of all debts and other property obligations upon return to the shareholders;
  - (b) The company redeems shares which have been sold in accordance with articles 132 and 133 of this Law;
  - (c) The shareholders fail to pay for the charter capital in full and on time in accordance with article 113 of this Law.

**Article 113** *Payment of shares which have been registered for subscription upon registration for establishment of enterprise*

1. Shareholders must pay in full for the number of shares which have been registered for subscription within ninety (90) days from the date of issuance of the enterprise registration certificate [ERC], except where the charter of the company or share subscription agreement stipulates a shorter time-limit. If a shareholder contributes capital in the form of assets, then the time taken for transportation, import and conduct of administrative procedures in order to transfer ownership of the assets is not included in the above deadline for contributing such capital. The Board of Management is responsible to supervise and monitor [to ensure that] shares which have been registered for subscription shall be paid in full and on time by the shareholders.
2. Within the period from the date on which the company is issued with an ERC to the last day on which the shares which have been registered for subscription must be paid in full in accordance with clause 1 of this article, the number of votes of the shareholders shall be calculated on the basis of the number of ordinary shares which have been registered for subscription, unless otherwise stipulated in the charter of the company.
3. If upon expiry of the period stipulated in clause 1 above, any shareholder has not paid or has only paid for part of the number of shares registered for subscription, the following provisions shall apply:
  - (a) The shareholder who has not paid for the number of shares registered for subscription shall automatically no longer be a shareholder of the company and must not assign the right to purchase such shares to another person;

- (b) The shareholder who has only paid for part of the number of shares registered for subscription shall have the right to vote and receive dividends and other rights in proportion to the number of shares paid; and must not assign the right to purchase the number of shares unpaid to another person;
  - (c) Shares which have not been paid for shall be deemed unsold shares and the Board of Management has the right to sell such shares;
  - (d) Within thirty (30) days from the date of expiry of the period in which the shares registered for subscription must be paid for in full as stipulated in clause 1 above, the company must register adjustment of the charter capital on the basis of the par value of shares which have been paid for in full, except where shares which have not been paid for have been sold out during this period; and register any change to founding shareholders.
4. Any shareholder who has not paid or has not paid in full for the number of shares registered for subscription must be responsible for the financial obligations of the company in proportion to the total aggregate par value of shares registered for subscription, which arise prior to the date on which the company registers adjustment of its charter capital as prescribed in clause 3(d) of this article. Members of the Board of Management and the legal representative must be jointly responsible for any loss arising from failure to implement or failure to implement correctly the provisions of clauses 1 and 3(d) of this article.
  5. Except in the case prescribed in clause 2 above, a capital contributor becomes a shareholder in the company as from the time of payment for share purchase and information about the shareholder as prescribed in sub-clauses (b), (c), (d) and (dd) of article 122.2 of this Law is recorded in the register of shareholders.

#### **Article 114** *Classes of shares*

1. **A shareholding company must have ordinary shares.** Owners of ordinary shares shall be ordinary shareholders.
2. In addition to ordinary shares, a shareholding company may have preference shares. Owners of preference shares are referred to as preference shareholders. Preference shares shall be of the following classes:
  - (a) Dividend preference shares;
  - (b) Redeemable preference shares;
  - (c) Voting preference shares;
  - (d) Other preference shares as stipulated in the charter of the company and in the law on securities.
3. Persons being entitled to purchase dividend preference shares, redeemable preference shares and other preference shares shall be stipulated in the charter of the company or decided by the General Meeting of Shareholders.
4. Each share of the same class shall entitle its holder to the same rights, obligations and interests.
5. Ordinary shares may not be converted into preference shares. Preference shares may be converted into ordinary shares pursuant to a resolution of the General Meeting of Shareholders.

6. Ordinary shares used as the underlying assets for issuing non-voting depository certificates are referred to as underlying ordinary shares. Non-voting depository certificates have the economic interests and obligations corresponding to underlying ordinary shares, except for voting rights.
7. The Government shall provide regulations on non-voting depository certificates.

**Article 115** *Rights of ordinary shareholders*

1. Ordinary shareholders have the following rights:
  - (a) To attend and express opinions at meetings of the General Meeting of Shareholders and to exercise the right to vote directly or through an authorized representative or in other forms stipulated in the charter of the company and in law. Any ordinary share shall carry one vote;
  - (b) To receive dividends at the rate decided by the General Meeting of Shareholders;
  - (c) To be given priority in subscribing for new shares in proportion to the ratio of ownership of ordinary shares each shareholder holds in the company;
  - (d) To freely assign their shares to other persons, except in the cases stipulated in articles 120.3 and 127.1 of this Law and other relevant laws;
  - (dd) To sight, consult and make an extract of information about names and contact addresses on the list of shareholders with voting rights; to request amendment of incorrect information about them;
  - (e) To sight, consult and make an extract or copy of the charter of the company, minutes of meetings of the General Meeting of Shareholders and resolutions of the General Meeting of Shareholders;
  - (g) Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the ratio of ownership of shares in the company.
2. A shareholder or a group of shareholders holding five (5) or more per cent of the total ordinary shares or holding a smaller percentage as stipulated in the charter of the company, has the following rights:
  - (a) To sight, consult and make an extract of the book of minutes and resolutions or decisions of the Board of Management, mid-year and annual financial statements, reports of the Inspection Committee, and contracts and transactions which must be passed by the Board of Management and other data except for data relating to commercial secrets or business secrets of the company;
  - (b) To request the convening of a General Meeting of Shareholders in the cases stipulated in clause 3 of this article;
  - (c) To request the Inspection Committee to inspect each issue relating to the management and administration of the operation of the company where it is considered necessary. The request must be made in writing and must contain the following contents: full name, contact address, nationality, serial number of the personal legal document in respect of a shareholder being an individual; name, enterprise code number of the organizational legal document, and head office address in respect of a shareholder being an organization; number of shares and date of

registration of shares of each shareholder, total number of shares of the group of shareholders and the percentage of ownership in the total number of shares of the company; issues to be inspected and purpose of the inspection;

- (d) Other rights in accordance with this Law and the charter of the company.
3. A shareholder or a group of shareholders stipulated in clause 2 of this article has the right to request the convening of a General Meeting of Shareholders in the following cases:
- (a) The Board of Management commits a serious breach of the rights of shareholders or the obligations of managers or makes a decision which falls outside its delegated authority;
  - (b) Other cases as stipulated in the charter of the company.
4. The request prescribed in clause 3 above must be made in writing and must contain the following contents: full name, contact address, nationality, serial number of the personal legal document in respect of a shareholder being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address in respect of a shareholder being an organization; number of shares and date of registration of shares of each shareholder, total number of shares of the group of shareholders and the percentage of ownership in the total number of shares of the company; and grounds and reasons for the request to convene a meeting of the General Meeting of Shareholders. The request must be accompanied by documents and evidence of the breaches of the Board of Management and the seriousness of such breaches, or on the decision which falls outside authority.
5. A shareholder or group of shareholders **owning ten per cent (10%) or more of the total ordinary shares or a smaller percentage as prescribed in the company charter has the right to nominate candidates for the Board of Management or the Inspection Committee.** Unless otherwise stipulated in the charter of the company, the nomination of candidates to the Board of Management and the Inspection Committee shall be carried out as follows:
- (a) Ordinary shareholders forming a group to nominate candidates to the Board of Management and the Inspection Committee must notify attending shareholders of the formation of the group prior to the opening of the General Meeting of Shareholders;
  - (b) Based on the number of members of the Board of Management and the Inspection Committee, the shareholder or group of shareholders stipulated in this clause has the right to nominate one or more persons as decided by the General Meeting of Shareholders as candidates to the Board of Management and the Inspection Committee. Where the number of candidates nominated by the shareholder or the group of shareholders is lower than the number of candidates they are entitled to nominate as decided by the General Meeting of Shareholders, the remaining candidates shall be nominated by the Board of Management, the Inspection Committee and other shareholders.
6. Other rights in accordance with this Law and the charter of the company.

#### **Article 116** *Voting preference shares and rights of voting preference shareholders*

1. A voting preference share is an ordinary share which carries more votes than other ordinary shares. The number of votes per voting preference share shall be stipulated in the charter of the company. Only the organization **authorized by the Government and founding shareholders** have the right to hold voting preference shares. **Voting preference of founding shareholders shall be effective within three years as from the date on which the company is issued with an ERC.** Voting rights and the



duration of voting preference with respect to voting preference shares held by the organization authorized by the Government shall be stipulated in the charter of the company. Upon expiry of the duration of voting preference, voting preference shares shall be converted into ordinary shares.

2. Voting preference shareholders have the following rights:
  - (a) To vote on matters which fall within the authority of the General Meeting of Shareholders with the number of votes in accordance with clause 1 of this article;
  - (b) Other rights as ordinary shareholders, except as stipulated in clause 3 of this article.
3. Voting preference shareholders may not assign such shares to other persons, except for assignment pursuant to a legally effective judgment or decision of a court or inheritance.
4. The Government shall provide detailed regulations on this article.

**Article 117** *Dividend preference shares and rights of dividend preference shareholders*

1. A dividend preference share is a share for which a dividend is paid at a rate higher than that paid for an ordinary share or at an annual fixed rate. Annually paid dividends shall include fixed dividends and bonus dividends. Fixed dividends shall not depend on the outcome of the business of the company. The specific rate of fixed dividends and method for determination of bonus dividends shall be specified in dividend preference share certificates.
2. Dividend preference shareholders have the following rights:
  - (a) To receive dividends as stipulated in clause 1 above;
  - (b) Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the ratio of ownership of shares in the company after the company has paid in full its debts and redeemable preference shares;
  - (c) Other rights as ordinary shareholders, except as stipulated in clause 3 above.
3. Dividend preference shareholders do not have the right to vote, the right to attend meetings of the General Meeting of Shareholders or the right to nominate candidates to the Board of Management and the Inspection Committee, except for the case prescribed in article 148.6 of this Law.

**Article 118** *Redeemable preference shares and rights of redeemable preference shareholders*

1. A redeemable preference share is a share the contributed capital of which is redeemed by the company at the demand of its owner or in accordance with the conditions stipulated in the redeemable preference share certificate and the charter of the company.
2. Rights of redeemable preference shareholders are the same as those of ordinary shareholders, except as stipulated in clause 3 above.
3. Redeemable preference shareholders do not have the right to vote, the right to attend meetings of the General Meeting of Shareholders or the right to nominate candidates to the Board of Management and the Inspection Committee, except for the case prescribed in articles 114.5 and 148.6 of this Law.

#### **Article 119** *Obligations of shareholders*

1. To pay in full and on time for the shares undertaken to be subscribed.
2. Not to withdraw the ordinary share capital contributed from the company in any form, except where shares are redeemed by the company or other persons. Where a shareholder withdraws a part or all of the share capital contributed not in accordance with this clause, such shareholder and any person with related interests in the company must be jointly liable for debts and other property obligations of the company to the extent of the value of shares withdrawn and any loss occurring.
3. To comply with the charter and the rules on internal management of the company.
4. To observe resolutions and decisions of the General Meeting of Shareholders and the Board of Management.
5. To preserve confidentiality of information provided by the company pursuant to the company charter and law; and only to use information provided in order to perform and protect their lawful rights and interests, and not to distribute, copy or send such information to other organizations or individuals.
6. Other obligations in accordance with this Law and the charter of the company.

#### **Article 120** *Ordinary shares of founding shareholders*

1. A newly established shareholding company must have at least **three founding shareholders**. A shareholding company which is converted from a State owned enterprise or from a limited liability company or which is divided, de-merged, consolidated or merged from another shareholding company need not necessarily have founding shareholders; in such case, the charter of the company which is included in the application file for enterprise registration must bear the signature of the legal representative or signatures of ordinary shareholders of such company.
2. Founding shareholders must together register to subscribe at least twenty (20) per cent of the total number of ordinary shares which may be offered for sale when registering establishment of the enterprise.
3. Within **a period of three years** from the date of issuance of the ERC to the company, ordinary shares of a founding shareholder may be freely assigned to other founding shareholders, and shall only be assigned to persons not being founding shareholders upon approval of the General Meeting of Shareholders. In this case, **founding shareholders intending to assign ordinary shares may not vote on the assignment of such shares**.
4. All restrictions prescribed in clause 3 above do not apply to the following ordinary shares:
  - (a) Additional shares which founding shareholders have after registration of establishment of the enterprise;
  - (b) **Shares which have been assigned to others not being founding shareholders.**

#### **Article 121** *Share certificates*

1. Share certificates are certificates issued by a shareholding company, book entries or electronic data certifying the ownership of one or more shares of such company. A share certificate must contain the following main details:

- (a) Name, enterprise code number and head office address of the company;
  - (b) Number of shares and class of shares;
  - (c) Par value of each share and total par value of shares included in the share certificate;
  - (d) Full name, contact address, nationality, serial number of the personal legal document in respect of a shareholder being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address in respect of a shareholder being an organization;
  - (dd) Signature of the legal representative of the company;
  - (e) Registration number in the register of shareholders of the company and date of issue of the share certificate;
  - (g) Preference share certificates shall also include other details as stipulated in articles 116, 117 and 118 of this Law.
2. Where there are errors in the contents and form of a share certificate issued by a company, the rights and interests of its owner shall not be affected. The legal representative of the company is liable for any loss caused by such errors.
  3. Where a share certificate is lost, damaged or otherwise ruined, the shareholder shall be re-issued by the company with a share certificate at the request of such shareholder. Such request of the shareholder must contain the following particulars:
    - (a) Information about the share certificate which was lost, damaged or otherwise ruined;
    - (b) Commitment to take responsibility for any disputes arising from the re-issuance of a new share certificate.

#### **Article 122** *Register of shareholders*

1. A shareholding company must establish and maintain a register of shareholders from the date of issuance of the ERC. The register of shareholders may be in the form of a paper document or a set of electronic data which records information about ownership of shares by shareholders of the company.
2. A register of shareholders must contain the following main details:
  - (a) Name and address of head office of the company;
  - (b) Total number of shares which may be offered for sale, classes of shares which may be offered for sale, and number of shares of each class which may be offered for sale;
  - (c) Total number of shares of each class already sold and value of share capital already contributed;
  - (d) Full name, contact address, nationality, serial number of the personal legal document in respect of a shareholder being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address in respect of a shareholder being an organization;

(dd) Number of shares of each class of each shareholder and date of share registration.

3. The register of shareholders shall be retained at the head office of the company or at any other organization having the function of retaining the register of shareholders. Shareholders have the right to inspect, consult or make an extract or copy of the name and contact address of any shareholder of the company in the register of shareholders.
4. Where a shareholder changes his or her contact address, such shareholder must promptly notify the company of such change in order for the latter to update the register of shareholders. The company is not responsible for failure to contact the shareholder resulting from the fact that the company is not notified of such change.
5. The company must promptly update changes to shareholders in the register of shareholders at the request of related shareholders in accordance with the charter of the company.

#### **Article 123** *Offer to sell shares*

1. *Offer to sell shares* means a company increasing the number of shares [and/or] classes of shares which may be offered for sale in order to increase the charter capital.
2. The offer to sell shares may be implemented by the following methods:
  - (a) Offer for sale of shares to existing shareholders;
  - (b) Private share placement;
  - (c) Public offer for sale of shares.
3. The public offer or offer to sell shares of public companies and other organizations shall be implemented in accordance with the law on securities.
4. The company shall register any change to its charter capital within ten (10) days from the date of completion of a tranche of sale of shares.

#### **Article 124** *Offer to sell shares to existing shareholders*

1. *Offer to sell shares to existing shareholders* means a company increases the number of shares [and/or] classes of shares which may be offered for sale and sells all such shares to all shareholders in proportion to their current ratio of ownership of shares in the company.
2. The offer to sell shares to existing shareholders by a shareholding company not being a public company is implemented as follows:
  - (a) The company must notify shareholders in writing by a method guaranteed to reach their contact addresses as stated in the register of shareholders no later than fifteen (15) days prior to expiry of the period for registration to subscribe shares;
  - (b) The notice must contain full name, contact address, nationality, serial number of the personal legal document in respect of a shareholder being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address in respect of a shareholder being an organization; the number of shares and current ratio of ownership of shares of the shareholder in the company; total number of shares intended to be offered for

sale and number of shares which the shareholder is entitled to subscribe for; offered selling price of shares; time-limit for registration to subscribe; and full name and signature of the legal representative of the company. The notice must be accompanied by a registration form for share subscription issued by the company. If the registration form for share subscription is not returned to the company within the notified time-limit, such shareholder shall be deemed to have rejected<sup>11</sup> the priority right for subscription;

- (c) Shareholders have the right to transfer their priority right for subscription for shares to other persons.
- 3. Where shareholders and transferees of priority rights for subscription do not register to subscribe for all of the shares intended to be offered for sale, the Board of Management has the right to sell the remaining shares which may be offered for sale to shareholders of the company and to other persons with conditions not more favourable than the conditions offered to shareholders, except where otherwise approved by the General Meeting of Shareholders or otherwise stipulated in the law on securities.
- 4. Shares are deemed to have been sold when such shares have been paid for in full and all details of purchasers as stipulated in article 122.2 of this Law have been recorded in the register of shareholders; from such point of time, the purchasers of shares become shareholders of the company.
- 5. After shares are paid for in full, the company shall issue and deliver share certificates to the purchasers. If share certificates are not delivered, the details of shareholders as stipulated in article 122.2 of this Law shall be recorded in the register of shareholders to certify the ownership of shares of such shareholders in the company.

#### **Article 125** *Private share placement*

- 1. Private share placement by a shareholding company not being a public company must satisfy the following conditions:
  - (a) The placement is not made via the mass media;
  - (b) The placement is made to less than one hundred (100) excluding institutional securities investors or is only made to institutional securities investors.
- 2. A shareholding company not being a public company shall make a private share placement in accordance with the following provisions:
  - (a) The company decides a plan for private share placement in accordance with this Law;
  - (b) Shareholders of the company exercise the priority right for subscription for shares in accordance with article 124.2 of this Law, except for the case of merger or consolidation of the company;
  - (c) Where shareholders and transferees of priority rights for subscription do not subscribe for all [shares], the remaining shares shall be sold to other persons in accordance with the plan on private share placement with conditions no more favourable than the conditions offered to the shareholders, unless otherwise approved by the General Meeting of Shareholders.

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<sup>11</sup> Allens footnote: The literal translation is "to have not accepted".

3. Foreign investors purchasing shares offered for sale in accordance with this article must carry out the procedures for purchase of shares in accordance with the *Law on Investment*.

#### **Article 126** *Sale of shares*

The Board of Management shall make a decision on the time and method of selling shares and selling price of shares. The selling price of shares must not be lower than the market price at the time of sale or the book value of shares at the most recent time, except for the following cases:

1. Shares are initially sold to persons not being founding shareholders;
2. Shares are sold to all shareholders in proportion to their current ratio of ownership of shares in the company;
3. Shares are sold to brokers or underwriters. In this case, the specific amount or ratio of discount must be approved by the General Meeting of Shareholders, unless otherwise stipulated in the charter of the company;
4. Other cases and the rate of discount in such cases as stipulated in the charter of the company or in a resolution of the General Meeting of Shareholders.

#### **Article 127** *Assignment of shares*

1. Shares may be freely assigned, except in the cases stipulated in article 120.3 of this Law and except where the charter of the company provides restrictions on assignment of shares. Where the charter of the company provides restrictions on assignment of shares, such restrictions shall only be effective if they are specified in the corresponding share certificates.
2. Assignment shall be conducted in the form of a contract or a transaction on the securities market. In the case of assignment by a contract, assignment documents must be signed by the assignor and the assignee or their authorized representatives. In the case of a transaction on the securities market, the sequence and procedures for assignment shall be as stipulated in the law on securities.
3. Where a shareholder being an individual dies, the heir of such shareholder under a will or at law shall become a shareholder of the company.
4. Where a shareholder being an individual dies intestate or where his or her heir disclaims the inheritance or the right to inherit is forfeited, then shares of such shareholder shall be dealt with in accordance with the civil law.
5. A shareholder has the right to make a gift of part or all of his or her shares in the company to another individual or organization or use his or her shares to pay debts. The individual or organization receiving such gift or receiving payment of debts by shares shall become a shareholder of the company.
6. Individuals and organizations receiving shares in the cases stipulated in this article shall only become shareholders of the company from the time when information about such individuals and organizations as stipulated in article 122.2 of this Law is fully recorded in the register of shareholders.
7. The company must register changes to shareholders in the register of shareholders at the request of related shareholders within twenty four (24) hours of receipt of the request in accordance with the charter of the company.

#### **Article 128** *Private placement of bonds*

1. A shareholding company not being a public company may make a private placement of bonds in accordance with this Law and other relevant laws. Private placement of bonds by public companies and other organizations, and public offers to sell bonds shall comply with the law on securities.
2. Private placement of bonds by a shareholding company not being a public company means an offer for sale which is made not via the mass media to less than one hundred (100) investors, excluding institutional securities investors, and must satisfy the conditions on entities purchasing privately placed bonds as follows:
  - (a) Strategic investors in the case of privately placed convertible bonds and privately placed bonds with warrants;
  - (b) Institutional securities investors in the case of privately placed convertible bonds, privately placed bonds with warrants and other types of privately placed bonds.
3. A shareholding company not being a public company which makes a private placement of bonds must satisfy the following conditions:
  - (a) The company has paid in full for the principal and interest on bonds already offered for sale which are due for payment or has paid in full all due debts for three consecutive years prior to the bond placement tranche (if any), except for bond placement to creditors being selected financial institutions;
  - (b) It has audited annual financial statements for the year immediately preceding the year of issuance;
  - (c) It satisfies the conditions on financial safety ratios and prudential ratios during operation as prescribed by law;
  - (d) Other conditions stipulated in relevant laws.

#### **Article 129** *Sequence and procedures for private placement of bonds and assignment of privately placed bonds*

1. A company shall decide a plan for private placement of bonds in accordance with this Law.
2. The company shall disclose information before a placement tranche to investors registering to purchase bonds and notify the Stock Exchange of the placement tranche at least one working day prior to the date on which the placement tranche of bonds is proposed to be organized.
3. The company shall disclose information about the results of the placement tranche to the investors who purchased bonds and notify the Stock Exchange of such results within ten (10) days from the date of completion of the placement tranche of bonds.
4. Privately placed bonds may be assigned among investors who satisfy the conditions on entities purchasing privately placed bonds as prescribed in article 128.2 of this Law, except for the case of compliance with a legally effective judgement or decision of a court or an effective award of an arbitrator, or except for the case of inheritance in accordance with law.
5. Pursuant to this Law and the *Law on Securities*, the Government shall provide detailed regulations on the types of bonds, on the application file, sequence and procedures for issuance and trading of



privately placed bonds, on disclosure of information, and on issue of bonds on the international market.

**Article 130** *Decisions on private placement of bonds*

1. A company shall make a decision on private placement of bonds in accordance with the following provisions:
  - (a) The General Meeting of Shareholders makes a decision on the type, total value of bonds and the time of placement in the case of convertible bonds and bonds with warrants. Article 148 of this Law applies to voting to approve a resolution on private placement of bonds by the company;
  - (b) Unless otherwise stipulated in the charter of the company and except for the case prescribed in sub-clause (a) above, the Board of Management has the right to make decisions on the class of bonds, total value of bonds and timing of placement, but must report to the General Meeting of Shareholders at its next meeting. The report must be accompanied by documents and files on placement of bonds;
2. The company shall register any change to its charter capital within ten (10) days from the date of completion of conversion of bonds into shares.

**Article 131** *Purchase of shares and bonds*

Shares and bonds of shareholding companies may be paid for in Vietnamese Dong, freely convertible foreign currency, gold, land use rights, intellectual property rights, technology, technical know-how, or other assets stipulated in the charter of the company, and shall be paid in full in one instalment.

**Article 132** *Redemption of shares upon demand by shareholders*

1. A shareholder casting a vote which does not agree with a resolution on re-organization of the company or against a change to the rights and obligations of shareholders stipulated in the charter of the company may demand the company redeem its shares. Such demand must be made in writing and specify the name and address of the shareholder, the number of shares of each class, the intended selling price, and the reason for demanding redemption by the company. Such demand must be sent to the company within ten (10) days from the date on which the General Meeting of Shareholders passed the resolution on the matter referred to in this clause.
2. The company must redeem shares upon demand by the shareholder as stipulated in clause 1 of this article at the market price or the price determined on the basis of the principles stipulated in the charter of the company, within a period of ninety (90) days from the date of receipt of the demand. Where there is disagreement about the price, the parties may request valuation by a price evaluation organization. The company shall recommend at least three price evaluation organizations for the shareholder to select from, and such selection shall be the final decision.

**Article 133** *Redemption of shares pursuant to decision of company*

A company may redeem no more than thirty (30) per cent of the total number of ordinary shares sold, and part or all of the dividend preference shares sold, in accordance with the following provisions:

1. The Board of Management has the right to decide on redemption of no more than ten (10) per cent of the total number of shares of each class already sold within a period of twelve (12) months. In other cases, redemption of shares shall be decided by the General Meeting of Shareholders;

2. The Board of Management shall decide on the price for redemption of shares. The price for redemption of ordinary shares shall not be higher than the market price at the time of redemption, subject to the exception in clause 3 of this article. In respect of shares of other classes, unless otherwise stipulated in the charter of the company or agreed between the company and the relevant shareholders, the price for redemption shall not be lower than the market price;
3. The company may redeem shares of each shareholder in proportion to their ratio of ownership of shares in the company in accordance with the following sequence and procedures:
  - (a) The decision to redeem shares of the company must be notified by a method guaranteed to reach all shareholders within thirty (30) days from the date on which such decision is passed. The notice must include the name and address of the head office of the company, total number of shares and class of shares to be redeemed, price for redemption or principle for determination of the price for redemption, procedures and time-limit for payment, and procedures and time-limit for shareholders to sell their shares to the company;
  - (b) Shareholders agreeing to have their shares redeemed must send a letter agreeing to sell their shares by a method guaranteed to reach the company within thirty (30) days from the date of notice. The letter agreeing to sell shares must include the full name, contact address, serial number of the personal legal document of a shareholder being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address of a shareholder being an organization; number of shares owned and number of shares agreed to be sold; payment methods; and signature of the shareholder or the legal representative of the shareholder. The company may only redeem shares within the above time-limit.

**Article 134** *Conditions for payment for and dealing with redeemed shares*

1. A company may only pay shareholders for redeemed shares in accordance with articles 132 and 133 of this Law if, after such redeemed shares are paid for, the company will still be able to satisfy in full its debts and other property obligations.
2. All shares redeemed in accordance with articles 132 and 133 of this Law shall be considered unsold shares in accordance with article 112.4 of this Law. The company must register reduction of its charter capital corresponding to the total par value of shares redeemed by the company within ten (10) days from the date of completion of payment for redemption of shares, unless otherwise stipulated in the law on securities.
3. Share certificates certifying the ownership of redeemed shares must be destroyed immediately after the corresponding shares are paid for in full. The chairman of the Board of Management and the director or general director must be jointly responsible for any loss caused by failure to destroy or by delayed destruction of share certificates.
4. After the redeemed shares are paid for in full, if the total value of assets recorded in the accounting books of the company is reduced by more than ten (10) per cent, the company must notify all creditors thereof within fifteen (15) days from the date on which the redeemed shares are paid for in full.

**Article 135** *Payment of dividends*

1. Dividends paid on preference shares shall be in accordance with the respective conditions applicable to each class of preference shares.

2. Dividends paid on ordinary shares shall be determined on the basis of the realized net profit and payment for dividends shall be sourced from profit retained by the company. A shareholding company may pay dividends for ordinary shares only when the company satisfies all the following conditions:
  - (a) The company has fulfilled its tax obligations and other financial obligations in accordance with law;
  - (b) The company has made appropriation for all funds of the company and has made up for previous losses in accordance with law and the charter of the company;
  - (c) After payment of all dividends, the company will still be able to satisfy its debts and other property obligations which become due.
3. Dividends may be paid in cash, by shares of the company or by other assets as stipulated in the charter of the company. Where payment is made in cash, it must be made in Vietnamese Dong and by the payment methods stipulated by law.
4. Dividends must be paid in full within six months from the date of closing of the annual General Meeting of Shareholders. The Board of Management shall prepare a list of shareholders to be paid dividends and shall determine the rate of dividend paid for each share and the time-limit and method of payment no later than thirty (30) days prior to each payment of dividends. The notice on payment of dividends shall be sent by a method guaranteed to reach the shareholders at the addresses registered in the register of shareholders no later than fifteen (15) days prior to the actual payment of dividends. The notice must contain the following particulars:
  - (a) Name and head office address of the company;
  - (b) Full name, contact address, nationality, serial number of the personal legal document in respect of a shareholder being an individual;
  - (c) Name, enterprise code number or serial number of the organizational legal document, and head office address in respect of a shareholder being an organization;
  - (d) Number of shares of each class of such shareholder, dividend rate for each share and total dividends to be paid to such shareholder;
  - (dd) Time and method for payment of dividends;
  - (e) Full names and signatures of the chairman of the Board of Management and the legal representative of the company.
5. Where shares are assigned between the [time of] completion of the list of shareholders and the time of payment of dividends, the assignor shall receive the dividends from the company.
6. In the case of payment of dividends by shares, the company is not required to carry out the procedures for offer to sell shares in accordance with articles 123, 124 and 125 of this Law. The company must register an increase of its charter capital corresponding to the total par value of shares used to pay for dividends, within ten (10) days from the date of completion of payment of dividends.

**Article 136** *Recovery of payments for redeemed shares or dividends*

Where a payment for redeemed shares is made other than pursuant to article 134.1 of this Law or where dividends are paid other than pursuant to article 135 of this Law, all shareholders shall surrender to the company the monies or other assets received; where a shareholder is not able to surrender same to the company, all members of the Board of Management shall be jointly liable for the debts and other property obligations of the company to the extent of the monies or assets which have been paid to shareholders but not surrendered.

**Article 137** *Organizational and managerial structure of shareholding companies*

1. Unless otherwise stipulated in the law on securities, shareholding companies may select either of the following models of organization of management and operation:
  - (a) A General Meeting of Shareholders, a Board of Management, an Inspection Committee and a director or general director. If a shareholding company has less than eleven (11) shareholders and the shareholders being organizations together own less than fifty (50) per cent of the total shares of the company, it is not required to have an Inspection Committee;
  - (b) A General Meeting of Shareholders, a Board of Management and a director or general director. In this case, at least twenty (20) per cent of the number of members of the Board of Management must be independent members and there must be an auditing committee under the Board of Management. The organizational structure, functions and duties of the auditing committee shall be regulated in the company charter or in the operational rules of such auditing committee issued by the Board of Management.
2. Where the company has only one legal representative, the chairman of the Board of Management or the director or general director shall be the legal representative of the company. Where it is not stipulated in the charter, the chairman of the Board of Management shall be the legal representative of the company. Where the company has more than one legal representative, the chairman of the Board of Management and the director or general director shall automatically be the legal representatives of the company.

**Article 138** *Rights and obligations of General Meeting of Shareholders*

1. The General Meeting of Shareholders shall include all shareholders entitled to vote and shall be the highest decision-making authority of a shareholding company.
2. The General Meeting of Shareholders has the following rights and obligations:
  - (a) To pass the developmental direction of the company;
  - (b) To make decisions on the classes of shares and total number of shares of each class which may be offered for sale; to make decisions on the rate of annual dividend for each class of shares;
  - (c) To elect, remove or discharge members of the Board of Management and inspectors;
  - (d) To make investment decisions or decisions on sale of assets valued at thirty five (35) or more per cent of the total value of assets recorded in the most recent financial statements of the company, except where the charter of the company stipulates some other percentage or value;
  - (dd) To make decisions on amendments of and additions to the charter of the company;

- (e) To approve annual financial statements;
- (g) To make decisions on redemption of more than ten (10) per cent of the total number of shares of each class already sold;
- (h) To consider and deal with breaches by members of the Board of Management and inspectors which cause loss to the company and its shareholders;
- (i) To make decisions on re-organization and dissolution of the company;
- (k) To decide the budget or the total remuneration, bonuses and other benefits of the Board of Management and of the Inspection Committee;
- (l) To approve the internal management rules, and the operational rules of the Board of Management and of the Inspection Committee;
- (m) To approve the list of independent auditing companies, and to decide on an independent auditor to conduct inspection of activities of the company, and to remove the independent auditor when considered necessary;
- (n) Other rights and obligations in accordance with this Law and the charter of the company.

**Article 139** *Meeting of General Meeting of Shareholders*

1. The General Meeting of Shareholders shall convene annual meetings once per year. In addition to such annual meetings, the General Meeting of Shareholders may convene extraordinary meetings. The location of meetings of the General Meeting of Shareholders shall be determined as the location where the chairman [of the meeting] attends the meeting and must be in the territory of Vietnam.
2. The General Meeting of Shareholders must hold its annual meeting within four months from the end of the financial year. Unless otherwise stipulated in the charter of the company, the Board of Management may extend the time-limit for holding an annual meeting of the General Meeting of Shareholders where necessary, but not beyond six months from the end of the financial year.
3. An annual meeting of the General Meeting of Shareholders shall debate and pass the following issues:
  - (a) Annual business plan of the company;
  - (b) Annual financial statements;
  - (c) Report of the Board of Management regarding management by and operational results of the Board of Management and each member of the Board of Management;
  - (d) Report of the Inspection Committee regarding business results of the company [and/or] operational results of the Board of Management and the director or general director;
  - (dd) Report on self-assessment of operational results of the Inspection Committee and of inspectors;
  - (e) Amount of dividend payable on each class of share;

- (g) Other matters within its authority.

**Article 140** *Convening meeting of General Meeting of Shareholders*

1. The Board of Management shall convene annual and extraordinary meetings of the General Meeting of Shareholders. The Board of Management shall convene an extraordinary meeting of the General Meeting of Shareholders in the following cases:
  - (a) The Board of Management considers that it is necessary to do so in the interests of the company;
  - (b) The number of the remaining members of the Board of Management or of the Inspection Committee is less than the minimum number of members required by law;
  - (c) Upon request by a shareholder or a group of shareholders as stipulated in article 115.2 of this Law;
  - (d) Upon demand by the Inspection Committee;
  - (dd) In other cases as stipulated by law and in the charter of the company.
2. Unless otherwise stipulated in the charter of the company, the Board of Management must convene a meeting of the General Meeting of Shareholders within thirty (30) days from the date on which the event stipulated in clause 1(b) above occurs or from the date of receipt of a request for convening a meeting as stipulated in clauses 1(c) and 1(d) above. If the Board of Management fails to convene a meeting of the General Meeting of Shareholders as stipulated, the chairman of the Board of Management and members of the Board of Management must compensate for any loss to the company.
3. Where the Board of Management fails to convene a meeting of the General Meeting of Shareholders as stipulated in clause 2 above, within thirty (30) days thereafter, the Inspection Committee shall, in place of the Board of Management, convene a meeting of the General Meeting of Shareholders in accordance with this Law. If the Inspection Committee fails to convene a meeting as stipulated, the Inspection Committee must compensate for any loss to the company.
4. Where the Inspection Committee fails to convene a meeting as stipulated in clause 3 of this article, the shareholder or group of shareholders stipulated in article 115.2 of this Law has the right to represent the company to convene a meeting of the General Meeting of Shareholders in accordance with this Law.
5. The convenor of a meeting of the General Meeting of Shareholders must carry out the following work:
  - (a) To prepare a list of shareholders entitled to attend the meeting;
  - (b) To provide information and deal with complaints relating to the list of shareholders;
  - (c) To prepare the program and agenda of the meeting;
  - (d) To prepare documents for the meeting;

- (dd) To draft a resolution of the General Meeting of Shareholders in accordance with the proposed agenda of the meeting; a list and details of candidates in the case of election of members of the Board of Management or inspectors;
  - (e) To determine the time and venue of the meeting;
  - (g) To send a notice of invitation to the meeting to each shareholder entitled to attend the meeting in accordance with this Law;
  - (h) Other work serving the meeting.
6. The expenses for convening and conducting a meeting of the General Meeting of Shareholders as stipulated in clauses 2, 3 and 4 of this article shall be reimbursed by the company.

**Article 141** *List of shareholders entitled to attend meeting of General Meeting of Shareholders*

1. The list of shareholders entitled to attend a meeting of the General Meeting of Shareholders is prepared based on the register of shareholders of the company. The list of shareholders entitled to attend a meeting of the General Meeting of Shareholders shall be prepared no earlier than ten (10) days prior to the date on which the notice of invitation to the meeting of the General Meeting of Shareholders is sent, if the charter of the company does not stipulate a shorter time-limit.
2. The list of shareholders entitled to attend a meeting of the General Meeting of Shareholders shall include the full name, contact address, nationality and serial number of the personal legal document in respect of shareholders being individuals; name, enterprise code number or serial number of the organizational legal document, and head office address in respect of shareholders being organizations; and number of shares of each class and number and date of registration of each shareholder.
3. Shareholders have the right to inspect, consult, make an extract of and copy names and contact addresses of shareholders on the list of shareholders entitled to attend a meeting of the General Meeting of Shareholders; and to request correction of wrong information or addition of necessary information about themselves in the list of shareholders entitled to attend a meeting of the General Meeting of Shareholders. The manager of the company must promptly provide information in the register of shareholders, and must amend or supplement any wrong information at the request of shareholders; and must be responsible to compensate for any loss from failure to provide or failure to provide promptly and accurately information in the register of shareholders as requested. The sequence and procedures for requesting information in the register of shareholders shall be in accordance with the charter of the company.

**Article 142** *Program and agenda of meeting of General Meeting of Shareholders*

1. The convenor of a meeting of the General Meeting of Shareholders must prepare the program and agenda of the meeting.
2. A shareholder or group of shareholders stipulated in article 115.2 of this Law may recommend items to be included in the agenda of a meeting of the General Meeting of Shareholders. The recommendation must be made in writing and be sent to the company no later than three working days prior to the date of opening, unless the charter of the company stipulates some other time-limit. The recommendation must specify the name of shareholder(s), the number of shares of each class of shareholder(s) and the items recommended to be included in the agenda.



3. Where the convenor of a meeting of the General Meeting of Shareholders refuses the recommendation stipulated in clause 2 of this article, the convenor must provide a written reply specifying the reasons no later than two working days prior to the date of opening of the meeting. The convenor is only permitted to refuse such recommendation in one of the following cases:
  - (a) The recommendation is not sent in accordance with clause 2 of this article;
  - (b) The item recommended does not fall within the decision-making authority of the General Meeting of Shareholders;
  - (c) Other cases as stipulated in the charter of the company.
4. The convenor of a meeting of the General Meeting of Shareholders must accept and include the recommendations stipulated in clause 2 above into the draft program and agenda for the meeting, except in the cases stipulated in clause 3 above; the recommendation shall be added officially to the program and agenda for the meeting if the General Meeting of Shareholders so agrees.

**Article 143** *Invitations to meeting of General Meeting of Shareholders*

1. The convenor of a meeting of the General Meeting of Shareholders shall send a notice of invitation to all shareholders on the list of shareholders entitled to attend the meeting no later than twenty one (21) days prior to the date of opening, unless the charter of the company does not stipulate a longer time-limit. The notice of invitation must contain the name, head office address, enterprise code number; name and contact address of the shareholder, time and location of the meeting, and other requirements applicable to attendees.
2. The notice of invitation to the meeting must be sent by a method guaranteed to reach the contact addresses of shareholders and must be published on the website of the company; if the company considers it necessary, [the notice] shall be published in a central or local daily newspaper in accordance with the charter of the company.
3. The notice of invitation must be accompanied by the following documents:
  - (a) The program of the meeting, documents to be used in the meeting and draft resolution for each matter in the program;
  - (b) Voting slips.
4. Where the company has its own website, the sending of documents of the meeting enclosed with the notice of invitation stipulated in clause 3 above may be replaced by the publication of same on the website of the company. In this case, the notice of invitation must specify where and how to download documents.

**Article 144** *Exercise of the right to attend meeting of General Meeting of Shareholders*

1. A shareholder [or] an authorized representative of a shareholder being an organization may attend a meeting in person, or authorize one or more other organizations or individuals in writing to attend a meeting or may attend a meeting in any of the forms stipulated in clause 3 below.
2. The authorization for an organization or individual to attend a meeting of the General Meeting of Shareholders must be made in writing. Written authorization must be made in accordance with the civil law and must specify the name of the organization or individual authorized and the number of shares for which there is authorization. When registering to attend a meeting of the General Meeting

of Shareholders, the organization or individual authorized to attend the meeting must present the written authorization prior to entering the meeting room.

3. A shareholder shall be deemed to attend and vote at a meeting of the General Meeting of Shareholders in the following cases:
  - (a) Such shareholder attends and votes in person at the meeting;
  - (b) Such shareholder authorizes another organization or individual to attend and vote at the meeting;
  - (c) Such shareholder attends and votes [at a meeting] via an online conference, or by casting an electronic vote or by other electronic forms;
  - (d) Such shareholder sends his or her voting slip to the meeting by mail, by fax or email;
  - (dd) Such shareholder sends his or her voting slip by other means stipulated in the charter of the company.

**Article 145** *Conditions for conducting meeting of General Meeting of Shareholders*

1. A meeting of the General Meeting of Shareholders shall be conducted where the number of attending shareholders represents more than fifty (50) per cent of the total number of voting slips. The specific percentage shall be stipulated in the charter of the company.
2. Where a meeting is not able to be conducted for the first time because the condition stipulated in clause 1 of this article is not satisfied, the notice of invitation to the second meeting must be sent within thirty (30) days from the date of the intended opening of the first meeting, unless otherwise stipulated in the charter of the company. The second meeting of the General Meeting of Shareholders shall be conducted where the number of attending shareholders represents thirty three (33) or more per cent of the total number of voting slips. The specific percentage shall be stipulated in the charter of the company.
3. Where the second meeting is not able to be conducted because the condition stipulated in clause 2 of this article is not satisfied, the notice of invitation to the third meeting must be sent within twenty (20) days from the date of the intended opening of the second meeting, unless otherwise stipulated in the charter of the company. The third meeting of the General Meeting of Shareholders shall be conducted irrespective of the total number of voting slips of shareholders attending the meeting.
4. Only the General Meeting of Shareholders may make decisions on change of the agenda accompanying the notice of invitation to the meeting as stipulated in article 142 of this Law.

**Article 146** *Procedures for conducting and voting at a meeting of General Meeting of Shareholders*

Unless otherwise stipulated in the charter of the company, the procedures for conducting and voting at a meeting of the General Meeting of Shareholders are as follows:

1. Prior to the time of opening of a meeting, procedures shall be carried out for registration of shareholders attending the meeting of the General Meeting of Shareholders;
2. The election of the chairman, secretary and vote-counting committee [of a meeting] shall be stipulated as follows:

- (a) The chairman of the Board of Management shall act as chairman or authorize a member of the Board of Management to act as chairman of meetings of the General Meeting of Shareholders which are convened by the Board of Management; if the chairman is absent or is not temporarily able to work, the remaining members of the Board of Management shall elect one of them to act as the chairman of the meeting on the principle of majority; if they cannot elect a person to act as chairman, the head of the Inspection Committee shall arrange for the General Meeting of Shareholders to elect the chairman of the meeting, and the person with the highest number of votes shall act as the chairman of the meeting;
  - (b) Except for the case stipulated in sub-clause (a) above, the person who signed the document convening the meeting of the General Meeting of Shareholders shall arrange for the General Meeting of Shareholders to elect a chairman of the meeting, and the person with the highest number of votes shall act as the chairman of the meeting;
  - (c) The chairman shall elect one or more persons to act as secretary of the meeting;
  - (d) The General Meeting of Shareholders shall elect one or more persons to the vote-counting committee on the proposal of the chairman of the meeting;
3. The program and agenda of the meeting must be passed by the General Meeting of Shareholders in the opening session. The program must specify the time [duration] applicable to each issue in the agenda for the meeting;
  4. The chairman has the right to take necessary and reasonable measures to direct the conduct of the meeting in an orderly manner, correctly in accordance with the program as passed, and so that it reflects the wishes of the majority of attendees;
  5. The General Meeting of Shareholders shall discuss and vote on each issue in the agenda for the meeting. Voting shall be conducted by votes which agree, which do not agree, and abstentions. The chairman shall announce the results of the voting counts immediately prior to the closing of the meeting, unless otherwise stipulated in the charter of the company;
  6. Any shareholder or person authorized to attend a meeting who arrives after the opening of the meeting shall still be registered and has the right to participate in voting immediately after registration; in such case, the effectiveness of any item which was previously voted on shall not be affected;
  7. The convenor or the chairman of a meeting of the General Meeting of Shareholders has the following rights:
    - (a) To require all persons attending the meeting to be [security] checked or subject to other lawful and reasonable security measures;
    - (b) To request a competent agency to maintain order during the meeting; to expel from a meeting of the General Meeting of Shareholders any person who fails to comply with the right of the chairman to control the meeting, who intentionally disrupts order or prevents normal progress of the meeting or who fails to comply with a request to undergo a security check;
  8. The chairman has the right to adjourn a meeting of the General Meeting of Shareholders for which sufficient attendees have registered for a period of no more than three working days from the proposed date of opening of the meeting and may only adjourn a meeting or change the location of the meeting in the following cases:

- (a) The location for the meeting has insufficient suitable seating for all of the attendees;
  - (b) The communication means at the location of the meeting do not ensure the attending shareholders participate, discuss and vote [at the meeting];
  - (c) There is an attendee who obstructs the meeting or disrupts order, and there is a danger that the meeting might not be conducted fairly and lawfully.
9. If the chairman adjourns or suspends a meeting of the General Meeting of Shareholders contrary to the provisions in clause 8 of this article, the General Meeting of Shareholders shall elect another person from the attendees to replace the chairman in conducting the meeting until its completion; and all resolutions passed at such meeting shall be effective.

**Article 147** *Form of passing of resolutions of General Meeting of Shareholders*

- 1. The General Meeting of Shareholders shall pass resolutions which fall within its power by way of voting in a meeting or collecting written opinions.
- 2. Unless otherwise stipulated in the charter of the company, a resolution of the General Meeting of Shareholders on the following matters must be passed by way of voting in a meeting of the General Meeting of Shareholders:
  - (a) Amendment of or addition to contents of the charter of the company;
  - (b) Developmental direction of the company;
  - (c) Classes of shares and total number of shares of each class;
  - (d) Election, removal or discharge of members of the Board of Management and Inspection Committee;
  - (dd) Decision on any investment or sale of assets valued at thirty five (35) or more per cent of the total value of assets recorded in the most recent financial statements of the company, except where the charter of the company stipulates some other percentage or value;
  - (e) Approval of the annual financial statements;
  - (g) Re-organization or dissolution of the company.

**Article 148** *Conditions for passing resolutions of General Meeting of Shareholders*

- 1. A resolution on the following matters shall be passed if it is agreed by a number of shareholders representing sixty five (65) or more per cent of the total number of voting slips of all attending shareholders, except in the case prescribed in clauses 3, 4 and 6 below; the specific percentage shall be stipulated in the charter of the company:
  - (a) Classes of shares and the total number of shares of each class;
  - (b) Change of lines of business and business sectors;
  - (c) Change of the organizational and managerial structure of the company;

- (d) Investment project or sale of assets valued at thirty five (35) or more per cent of the total value of assets recorded in the most recent financial statements of the company, except where the charter of the company stipulates some other percentage or value;
  - (dd) Re-organization or dissolution of the company;
  - (e) Other matters as stipulated in the charter of the company.
2. Resolutions shall be passed when they are agreed by a number of shareholders owning more than fifty (50) per cent of the total number of voting slips of all attending shareholders, except in the cases stipulated in clauses 1, 3, 4 and 6 of this article; the specific percentage shall be stipulated in the charter of the company.
  3. Unless otherwise stipulated in the charter of the company, voting to elect members of the Board of Management and of the Inspection Committee must be implemented by the method of cumulative voting, whereby each shareholder has as its total number of votes the total number of shares it owns multiplied by the number of members to be elected to the Board of Management or the Inspection Committee, and each shareholder has the right to accumulate all or part of its total votes for one or more candidates. Persons to be elected as members of the Board of Directors or inspectors are determined on the basis of a descending vote count, starting with the candidate with the highest number of votes until the number of members required by the company charter have been elected. If there are two or more candidates who obtain the same number of votes for being the last member of the Board of Management or the Inspection Committee, such member shall be elected amongst the number of candidates having an equal number of votes or selected in accordance with the criteria stated in the regulations on election or the charter of the company.
  4. Where a resolution is passed by way of collection of written opinions, a resolution of the General Meeting of Shareholders [is deemed] passed when it is agreed by a number of shareholders owning more than fifty (50) per cent of the total votes of all shareholders having the voting right. The specific percentage shall be stipulated in the charter of the company.
  5. Resolutions of the General Meeting of Shareholders must be notified to shareholders entitled to attend a meeting of the General Meeting of Shareholders within fifteen (15) days from the date of approval thereof. If the company has its own website, the resolutions may be published on the website of the company instead.
  6. A resolution of the General Meeting of Shareholders on any item which results in an adverse change of rights and obligations of a preference shareholder [is only deemed] passed if it is agreed by the number of attending preference shareholders of the same type owning seventy five (75) or more per cent of the total number of preference shares of such type or if it is agreed by the preference shareholders of the same type owning seventy five (75) or more per cent of the total number of preference shares of such type if such resolution is passed by way of collection of written opinions.

**Article 149** *Authority and procedures for collection of written opinions in order to pass resolutions of General Meeting of Shareholders*

Unless otherwise stipulated in the charter of the company, the authority and procedures for collection of written opinions of shareholders in order to pass a resolution of the General Meeting of Shareholders is implemented in accordance with the following provisions:

1. The Board of Management has the right to collect written opinions of shareholders in order to pass a resolution of the General Meeting of Shareholders if it is considered necessary in the interests of the company; except for the case prescribed in article 147.2 of this Law.

2. The Board of Management shall prepare written opinion forms, a draft of the resolution of the General Meeting of Shareholders, and other documents explaining the draft resolution, and shall send same to all shareholders with voting rights no later than ten (10) days prior to the time-limit within which they are required to return their written opinion forms, if the charter of the company does not stipulate a longer time-limit. The preparation of a list of shareholders sending written opinion forms shall be implemented in accordance with articles 141.1 and 141.2 of this Law. The request for and method of sending written opinion forms and enclosed documents shall be implemented in accordance with article 143 of this Law;
3. The written opinion form must contain the following basic details:
  - (a) Name, head office address, and enterprise code number;
  - (b) Purpose of collecting written opinions;
  - (c) Full name, contact address, nationality, and serial number of the personal legal document in respect of a shareholder being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address of a shareholder being an organization or full name, contact address, nationality, serial number of the personal legal document of the representative of a shareholder being an organisation; number of shares of each class and number of votes of the shareholder;
  - (d) Issue on which it is necessary to obtain opinions for passing;
  - (dd) Voting options, comprising agreement, non-agreement, or abstention;
  - (e) Time-limit within which the completed written opinion form must be returned to the company;
  - (g) Full name and signature of the chairman of the Board of Management.
4. A shareholder may send a completed written opinion form to the company by mail, fax or email in accordance with the following provisions:
  - (a) If sent by mail, the completed written opinion form must bear the signature of the shareholder being an individual, and of the authorized representative or of the legal representative of the shareholder being an organization. The written opinion form which is returned to the company must be enclosed in a sealed envelope and must not be opened by any person prior to vote-counting;
  - (b) If sent by fax or email, the written opinion form which is sent to the company must be kept confidential until the time of counting of votes;
  - (c) Any written form which is returned to the company after the expiry of the time-limit stated in the written opinion form or any form which has been opened in the case of sending by mail and disclosed in the case of sending by fax or electronic mail shall be invalid. Written opinion forms which are not returned shall be deemed to be forms not participating in the vote;
5. The Board of Management shall organize the vote-counting and prepare the minutes of vote-counting in the presence and under supervision of the Inspection Committee or of shareholders not holding managerial positions in the company. The minutes of vote-counting shall contain the following basic details:

- (a) Name, head office address, and enterprise code number;
- (b) Purpose of collection of written opinions and issues on which it is necessary to obtain written opinions in order to pass a resolution;
- (c) Number of shareholders with total numbers of votes having participated in the vote, classifying the votes into valid and invalid and method of sending votes and including an appendix being a list of the shareholders having participated in the vote;
- (d) Total number of votes for, against and abstentions on each issue voted on;
- (dd) Matters which have been passed and corresponding percentage of votes for passing;
- (e) Full names and signatures of the chairman of the Board of Management and of the person who supervised the vote-counting, and of the person who counted votes.

The members of the Board of Management, the person who counted votes and the person who supervised the vote-counting are jointly liable for the truthfulness and accuracy of the minutes of vote-counting, and are jointly liable for any loss arising from a decision which is passed due to an untruthful or inaccurate counting of votes;

- 6. The minutes of vote-counting and the resolution must be sent to shareholders within a time-limit of fifteen (15) days from the date of completion of the vote-counting. If the company has its own website, the minutes of vote-counting and the resolution may be published on the website of the company instead;
- 7. Completed written opinion forms, the minutes of vote-counting, the resolution which was passed and any related documents sent with all of the written opinion forms shall be archived at the head office of the company;
- 8. A resolution which is passed by way of collection of written opinions of shareholders shall have the same validity as a resolution passed in a meeting of the General Meeting of Shareholders.

**Article 150** *Minutes of meeting of General Meeting of Shareholders*

- 1. Meetings of the General Meeting of Shareholders shall be minuted and may be sound recorded or recorded and stored in other electronic forms. Minutes must be prepared in Vietnamese and may also be in a foreign language, and must contain the following main details:
  - (a) Name, head office address, and enterprise code number;
  - (b) Time and location of the meeting of the General Meeting of Shareholders;
  - (c) Program and agenda of the meeting;
  - (d) Full names of the chairman and secretary;
  - (dd) Summary of developments of the meeting and of opinions stated in the General Meeting of Shareholders on each matter set out in the meeting agenda;
  - (e) Number of shareholders and total number of votes of attending shareholders, and an appendix listing registered shareholders and representatives of shareholders attending the meeting with the corresponding number of shares and number of votes;



- (g) Total number of votes for each issue voted on, specifying the method of voting, the number of valid or invalid votes, the number of votes for, against, and abstentions; and the corresponding percentage of the total number of votes of shareholders attending the meeting;
- (h) Matters which were passed and corresponding percentage of votes for passing;
- (i) Full names and signatures of the chairman and the secretary.

If the chairman or the secretary refuses to sign the minutes of the meeting, the minutes shall take effect if the minutes are signed by all other attending members of the Board of Management and contain all the contents stipulated in this clause. The minutes of the meeting must specify the refusal to sign the minutes of the meeting by the chairman or the secretary.

2. The minutes of a meeting of the General Meeting of Shareholders must be completed and approved prior to the closing of the meeting.
3. The chairman and secretary of the meeting or any other person signing the minutes of meeting must be jointly liable for the truthfulness and accuracy of the contents of the minutes.
4. Minutes prepared in Vietnamese and minutes prepared in a foreign language shall be of equal legal validity. In the case of any difference in the contents of the minutes between the Vietnamese text and the foreign language text, the contents in the Vietnamese text shall prevail.
5. The minutes of a meeting of the General Meeting of Shareholders must be sent to all shareholders within a time-limit of fifteen (15) days from the date of the closing of the meeting. The minutes of vote-counting may be published on the website of the company instead.
6. The minutes of a meeting of the General Meeting of Shareholders, the appendix listing the shareholders registered to attend the meeting, the resolutions passed and any related documents sent together with the notice of invitation to attend the meeting must be archived at the head office of the company.

#### **Article 151** *Demand for cancellation of resolutions of General Meeting of Shareholders*

Within ninety (90) days from the date of receipt of a resolution or the minutes of a meeting of the General Meeting of Shareholders or the minutes of the results of vote-counting by way of written opinions from the General Meeting of Shareholders, a shareholder or a group of shareholders stipulated in article 115.2 of this Law have the right to request a court or an arbitrator to consider and cancel a resolution or part of the contents of a resolution of the General Meeting of Shareholders in the following cases:

1. The sequence and procedures for convening the meeting and issuing the decision of the General Meeting of Shareholders seriously breached this Law and the charter of the company, except in the case stipulated in article 152.2 of this Law;
2. The content of the resolution breaches the law or the charter of the company.

#### **Article 152** *Effectiveness of resolutions of General Meeting of Shareholders*

1. A resolution of the General Meeting of Shareholders is effective as from the date it is passed or as from the effective date stated in such resolution.

2. Any resolution of the General Meeting of Shareholders which is passed by one hundred (100) per cent of the total voting shares is lawful and effective even when the sequence and procedures for convening the meeting and passing such resolution breaches this Law and the charter of the company.
3. If a shareholder or a group of shareholders requests a court or an arbitrator to cancel a resolution of the General Meeting of Shareholders as stipulated in article 151 of this Law, such resolution remains effective until the decision repealing such resolution issued by the court or arbitrator takes effect, except where temporary emergency measures are applied pursuant to a decision of a competent agency.

#### **Article 153** *Board of Management*

1. The Board of Management is the body managing the company and has full authority to make decisions in the name of the company and to exercise the rights and perform the obligations of the company, except for those within the authority of the General Meeting of Shareholders.
2. The Board of Management has the following rights and obligations:
  - (a) To make decisions on medium term developmental strategies and plans, and on annual business plans of the company;
  - (b) To recommend the classes of shares and total number of shares of each class which may be offered;
  - (c) To make decisions on selling unsold shares within the number of shares of each class which may be offered for sale; to make decisions on raising additional funds in other forms;
  - (d) To make decisions on the selling price of shares and bonds of the company;
  - (dd) To make decisions on redemption of shares in accordance with the provisions in articles 133.1 and 133.2 of this Law;
  - (e) To make decisions on investment plans and investment projects within the authority and limits stipulated by law;
  - (g) To make decisions on solutions for market expansion, marketing and technology;
  - (h) To approve contracts for purchase, sale, borrowing, lending and other contracts and transactions valued at thirty five (35) or more per cent of the total value of assets recorded in the most recent financial statements of the company, except where the charter of the company stipulates some other percentage or value, and contracts and transactions within the decision-making authority of the General Meeting of Shareholders as stipulated in clause 2(d) of article 138 and clauses 1 and 3 of article 167 of this Law;
  - (i) To elect, remove or discharge the chairman of the Board of Management; to appoint, remove, and sign contracts or terminate contracts with the director or the general director and other key managers of the company as stipulated in the charter of the company; to make decisions on salaries, remuneration, bonuses and other benefits of such managers; to appoint authorized representatives to participate in the members' council or general meeting of shareholders of other companies, and to make decisions on the level of remuneration and other benefits of such persons;

- (k) To supervise and direct the director or general director and other managers in their work of conducting the day-to-day business of the company;
  - (l) To make decisions on the organizational structure and the rules on internal management of the company, to make decisions on the establishment of subsidiary companies, branches and representative offices and the capital contribution to or purchase of shares of other enterprises;
  - (m) To approve the agenda and contents of documents for the meetings of the General Meeting of Shareholders; to convene meetings of the General Meeting of Shareholders or to obtain opinions in order for the General Meeting of Shareholders to pass resolutions;
  - (n) To submit annual financial statements to the General Meeting of Shareholders;
  - (o) To recommend the dividend rates to be paid, to make decisions on the time-limit and procedures for payment of dividends or for dealing with losses incurred in the business operations;
  - (p) To recommend re-organization or dissolution of the company, or to request bankruptcy of the company;
  - (q) Other rights and obligations in accordance with this Law and the charter of the company.
3. The Board of Management passes resolutions and decisions by way of voting at a meeting, collecting written opinions or otherwise as stipulated in the charter of the company. Each member of the Board of Management has one vote.
  4. If a resolution or decision is passed by the Board of Management contrary to law, contrary to a resolution of the General Meeting of Shareholders or contrary to the provisions of the charter of the company, thereby causing loss to the company, the members who agreed to pass such resolution or decision shall be personally jointly liable for such resolution or decision and they must compensate the company for loss; any member who opposed the passing of such resolution or decision shall be relieved from liability. In such case, a shareholder of the company has the right to request a court to suspend implementation of or to rescind the above-mentioned resolution or decision.

**Article 154** *Term of office and numbers of members of Board of Management*

1. The Board of Management shall have three to eleven (11) members. The charter of the company shall specify the number of members of the Board of Management.
2. The term of office of members of the Board of Management shall not exceed five years; and they may be re-elected for an unlimited number of terms. One individual shall only be elected as an independent member of the Board of Management of one company for no more than two consecutive terms of office..
3. If the term of office of all members of the Board of Management expires at the same time, such members shall continue to be members of the Board of Management until new members are elected as replacements and take over the work, unless otherwise stipulated in the charter of the company.
4. The charter of the company shall specify the number, rights, obligations, methods of organization and co-ordination of activities of independent members of the Board of Management.

**Article 155** *Organizational structure, criteria and conditions for acting as member of Board of Management*

1. A member of the Board of Management must satisfy the following criteria and conditions:
  - (a) Not fall into the category of entities stipulated in article 17.2 of this Law;
  - (b) Have professional expertise and experience in business management or in the sectors or business lines of the company and not necessarily be a shareholder of the company, unless otherwise stipulated in the charter of the company;
  - (c) A member of the Board of Management may concurrently be a member of the board of management of another company;
  - (d) In the case of a State owned enterprise as prescribed in article 88.1(b) of this Law and of a subsidiary of a SOE as prescribed in article 88.1 of this Law, a member of the Board of Management must not be a person with a family relationship with the director or general director or other managers of the company, or with a manager or a person with the authority to appoint managers of the parent company.
2. Unless otherwise stipulated in the law on securities, **an independent member** of the Board of Management stipulated in article 137.1(b) of this Law must satisfy the following criteria and conditions:
  - (a) **Not being a person currently working for the company, the parent company or any subsidiary company of the company; or not being a person having worked for the company, the parent company or any subsidiary company of the company for at least the three preceding years;**
  - (b) **Not being a person who is currently entitled to salary or remuneration from the company,** except for allowances which members of the Board of Management are entitled to in accordance with regulations;
  - (c) **Not being a person whose spouse, natural or adoptive parent, child, adopted child or sibling is a major shareholder of the company, or a manager of the company or its subsidiary company;**
  - (d) **Not being a person directly or indirectly owning at least one per cent of the total voting shares in the company;**
  - (dd) Not being a person who was a member of the Board of Management or the Inspection Committee of the company for **at least five preceding years, except in the case of appointment for two (2) consecutive terms.**
3. An independent member of the Board of Management must notify the Board of Management that such member no longer satisfies all the criteria and conditions stipulated in clause 2 above; and such member shall automatically no longer be an independent member of the Board of Management from the date of failure to satisfy all the criteria and conditions. The Board of Management must provide a notice of the case where an independent member of the Board of Management no longer satisfies all the criteria and conditions at the next General Meeting of Shareholders or must convene a meeting of the General Meeting of Shareholders to elect an additional member or to replace the independent member of the Board of Management within six months from the date of receipt of the notice from the related independent member of the Board of Management.

## **Article 156** *Chairman of Board of Management*

1. The chairman of the Board of Management shall be elected, removed or discharged by the Board of Management among members of the Board of Management.
2. The chairman of the Board of Management of a public company or a shareholding company as prescribed in article 88.1(b) of this Law is not permitted to act concurrently as the director or general director.
3. The chairman of the Board of Management has the following rights and obligations:
  - (a) To prepare working plans and programs of the Board of Management;
  - (b) To prepare the program, agenda and documents for meetings of the Board of Management; to convene, preside over and chair meetings of the Board of Management;
  - (c) To organize for resolutions and decisions of the Board of Management to be passed;
  - (d) To monitor the implementation of resolutions and decisions of the Board of Management;
  - (dd) To chair meetings of the General Meetings of Shareholders;
  - (e) Other rights and obligations in accordance with this Law and the charter of the company.
4. Where the chairman of the Board of Management is absent or is not able to perform his or her duties, he or she must authorize in writing another member to exercise the rights and perform the obligations of the chairman of the Board of Management in accordance with the principles stipulated in the charter of the company. Where no person is authorized or the chairman of the Board of Management dies, goes missing [is lost], is temporarily detained in prison, serves a prison sentence, is subject to administrative measures in a compulsory drug rehabilitation establishment or compulsory educational establishment, absconds from his or her place of residence, has his or her capacity for civil acts restricted or lost, has cognitive difficulties or difficulties with behavioural control, or is prohibited by a court from assuming a certain position or practising or doing certain work then the remaining members shall select one of them to hold the position of the chairman of the Board of Management in accordance with the principle that the majority of the remaining members agree until there is a new decision of the Board of Management.
5. If considered necessary, the Board of Management may decide to appoint a secretary for the company. The secretary of the company has the following rights and obligations:
  - (a) To assist the convention [convening] of meetings of the General Meeting of Shareholders or of the Board of Management; to record minutes of meetings;
  - (b) To assist members of the Board of Management to exercise their assigned rights and perform their assigned obligations;
  - (c) To assist the Board of Management to apply and implement the corporate governance principles;
  - (d) To assist the company to build up the relationship with the shareholders and protect the lawful rights and interests of the shareholders; to comply with the obligations to provide and disclose information and comply with administrative procedures.

(dd) Other rights and obligations as stipulated in the charter of the company.

**Article 157** *Meetings of Board of Management*

1. The chairman of the Board of Management shall be elected at the initial meeting of the Board of Management within a time-limit of seven working days from the date of completion of the election of the Board of Management. Such meeting shall be convened and chaired by the member who obtains the highest number of votes or the highest percentage of votes. If two or more members obtain the same highest number of votes or the same highest percentage of votes, the members shall elect by a majority vote to select a person amongst them to convene the meeting.
2. Meetings of the Board of Management shall be held at least once every quarter and may be held on an extraordinary basis.
3. The chairman of the Board of Management shall convene a meeting of the Board of Management in the following circumstances:
  - (a) Upon request of the Inspection Committee or an independent member of the Board of Management;
  - (b) Upon request of the director or general director or upon request of at least five other managers;
  - (c) Upon request of at least two members of the Board of Management;
  - (d) In other circumstances as stipulated in the charter of the company.
4. The request prescribed in clause 3 above must be made in writing and must specify the objectives and issues which require to be discussed, and decisions within the authority of the Board of Management.
5. The chairman of the Board of Management must convene a meeting of the Board of Management within a time-limit of seven working days from the date of receipt of a request stipulated in clause 3 above. If a meeting of the Board of Management is not convened pursuant to a request, the chairman of the Board of Management shall be liable for loss caused to the company; the person making the request has the right to convene a meeting of the Board of Management in place of the chairman of the Board of Management.
6. The chairman of the Board of Management or the convenor of the meeting of the Board of Management must send a notice of invitation to attend the meeting at least three working days prior to the date of meeting, unless otherwise stipulated in the charter of the company. The notice of invitation must specify the time and location of the meeting, the agenda and issues to be discussed, and decisions. The notice must enclose documents to be used at the meeting and voting forms for the members.

The notice of invitation to a meeting of the Board of Management may be sent in the form of a letter of invitation, or by telephone, fax, electronic mail or other method stipulated in the charter of the company and guaranteed to reach the contact address of each member of the Board of Management as registered with the company.
7. The chairman of the Board of Management or the convenor shall send the notice of invitation to attend the meeting together with the enclosed documents to all inspectors in the same manner as to the members of the Board of Management.

Inspectors have the right to attend meetings of the Board of Management and to discuss issues but not to vote.

8. A meeting of the Board of Management shall be conducted where three quarters (3/4) or more of the total members are in attendance. If the meeting convened in accordance with this clause does not have sufficient attending members as stipulated, it shall be convened for a second time within seven days from the intended date of the first meeting, except where the charter of the company stipulates some other shorter time-limit. In this case, the meeting shall be conducted if more than half of the number of members of the Board of Management attend the meeting.
9. A member of the Board of Management shall be deemed to attend and vote at the meeting in the following cases:
  - (a) Such member attends and votes at the meeting in person;
  - (b) Such member authorizes another person to attend and vote at the meeting in accordance with clause 11 of this article;
  - (c) Such member attends and votes [at the meeting] via an online conference, by casting an electronic vote or by other electronic forms;
  - (d) Such member sends his or her written vote to the meeting by mail, fax or email;
  - (dd) Such member sends his or her written vote by other means stipulated in the charter of the company.
10. Where a written vote is sent to the meeting by mail, it must be enclosed in a sealed envelope and delivered to the chairman of the Board of Management at least one hour prior to the opening of the meeting. Written votes shall be opened only in the presence of all persons attending the meeting.
11. Members must participate in all meetings of the Board of Management. A member may authorize another person to attend and vote at a meeting if the majority of members of the Board of Management agrees.
12. Except where the charter of the company provides for some other higher percentage, a resolution or decision of the Board of Management shall be passed when it is agreed by the majority of the members in attendance; in the case of a tied vote, the final decision shall be made in favour of the vote of the chairman of the Board of Management.

#### **Article 158** *Minutes of meetings of Board of Management*

1. All meetings of the Board of Management must be minuted and may be sound recorded [or] recorded and stored in other electronic forms. Minutes must be prepared in Vietnamese and may also be in a foreign language, and must include the following main contents:
  - (a) Name, address of the head office, and enterprise code number;
  - (b) Time and location of meeting;
  - (c) Purpose, program and agenda of meeting;



- (d) Full names of each member attending the meeting or other persons authorized to attend the meeting and method of attending the meeting; full names of members not attending the meeting and reasons for not attending;
  - (dd) Issues discussed and voted on in the meeting;
  - (e) Summary of opinions of each member attending the meeting during the process of the meeting;
  - (g) Result of voting, indicating members who agree, who do not agree and who abstain from voting;
  - (h) Approved matters and corresponding percentage of votes for passing;
  - (i) Full names and signatures of the chairman [of the meeting] and the person writing the minutes, except for the case stipulated in clause 2 of this article.
2. If the chairman or the person writing the minutes refuses to sign the minutes of the meeting, but the minutes are signed by all other attending members of the Board of Management and contain all the contents prescribed in sub-clauses (a) to (h) of clause 1 above, then the minutes are effective.
  3. The chairman, the person writing the minutes and the persons signing the minutes must be responsible for the accuracy and truthfulness of the minutes of meetings of the Board of Management.
  4. Minutes of meetings of the Board of Management and documents used in the meetings must be archived at the head office of the company.
  5. Minutes prepared in Vietnamese and foreign languages shall have equal validity. In the case of any difference in the contents of the minutes between the Vietnamese text and the foreign language text, the contents in the Vietnamese text shall prevail.

**Article 159** *Rights of members of Board of Management to be provided with information*

1. A member of the Board of Management may demand the director, deputy director or general director, deputy general director, and other managers in the company provide information and documents on the financial situation and business operations of the company and of units in the company.
2. A manager receiving such a demand must provide all information and documents promptly, completely and accurately as demanded by a member of the Board of Management. The sequence and procedures for requesting for and providing information shall be as stipulated in the charter of the company.

**Article 160** *Discharge, removal, replacement and addition of members of Board of Management*

1. A member of the Board of Management shall be discharged by the General Meeting of Shareholders in the following cases:
  - (a) Failure to satisfy the criteria and conditions stipulated in article 155 of this Law;
  - (b) Upon written notice of resignation which is approved;
  - (c) Other cases as stipulated in the charter of the company.

2. A member of the Board of Management shall be removed in the following cases:
  - (a) Failure to participate in activities of the Board of Management for six consecutive months, except for cases of force majeure;
  - (b) Other cases as stipulated in the charter of the company.
3. When considered necessary, the General Meeting of Shareholders shall decide to replace any member of the Board of Management; or discharge or remove any member of the Board of Management in the cases other than those stipulated in clauses 1 and 2 of this article.
4. The Board of Management must convene a meeting of the General Meeting of Shareholders to elect additional members of the Board of Management in the following cases:
  - (a) The number of members of the Board of Management is reduced by more than one third (1/3) of the number stipulated in the charter of the company. In this case, the Board of Management must convene a meeting of the General Meeting of Shareholders within sixty (60) days from the date on which the number of members is reduced by more than one third (1/3);
  - (b) The number of independent members of the Board of Management is reduced and does not ensure the percentage stipulated in article 137.1(b) of this Law.
  - (c) Except for the cases stipulated in sub-clauses (a) and (b) above, the General Meeting of Shareholders shall elect new members of the Board of Management to replace members of the Board of Management who have been removed or discharged at the next meeting.

**Article 161** *Auditing Committee*

1. The Auditing Committee is the professional body of the Board of Management. The Auditing Committee consists of two or more members. The chairman [head] of the Auditing Committee must be an independent member of the Board of Management. Other members of the Auditing Committee must be non-executive members of the Board of Management.
2. The Auditing Committee passes a decision by way of voting in a meeting, by way of collection of written opinions or by other methods as stipulated in the charter of the company or in the operational regulations of the Auditing Committee. Each member of the Auditing Committee shall have one vote. Unless the charter of the company or the operational regulations of the Auditing Committee stipulate a higher percentage, a decision of the Auditing Committee [is deemed] passed if it is agreed by the majority of attending members; in the case of a tied vote, the final decision shall be made in favour of the vote of the chairman of the Auditing Committee.
3. The Auditing Committee has the following rights and obligations:
  - (a) To supervise the truthfulness of the financial statements of the company and any official announcement relating to the financial results of the company;
  - (b) To conduct a review of the internal control and risk management system;
  - (c) To review related person transactions within the authority of approval of the Board of Management or the General Meeting of Shareholders and to make recommendations on transactions requiring approval of the Board of Management or the General Meeting of Shareholders;

- (d) To supervise the internal auditing division of the company;
- (dd) To recommend an independent auditing company, the level of remuneration and relevant terms in the contract signed with the auditing company to the Board of Management for its approval before submitting same to the annual General Meeting of Shareholders for approval;
- (e) To monitor and assess the independence and objectiveness of the auditing company and the efficiency of the auditing process, especially where the company uses non-auditing services of the auditing party;
- (g) To conduct supervision in order to ensure that the company complies with all laws and requirements of administrative agencies and other internal rules of the company.

**Article 162** *Director or general director of company*

1. The Board of Management shall appoint one member of the Board of Management or employ another person as the director or general director.
2. The director or general director manages the day-to-day business operations of the company; is supervised by the Board of Management, and is responsible to the Board of Management and before the law for the exercise of his or her delegated powers and the performance of his or her delegated obligations.

The term of the director or general director shall not exceed five years and [a director or general director] may be re-appointed for an unlimited number of terms.

3. The director or general director has the following powers and obligations:
  - (a) To make decisions on all issues relating to the day-to-day business operations of the company which do not fall within the authority of the Board of Management;
  - (b) To organize the implementation of resolutions and decisions of the Board of Management;
  - (c) To organize the implementation of business plans and investment plans of the company;
  - (d) To make recommendations with respect to the plan on organizational structure and the rules on internal management of the company;
  - (dd) To appoint, remove and discharge managerial positions in the company, except for those under the scope of authority of the Board of Management;
  - (e) To make decisions on salary and other benefits for employees of the company, including managers who may be appointed by the director or general director;
  - (g) To recruit employees;
  - (h) To make recommendations on plans on payment of dividends and on dealing with business losses;
  - (i) Other powers and obligations in accordance with provisions of law, the charter of the company and resolutions and decisions of the Board of Management.

4. The director or general director must manage the day-to-day business operations of the company strictly in accordance with law, the charter of the company, the employment contract signed with the company and the resolutions and decisions of the Board of Management. Where such management is inconsistent with this clause and causes loss to the company, the director or general director shall be responsible before the law and shall compensate the company for the loss.
5. In the case of a public company and a State owned enterprise as prescribed in article 88.1(b) of this Law and a subsidiary of a SOE as prescribed in article 88.1 of this Law, the director or general director must satisfy the following criteria and conditions:
  - (a) Not fall into the category of entities stipulated in article 17.2 of this Law;
  - (b) Not be a person with a family relationship with a manager of the enterprise or an inspector of the company and the parent company; or with the representative of the State capital portion or the representative of the capital portion of the enterprise in the company and the parent company;
  - (c) Must have professional qualifications and experience in business management of the company.

**Article 163** *Salary, remuneration, bonuses and other benefits of members of Board of Management and director or general director*

1. The company is entitled to pay remuneration and bonuses to members of the Board of Management and salary and bonuses to the director or general director and other managers based on the business results and efficiency.
2. Unless otherwise stipulated in the charter of the company, the salary, remuneration, bonuses and other benefits of members of the Board of Management and the director or general director are paid in accordance with the following provisions:
  - (a) Members of the Board of Management are entitled to remuneration for work and bonuses.

Remuneration for work is calculated on the basis of the working days which are necessary to fulfil the duties of the members of the Board of Management and the daily rate of remuneration. The Board of Management shall estimate the remuneration for each member on the principle of agreement. The total amount of remuneration and bonuses for the Board of Management shall be decided by the General Meeting of Shareholders at the annual meeting;
  - (b) Members of the Board of Management are entitled to reimbursement of expenses for meals, accommodation and travel and other reasonable expenses in order to fulfil their delegated duties;
  - (c) The director or general director is entitled to salary and bonuses. The salary and bonuses of the director or general director shall be decided by the Board of Management.
3. The remuneration of each member of the Board of Management and the salary of the director or general director and other managers shall be included in the business expenses of the company in accordance with the law on corporate income tax, and shall be presented as a separate item in the annual financial statements of the company and must be reported to the General Meeting of Shareholders at its annual meeting.

#### **Article 164** *Public disclosure of relevant interests*

If the charter of the company does not provide any other stricter provisions, the public disclosure of relevant interests and related persons of a company shall be implemented in accordance with the following provisions:

1. The company must gather and update a list of related persons of the company in accordance with article 4.23 of this Law and corresponding contracts and transactions between them and the company.
2. Members of the Board of Management, inspectors, the director or general director and other managers of the company must declare their relevant interests to the company, including:
  - (a) Names, enterprise code numbers, head office addresses, business lines of enterprises in which they are owners or own a capital contribution portion or shares; ratio of such capital contribution portion or shares and time in which they became owners or owned such capital contribution portion or shares;
  - (b) Names, enterprise code numbers, head office addresses, business lines of enterprises in which their related persons are owners or jointly own or separately own a capital contribution portion or shares of more than ten (10) per cent of charter capital.
3. The declaration stipulated in clause 2 above must be made within seven working days from the date of the relevant interest arising; any amendment and addition shall be notified to the company within seven working days from the date of amendment or addition;
4. The retention, public disclosure, review, extract and copy of the list of related persons and relevant interests as declared in accordance with clauses 1 and 2 above are implemented as follows:
  - (a) The company must report such list to the General Meeting of Shareholders at its annual meeting;
  - (b) The list shall be retained at the head office of the enterprise; in necessary cases, part or all of the contents of the list mentioned above may be retained at branches of the company;
  - (c) Shareholders, authorized representatives of shareholders, members of the Board of Management or the Inspection Committee, the director or general director, and other managers have the right to review, make an extract and copy part or all of the contents declared;
  - (d) The company must facilitate the persons stipulated in sub-clause (c) above to access, sight, make an extract and copy the list of related persons and relevant interests in the fastest and most convenient manner, and the company is not permitted to prevent them from or cause difficulties to them in exercising such rights. The sequence and procedures for reviewing, making an extract and copying the declarations of related persons and relevant interests shall be implemented in accordance with the charter of the company.

5. [Each] member of the Board of Management and the director or general director must, if performing any form of work on behalf of himself or herself or on behalf of others within the scope of business operations of the company, report the nature and content of that work to the Board of Management and Inspection Committee and shall only be permitted to perform [this work] if the majority of the remaining members of the Board of Management approve; if the work is performed without reporting or without the approval from the Board of Management, all income arising from such activity shall belong to the company.

**Article 165** *Responsibilities of managers of company*

1. Each member of the Board of Management, the director or general director or other manager [of a company] has the following responsibilities:
  - (a) To exercise his or her delegated powers and perform his or her delegated obligations in accordance with this Law, other relevant laws, the charter of the company, and the resolutions of the General Meeting of Shareholders;
  - (b) To exercise his or her delegated powers and perform his or her delegated obligations honestly and prudently to the best of his or her ability in order to assure the maximum legitimate interests of the company;
  - (c) To be loyal to the interests of the company and shareholders; not to abuse his or her position and power and not to use information, know-how, business opportunities and other assets of the company for his or her own personal benefit or for the benefit of other organizations or individuals;
  - (d) To promptly notify the company fully and accurately of the items prescribed in article 164.2 of this Law;
  - (dd) Other responsibilities in accordance with this Law and the charter of the company.
2. Any member of the Board of Management, the director or general director and any other manager prescribed in clause 1 above shall be personally or jointly liable to pay compensation for lost benefits/interests and to return benefits received and to pay compensation for all loss to the company and to third parties.

**Article 166** *Right to initiate legal action against members of Board of Management, director or general director*

1. A shareholder or a group of shareholders owning at least one per cent of the number of ordinary shares has the right, on its own behalf or on behalf of the company, to initiate a legal action regarding personal liability or joint liability against a member of the Board of Management or the director or general director and to apply for refund of benefits or payment of compensation for loss to the company or to others in the following cases [if such member of the Board of Management or the director or general director]:
  - (a) Commit a breach of the responsibilities of managers of the company in accordance with article 165 of this Law;
  - (b) Fail to implement or fail to implement completely and promptly their assigned rights and obligations or implement same contrary to the provisions of law, the charter of the company or resolutions and decisions of the Board of Management;

- (c) Abuse his or her position and power and use information, know-how, business opportunities and other assets of the company for their own personal benefit or for the benefit of other organizations or individuals;
  - (d) Other cases in accordance with law and the charter of the company.
2. The sequence and procedures for initiating a legal action is implemented in accordance with the provisions of the law on civil proceedings. The expenses for initiating a legal action by a shareholder or group of shareholders in the name of the company shall be included in expenses of the company, except where a petition initiating legal action is rejected.
  3. A shareholder or group of shareholders stipulated in this article has the right to review, consult and make an extract of necessary information pursuant to a decision of a court or arbitrator or during the process of initiation of a legal action.

**Article 167** *Approval of contracts and transactions between company and related persons*

1. The General Meeting of Shareholders or the Board of Management shall approve contracts and transactions between the company and the following related persons:
  - (a) Shareholders or authorized representative of shareholders being organizations holding more than ten (10) per cent of the ordinary shares of the company, and their related persons;
  - (b) Members of the Board of Management, director or general director and their related persons;
  - (c) Enterprises to be declared by members of the Board of Management, inspectors, the director or general director and other managers of the company as stipulated in article 164.2 of this Law.
2. Any contract or transaction stipulated in clause 1 above and valued at less than thirty five (35) per cent of the total value of assets recorded in the most recent financial statements of the company, or a smaller percentage or value as stipulated in the charter of the company, shall be approved by the Board of Management. In this case, the person representing the company to sign the contract or transaction must notify members of the Board of Management and/or inspectors of entities involved in such contract or transaction, and enclose the draft of the contract or main contents of the transaction. The Board of Management shall make a decision on approval of the contract or transaction within fifteen (15) days from the date of receipt of the notice, except where the charter of the company stipulates some other time-limit; members of the Board of Management with interests relating to the parties to the contract or transaction shall not have the right to vote.
3. The General Meeting of Shareholders shall approve the following contracts and transactions:
  - (a) Contracts and transactions other than those stipulated in clause 2 of this article;
  - (b) Contracts for and transactions of borrowing, lending or sale of assets valued at more than ten (10) per cent of the total value of assets of the enterprise stated in the most recent financial statements between the company and shareholders owning fifty one (51) or more per cent of the total number of voting shares or their related persons.
4. Where a contract or transaction is approved in accordance with clause 3 above, the person representing the company to sign the contract or transaction must notify the Board of Management and inspectors of entities involved in such contract or transaction, and enclose the draft contract or the notice of main contents of the transaction. The Board of Management shall submit the draft



contract or transaction or explain the main contents of the contract or transaction at the General Meeting of Shareholders or collect written opinions from shareholders. In such case, shareholders with interests relating to the parties to the contract or transaction do not have the right to vote; and the contract or transaction shall be approved in accordance with clauses 1 and 4 of article 148 of this Law, unless otherwise stipulated in the charter of the company.

5. Contracts and transactions shall be invalid pursuant to a decision of a court and shall be dealt with in accordance with law if they were signed contrary to the provisions of this article. The person signing the contract or transaction, shareholders, members of the Board of Management or the director or general director concerned must jointly compensate for the loss caused and must return to the company any benefits gained from the performance of such contract and transaction.
6. The company must publicize relevant contracts and transactions in accordance with relevant laws.

#### **Article 168** *Inspection Committee*

1. The Inspection Committee shall have from three to five inspectors. The term of an inspector shall be not more than five years, and [inspectors] may be re-elected for an unlimited number of terms.
2. The head of the Inspection Committee shall be elected by the Inspection Committee from among the inspectors; the election, removal or discharge shall be implemented on the principle of majority [vote]. The rights and obligations of the head of the Inspection Committee shall be stipulated in the charter of the company. More than half of the inspectors of the Inspection Committee must **reside permanently in Vietnam**. The head of the Inspection Committee must have **a university or higher graduation degree in one of the following specialities**: economics, finance, accounting, auditing, law, business management or in a specialized faculty relating to the business activities of the enterprise, except where the charter of the company provides for other higher standards.
3. If the term of office of [all] inspectors expires at the same time and if inspectors of the new term of office have not been elected, the inspectors of the term which has expired shall retain their rights and obligations until inspectors of the new term of office are elected and take over the duties.

#### **Article 169** *Criteria and conditions for inspectors*

1. Inspectors must satisfy the following criteria and conditions:
  - (a) Not falling within the category of entities stipulated in article 17.2 of this Law;
  - (b) Having been trained in one of the following specialities: economics, finance, accounting, auditing, law, business management or in a specialized faculty appropriate for the business activities of the enterprise;
  - (c) Not be a person with a family relationship with any member of the Board of Management, the director or general director or other managers;
  - (d) Not being a manager of the company; and is not required to be a shareholder or an employee of the company, unless otherwise stipulated in the charter of the company;
  - (dd) Other criteria and conditions in accordance with other relevant laws and the charter of the company.
2. In addition to the criteria and conditions prescribed in clause 1 above, inspectors of a public company or of a SOE as prescribed in article 88.1(b) of this Law must not be a person with a family

relationship with an enterprise manager of the company and the parent company; or with the representative of the capital portion of the enterprise or the representative of the State capital in the parent company and in the company.

**Article 170** *Rights and obligations of Inspection Committee*

1. To supervise the Board of Management and the director or general director with respect to management and administration of the company.
2. To inspect the reasonableness, legality, truthfulness and prudence in management and administration of business activities; and the systematic nature, consistency and appropriateness of statistic and accounting work and preparation of financial statements.
3. To evaluate the completeness, lawfulness and truthfulness of reports on business, half-yearly and annual financial statements and reports on evaluation of the management of the Board of Management; and to submit evaluation reports at annual meetings of the General Meeting of Shareholders. To review contracts and transactions with related persons which fall within the authority of approval of the Board of Management or the General Meeting of Shareholders and to make recommendations on contracts and transactions requiring approval of the Board of Management or the General Meeting of Shareholders.
4. To review, inspect and evaluate the effectiveness and efficiency of systems of internal control, internal audit, risk management and early warning of the company.
5. To review books of account, records of accounts and other documents of the company, and the management and administration of the operations of the company if deemed necessary or pursuant to a resolution of the General Meeting of Shareholders or as requested by a shareholder or group of shareholders as stipulated in article 115.2 of this Law.
6. Upon request by a shareholder or group of shareholders as stipulated in article 115.2 of this Law, the Inspection Committee shall carry out an inspection within a period of seven working days from the date of receipt of the request. The Inspection Committee must submit a report on the issues required to be inspected to the Board of Management and the requesting shareholder or group of shareholders within a period of fifteen (15) days from the date of completion of the inspection. Inspections stipulated in this clause may not disrupt the normal activities of the Board of Management and shall not interrupt the administration of the business operations of the company.
7. To recommend to the Board of Management or the General Meeting of Shareholders any changes and improvements in the organizational and management structure, supervision and administration of the business operations of the company.
8. Upon discovery that a member of the Board of Management or a director or general director is in breach of the provisions in article 165 of this Law, to give immediate written notice to the Board of Management and request the person in breach to cease the breach and take measures to remedy any consequences.
9. To attend and participate in discussions at meetings of the General Meeting of Shareholders and of the Board of Management and other meetings of the company.
10. To use an independent consultant or the internal audit department of the company to perform the assigned duties.

11. The Inspection Committee may consult the Board of Management prior to submission of reports, conclusions and recommendations to the General Meeting of Shareholders.
12. Other rights and obligations as stipulated in this Law, the charter of the company and resolutions of the General Meeting of Shareholders.

**Article 171** *Rights of Inspection Committee to be provided with information*

1. Documents and information must be sent to inspectors at the same time and in the same manner as to members of the Board of Management, comprising:
  - (a) Notice of invitation to a meeting, opinion forms to members of the Board of Management and enclosed documents;
  - (b) Resolutions, decisions and minutes of meetings of the General Meeting of Shareholders or of the Board of Management;
  - (c) Reports of the director or general director for submission to the Board of Management or other documents issued by the company.
2. Inspectors have the right to access files and documents of the company retained in the head office, branches and other locations; have the right to access the workplace of managers and employees of the company during working hours.
3. The Board of Management, members of the Board of Management, the director or general director and other managers must provide in full, accurately and on time all information and documents relating to the management, administration and business operations of the company upon demand by inspectors or by the Inspection Committee.

**Article 172** *Salaries, remuneration, bonuses and other benefits of inspectors*

Unless otherwise stipulated in the charter of the company, salaries, remuneration, bonuses and other benefits of inspectors are implemented in accordance with the following provisions:

1. Inspectors shall be paid salaries, remuneration, bonuses and other benefits as decided by the General Meeting of Shareholders. The General Meeting of Shareholders shall decide on the total salaries, remuneration, bonuses and other benefits and annual operating budget of the Inspection Committee;
2. Inspectors shall be reimbursed for expenses for meals, accommodation, travel and for use of independent consultancy services at reasonable rates. The total amount of such remuneration and expenses shall not exceed the total annual operating budget of the Inspection Committee approved by the General Meeting of Shareholders, unless otherwise decided by the General Meeting of Shareholders;
3. Salaries and operating costs of the Inspection Committee shall be included in business expenses of the company in accordance with the law on corporate income tax and other relevant laws, and must be presented in a separate item in the annual financial statements of the company.

**Article 173** *Responsibilities of inspectors*

1. To comply with law, the charter of the company, resolutions of the General Meeting of Shareholders and professional ethics during the exercise of delegated rights and obligations.

2. To exercise delegated rights and perform delegated obligations honestly, prudently and to the best of their ability in order to assure the maximum lawful interest of the company.
3. To be loyal to the interests of the company and shareholders; not to abuse their positions and powers and not to use information, know-how, business opportunities and other assets of the company for their personal benefit or for the benefit of other organizations or individuals.
4. Other obligations as stipulated in this Law and in the charter of the company.
5. In the case of breaching the provisions in clauses 1, 2, 3 or 4 above causing loss to the company or to other persons, inspectors must bear personal or joint responsibility for compensating for such loss. Other income and benefits which an inspector gains from the breach must be returned to the company.
6. Where it is discovered that an inspector commits a breach during the exercise of delegated rights and obligations, a written notice thereof must be sent to the Inspection Committee, requesting the person in breach to cease the breach and remedy any consequences.

**Article 174** *Removal and discharge of inspectors*

1. The General Meeting of Shareholders shall remove an inspector in the following cases:
  - (a) No longer meeting the criteria and conditions to be an inspector as stipulated in article 169 of this Law;
  - (b) Written resignation notice which is approved;
  - (c) Other cases as stipulated in the charter of the company.
2. The General Meeting of Shareholders shall discharge an inspector in the following cases:
  - (a) Failing to fulfil his or her assigned duties or work;
  - (b) Not exercising his or her rights and obligations in six consecutive months, except for cases of force majeure;
  - (c) Committing a number of serious breaches of the obligations of inspectors as stipulated in this Law and the charter of the company;
  - (d) Other cases pursuant to a resolution of the General Meeting of Shareholders.

**Article 175** *Submission of annual reports*

1. At the end of a fiscal year, the Board of Management must submit the following reports to the General Meeting of Shareholders:
  - (a) Report on the business results of the company;
  - (b) Financial statements;
  - (c) Report on the evaluation of the management and administration of the company;

- (d) Evaluation report of the Inspection Committee.
- 2. In respect of shareholding companies which are required by law to be audited, the annual financial statements of such shareholding companies must be audited before submission to the General Meeting of Shareholders for consideration and approval.
- 3. The reports stipulated in sub-clauses (a) to (c) of clause 1 above must be sent to the Inspection Committee for evaluation no later than thirty (30) days before the opening day of the annual meeting of the General Meeting of Shareholders unless otherwise stipulated in the charter of the company.
- 4. The reports stipulated in sub-clauses 1 to 3 above, evaluation reports of the Inspection Committee and audited reports must be retained at the head office of the company no later than ten (10) days before the opening day of the annual meeting of the General Meeting of Shareholders if the charter of the company does not provide for any other longer period. A shareholder owning shares in a company for a consecutive [period of] at least one year has the right to review directly the reports stipulated in this article by himself or herself, or together with a lawyer or an accountant or auditor who has a practising certificate.

**Article 176** *Public disclosure of information*

- 1. Shareholding companies must submit annual financial reports as approved by the General Meeting of Shareholders to competent State agencies in accordance with the law on accounting and other relevant laws.
- 2. A shareholding company shall publish the following information on its website:
  - (a) Charter of the company;
  - (b) Curricula vitae, educational qualifications and work experience of members of the Board of Management, inspectors, and the director or general director of the company;
  - (c) Annual financial reports approved by the General Meeting of Shareholders;
  - (d) Annual reports on evaluation of operational results of the Board of Management and the Inspection Committee.
- 3. A shareholding company not being a listed company must provide a notice to the BRO in the locality where the company has its head office no later than three working days after it obtains or changes the following information: full name, nationality, passport number, contact address, number of shares and classes of shares in respect of a shareholder being a foreign individual; name, enterprise code number, head office address, number of shares and classes of shares in respect of a shareholder being a foreign organization and full name, nationality, passport number and contact address of the authorized representative in respect of a shareholder being a foreign organization.
- 4. Public companies shall publicly announce and disclose information in accordance with the law on securities. Shareholding companies stipulated in article 88.1(b) of this Law shall publicly announce and disclose information in accordance with sub-clauses (a), (c), (dd) and (g) of article 109.1 and article 110 of this Law.

## CHAPTER 6

### Partnerships

#### **Article 177** *Partnerships*

1. A partnership is an enterprise in which:
  - (a) There must be at least two members being co-owners of the company jointly conducting business under one common name (hereinafter referred to as unlimited liability partners). In addition to unlimited liability partners, the company may also have limited liability partners<sup>12</sup>;
  - (b) Unlimited liability partners must be individuals who shall be liable for the obligations of the company to the extent of all of their assets;
  - (c) Limited liability partners may be organizations or individuals and shall only be liable for the debts of the company to the extent of the amount of capital they have undertaken to contribute to the company.
2. A partnership shall enjoy legal entity status as from the date of issuance of the ERC.
3. Partnerships may not issue any type of securities.

#### **Article 178** *Capital contribution and issuance of capital contribution certificates*

1. Unlimited liability partners and limited liability partners must contribute capital in full and on time as undertaken.
2. Where an unlimited liability partner fails to contribute capital in full and on time as undertaken causing loss to the company, such partner must be liable to compensate the company for the loss.
3. Where a limited liability partner fails to contribute capital in full and on time as undertaken, the unpaid amount shall be considered as a debt owed by that partner to the company; in this case, the relevant limited liability partner may be excluded from the partnership in accordance with a decision of the Partners' Council.
4. Upon payment in full of capital contribution as undertaken, the partner shall be issued with a capital contribution certificate. A capital contribution certificate must contain the following main details:
  - (a) Name, enterprise code number, head office address of the partnership;
  - (b) Charter capital of the partnership;
  - (c) Name, contact address, nationality and serial number of the personal legal document in respect of a partner being an individual; name, enterprise code number or serial number of the organizational legal document, and head office address in respect of a partner being an organization; type of partner;
  - (d) Value of capital contribution and types of assets contributed as capital by such partner;
  - (dd) Number and date of issuance of the capital contribution certificate;

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<sup>12</sup> Allens footnote: The literal translation is "capital contributing partners".

- (e) Rights and obligations of the holder of the capital contribution certificate;
  - (g) Full names and signatures of the owner of the capital contribution certificate and of unlimited liability partners of the company.
5. Where a capital contribution certificate is lost, damaged or otherwise ruined, the partner shall be re-issued by the company with a capital contribution certificate.

**Article 179** *Assets of partnership*

Assets of a partnership comprise:

1. Assets contributed as capital by partners the ownership of which has been transferred to the company;
2. Assets created in the name of the company;
3. Assets derived from business activities conducted by unlimited liability partners in the name of the company and from business activities of the company conducted by unlimited liability partners in their personal name;
4. Other assets as stipulated by law.

**Article 180** *Restrictions of rights applicable to unlimited liability partners*

1. An unlimited liability partner is not allowed to act as the owner of a private enterprise, and is not permitted to act as an unlimited liability partner of another partnership unless he or she obtains the consent from other unlimited liability partners.
2. An unlimited liability partner is not allowed to conduct in his or her own name or in the name of another person the same line of business as the partnership for his or her personal benefit or to serve the benefit of another organization or individual.
3. An unlimited liability partner is not allowed to transfer all or part of its portion of capital contribution in the company to another organization or individual without the consent of other unlimited liability partners.

**Article 181** *Rights and obligations of unlimited liability partners*

1. An unlimited liability partner has the following rights:
  - (a) To attend meetings, to discuss and vote on matters of the company; each unlimited liability partner shall have one vote or another number of votes as stipulated in the charter of the company;
  - (b) To conduct business in the name of the company in the lines of business of the company; to negotiate and sign contracts, transactions or covenants [MOUs] on terms that such unlimited liability partner considers most favourable for the company;



- (c) To use assets of the company to conduct business in the lines of business of the company; if such partner advances his or her own money in order to conduct business for the company, he or she shall be entitled to require the company to refund the principal and interest at the market rate of interest on the amount of principal advanced;
- (d) To claim compensation from the company for loss arising from the business activities within scope of his or her delegated duties if such loss is not caused by a personal mistake of such partner;
- (dd) To request the company and other unlimited liability partners to provide information on the business of the company; to inspect assets, books of account and other documents of the company where he or she considers necessary;
- (e) To be distributed with profit in proportion to his or her ratio of capital contribution or as agreed in the charter of the company;
- (g) Upon dissolution or bankruptcy of the company, to be distributed with the remainder of the value of assets of the company in proportion to his or her ratio of capital contribution in the company unless the charter of the company provides for another ratio;
- (h) Where an unlimited liability partner dies, his or her heir may enjoy the share of the value of the assets in the company after deduction of debts and other property obligations for which such partner is responsible. The heir may become an unlimited liability partner if the Partners' Council so approves;
- (i) Other rights in accordance with this Law and the charter of the company.

2. An unlimited liability partner has the following obligations:

- (a) To manage and conduct business activities honestly, prudently to the best of his or her ability in order to assure the best lawful interests of the company;
- (b) To manage and conduct business activities strictly in accordance with law, the charter of the company and resolutions and decisions of the Partners' Council; he or she shall be responsible for compensation for loss caused by his or her breach of the provision of this clause;
- (c) Not to use the assets of the company for his or her personal benefit or for the benefit of another organization or individual;
- (d) To return to the company any amount of money or assets received and compensate for any loss caused to the company in the case where he or she receives such money or assets from the business activities of the company in the name of the company or in his or her name or in the name of another person, but fails to pay [such money or assets] to the company;
- (dd) To be jointly liable to pay in full outstanding debts of the company in the case where the assets of the company are insufficient for the discharge of its debts;
- (e) To bear losses in proportion to his or her portion of capital contribution in the company or as agreed in the charter of the company in the case where the company suffer losses during its business;

- (g) To submit regular truthful and accurate reports on his or her business operations and results to the company on a monthly basis; to provide information on his or her business and business results to any partner who so requests;
- (h) Other obligations in accordance with this Law and the charter of the company.

**Article 182** *Partners' Councils*

1. The Partners' Council shall consist of all partners. The Partners' Council shall elect an unlimited liability partner to be the chairman of the Partners' Council who may concurrently act as the director or general director of the company, unless otherwise stipulated in the charter of the company.
2. An unlimited liability partner has the right to request that a meeting of the Partners' Council be convened to discuss and resolve the business affairs of the company. The requesting partner must prepare the program, agenda and documents for the meeting.
3. The Partners' Council has the right to resolve all of business affairs of the company. Unless regulated by the charter of the company, the decisions on the following issues shall require the agreement of at least three-quarters of the total number of unlimited liability partners:
  - (a) Strategic direction for development of the company;
  - (b) Amendments of or additions to the charter of the company;
  - (c) Admission of a new partner;
  - (d) Approval for an unlimited liability partner to withdraw from the company or decision on exclusion of a partner;
  - (dd) Decisions on investment projects;
  - (e) Decisions on borrowing and raising capital in other forms or providing loans valued at fifty (50) per cent or more of the charter capital of the company, unless a higher percentage is stipulated in the charter of the company;
  - (g) Decisions on sales or purchases of assets valued equal to or more than the charter capital of the company, unless a higher percentage is stipulated in the charter of the company;
  - (h) Approval of annual financial statements, total profit distributable and amount of profit to be distributed to each partner;
  - (i) Decisions on dissolution; or request for bankruptcy of the company.
4. Decisions on other matters not covered by clause 3 of this article shall be adopted by the agreement of at least two-thirds (2/3) of the total number of unlimited liability partners; the specific percentage shall be stipulated in the charter of the company.
5. The right to vote of limited liability partners shall be subject to the provisions of this Law and the charter of the company.

### **Article 183** *Convening meetings of Partners' Council*

1. The chairman of the Partners' Council may convene a meeting of the Partners' Council where necessary or at the request of an unlimited liability partner. If the chairman of the Partners' Council does not convene a meeting at the request of an unlimited liability partner, such partner shall convene a meeting.
2. A notice of invitation to a meeting of the Partners' Council may be sent in the form of a letter of invitation or by telephone, facsimile, electronic means or other methods stipulated in the charter of the company. The notice must clearly stipulate the purpose, requirement and agenda of the meeting; the program and location of the meeting and the name of the partner who requests to convene the meeting.

Discussion documents to be used to resolve the matters stipulated in article 182.3 of this Law must be forwarded to all the partners in advance; such prior period shall be stipulated in the charter of the company.

3. The chairman of the Partners' Council or the requesting partner shall chair the meeting. The meeting shall be recorded in the minutes, comprising the following main contents:
  - (a) Name, enterprise code number, head office address;
  - (b) Time and location of the meeting
  - (c) Purpose, program and agenda of the meeting;
  - (d) Full names of the chairman [of the meeting] and participant members of the meeting;
  - (dd) Opinions of the participant members;
  - (e) The passed resolutions and decisions, number of members voting in favour, against and abstentions and main contents of such resolutions and decisions;
  - (g) Full names and signatures of the participant members.

### **Article 184** *Management of business of partnership*

1. Unlimited liability partners are legal representatives of the partnership and shall organize management of the day-to-day business of the partnership. Any restriction on unlimited liability partners with respect to the conduct of the day-to-day business of the partnership shall be effective against a third party only if such [third] party knows of such restriction.
2. In management of business activities of the partnership, unlimited liability partners shall allocate amongst themselves the tasks of management and control of the partnership.

Where a number of or all unlimited liability partners together carry out a number of business operations, decisions shall be passed on the principle that they are approved by a majority.

Activities carried out by an unlimited liability partner beyond the scope of business activities of the partnership shall not fall within the scope of liability of the partnership, unless such activities are approved by the other partners.

3. The partnership may open an account or a number of accounts at banks. The Partners' Council shall appoint the partner authorized to deposit or withdraw money from such accounts.
4. The chairman of the Partners' Council, director or general director has the following obligations:
  - (a) To manage and operate the day-to-day business activities of the partnership in the capacity of an unlimited liability partner;
  - (b) To convene and organize meeting of the Partners' Council; to sign resolutions and decisions of the Partners' Council;
  - (c) To allocate tasks, co-ordinate business activities among the unlimited liability partners;
  - (d) To organize, arrange and store fully and truthfully books of account, invoices, vouchers and other documents of the partnership in accordance with law;
  - (dd) To represent the partnership in the capacity of the person lodging the petition for resolution of a civil matter, the defendant, the plaintiff or the person with related interests and obligations in arbitration or court proceedings; and to represent the company to perform other rights and obligations stipulated by law;
  - (e) Other obligations as stipulated in the charter of the partnership.

**Article 185** *Termination of status as unlimited liability partner*

1. Status as an unlimited liability partner shall terminate in the following cases:
  - (a) Voluntarily withdrawing capital from the partnership;
  - (b) On death, or being missing or having his or her capacity for civil acts restricted or lost or having cognitive difficulties or difficulties with behavioural control;
  - (c) Having been excluded from the partnership;
  - (d) Serving a prison sentence or being prohibited by a court from practising or doing certain work in accordance with law;
  - (dd) Other cases as stipulated in the charter of the partnership.
2. An unlimited liability partner is entitled to withdraw capital from the partnership if the Partners' Council so agrees. In such case, the partner who wants to withdraw capital from the partnership must give written notice of the capital withdrawal request no later than six months prior to the date of withdrawal. He or she may withdraw capital only at the end of the financial year after the financial report of such year has been approved.
3. An unlimited liability partner shall be excluded from the partnership in the following cases:
  - (a) Being unable to contribute capital or failing to contribute capital as undertaken after the partnership makes its request for the second time;
  - (b) Breaching provisions of article 180 of this Law;

- (c) Not carrying out business activities truthfully and prudently, or carrying out other inappropriate acts causing serious loss and damage to the interests of the partnership and other partners;
  - (d) Not properly performing the obligations of an unlimited liability partner.
4. In the case of termination of the status as partner of a partner who has his or her capacity for civil acts restricted or lost or has cognitive difficulties or difficulties with behavioural control, the contributed capital of such partner shall be refunded fairly and equitably.
  5. During a period of two years from the date of termination of status as an unlimited liability partner as stipulated in sub-clauses (a), (c), (d) and (dd) of clause 1 above, such individual shall remain jointly liable to the extent of all of his or her assets for any debts of the partnership arising prior to the date of termination of status as a partner.
  6. After termination of status as an unlimited liability partner, if the name of such partner has been used as a part or all of the name of the partnership, such individual or his or her heir or legal representative has the right to request the company to cease use of such name.

**Article 186** *Admission of new partners*

1. A partnership may admit new unlimited liability partners or limited liability partners; admission of new partners shall be approved by the Partners' Council.
2. An unlimited liability partner or limited liability partner must contribute capital in full as undertaken to the partnership within fifteen (15) days from the date of approval, unless the Partners' Council decides on a different time-limit.
3. The new unlimited liability partner must be jointly liable for the debts and other property obligations of the partnership to the extent of all his or her assets, unless such partner and other partners have otherwise agreed.

**Article 187** *Rights and obligations of limited liability partners*

1. A limited liability partner has the following rights:
  - (a) To attend meetings of the Partners' Council, to discuss and vote on amendments of and additions to the charter of the partnership; amendments of and additions to the rights and obligations of limited liability partners, on re-organization and dissolution of the partnership and other contents of the charter of the partnership directly relating to his or her rights and obligations;
  - (b) To be distributed with annual profit in proportion to his or her ratio of capital contribution in the charter capital of the partnership;
  - (c) To be provided with the annual financial report of the partnership; to request the chairman of the Partners' Council and the unlimited liability partners to provide complete and truthful information on the business and business results of the partnership; to check books of account, minutes, contracts, transactions, files and other documents of the partnership;
  - (d) To transfer his or her contributed capital in the partnership to another person;
  - (dd) To conduct business activities in the lines of business of the partnership in his or her own name or in the name of another person;

- (e) To dispose of his or her contributed capital by way of bequest, gift, mortgage, pledge and other forms in accordance with law and the charter of the partnership; in the event that he or she dies, his or her heir shall replace him or her as a limited liability partner of the partnership;
  - (g) To be distributed with part of the remainder of the value of assets of the partnership in proportion to his or her ratio of capital contribution in the charter capital of the partnership upon dissolution or bankruptcy of the partnership;
  - (h) Other rights in accordance with this Law and the charter of the partnership.
2. A limited liability partner has the following obligations:
- (a) To be liable for the debts and other property obligations of the partnership to the extent of his or her contributed capital as undertaken;
  - (b) Not to manage the partnership, not to conduct business activities in the name of the partnership;
  - (c) To comply with the charter of the partnership and resolutions and decisions of the Partners' Council;
  - (d) Other obligations in accordance with this Law and the charter of the partnership.

## CHAPTER 7

### Private Enterprises

#### **Article 188** *Private enterprises*

1. A private enterprise is an enterprise owned by one individual who shall be liable for all activities of the enterprise to the extent of all his or her assets.
2. Private enterprises may not issue any type of securities.
3. Each individual may only establish one private enterprise. The owner of a private enterprise must not concurrently act as the head of a business household or an unlimited liability member of a partnership.
4. Private enterprises are not permitted to contribute capital to establish or purchase shares or of capital contribution portions in partnerships, limited liability companies or shareholding companies.

#### **Article 189** *Invested capital of private enterprise owners*

1. The invested capital of the owner of a private enterprise shall be registered by himself or herself. The owner of a private enterprise is obliged to register accurately the total invested capital, specifying the amount of capital denominated in Vietnamese Dong, in freely convertible foreign currency, in gold or in other assets; in respect of capital denominated in other assets, the types of asset, quantity and residual value of each type of assets must be specified.

2. All capital and assets, including loans and leased assets, used for the business operations of an enterprise shall be recorded fully in its books of account and financial statements of the enterprise in accordance with law.
3. In the course of operation, the owner of a private enterprise may increase or reduce the capital invested in the business operations of the enterprise. The increase or reduction of the invested capital of the private enterprise owner must be recorded fully in the books of account. The owner of a private enterprise may only reduce the invested capital below the amount of invested capital registered after registration with the BRO.

#### **Article 190** *Management of private enterprises*

1. The owner of a private enterprise shall have total discretion in making all business decisions of the private enterprise; and in deciding on the use of profit after payment of taxes and performance of other financial obligations as stipulated by law.
2. The owner of a private enterprise may directly act as or employ another person to act as the director or general director to manage and administer the business operations; in this case, the private enterprise owner shall remain liable for all business activities of the private enterprise.
3. The owner of a private enterprise shall be the legal representative and shall represent the private enterprise in the capacity of the person lodging the petition for resolution of a civil matter, the plaintiff, the defendant, or the person having related interests and obligations in arbitration or court proceedings, and represent the private enterprise to perform other rights and obligations in accordance with law.

#### **Article 191** *Lease-out of private enterprises*

The owner of a private enterprise may lease out his or her whole private enterprise provided that a written notice and a notarized copy of the lease contract must be submitted to the BRO and the tax office within three working days from the effective date of the lease contract. During the term of the lease, the owner of the private enterprise shall remain responsible before the law as the owner of the private enterprise. The rights, obligations and responsibilities of the owner and the lessee with respect to the business activities of the private enterprise shall be stipulated in the lease contract.

#### **Article 192** *Sale of private enterprises*

1. The owner of a private enterprise may sell his or her private enterprise to another individual or organization.
2. After the private enterprise is sold, the owner of the private enterprise shall remain liable for all debts and other property obligations of the private enterprise which arose prior to the date of transfer of the enterprise, unless otherwise agreed by the private enterprise owner, the purchaser and creditors of the private enterprise.
3. The private enterprise owner and the purchaser of the private enterprise must comply with the provisions of the law on labour.
4. The purchaser of the private enterprise must register any change to the owner of the private enterprise in accordance with the provisions of this Law.



**Article 193** *Exercise of rights of the owner of a private enterprise in a number of special cases*

1. If the owner of a private enterprise is subject to temporary imprisonment, serves a prison sentence or is subject to administrative measures at a compulsory drug rehabilitation establishment or compulsory educational establishment, then he or she shall authorize another person to exercise his or her rights and discharge his or her obligations.
2. Where the owner of a private enterprise dies, then his or her heir or one of the heirs in accordance with the will or in accordance with law shall be the owner of the private enterprise as agreed by such heirs. If the heirs are unable to reach agreement, then they must register to convert the company or dissolve the private enterprise.
3. If the owner of a private enterprise dies without an heir, or if the heir refuses to accept the inheritance or is deprived of the right to inherit, then assets of the private enterprise shall be dealt with in accordance with the civil law.
4. If the owner of a private enterprise has his or her capacity for civil acts restricted or lost or has cognitive difficulties or difficulties with behavioural control, then the rights and obligations of such owner are exercised via his or her representative.
5. If the owner of a private enterprise is prohibited by a court from practising or doing certain work within the scope of business lines of the enterprise, the owner of the private enterprise must temporarily suspend or terminate business in the relevant industries or trades pursuant to a decision of the court or assign the private enterprise to another individual or organization.

CHAPTER 8

**Corporate Groups**

**Article 194** *Economic groups and corporations*

1. An economic group or corporation in any economic sector means a group of companies having relations with each other through ownership of shares, capital contribution portions or [through] other [forms of] association. Economic group or corporation is not a form of enterprise, does not have legal entity status, and is not required to be registered for establishment in accordance with this Law.
2. An economic group or corporation shall have a parent company, subsidiary companies and other member companies. The parent company, subsidiary companies and each member company in one economic group or corporation shall have the same rights and obligations as applicable to independent enterprises in accordance with law.

**Article 195** *Parent companies and subsidiary companies*

1. A company is deemed to be the parent company of another company if it falls into one of the following cases:
  - (a) It owns more than fifty (50) per cent of the charter capital or the total number of ordinary shares of such [another] company;
  - (b) It has the right to directly or indirectly make decisions on appointment of the majority or all members of the Board of Management, the director or general director of such [another] company;

- (c) It has the right to make decisions on amendment of and addition to the charter of such [another] company.
- 2. Subsidiary companies are not permitted to invest in purchase of shares in or contribute capital to the parent company. Subsidiary companies of the same parent company are not permitted to jointly contribute capital or purchase shares at the same time in order to have mutual cross ownership.<sup>13</sup>
- 3. Subsidiary companies having the same parent company which is an enterprise with ownership of at least sixty five (65) per cent of State capital are not permitted to jointly contribute capital or purchase shares in another enterprise or in order to establish a new enterprise in accordance with this Law.
- 4. The Government shall provide detailed regulations on clauses 2 and 3 of this article.

**Article 196** *Rights, obligations and responsibilities of parent company to subsidiary company*

- 1. Depending on the legal form of a subsidiary company, the parent company shall exercise its rights and perform its obligations as a member, owner or shareholder in the relation with the subsidiary company in accordance with the relevant provisions of this Law and other provisions of relevant laws.
- 2. Contracts, transactions and other relations between the parent company and a subsidiary company shall be made and performed independently and equally in accordance with the conditions applicable to independent legal subjects.
- 3. Where the parent company interferes beyond the authority of the owner, member or shareholder and compels a subsidiary company to conduct business operations inconsistently with normal business practices or conduct non-profitable activities without reasonable compensation in a relevant fiscal year which causes loss to the subsidiary company, the parent company shall be responsible for such loss.
- 4. The managers of the parent company which is responsible for the interference compelling the subsidiary company to conduct the business operations specified in clause 3 of this article are jointly liable with the parent company for such loss.
- 5. Where the parent company fails to compensate the subsidiary company in accordance with clause 3 of this article, the creditors or members or shareholders holding at least one per cent of the charter capital of the subsidiary company may on their own behalf or on behalf of the subsidiary company require the parent company to compensate the subsidiary company.
- 6. Where the business operations referred to in clause 3 above and conducted by the subsidiary company provide any benefit to another subsidiary company of the same parent company, such beneficial subsidiary company and the parent company shall be jointly responsible for returning the benefit to the subsidiary company suffering loss.

**Article 197** *Financial statements of parent companies and subsidiary companies*

- 1. At the end of a fiscal year, in addition to the statements and documents specified by law, a parent company must prepare the following statements:
  - (a) Consolidated financial statements of the parent company in accordance with the law on accounting;

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<sup>13</sup> Allens footnote: See the transitional provision article 219.

- (b) General report on annual business results of the parent company and subsidiary companies;
  - (c) General report on management and administration of the parent company and subsidiary companies.
2. Upon the request of the legal representative of the parent company, the legal representative of the subsidiary company must provide stipulated reports, documents and information necessary for preparation of the consolidated financial statements and general reports of the parent company and subsidiary companies.
  3. The person in charge of preparing reports of the parent company shall use the statements stipulated in clause 2 above to prepare the consolidated financial statements and general reports of the parent company and subsidiary companies if there is no doubt that the statements prepared and submitted by the subsidiary companies do not contain any wrong, incorrect or forged information.
  4. The person in charge of preparing the statements stipulated in clause 1 above shall not prepare and submit such statements if he or she does not yet receive complete financial statements of the subsidiary companies. Where the managers of the parent company have taken all necessary measures within their authority, but have not received the necessary reports, documents and information as stipulated from a subsidiary company, they shall prepare and submit the consolidated financial statements and general reports of the parent company and the subsidiary company. Such statements may or may not include information from such subsidiary company, but must contain necessary explanatory statements to avoid any misunderstanding or incorrect understanding.
  5. Reports and final annual financial statements, consolidated financial statements and general reports of the parent company and subsidiary companies shall be retained at the head office of the parent company. Copies of statements and documents specified in this clause must be retained at branches of the parent company in Vietnam.
  6. In addition to statements and documents stipulated by law, subsidiary companies must prepare a general report on purchases, sales and other transactions with their parent company.

## CHAPTER 9

### Re-organization, Dissolution and Bankruptcy of Enterprises

#### **Article 198** *Division of companies*

1. Limited liability companies and shareholding companies may divide their assets, rights and obligations, members or shareholders of the existing company (hereinafter referred to as the company being divided) in order to establish two or more new companies.
2. Procedures for division of a limited liability company or shareholding company shall be as follows:
  - (a) The Member's Council, the company owner or the General Meeting of Shareholders of the company being divided shall pass a resolution or decision on division of the company in accordance with the provisions of this Law and the charter of the company. The resolution or decision on division of the company shall have the following main details: the name and address of the head office of the company being divided; names of companies to be established; the principles, methods and procedures for division of assets of the company; the plan for employment of employees; methods of distribution, the time-limit and procedures for

transfer of capital contribution portions, shares and bonds of the company being divided to the newly-established companies; the principles for dealing with the obligations of the company being divided; and the time-limit for implementing the division of the company. The resolution or decision on division of the company shall be sent to all creditors and notified to employees within fifteen (15) days from the date of issuance of the decision or passing of the resolution;

- (b) Members, company owner or shareholders of newly-established companies shall pass the charter, elect or appoint the chairman of the Member's Council, chairman of the company, the Board of Management, director or general director and carry out enterprise registration in accordance with this Law. In this case, the application file for enterprise registration for new companies shall include the resolution or decision on division of the company referred to in sub-clause (a) of this clause.
- 3. The number of members or shareholders and the number and ratio of ownership of shares or capital contribution of members or shareholders and charter capital of new companies shall be stated accordingly in accordance with methods of division and transfer of capital contribution or shares of the company being divided to new companies in accordance with the resolution or decision on division of the company.
- 4. The company being divided ceases to exist after the new companies are issued with ERCs. The new companies must be jointly liable for unpaid obligations and debts, labour contracts and other property obligations of the company being divided or shall agree with creditors, customers and employees in order for one of such companies to perform such obligations. The new companies shall automatically inherit all of the lawful rights, obligations and interests which were divided pursuant to the resolution or decision dividing the company.
- 5. The BRO shall update the legal status of the company being divided on the national enterprise registration database upon issuance of ERCs to new companies. If the head office address of a new company is located outside the province or city under central authority where the company being divided has its head office, the BRO in the locality where the new company has its head office must notify the enterprise registration for the new company to the BRO in the locality where the company being divided has its head office in order to update the legal status of the company being divided on the national enterprise registration database.

#### **Article 199** *Separation of companies*

- 1. Limited liability companies and shareholding companies may be separated by transferring part of the assets, rights, obligations, members or shareholders of the existing company (hereinafter referred to as the company being separated) to establish one or more new LLCs or shareholding companies (hereinafter referred to as the separated company) without terminating the existence of the company being separated.
- 2. The company being separated must register any change to the charter capital and the number of members or shareholders corresponding to their capital contribution portions or shares and the number of members or shareholders reduced (if any), and at the same time, implement enterprise registration for separated companies.
- 3. Procedures for separation of a LLC or shareholding company are as follows:
  - (a) The Member's Council, the company owner or the General Meeting of Shareholders of the company being separated shall pass a resolution or decision on separation of the company in accordance with the provisions of this Law and the charter of the company. The resolution or decision on separation of the company shall have the following main details: the name and

address of the head office of the company being separated; the names of separated companies to be established; the plan for employment of employees; method of separation of the company; the value of assets, rights and obligations to be transferred from the company being separated to the separated company(ies); and the time-limit for implementing the separation of the company. The resolution or decision on separation of the company shall be sent to all creditors and notified to employees within fifteen (15) days from the date of issuance of the decision or passing of the resolution;

(b) Members, company owners or shareholders of the separated companies shall pass a charter, elect or appoint a chairman of the Member's Council, chairman of the company, the Board of Management, director or general director, and implement enterprise registration in accordance with this Law.

4. After enterprise registration, the company being separated and the separated company(ies) must be jointly liable for unpaid obligations and debts, labour contracts and other property obligations of the company being separated, unless otherwise agreed as between the company being separated, the separated company, creditors, customers and employees of the company being separated. The separated companies automatically inherit all the lawful rights, obligations and interests which were separated pursuant to the resolution or decision on separation of the company.

#### **Article 200** *Consolidation of companies*

1. Two or more companies (hereinafter referred to as companies being consolidated) may be consolidated into a new company (hereinafter referred to as the consolidated company) and at the same time, terminate the existence of the companies being consolidated.
2. Procedures for consolidation of companies are as follows:
  - (a) Companies being consolidated shall prepare a consolidation contract and the draft charter of the consolidated company. The consolidation contract shall have the following main details: the names and head office addresses of the companies being consolidated; the name and address of the head office of the consolidated company; the procedures and conditions for consolidation; the plan for employment of employees; the time-limit, procedures and conditions for conversion of assets, for conversion of capital contribution portions, shares and bonds of the companies being consolidated into capital contribution portions, shares and bonds of the consolidated company; and the time-limit for implementing the consolidation;
  - (b) Members, owners or shareholders of companies being consolidated shall pass the consolidation contract and the charter of the consolidated company, elect or appoint the chairman of the Member's Council, chairman of the company, the Board of Management, the director or general director of the consolidated company and implement enterprise registration for the consolidated company in accordance with this Law. The consolidation contract shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing.
3. A company being consolidated must ensure compliance with the *Law on Competition* regarding consolidation of companies.

4. After the consolidated company has conducted enterprise registration, the companies being consolidated cease to exist; the consolidated company is entitled to the lawful rights and interests and is liable for unpaid obligations and debts, labour contracts and other property obligations of the companies being consolidated. The consolidated company automatically inherits all the lawful rights, obligations and interests of the companies being consolidated pursuant to the contract for consolidation of companies.
5. The business registration office [BRO] shall update the legal status of companies being consolidated on the national enterprise registration database upon issuance of an ERC to the consolidated company. If the head office address of a company being separated is located outside the province or city under central authority where the consolidated company has its head office, the BRO in the locality where the consolidated company has its head office must notify the enterprise registration to the BRO in the locality where the company being consolidated has its head office in order to update the legal status of the company being consolidated on the national enterprise registration database.

#### **Article 201** *Merger of companies*

1. One or more companies (hereinafter referred to as merging companies) may be merged into another company (hereinafter referred to as the merged company) by way of transfer of all lawful assets, rights, obligations and interests to the merged company and, at the same time, terminate the existence of the merging companies.
2. Procedures for merger of companies shall be stipulated as follows:
  - (a) Related companies shall prepare a merger contract and a draft charter of the merged company. The merger contract must have the following main details: the name and address of the head office of the merged company; the name(s) and addresses of the head office(s) of the merging company(ies); the procedures and conditions for the merger; the plan for employment of employees; the methods, procedures, time-limit and conditions for conversion of assets, for conversion of capital contribution portions, shares and bonds of the merging company(ies) to capital contribution portions, shares and bonds of the merged company; and the time-limit for implementing the merger;
  - (b) Members, company owners or shareholders of related companies shall pass the merger contract and the charter of the merged company and implement enterprise registration for the merged company in accordance with this Law. The merger contract shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing;
  - (c) After the merged company has conducted enterprise registration, the merging companies cease to exist; the merged company is entitled to the lawful rights and interests and is liable for unpaid obligations and debts, labour contracts and other property obligations of the merging companies. The merged company automatically inherits all the lawful rights, obligations and interests of the merging companies pursuant to the merger contract.
3. Companies involved in conducting the merger must comply with the *Law on Competition* regarding merger of companies.



4. The BRO shall update the legal status of merging companies on the national enterprise registration database and shall make amendment to the contents of enterprise registration for the merged company. If the head office address of a merging company is located outside the province or city under central authority where the merged company has its head office, the BRO in the locality where the merged company has its head office shall notify the enterprise registration to the BRO in the locality where the merging company has its head office in order to update the legal status of the merging company on the national enterprise registration database.

**Article 202** *Conversion of limited liability companies into shareholding companies*

1. State owned enterprises shall be converted into shareholding companies in accordance with relevant laws.
2. A limited liability company may be converted into a shareholding company by the following methods:
  - (a) It is converted into a shareholding company without raising additional contributed capital from other organizations or individuals or without selling any portion of capital contribution to other organizations or individuals;
  - (b) It is converted into a shareholding company by way of raising additional contributed capital from other organizations or individuals;
  - (c) It is converted into a shareholding company by way of selling all or part of capital contribution portion to one or more other organizations or individuals;
  - (d) Combination of the methods stated in sub-clauses (a), (b) and (c) of this clause and other methods.
3. A company must register its conversion with the BRO within ten (10) days from the date of completion of the conversion. Within three working days from the date of receipt of an application file for conversion, the BRO shall issue a new ERC and update the legal status of the company on the national enterprise registration database.
4. The converted company automatically inherits all lawful rights and interests of the company being converted, and is responsible for debts, including tax debts, labour contracts and other obligations of the company being converted.

**Article 203** *Conversion of shareholding companies into single member limited liability companies*

1. A shareholding company may be converted into a single member LLC by the following methods:
  - (a) One shareholder receives an assignment of the entire corresponding shares of all remaining shareholders;
  - (b) One organization or individual not being a shareholder receives an assignment of the entire shares of all shareholders of the company;
  - (c) The company still has only one shareholder.
2. The assignment or receipt of an investment capital contribution stipulated in clause 1 above must be implemented on the basis of market price [and/or] price determined by the asset method, the discounted cash flow method or other methods.



3. Within fifteen (15) days from the date on which the company has only one shareholder or completes assignment of shares as stipulated in clauses 1(a) and 1(b) of this article, the company shall send an application file for conversion with the BRO at the place where the enterprise implemented [business] registration. Within three working days from the date of receipt of the application file for conversion, the BRO shall issue an ERC and update the legal status of the company on the national enterprise registration database.
4. A converted company automatically inherits all the lawful rights and legal interests and is responsible for all debts including tax debts and labour contracts and other obligations of the company being converted.

**Article 204** *Conversion of shareholding companies into limited liability companies with two or more members*

1. A shareholding company may be converted into a limited liability company with two or more members [*multiple LLC*] by the following methods:
  - (a) It is converted into a multiple LLC without raising additional [capital] from or assigning shares to other organizations or individuals;
  - (b) It is converted into a multiple LLC at the same time as it raises contributed capital from other organizations or individuals;
  - (c) It is converted into a multiple LLC at the same time as it assigns all or part of shares to other capital contributing organizations or individuals;
  - (d) It only has two remaining shareholders;
  - (dd) Combination of the methods stipulated in sub-clauses (a), (b) and (c) above and other methods.
2. A company must register its conversion with the BRO within ten (10) days from the date of completion of the conversion. Within three working days from the date of receipt of an application file for conversion, the BRO issues an ERC and updates the legal status of the company on the national enterprise registration database.
3. A converted company automatically inherits all lawful rights and interests of the company being converted and is responsible for debts, including tax debts, labour contracts and other obligations of the company being converted.

**Article 205** *Conversion of private enterprises into limited liability companies, shareholding companies or partnerships*

1. A private enterprise may be converted into a LLC, shareholding company or partnership pursuant to a decision of the owner of the private enterprise if it satisfies all the following conditions:
  - (a) The converted enterprise must satisfy the conditions stipulated in article 27.1 of this Law;
  - (b) The owner of the private enterprise undertakes in writing to be personally responsible by all his own assets for all unpaid debts and undertakes to pay all debts when due;

- (c) The owner of the private enterprise agrees in writing with parties to contracts which have not yet been discharged [liquidated] that the converted company shall take over and perform such contracts;
  - (d) The owner of the private enterprise provides written undertakings or enters into a written agreement with other capital contributing members on receipt and employment of existing employees of the private enterprise.
- 2. Within three working days from the date of receipt of an application file, the BRO shall consider and issue an ERC if all the conditions stipulated in clause 1 of this article are satisfied, and update the legal status of the enterprise on the national enterprise registration database.
  - 3. A converted company automatically inherits all rights and obligations of the private enterprise from the date of issuance of the ERC. The private enterprise owner is personally responsible by his or her entire assets for all debts arising prior to the date on which the converted company is issued with the ERC.

**Article 206** *Temporary suspension and suspension of operation, and termination of business*

- 1. An enterprise must notify the BRO in writing no later than three working days before the date of temporary suspension of its business or resumption of its business prior to the notified time-limit.
- 2. The BRO or a competent State agency shall require an enterprise to temporarily suspend or suspend its activities or terminate its business in the following cases:
  - (a) Temporary suspension or termination of business in an industry or trade subject to conditions or in an industry or trade for which market approach is subject to conditions applicable to foreign investors on discovery that the enterprise fails to satisfy the conditions as stipulated by law;
  - (b) Temporary suspension of business when required by the relevant agency pursuant to the laws on tax management, the environment and/or other relevant laws;
  - (c) Suspension of operation and termination of one or more business lines or a number of sectors pursuant to a decision of a court.
- 3. During the period of any temporary suspension of business, the enterprise must pay any outstanding taxes, social insurance, health insurance and unemployment insurance, must continue to pay other debts and must complete performance of contracts signed with customers and employees, unless otherwise agreed by the enterprise, creditors, customers and employees.
- 4. The Government shall provide detailed regulations on the sequence and procedures for co-ordination between the BRO and other relevant State agencies in the cases prescribed in clause 2 above.

**Article 207** *Cases of and conditions for dissolution of enterprises*

- 1. An enterprise shall be dissolved in the following cases:
  - (a) The duration of operation stipulated in the charter of the company expires without a decision to extend;

- (b) Pursuant to a resolution or decision of the enterprise owner in the case of a private enterprise, of the partners' council in the case of a partnership, of the members' council or the company owner in the case of a LLC, or by the general meeting of shareholders in the case of a shareholding company;
  - (c) The company does not have the minimum number of members stipulated in this Law for a period of six consecutive months and does not conduct procedures to convert the form of enterprise;
  - (d) The ERC is revoked, unless otherwise stipulated in the *Law on Tax Management*.
2. An enterprise is only allowed to be dissolved when it ensures it will pay all debts and other property obligations and is not in the process of resolution of a dispute at a court or arbitration agency. The relevant managers and the enterprise stipulated in clause 1(d) of this article are jointly responsible for the debts of the enterprise.

**Article 208** *Sequence and procedures for dissolution of enterprises*

Dissolution of an enterprise in the cases stipulated in clauses 1(a), 1(b) and 1(c) of article 207 of this Law shall be carried out in accordance with the following provisions:

1. A resolution or decision on dissolution of the enterprise shall be passed. The resolution or decision on dissolution of the enterprise must contain the following main details:
  - (a) Name and address of the head office of the enterprise;
  - (b) Reasons for dissolution;
  - (c) Time-limit and procedures for discharging [liquidating] contracts and paying debts of the enterprise;
  - (d) Plan for dealing with obligations arising from labour contracts;
  - (dd) Full name and signature of the owner of the private enterprise, the company owner, or chairman of the Members' Council or Board of Management.
2. The owner of a private enterprise, the members' council or company owner or the board of management shall directly organize the liquidation of assets of the enterprise, except where the establishment of a separate liquidation organization is stipulated by the charter of the company.
3. Within seven working days from the date of passing, the resolution or decision on dissolution and the minutes of the meeting must be sent to the BRO, the tax office, and employees in the enterprise. The resolution or decision on dissolution must be published on the national enterprise registration information portal, and must be displayed publicly at the head office, branches and representative offices of the enterprise.

If the enterprise has unpaid financial obligations, it must send the resolution or decision on dissolution together with a plan on settlement of debts to creditors and people with related rights, obligations and interests. The plan on settlement of debts shall include the name and address of the creditor; the amount of the debt, the time-limit, location and method of payment of such debt; and the method and time-limit for dealing with complaints of creditors.

4. The BRO must make an announcement of the status of the enterprise which is currently conducting procedures for dissolution on the national enterprise registration information portal immediately after receiving the resolution or decision on dissolution from the enterprise, and must publish the resolution or decision on dissolution and the plan on settlement of debts (if any) together with the announcement.
5. Debts of the enterprise shall be paid in the following order of priority:
  - (a) Unpaid wages, retrenchment allowances, social insurance, health insurance and unemployment insurance in accordance with law and other benefits of employees pursuant to the signed collective labour agreement and labour contracts.
  - (b) Tax liabilities;
  - (c) Other debts.
6. After payment of costs of the dissolution proceeding of the enterprise and debts, the remainder shall be distributed to the owner of the private enterprise, the members, shareholders or company owner in proportion to their ratio of ownership of capital contribution portions or shares.
7. The legal representative of the enterprise shall send an application file for dissolution of the enterprise to the BRO within five working days from the date of payment of all debts of the enterprise.
8. The BRO shall update the legal status of the enterprise on the national enterprise registration database if upon expiry of one hundred and eighty (180) days from the date of receipt of the resolution or decision on dissolution as stipulated in clause 3 of this article the BRO does not receive any opinion on the dissolution from the enterprise or any objection from related parties, or does not receive same within five working days from the date of receipt of an application file for dissolution.
9. The Government shall provide detailed regulations on the sequence and procedures for dissolution of enterprises.

**Article 209** *Dissolution of enterprises in the case of revocation of enterprise registration certificates or pursuant to decisions of courts*

Dissolution of an enterprise in the case of revocation of its ERC or pursuant to a decision of a court is carried out in accordance with the following sequence and procedures:

1. The BRO must make an announcement of the status of the enterprise which is currently carrying out the procedures for dissolution on the national enterprise registration information portal at the same time as it issues a decision revoking the ERC or immediately after receipt of the legally effective decision on dissolution from a court. The BRO must publish the decision revoking the ERC or the legally effective decision of the court together with the announcement;
2. Within ten (10) days from the date of receipt of the decision revoking the ERC or the legally effective decision of the court, the enterprise must convene a meeting to make a decision on dissolution. The resolution or decision on dissolution and the copy of the decision revoking the ERC or the legally effective decision of the court must be sent to the BRO, the tax office and employees in the enterprise, and must be publicly displayed at the head office, branches and representative offices of the enterprise. Where the law requires publication in a newspaper, the resolution or decision on dissolution must be published in at least one printed or electronic newspaper in three consecutive issues.

If the enterprise has unpaid financial obligations, it must send a plan on settlement of debts together with the resolution or decision on dissolution of the enterprise to creditors and people with related interests and obligations. The notice shall include the name and address of the creditor; the amount of the debt, the time-limit, location and method of payment of such debt; and the method and time-limit for dealing with complaints of creditors.

3. The payment of debts of the enterprise shall be made in accordance with article 208.5 of this Law.
4. The legal representative of the enterprise shall send an application file for dissolution of the enterprise to the BRO within five working days from the date on which all debts of the enterprise are fully paid.
5. The BRO shall update the legal status of the enterprise on the national enterprise registration database if upon expiry of the period of one hundred and eighty (180) days from the date of notification of the status of carrying out the procedures for dissolution of the enterprise as stipulated in clause 1 of this article the BRO does not receive any written objection from the related parties, or [any written objection] within five working days from the date of receipt of an application file for dissolution.
6. The manager of the company concerned must be personally responsible for any loss caused by the failure to implement or failure to correctly implement the provisions of this article.

#### **Article 210** *Application file for dissolution of enterprise*

1. An application file for dissolution of an enterprise shall comprise the following documents:
  - (a) Notice of dissolution of the enterprise;
  - (b) Report on liquidation of assets of the enterprise; list of creditors and amount of debts paid, including full payment of tax liabilities and payment of social insurance, health insurance and unemployment insurance contributions for employees after the decision on dissolution of the enterprise is made (if any).
2. Members of the board of management of a shareholding company, members of the members' council of a LLC, the company owner, the owner of a private enterprise, the director or general director, unlimited liability partners, or the legal representative of the enterprise are liable for the truthfulness and accuracy of the application file for dissolution of the enterprise.
3. If the application file for dissolution is inaccurate or contains false materials, then the persons referred to in clause 2 above are jointly liable to pay for interests of employees which remain unresolved, unpaid tax debts, and other unpaid debts,, and are personally liable before the law for any consequences arising during a period of five years as from the date of lodging the application file for dissolution of the enterprise to the BRO.

#### **Article 211** *Prohibited activities as from date of decision on dissolution*

1. As from the date of the decision on dissolution of an enterprise, the enterprise and managers of the enterprise shall be strictly prohibited from conducting the following activities:
  - (a) Concealing, or dispersing<sup>14</sup> any asset;

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<sup>14</sup> Allens footnote: That is, so that such assets may not be included in the dissolution process.

- (b) Waiving or reducing the right to claim any debt;
  - (c) Converting any unsecured debts into debts secured by assets of the enterprise;
  - (d) Signing any new contract except where [the signing of a new contract] is for the purpose of dissolution of the enterprise;
  - (dd) Pledging, mortgaging, donating, giving or leasing out any assets;
  - (e) Terminating the performance of any contract which has taken effect;
  - (g) Raising capital in any other forms.
2. Depending on the nature and seriousness of the breach, the individual in breach of clause 1 above may be subject to administrative penalties or criminal prosecution, or must pay compensation for any loss or damage caused.

**Article 212** *Revocation of enterprise registration certificate [ERC]*

1. The ERC of an enterprise shall be revoked in the following cases:
- (a) Content declared in the application file for enterprise registration is false;
  - (b) The enterprise is established by persons prohibited from establishing enterprises as stipulated in article 17.2 of this Law;
  - (c) The enterprise ceases its business activities for one year without notifying the BRO and the tax office;
  - (d) The enterprise fails to send reports as stipulated in clause 1(c) of article 216 of this Law to the BRO within six months from the date of expiry of the period for sending reports or from the date of a written demand;
  - (dd) Other cases pursuant to a decisions of a court or as requested by a competent agency in accordance with law.
2. The Government shall provide regulations on the sequence and procedures for revocation of ERCs.

**Article 213** *Termination of operation of branches, representative offices and business locations*

1. A branch, representative office or business location of an enterprise may terminate its operation pursuant to a decision of such enterprise or pursuant to a decision revoking the certificate of registration of operation of the branch or representative office made by a competent State agency.
2. The legal representative of the enterprise and the head of the branch or representative office whose operation is being terminated are jointly liable for the truthfulness and accuracy of the application file for termination of operation of the branch, representative office or business location.
3. An enterprise whose branch has terminated its operation is responsible to perform all contracts, to pay all debts including tax debts of the branch, and to continue to employ the employees or to fully resolve the legal interests of the employees who have worked in the branch in accordance with law.
4. The Government shall provide detailed regulations on this article.

#### **Article 214** *Bankruptcy of enterprises*

The bankruptcy of enterprises shall be carried out in accordance with the law on bankruptcy.

### **CHAPTER 10**

#### **Implementing Provisions**

#### **Article 215** *Responsibilities of State administrative agencies*

1. The Government shall exercise uniform State administration of enterprises.
2. Ministries and ministerial equivalent agencies are responsible before the Government for performance of assigned duties during State administration of enterprises.
3. Provincial people's committees shall exercise State administration of enterprises in their localities.
4. Ministries, ministerial equivalent agencies, relevant agencies and provincial people's committees shall, within the scope of their assigned duties and powers, establish connection with, link and share the following information with the national enterprise registration database:
  - (a) Information about the business licence, certificate of satisfaction of business conditions, practising certificate, certificate or written approval of business conditions issued to enterprises and decisions imposing penalties for administrative breaches on enterprises;
  - (b) Information about operational status and tax payment status of enterprises from tax reports of the enterprises, and financial statements of enterprises;
  - (c) Co-ordination and sharing of information about the operational status of enterprises in order to increase the effectiveness of State administration.
5. The Government shall provide detailed regulations on this article.

#### **Article 216** *Business registration offices*

1. A business registration office [BRO] has the following duties and powers:
  - (a) To carry out enterprise registration and to issue enterprise registration certificates in accordance with law;
  - (b) To co-operate to establish and manage a national system of information on enterprise registration; to publicize and provide information to State agencies, organizations and individuals upon demand/request in accordance with law;
  - (c) To require enterprises to report on their compliance with the provisions of this Law when considered necessary; and to monitor the performance of the reporting obligation by enterprises;
  - (d) To examine and supervise directly, or request competent State agencies to examine and supervise, enterprises with respect to the matters in application files for enterprise registration;



- (dd) To be responsible for the validity of application files for enterprise registration and not to be responsible for breaches committed by enterprises before and after enterprise registration;
  - (e) To deal with breaches of the law on enterprise registration; to revoke enterprise registration certificates and to request enterprises to carry out procedures for dissolution in accordance with this Law;
  - (g) Other duties and powers in accordance with this Law and other provisions of relevant laws.
2. The Government shall provide for the organizational system of business registration offices.

**Article 217** *Implementing provisions*

1. This Law is of full force and effect as from 1 January 2021.
2. The *Law on Enterprises* 68/2014/QH13 shall no longer be effective as from the effective date of this Law
3. The expression "State owned enterprise" is replaced by the expression "enterprise in which the State holds 100% charter capital" as stated in articles 35.1(m) and 37.1(k) of the *Law on State Budget* 83/2015/QH13; in article 23.3(a) of the *Law on Irrigation* 08/2017/QH14 as amended by Law 35/2018/QH14; in article 74.2(b) of the *Civil Proceedings Code* 92/2015/QH13 as amended by Law 45/2019/QH14; in article 43.2(a) of the *Law on Management and Use of Weapons, Explosive Materials and Supporting Instruments* 14/2017/Qh14 as amended by Law 50/2019/QH14; in article 19 of the *Law on Denunciations* 25/2018/QH14; and in articles 3, 20, 30, 34, 39 and 61 of the *Law on Anti-Corruption* 36/2018/QH14.
4. The Government shall provide regulations on registration and operation of business households.
5. Subject to the provisions of this Law, the Government shall provide detailed regulations on organization of management and operation of State owned enterprises directly serving national defence and security or the economy in combination with national defence and security.

**Article 218** *Transitional provision*

1. Companies which do not have shares or capital contribution portions held by the State and which contributed capital or purchased shareholding prior to 1 July 2015 are not bound by article 195.2 of this Law but are not permitted to increase the rate of cross-ownership;
2. People being managers of enterprises, inspectors and authorized representatives who fail to satisfy the criteria and conditions prescribed in articles 14.5(b), 64.3, 93.3, 101.3, 103.3(a), 103.3(b), 103.3(c), 155.1(d), 162.5(b) and 169.2 of this Law are permitted to continue performance of their duties until the end of the remaining period of their term of office.

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This Law was passed by Legislature XIV of the National Assembly of the Socialist Republic of Vietnam at its 9th session on 17 June 2020.

Chairman of the National Assembly

NGUYEN THI KIM NGAN