

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

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DECREE

ON CONVERSION FROM STATE-OWNED ENTERPRISES AND SINGLE-MEMBER LIMITED LIABILITY COMPANIES WITH 100% OF CHARTER CAPITAL INVESTED BY STATE-OWNED ENTERPRISES INTO JOINT-STOCK COMPANIES

Pursuant to the Law on Government Organization dated June 19, 2015;

Pursuant to the Law on Enterprises dated November 26, 2014;

Pursuant to the Law on management and utilization of state capital invested in the enterprise's manufacturing and business activities dated November 26, 2014;

Pursuant to the Law on Securities dated June 29, 2006; Law on Amendments to certain articles of the Law on Securities dated November 24, 2010;

Pursuant to the Land Law dated November 29, 2013;

At the request of the Minister of Finance;

The Government promulgates a Decree on conversion from state-owned enterprises and single-member limited liability companies with 100% of charter capital invested by state-owned enterprises into joint-stock companies.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Decree deals with conversion from state-owned enterprises and single-member limited liability companies with 100% of charter capital invested by state-owned enterprises into joint-stock companies.

Article 2. Regulated entities

1. Authorities representing state ownership (hereinafter referred to as "representative authorities").

2. State-owned enterprises including:

a) Wholly state-owned single-member limited liability companies (LLCs) that are parent companies of state-owned economic groups, parent companies of state corporations (including state-owned commercial banks) or parent companies in groups of parent companies and subsidiaries (hereinafter referred to as “parent companies”).

b) Wholly state-owned single-member LLCs.

c) Wholly state-owned enterprises that have not been converted into single-member LLCs.

3. Single-member LLCs with 100% of charter capital invested by state-owned enterprises (hereinafter referred to as “level II enterprises”).

4. Other authorities, organizations and individuals relevant to conversion from state-owned enterprises into joint-stock companies (JSCs).

Article 3. Definitions

For the purposes of this Decree, the terms below shall be construed as follows:

1. “equitized enterprise” is any enterprise mentioned in Clause 2 and Clause 3 Article 2 herein and converted into the JSC stated herein.

2. “date of equitization decision” is the day on which a representative authority makes a decision on enterprise equitization.

3. “date of enterprise valuation” is the date selected by the representative authority that is suitable for methods to determine the enterprise value. In case of determining the enterprise value by the asset-based method, the date of enterprise valuation shall be the date of closing the accounting record to make the latest quarterly or annual financial statements after the date of equitization decision.

4. “date of publishing the enterprise value” is the day on which the representative authority makes a decision on publishing the equitized enterprise value.

5. “date of equitization” means the day on which the equitized enterprise obtains the certification of first registration of JSC.

6. “auction of shares” is the public offering of the equitized enterprise’s shares to those who go into price competition.

7. “auctioneering organization” is any stock exchange, stock company, service center or enterprise holding property auction in accordance with regulations of law on property auction and decisions made by the representative authority.

8. “starting price” means the initial price of a share sold on the market determined by the representative authority provided that it is not under the par value (VND 10,000). The starting price shall be determined by a consulting firm to ensure full determination of the actual value of state capital in the enterprise that has been recalculated and published by a competent authority and potential of the enterprise in the future.

9. “equitization expense” is an expense directly related to the process of enterprise equitization from the date of equitization decision to the date of equitization.

10. “representative authority” means any ministry, ministerial or governmental authority; People’s Committee of province/central-affiliated city (hereinafter referred to as “provincial People’s Committee”) or an organization established under regulations of law that is responsible for executing rights and fulfilling responsibilities of a representative of state ownership in the equitized enterprise.

Article 4. Equitization requirements

1. The enterprises mentioned in Clause 2 and Clause 3 Article 2 herein may be equitized when all the following requirements are satisfied:

a) Such enterprises are not on the currently effective list of wholly state-owned enterprises that is made by the Prime Minister;

b) State capital is still available after settling financial issues and revaluation of such enterprises.

2. In case of the enterprises that have financial issues settled and enterprise value recalculated as stated in Chapter II and Chapter III herein but the actual enterprise value is lower than payables:

a) In case of enterprises on the list of enterprises over 50% shares of which has to be held by the State after equitization under the Prime Minister’s decisions, representative authorities shall direct enterprises to cooperate with the Vietnam Debt and Asset Trading Corporation (DATC) and creditors of enterprises in making debt sale plans to restructure enterprises.

If the aforesaid plans are not feasible or efficient, they shall be converted into other conversions in accordance with regulations of law;

b) The other enterprises shall be converted into other conversions by representative authorities.

3. The State shall not provide further capital for equitization, even for enterprises over 50% shares of which have to be held by the State after under the Prime Minister's regulations.

Article 5. Forms of equitization

1. Issuing additional shares in order to increase charter capital while keeping current state capital unchanged.

2. Selling part of current state capital or both selling part of state capital and issuing additional shares to increase charter capital.

3. Selling the entire state capital available at the enterprise or both selling the entire state capital and issuing additional shares to increase charter capital.

Article 6. Requirements for purchasing shares

1. Domestic investors shall be entitled to purchase shares from equitized enterprises with unlimited quantity, unless otherwise stated in Clause 4 this Article.

2. Foreign investors shall be entitled to purchase shares from equitized enterprises in compliance with provisions of this Decree and relevant legislative documents.

Foreign investors that wish to purchase shares shall open accounts at credit institutions under regulations of Vietnam law on foreign exchange.

3. Strategic investors:

a) A strategic investor may be a domestic or foreign investor that:

- has the status of a legal entity;

- has adequate financial capacity and a profitable business in the past 2 years before the date of subscribing for shares without accumulated loss; and

- has a written commitment made by a competent person when registering to become the strategic investor of the equitized enterprise that:

+ The primary business line(s) and brand(s) of the equitized enterprise will be maintained for at least 3 years from the date officially becoming the strategic investor.

The representative authority of an enterprise on the list of national brands shall request the Prime Minister to determine the specific time that the strategic investor have to make the commitment to continue maintaining the primary business line(s) and brand(s) of the equitized enterprise.

+ The purchased shares will not be transferred within 3 years from the day on which the JSC obtains the certification of first registration of JSC according to the Law on Enterprises.

+ There is a plan for assisting the enterprise after equitized in new technology exchange; provision of training for personnel; financial capacity enhancement; enterprise management; provision of materials; market development.

+ Compensation shall be paid for damage caused by any violation against the commitment and in which case the shares purchased by the strategic investor are at the State's disposal.

b) The initial offering of shares to strategic investors is only available to the enterprises on the list of enterprises over 50% of shares of which has to be held by the State under the Prime Minister's decision.

c) According to the amount of charter capital, nature of business lines and the need for enterprise expansion and development, a steering committee for enterprise equitization (hereinafter referred to as "steering committee") shall request the representative authority to make a decision on initial offering of shares to strategic investors, criteria for selecting strategic investors and amount of shares offered to strategic investors.

Procedures for selecting strategic investors in the equitized enterprise are provided in Appendix I attached hereto to ensure strategic investors are selected and shares are subscribed before initial public offering (IPO).

d) If there is only one strategic investor that is eligible to subscribe for shares and the quantity of subscribed shares is less than or equal to the shares offered to the strategic investor according to the approved equitization plan, the steering committee shall request the representative authority to make the decision on offering shares for the strategic investor through direct negotiation provided that the selling price is not less than the average successful bid according to public auction results; in case shares are offered to other investors as specified in Clause 2 Article 37 herein, the agreed price shall be at least equal to the price agreed with the investor subscribing for shares.

The steering authority shall request the representative authority to make a decision on revising the equitization plan to sell the remaining shares (difference between the number of shares offered to the strategic investor according to the approved equitization plan and the number of shares subscribed by the strategic investor) at public auction.

dd) If there are at least two strategic investors eligible to subscribe for shares and the total number of shares subscribed by strategic investors is more than the number of shares offered to strategic investors specified in the approved equitization plan, the steering committee shall request the representative authority to consider holding an auction for strategic investors at a stock exchange.

The auction between strategic investors shall be conducted after the public auction is held with the starting price equal to the average successful bid of the public auction (except for the case stated in Clause 2 Article 37 herein, in which the starting price shall be the agreed price to offer shares for the investor) Shares will be sold to investors in order of their offered prices from highest to lowest.

e) If there are at least two strategic investors that are eligible to subscribe for shares and the total number of subscribed shares is less than or equal to the shares offered to strategic investors according to the approved equitization plan, the steering committee shall reach an agreement on the number of offered shares and the selling price of shares for each strategic investor and request the representative authority for approval and the number of shares offered to each strategic investor shall be the quantity of shares subscribed by each strategic investor provided

that the selling price is not less than the average successful bid according to public auction results (in case shares are offered to other investors specified in Clause 2 Article 37 herein, the agreed selling price shall be at least equal to the price agreed with investors subscribing for shares).

The steering authority shall request the representative authority to make a decision on revising the equitization plan to sell the remaining shares (difference between the number of shares offered to strategic investors according to the approved equitization plan and the number of shares subscribed by the strategic investor) at public auction.

g) The strategic investor that fails to comply with the commitment or violates against regulations on transfer of shares shall provide compensation for any damage in accordance with the commitment agreement and regulations of law.

h) The strategic investor has to pay a deposit or obtain a guarantee from a credit institution or branch of foreign bank that equals (=) 20% of value of the shares subscribed at the starting price that a competent authority decided through the approved equitization plan.

The strategic investor abandoning the right to purchase shares will lose the deposit (or incur a fine equal to the deposit in case of guarantee).

i) Offering of shares for the strategic investor shall be done before the first General meeting of shareholders is held to convert the enterprise into the JSC.

The steering authority shall request the representative authority to make a decision on recording unsold shares (difference between the number of shares offered to strategic investors according to the approved equitization plan and the number of shares subscribed by the strategic investor) as a decrease in charter capital before the first General meeting of shareholders is held.

4. Entities not eligible for purchasing initially issued shares from the equitized enterprise include:

- a) Members of the steering committee and assistance teams of enterprise equitization (excluding for members that are representatives of the enterprise);
- b) Financial intermediaries and employees or managers thereof engaging in providing consulting services of equitization or financial statement audit and the organization that audits the enterprise value (excluding underwriters that purchase unsold shares as stated in the underwriting agreements);
- c) Subsidiaries and associate companies in the same corporation and parent companies;
- d) Auctioneering organizations and employees and managers thereof;
- dd) The related persons mentioned in Points a, b and d Clause 17 Article 4 of the 2014 Law on Enterprises.

Article 7. Payment currency and methods of initial offering

1. Domestic and foreign investors shall purchase shares from the enterprise in VND.
2. The initial offering shall be carried out in the following methods:
 - a) Public auction;
 - b) Underwriting;
 - c) Direct negotiation;
 - d) Book building.

The Prime Minister shall decide entities eligible to apply the booking building mode and the Ministry of Finance shall provide detailed guidance on the share offering according to such method.

3. The representative authority shall determine the offering method mentioned in Clause 2 this Article depending on the eligibility to buy shares through initial offering.

Article 8. Equitization expenses

1. The representative authority shall make the estimate and statement of equitization expenses. The general director or director of the equitized enterprise shall decide specific expenses in conformity with the contents approved by the representative authority and take responsibility for such decision. Equitization expenses shall ensure the availability of all suitable and valid documentation and cost-effectiveness.

2. Equitization expenses consist of:

a) Direct costs of the enterprise:

- Cost of providing professional training in enterprise equitization;
- Cost of stocktaking and determination of asset values;
- Cost of making the equitization plan and developing the charter;
- Cost of organizing the labor conference to implement equitization;
- Cost of communications and publishing information about the enterprise;
- Cost of hiring financial statement audit on the official date of equitization;
- Cost of share offering;

- Cost of holding the first General meeting of shareholders.

b) Costs of hiring an auditing or consulting firm (including the organization providing consulting services to determine enterprise value, determine the starting price, develop the equitization plan or offer shares) decided by the representative authority or the steering committee (if authorized). The payment for the costs of hiring the consulting firm shall be made according to agreements concluded by relevant parties.

c) Salary for the steering committee and the assistance team:

- The salary for each member of the steering committee and the assistance team shall not exceed twice as much as the statutory pay rate for officials, public employees and arm forces issued by the Government in each period.

- The time limit for paying salary to each member of the steering committee or the assistance team shall be 24 months from the day on which the steering committee or the assistance team is established.

d) Other expenses related to enterprise equitization.

3. Cost of hiring financial statement audit on the date of enterprise valuation not considered one of the equitization expenses and shall be aggregated with business expenses of the enterprise in the current period.

4. Equitization expenses shall be taken from the revenue earned from the offering of shares stated in Article 39 herein.

Article 9. Shares and share certificates

1. Charter capital shall be divided into equal parts called shares. The par value of each share shall be VND ten thousand (VND 10,000).

2. A share certificate may be a certificate given by the JSC, accounting entry or electronic data to certify that one or some shares is/are under ownership of a company's shareholder. The share certificate shall specify the primary contents mentioned in Clause 1 Article 120 of the 2014 Law on Enterprises.

Article 10. Rules for inheritance of rights and obligations of JSCs converted from state-owned enterprises

1. The equitized enterprise shall arrange and utilize the existing employees on the date of making the decision on equitization and provide sufficient benefits for employees who resign or are made redundant.

The JSC shall take all responsibilities related to employees from the converted equitized enterprise; have the right to recruit and allocate the workforce and cooperate with relevant authorities in providing sufficient benefits for employees.

2. The equitized enterprise shall cooperate with relevant authorities in conducting inspections and settling financial issues in order to determine the state capital value on the official date of equitization.

3. The JSC shall be entitled to use the entire assets and sources of capital transferred for business; inherit all legitimate and rights and benefits, take responsibilities for debts including tax debts, labor contracts and other obligations of the equitized enterprise.

4. Surplus or deficit assets compared to the equitized enterprise value decided and published shall be disposed of as follows:

a) In case the enterprise still has state capital after the equitization:

- Surplus assets:

If the enterprise has not made the terminal statement on the official date of equitization, the surplus assets shall be recorded as an increase in state capital in the JSC (if the JSC wishes to use the assets and the use of the surplus assets by the JSC is approved by the resolution of the General meeting of shareholders) or shall be transferred to the DATC (if the JSC does not wish to use the assets).

If the enterprise has made the terminal statement on the official date of equitization, the assets shall be transferred to the DATC.

- Deficit assets after being offset against compensation (if any):

If the enterprise has not made the terminal statement on the official date of equitization, the assets shall be aggregated with business expenses incurred over the period from the date of enterprise valuation to official date of equitization.

If the enterprise has made the terminal statement on the official date of equitization, the deficit assets shall be recorded as decrease in state capital in the JSC (if a resolution has been adopted by the General meeting of shareholders) or aggregated with business expenses of the JSC (if the resolution is rejected by the General meeting of shareholders).

b) In case the enterprise no longer has state capital after the equitization:

- The surplus assets shall be transferred to the DATC.

- The deficit assets after being offset against compensation (if any) shall be aggregated with business expenses of the JSC.

Article 11. Transparency and listing

1. The equitized enterprise shall publish the following information on the Government's website and sent it to the Ministry of Finance and the reform and development steering committee: the roadmap and progress of equitization, information about the enterprise (including the approved plan for land use, unsettled land disputes (if any)), settlement of financial issues during equitization, enterprise valuation method and enterprise value, equitization plan and results thereof, land management and use, plan for arrangement and purchasing of shares by employees and draft of the enterprise's charter mentioned in the 2014 Law on Enterprises.

2. When making a document on the IPO auction, the equitized enterprise shall prepare both an application for share deposit and an application for listing or registration at the stock market (if the equitized enterprise is eligible to be listed in compliance with regulations of law on securities).

3. Within 90 days from the end of the IPO, the equitized enterprise shall complete procedures for registration of deposit of share certificates at the Vietnam Securities Depository and transaction registration on the unlisted public company market (UPCOM) transaction system.

4. The enterprise equitized in the form of both selling part of state capital and issuing additional shares to increase charter capital through public auction for the IPO if satisfying all requirements listed at the stock exchange shall submit the application for listing after the offering and report results thereof to the State Securities Commission.

5. The representative authority shall specify equitization listed on the stock market in the equitization plan in order to inform investors before the initial offering.

Where the equitized enterprise is listed at the stock exchange, the representative authority shall decide the minimum number of subscribed shares over the number of IPO shares so that the enterprise meets all requirements for listing shares after the equitization. The minimum number of subscribed IPO shares shall abide by the principle of equality for all types of ownership.

Article 12. Provision of equitization consulting services

1. The equitized enterprise shall be entitled to hire a consulting firm to determine the enterprise value and the starting price and develop plans for equitization and initial offering.

2. The equitized enterprise shall hire the consulting firm qualified for providing consulting services to determine the enterprise value.

3. The representative authority shall decide the consulting firm having all the qualifications specified in Clause 5 and Clause 6 this Article to determine the enterprise value according to the following rules:

a) If the consulting contract package is not exceeding VND 3 billion and there is only one consulting firm providing consulting services to determine the enterprise value, the representative authority may direct contracting to select the consulting firm;

b) If the consulting contract package is not included in the provision of Point a this Clause, the representative authority shall decide to organize a bidding to select the consulting firm in accordance with regulations of law on bidding.

4. The consulting firm determining the enterprise value shall be entitled to select appropriate methods to determine the enterprise value and ensure the rules mentioned herein, regulations of law on land and pricing, valuation and perform tasks on schedule and in accordance with commitments stated in the concluded contract. The equitized enterprise shall provide adequate and true information about the enterprise for the consulting firm to determine the enterprise value used for price determination.

5. A domestic consulting firm shall satisfy the following standards:

a) It is an auditing company, securities company or assessment enterprise established and operating in Vietnam in accordance with regulations of law;

b) It has at least 5-year experience (operating for 60 consecutive months from the day on which the application for provision of consulting services to determine the enterprise value is submitted) of working in the field of assessment, audit, accounting, financial services or enterprise ownership conversion consulting.

During the past 3 years from the day on which the application for provision of consulting services to determine the enterprise value is submitted, the consulting firm shall reach at least 30 service provision contracts in any of the above-mentioned fields;

c) It is not undergoing dissolution, bankruptcy, restructuring or put under special control by a competent state authority;

d) It has at least 3 appraisers whose appraisal cards are granted by the Ministry of Finance. Each appraiser shall conclude either the definite-term or indefinite-term labor contract mentioned in Point a or Point b Clause 1 Article 22 of the Labor Code No. 10/2012/QH13 with the domestic consulting firm.

If it has fewer than 3 appraisers, the domestic consulting firm shall conclude a joint-venture contract with a qualified domestic assessment firm;

dd) It meets criteria for the number and qualifications of the personnel;

e) It does not incur any administrative penalties or more serious penalties for violations against regulations of law on business lines within 5 consecutive years before the year of registration;

g) It has (official) process to determine the enterprise value in accordance with regulations of law on conversion from state-owned enterprises into JSCs and assessment standards.

6. A foreign consulting firm shall satisfy the following standards:

a) It operates in the field of assessment, audit, accounting, financial services or enterprise ownership conversion consulting in accordance with regulations of law of the country where the headquarters is located;

b) It has prestigiousness, capacity, brand and at least 5-year experience (operating for 60 consecutive months from the day on which the application for provision of consulting services to determine the enterprise value is submitted) of working in the field of assessment, audit, accounting, financial services or enterprise ownership conversion consulting;

c) If it has fewer than 3 appraisals, the foreign consulting firm shall conclude a joint-venture contract with a qualified domestic assessment firm.

7. Responsibilities of the consulting firm:

a) Comply with regulations of relevant law in the course of determining the enterprise value and execute the contract concluded with the enterprise;

b) Take responsibilities for the enterprise value;

c) Provide compensation for damage due to committing violations against regulations of law in the course of providing consulting services of assessment;

d) Explain or provide information or data related to the enterprise value if required or at the request of the representative authority, State Audit Office of Vietnam, Ministry of Finance or relevant competent state authorities.

dd) Protect the confidentiality of the enterprise; retain documents on the enterprise when its value has been determined;

e) A consulting firm shall not provide consulting services if:

- Its executive officer (defined in Clause 18 Article 4 of the 2014 Law on Enterprises), the chief accountant (or person responsible for accounting) or the appraiser of the consulting firm (stated in Clause 17 Article 4 of the 2014 Law on Enterprises) is related to the equitized enterprise.

- It is providing or has provided audit, accounting or financial statement services within 2 years preceding the year in which the equitized enterprise has its value determined.

Chapter II

SETTLEMENT OF FINANCIAL ISSUES WHEN EQUITIZING

Article 13. Stocktaking and classification of assets and settlement of financial issues

1. Enterprises on the lists of enterprises that have to be equitized compiled by competent authorities shall review all land area that they are managing or using for making a land use plan in accordance with regulations of law on land, re-arrangement or settlement of housing and land under state ownership and request a competent state authority to consider approving it before the equitization is decided.

The land use plan for the entire land area managed or used by the equitized enterprise shall ensure the compliance with regulations of law on re-arrangement or settlement of housing and land under state ownership; planning, land use scheme or local construction planning; or the development strategy of the enterprise.

2. When receiving a decision on equitization from a competent authority, the enterprise shall carry out stocktaking or classify the assets, sources of capital and funds managed by the enterprise; use, verify debts on the date of enterprise valuation.

3. The equitized enterprise shall audit annual financial statements in accordance with the State's regulations. If the date of enterprise valuation is not on the ending date of the fiscal year, the equitized enterprise shall make the financial statement on the former date.

When the parent company is equitized, all subsidiaries 100% of charter capital of which is held by the parent company shall have undergo enterprise valuation in accordance with this Decree. The enterprise value of the subsidiaries and the parent company shall be determined on the same date.

4. If the date of enterprise valuation is not on the ending date of the fiscal year, the equitized enterprise shall request the supervisory tax authority to settle the amounts payable to state budget before determining the enterprise value.

If the date of enterprise valuation is not on the ending date of the fiscal year, the equitized enterprise shall request the supervisory tax authority to inspect or determine amounts payable to state budget before determining the enterprise value.

Within 30 days from the date of receiving the written request from the enterprise, the tax authority shall carry out inspections or make settlement. If the tax authority fails to conduct inspections or make financial statements after the aforesaid time limit, the equitized enterprise shall determine the enterprise value according to the declared figures.

5. The equitized enterprise shall cooperate with relevant authorities in settling financial issues before determining the enterprise value on the basis of stocktaking results, audit of financial statements and financial statements on amounts transferred to state budget.

The equitized enterprise shall promptly inform a competent authority of any issues ultra vires.

If the aforesaid issues fail to be settled by the competent authority, the enterprise shall specify such issues in a record on the equitized enterprise value from the date of enterprise valuation to the official date of equitization.

Article 14. Disposal of assets rented, borrowed or received under joint-venture or cooperation agreements, redundant assets and assets purchased with reward or welfare funds

1. The asset that is rented, borrowed, received from joint-venture or associated capital and other assets not owned by the enterprise shall not be added to the enterprise value before equitization.

Other assets formed by the investment assistance capital from state budget that the equitized enterprise shall only be responsible for acting as the investor but not responsible for managing, using or exploiting technical infrastructure shall not be added to the enterprise value for equitization and the equitized enterprise shall request the competent state authority to consider making a decision on disposal of such assets in accordance with regulations of law on management of state assets.

2. The equitized enterprise shall dispose of redundant assets in conformity with regulations of law on liquidation and sale of assets.

If such assets fail to be disposed of on the date of enterprise valuation, apart from the provision of Clause 3 this Article, the equitized enterprise shall transfer them to the DATC. The remaining value stated in books of such assets shall be aggregated with business expenses of the enterprise in the current period.

3. Assets that must not be excluded from the enterprise value:

a) In case of housing or structures (including underground construction works, streets, walls or fields) that the enterprise uses directly or indirectly; machines, equipment or vehicles used for 5 years or having the remaining value accounting for 50% of the cost or over stated in the accounting record, the enterprise shall continue to manage, monitor and settle such assets in accordance with regulations of law until the official date of equitization.

b) The enterprise shall cooperate with law enforcement authorities in treating or destructing chemicals, hazardous substances, expired pesticides, etc. in compliance with regulations of law on environmental safety before the equitized enterprise obtains the certification of first registration of JSC.

After the cause and responsibility to pay compensation are determined, the loss incurred by the enterprise shall be offset against its income.

c) In case of costs of construction in progress of a project or construction work delayed according to a competent authority's decision, the equitized enterprise shall continue to inherit, monitor and settle such assets in accordance with regulations of law. The enterprise shall determine the entities liable for the unrecoverable costs of intangible items (such as costs of

prefeasibility study, construction survey, design); the loss shall be offset against revenue as prescribed.

d) Assets that the enterprise has put up as collateral for loans at credit institutions.

dd) In case of the enterprise assets stated in Clause 2 Article 4 herein, during the cooperation with the DATC and creditors of the enterprise in developing the debt sale plan to restructure the enterprise and request the representative authority for approval, the equitized enterprise shall not liquidate or sell assets on the list that the representative authority publishes the enterprise value.

4. The welfare construction work that are nurseries, kindergartens, health facilities and others purchased with the reward or welfare fund shall be managed or used by the labor union of the JSC in order to serve its staff.

The housing of officials or employees funded by the welfare fund of the enterprise including housing funded by the state budget shall be managed by the local land authority.

5. The assets used for production or sale purchased with the reward or welfare fund shall be reassessed and added to the enterprise value for the JSC to continue using if they have adequate documentation.

6. Stocktaking, assessment or classification of assets that are capital in cash, finance lease assets and debts receivable and debts payable of a state-owned commercial bank shall comply with specific guidance provided by the Ministry of Finance.

7. Vocational training centers and health facilities in economic groups or corporations shall not be divided or transferred when such groups or corporations are equitized. Vocational training centers and health facilities shall be equitized together with the parent company.

8. In case of equitization of the parent company having financially autonomous public service providers (except for vocational training centers and health facilities):

a) If the equitized enterprise inherits the assets, their values shall be assessed and added to the enterprise value in accordance with regulations of law on conversion of public service providers into JSCs.

b) If the equitized enterprise does not inherit the assets, the steering committee shall request the representative authority to consider making a decision or request the Prime Minister to decide to transfer such assets to relevant ministries or provincial People's Committees. Before the assets are transferred, the equitized enterprise shall be entitled use them until a decision is issued by a competent authority.

Article 15. Debt receivables

1. The equitized enterprise shall verify all debt receivables (including due and undue debts; off-balance sheet receivables shall be verified by a credit institution (if any)) and collect due debts before the equitized enterprise value is determined.

Debts whose debtors or irrecoverability is not adequately proven by documents shall not be excluded from the enterprise value is dealt with as follows:

a) Assign responsibility for debts with unidentified debtors, the remaining loss shall be dealt with in accordance with regulations of law on dealing with outstanding debts.

b) Complete documents and continue to monitor unproven irrecoverable debts.

2. If some debt receivables have adequate documents but fail to be verified on the date of enterprise valuation, the chairperson or the board of members of the equitized enterprise shall explain clearly contents of the debts and assign people in charge of verification before the equitized enterprise obtains the certification of first registration of JSC and request the representative authority to consider deciding according to the value followed on accounting records; and specify such contents in the decision on approval for the enterprise value and the equitization plan as the basis for the auction of shares.

If the debts are not verified when the equitized enterprise obtains the certification of first registration of JSC, when making financial statements to transfer to the JSC, responsibility for compensation shall be assigned. The remaining debts (after offsetting compensation for entities or making provisions for bad debts (if any)) shall be aggregated with business expenses of the equitized enterprise and documents shall be transferred to the DATC.

3. The equitized enterprise shall transfer the debts not added to the equitized enterprise value (including bad debts that have been handled by provisions within 5 consecutive years preceding the date of enterprise valuation) and all related documents to the DATC.

4. In the cases where prepayments (such as: house rent, land rent, goods payment, remuneration, long-term insurance payment, lump-sum industrial park land rent) have been aggregated with business expenses, the enterprise shall compare to the contract and quantity of provided goods/services to aggregate so as to reduce costs (corresponding to the goods/services that have not been provided or the lease term has not been set) and aggregate to increase prepaid costs when the equitized enterprise value is determined.

Article 16. Debt payables

1. The equitized enterprise shall verify all debt payables to other entities (including due and undue debts) before the equitized enterprise value is determined.

If some debt payables have adequate documents but fail to be verified on the date of enterprise valuation, the chairperson or the board of members of the equitized enterprise shall explain clearly contents of the debts and assign people in charge of verification before the equitized enterprise obtains the certification of first registration of JSC and request the representative

authority to consider deciding according to the value followed on accounting records; and specify such contents in the decision on approval for the enterprise value and the equitization plan as the basis for the auction of shares.

When the equitized enterprise obtains the certification of first registration of JSC, when making financial statements to transfer from the state-owned enterprise to the JSC, the values of the debts without identified debtors may be recorded as increases in state capital. The JSC (after converted from the state-owned enterprise) shall retain documents and continue to monitor the debts and pay them if required by the creditors and aggregate the repaid debts with business expenses of the enterprise in the current period.

2. The equitized enterprise shall mobilize sources of legal capital to pay for due debts that must be prepaid when the equitized enterprise value is determined or reach an agreement with the creditor including conversion from payables into stake.

The conversion of debt payables on the date of enterprise valuation into stake shall be specified in the equitization plan, stated in the prospectus of initial offering and carried out through the successful bid made by the creditor. Accordingly, the creditor shall purchase shares at the IPO auction and convert the number of shares corresponding to the debts based on the successful bid of the creditor.

3. Tax debts and other payables to the State:

a) The equitized enterprise shall transfer tax and debts to the State before conversion;

b) If the equitized enterprise has not transferred tax and payables to the State, the JSC shall inherit the entire debts.

4. Any difficulties of possibility to pay for outstanding debts to the credit institution by the enterprise in the course of equitization (including the Vietnam Development Bank) due to business loss shall be handled in accordance with regulations of the State on dealing with outstanding debts.

Article 17. Provisions, loss and profit

1. Unused provisions for devaluation of stocks, financial investments or bad debts (if any) on the date of determining may be offset against the loss. Any remainder after offsetting shall be offset against the income of the equitized enterprise.

2. The equitized enterprise is entitled to the remainder of the provisions for warranty of goods or construction works on the date of enterprise valuation corresponding to the warranty obligation stated in an effective contract.

3. The exchange gain due to reassessment of foreign currency monetary items on the date of enterprise valuation shall be reassessed in accordance with regulations and shall not be

aggregated with income. The equitized enterprise shall keep monitoring the exchange gain accrued from the date of enterprise valuation to the official date of equitization.

4. The provisions for risks of the bank or provisions for profession of insurance after being offset against the loss shall be given to the equitized enterprise and added to the state capital value of the equitized enterprise.

5. The profit after being offset against the loss in the previous year (if any) in accordance with regulations of the Law on Corporate income tax contributed to the scientific and technological development fund shall be deducted in accordance with regulations of law, the corporate income tax shall be transferred and the remaining profit shall be distributed in accordance with regulations for the state-owned enterprise on the date of enterprise valuation.

6. If the debts of credit institutions are still outstanding after the loss has been handled in accordance with the aforesaid regulations until the date of enterprise valuation (including the Vietnam Development Bank), the equitized enterprise shall cooperate with relevant authorities to deal with such debts under regulations of law and the provision of Clause 4 Article 16 herein.

Article 18. Capital of equitized enterprises invested in other enterprises

1. If the equitized enterprise inherits the stakes in other enterprises, the stakes shall be determined according to the rules stated in Article 32 herein.

2. Where the equitized enterprise fails to inherit the stakes in other enterprises, the representative authority shall:

a) reach an agreement with capital contributors to transfer the stakes to another state-owned enterprise.

b) sell the stakes to another partner or investor.

c) The equitized enterprise failing to sell or transfer the stakes to another partner by the date of determining shall inherit such stakes in compliance with the provision of Clause 1 this Article.

3. In the cases where the investment value of the equitized enterprise in foreign-invested enterprise but there is a commitment provision on termination of operating term of such enterprise stated in the contract or license for capital contribution, the entire assets of the enterprise transferred without refunding to the domestic enterprise that the equitized enterprise continues to inherit shall be added to the enterprise value to equitize in compliance with the rules mentioned in Article 32 herein. When the foreign-invested enterprise terminates the operating term stated in the contract or the investment license, the JSC shall transfer non-refundable assets to the State in conformity with regulations of law on management and use of public assets. The equitized enterprise shall publish information about such contents to the investor and specify them in the asset transfer record and the charter of JSC.

Article 19. Unused reward or welfare fund and fund for reward of enterprise managers and controllers

1. The unused reward fund on the date of enterprise valuation shall be used to offset the expenses exceeding policies for employees (if any), expenses paid to employees in accordance with regulations of the state-owned enterprise and the remaining amount shall be paid to employees of the enterprise based on the number of months that they work for the equitized enterprise. The payment for unused reward fund for employees shall be made before the date of equitization.

2. The unused welfare fund on the date of enterprise valuation shall be used to offset the expenses exceeding benefits for employees (if any), expenses paid to employees in accordance with regulations of the equitized enterprise and the remaining amount shall be paid to employees, managers and controllers of the enterprise based on the number of months that they work for the equitized enterprise. The payment for the unused welfare fund for employees, managers and controllers of the enterprise shall be made before the date of equitization.

3. The unused reward fund for the enterprise managers and controllers on the date of enterprise valuation shall be continuously used under policies for the state-owned enterprise and handled according to the provision of Point e Clause 2 Article 21 herein.

4. When the parent company is equitized, the unused funds mentioned in Clause 1, Clause 2 and Clause 3 this Article shall be handled according to the fund of the enterprise (parent company or level II enterprise) provided for employees and managers thereof.

Article 20. Unused funds of enterprise assistance funds and scientific and technological development funds

1. The unused fund of the enterprise assistance fund of the equitized enterprise (if any) shall be considered the state capital and transferred to Enterprise Assistance and Development Fund.

2. The unused fund of the scientific and technological development fund shall be inherited, managed or used by the enterprise or the JSC.

Article 21. Settlement of financial issues on the official date of equitization

1. The equitized enterprise shall continue to comply with regulations on settlement of financial issues for the state-owned enterprise from the date of enterprise valuation to the official date of equitization.

2. From the day on which the equitized enterprise obtains the certification of first registration of JSC, the equitized enterprise shall make financial statements according to financial policies for state-owned enterprises as the basis for equitization, in which:

a) The unused provisions for devaluation of stocks, financial investments or bad debts (if any) may be used to offset the loss. Any remainder after offsetting shall be added to the income of the equitized enterprise.

The remainder of the provisions for warranty of goods or construction works (if the concluded contract or warranty period is effective) of the equitized enterprise shall be deducted according to the contract and retained to provide warranty for goods or construction works under the contract terms.

The equitized enterprise shall make specific declaration for each type of goods or construction work and documents on equitization. If such provisions fail to be paid off and there is still remainder if the warranty period of goods or construction works runs out, the JSC shall transfer the unused provisions to the Enterprise Assistance and Development Fund within 30 days from the day on which the warranty period expires.

The JSC shall pay an interest under regulations on management and use of the Enterprise Assistance and Development Fund if it fails to transfer these amounts in full and on schedule.

b) The exchange gain due to reassessment of currency items derived from the foreign currency on the date of official conversion into the joint-stock company shall be reassessed in accordance with regulations and shall not be aggregated with income. The exchange gained accrued on such date shall be transferred to the joint-stock company (after converted from the state-owned enterprise).

c) In case of the profit after tax, dividend distributed through financial investment (when the resolution of the General meeting of shareholders or board of members has been given at an organization receiving capital contribution) arising from the date of enterprise valuation to the official date of equitization but the payment fails to be collected, the equitized enterprise shall add the revenue earned from financial operations and add the debt receivables.

d) The equitized enterprise may record the unpaid shares it has received over the period from the enterprise valuation date to the official date of equitization.

dd) Distribution of profit and contribution to funds shall comply with regulations of law applying to state-owned enterprises.

If the official date of equitization and the date of making the annual financial statement are not on the same date that leads to failure to rank the enterprise as the basis for making provisions for the enterprise's funds, the equitized enterprise shall make the reward fund for the enterprise managers and controllers and the reward and welfare funds according to:

- The ranking of the enterprise in the year preceding the year in which the enterprise is converted into the JSC.

- The profit under policies for deduct or distribute the enterprise's funds.

- The contribution to funds equal to that under policies for profit distribution applied to the state-owned enterprise divided by (:) 12 and multiply by the number of months from the beginning of year until the official date of equitization.

e) The equitized enterprise shall manage and spend the reward fund for enterprise managers and controllers on the official date of equitization. If there is still unused fund after being settled, the equitized enterprise shall request the representative authority to consider deciding to transfer it to the Enterprise Assistance and Development Fund.

3. Within 90 days from the date of issuance of the certification of first registration of JSC, the equitized enterprise shall:

a) make the financial statement on the date of obtaining the certification of first registration of JSC;

b) audit the financial statement;

c) make a statement of taxes and other payables to state budget and send them to the tax authority;

d) After fulfilling the tasks mentioned in Point a, b and c this Clause, the equitized enterprise shall request the representative authority to approve the state capital value on the official date of equitization and make terminal statements on the revenue earned from equitization, expenses for redundancy policies and equitization expenses.

4. Within 60 days from the day on which the request for approval for the state capital value is received on the official date of equitization, the representative authority shall cooperate with relevant authority in conducting inspections and settling financial issues of the enterprise and giving the decision on approval for financial statements, terminal statements on revenue earned from equitization, equitization expenses, expenses for redundancy policies and the decision on publishing the actual state capital value on the date of official conversion from the equitized enterprise into the JSC and determining the additional payment in accordance with regulations on the Enterprise Assistance and Development Fund (if any).

5. The equitized enterprise shall remake the financial statement on the date of obtaining the certification of first registration of JSC to transfer to the JSC according to the decision on approval made by the representative authority.

The financial statement shall be remade to transfer to the JSC according to the adjustment of settlement of financial issues stated herein, making terminal statements on revenue earned from equitization, equitization expenses, expenses for redundancy policies and the decision on publishing the actual state capital value on the date of official conversion from the equitized enterprise into the JSC (not adjusted according to the revaluation results).

6. The equitized enterprise shall utilize the profit after tax arising from the date of enterprise valuation to the date of obtaining the certification of first registration of JSC to offset the state capital adjusted due to loss in business on the date of enterprise valuation (if any), distribute the remaining amount and make provisions for the funds mentioned in Point dd Clause 2 this Article.

The equitized enterprises shall transfer the profit deducted from the development investment fund and the difference in the state capital increasing from the date of enterprise valuation to the official date of equitization after deducting expenses to the Enterprise Assistance and Development Fund.

7. If the difference in reduction of the state capital value, the equitized enterprise shall report the representative authority to cooperate with relevant authorities in investigating and finding causes, assigning responsibilities of cooperatives and dealing with the following cases:

a) In case of force majeure events (acts of God, enemy-inflicted destruction; change in policies made by the State or change in international market and other force majeure events), the equitized enterprise shall request the representative authority to consider making a decision on utilization of revenue earned from offering of shares to offset the loss after deducting the compensation for insurance (if any).

In the cases where such revenue fails to offset the reduced state capital value, the representative authority shall consider through the General meeting of shareholders to reduce the state capital contributed to the JSC, charter capital and structures of charter capital of the JSC accordingly.

b) In case of other causes:

- If the loss fails to settle financial issues in accordance with regulations of the State, responsibilities of the enterprise, consulting firm, auditing authority, State Audit Office of Vietnam and authority deciding equitization shall be identified to provide compensation.

- If the loss arises due to the execution of business or management causing damage to capital and assets, the enterprise manager shall provide compensation for such damage.

- If the entity responsible for providing compensation fails to compensate according to a decision made by a competent authority due to a force majeure event, the remaining damage shall be handled as the same as that caused by a force majeure event mentioned in Point a this Clause.

8. In case of the assets stated in Clause 4 Article 10 herein, the equitized enterprise shall store such assets and transfer it to the DATC within 15 days from the day on which the representative authority gives a decision on asset transfer to the DATC.

Chapter III

DETERMINATION OF THE EQUITIZED ENTERPRISE VALUE

Section 1. DETERMINATION OF THE ENTERPRISE VALUE

Article 22. Methods for determining the enterprise value

1. The consulting firm determining the enterprise value shall be entitled to select appropriate methods to determine the enterprise value in accordance with regulations of law on prices and

make sure that each equitized enterprise applies at least 2 different methods for determining the enterprise value, which are subject to approval by the representative authority.

2. The enterprise value and the state capital value of the enterprise determined and published shall not be lower than that determined according to the asset-based method mentioned in Section 2 this Chapter.

Article 23. Publishing of the enterprise value

1. According to documents on the enterprise value produced by the consulting firm determining construction prices, the steering committee shall inspect procedures and comply with regulations of law on determination of the enterprise value and request the representative authority for approval.

The time for settling financial issues and providing consulting services of determining the enterprise value (from the date of enterprise valuation to the date of publishing it) shall not exceed 12 months (15 months if the enterprise has to undergo state audit according to Clause 1 Article 26 of this Decree).

If the equitized enterprise value fails to be published within the aforesaid time limit, the representative authority shall adjust the date of enterprise valuation to settle financial issues and determine the enterprise value in accordance with regulations; assign responsibility for the costs incurred due to delay in publishing the enterprise value.

2. The representative authority shall consider deciding and publishing the enterprise value within 15 working days from the day on which all documents are received (including the conclusion of the State Audit Office of Vietnam regarding the enterprises mentioned in Clause 1 Article 26 herein).

3. Within 15 working days from the day on which the representative authority gives a decision on publishing of the enterprise value, the equitized enterprise shall preserve the assets and transfer the debts and assets excluded from the enterprise value in accordance with the provision of Clause 2 Article 14, Clause 2 and Clause 3 Article 15 herein to the DATC; in case of other assets, the equitized enterprise shall continue to follow, manage and aggregate according to the value of accounting records on the date of enterprise valuation.

Article 24. Utilization of enterprise value

Results of the enterprise value published by the representative authority shall be the important basis for determining the starting price for the initial offering of the equitized enterprise.

Article 25. Adjustment of the enterprise value

1. The representative authority shall consider readjusting the published enterprise value when:

a) A force majeure event (act of God, enemy-inflicted destruction, change in policies made by the State or another force majeure event) affects the asset value of the enterprise.

b) Difference in the process of determining the enterprise value by the consulting firm or the equitized enterprise is found.

2. Adjustment of the published enterprise value mentioned in Clause 1 this Article shall only apply to the equitized enterprise that the IPO has not been carried out.

3. The enterprise that has not carried out the IPO after 9 months from the date of publishing the enterprise value shall recalculate the enterprise value unless otherwise stated in the Prime Minister's decision.

Article 26. State audit of equitized enterprises

1. Entities carrying out audit:

On the basis of the enterprise value for equitization that has been determined by the consulting firm and comments of the representative authority, the State Audit Office of Vietnam shall audit the enterprise value and settle financial issues before carrying out assessment for the following enterprises:

a) Wholly state-owned single-member LLCs that are parent companies of state-owned economic groups and parent companies of state corporations (including state-owned commercial banks);

b) State-owned enterprises (including parent companies in groups of parent companies and subsidiaries and wholly state-owned single-member LLCs) having state capital of at least VND 1,800 billion stated in accounting records on the date of enterprise valuation;

c) The level II enterprises mentioned in Clause 3 Article 2 herein having equity of at least VND 1,800 billion stated in accounting records on the date of enterprise valuation;

d) Other single-member LLCs at the request of the Prime Minister or the representative authority.

2. The representative authority of the enterprise mentioned in Point a, b or c Clause 1 this Article shall send the schedule to carry out equitization of enterprises to the State Audit Office of Vietnam. State Audit Office of Vietnam shall plan the audit of the enterprise value and settlement of financial issues before publishing the equitized enterprise value.

In case of the enterprises stated in Point d Clause 1 this Article, within 5 working days from the date receiving the request of carrying out audit from the Prime Minister, the representative authority shall send the list of schedule to carry out equitization of enterprises to the State Audit Office of Vietnam before publishing the equitized enterprise value.

3. Responsibilities of the State Audit Office of Vietnam and relevant authorities:

- a) After the enterprise value is given, the representative authority shall send documents and an application for auditing the enterprise value and financial handling to the State Audit Office of Vietnam before publishing the equitized enterprise value;
- b) Within 10 days from the date receiving the application from the representative authority, the State Audit Office of Vietnam shall audit the enterprise value and settle financial issues for the equitized enterprise. The time limit for completing and publishing audit the enterprise value shall be 60 days from the day on which the audit is carried out. The State Audit Office of Vietnam shall take responsibility for audit results in accordance with regulations of law;
- c) The equitized enterprise and consulting firm shall provide explanation and adequate documents related to determination of enterprise value and financial handling before assessing at the request of the State Audit Office of Vietnam.

4. Dealing with audit results:

According to audit results produced by the State Audit Office of Vietnam, the representative authority shall consider publishing the enterprise value and take the next step of the equitization process.

If the representative authority does not concur with the audit result given by the State Audit Office of Vietnam, the representative authority and the State Audit Office of Vietnam shall review the result or request the Prime Minister to consider before publishing the enterprise value.

Section 2. DETERMINATION OF ENTERPRISE VALUE BY THE ASSET-BASED METHOD

Article 27. Determination of equitized enterprise value by the asset-based method

1. The total actual value of the equitized enterprise shall be the value of the entire assets of the enterprise on the date of enterprise valuation after reassessing the profitability of the enterprise.

The actual value of the state capital of the equitized enterprise shall be the value after deducted from payables and unused funds (if any) and excluding exchange gain due to reassessment of currency items derived from the foreign currency mentioned in Clause 3 Article 17 herein.

2. When the parent company is equitized, the state capital value of the equitized enterprise shall be the actual state capital value of the parent company.

3. A financial institution or credit institution may use the financial statement audit result to determine cash assets, debts and other assets while applying the asset-based method provided that the quantities and value fixed assets, investments into another enterprise and value of the land use rights are verified in accordance with the State policies.

4. The equitized enterprise wishing to continue to use intangible assets (excluding land use rights) shall recalculate its value and add it to the enterprise value. The value of the intangible

assets shall be determined according to regulations of law on assessment identified by an appraiser in charge.

5. The unpaid shares received by the equitized enterprise by the enterprise valuation date shall be recorded as increases in state capital at the price specified in Article 32 of this Decree and recorded as increases in the value of financial investments.

6. The assets formed under a build-operate-transfer (BOT) contract shall be determined according to the value stated in books and informed to investors and transferred to a competent authority after such contract expires.

7. If the asset is the technical infrastructure of an industrial park (excluding rented land use rights) that the enterprise has invested in, concluded a sublease agreement, specified the land rent/m² in the agreement and collected land rent in lump-sum, the enterprise shall not reassess the value of such asset when determining the enterprise value for equitization. The JSC shall pay land rent in accordance with regulations of law on land. The technical infrastructure of other industrial park that has not been leased out shall be reassessed.

8. In case of the asset that the enterprise has liquidated or sold from the date of enterprise valuation to the day on which the enterprise value is determined by the consulting firm (when there is no exhibit available), the enterprise shall aggregate in accordance with policies on financial management of revenue and spending when liquidating or selling or when the consulting firm assesses to determine the enterprise value, it will rely on the actual value of the appropriated asset for liquidate or for sale provided that it is not under the value stated in accounting records.

Article 28. Amounts not included in the enterprise value for equitization

1. Values of the assets mentioned in Clauses 1, 2 and 4 Article 14 herein.
2. Irrecoverable debts.
3. Investments in other enterprises stated in Point a and Point b Clause 2 Article 18 herein.
4. Assets of financially autonomous public service providers when the parent company (except for vocational training centers and health facilities) is equitized; assets of professional operation or equitized enterprises not inheriting and considered transferring to relevant authorities by representative authorities to involve in public sectors.
5. The person having the power to decide the enterprise value shall decide whether to add the amounts mentioned in Clauses 1, 2, 3 and 4 this Article to the enterprise value and take responsibility for such decision.

Article 29. Basis to determine the actual enterprise value

1. Figures stated in accounting records of the enterprise on the date of enterprise valuation.

2. Documents on stocktaking, classification and assessment of the enterprise asset quality on the date of enterprise valuation.
3. Market prices of assets on the date of enterprise valuation.
4. Value of land use rights and recalculated land rent and goodwill of the enterprise.

Article 30. Value of land use rights

1. Land area allocated to use for the purposes of building housing for sale and infrastructure for transfer or for lease in accordance with the plan for land use made by the equitized enterprise approved by a competent state authority shall have the value of land use rights recalculated to add to the enterprise value as follows:

a) Land price to add the value of land use rights to the equitized enterprise value means the particular land price at the location where the enterprise has land allocated by the provincial People's Committee under the provisions of Clause 3 and Point d Clause 4 Article 114 of the Land Law.

b) The difference between the recalculated value of land use rights stated in Point a this Clause and the value aggregated in accounting records (if any) that is aggregated shall be transferred to state budget.

In the cases where the value of land use rights recalculated according to the land price stated in Point a this Clause is lower than that aggregated in accounting records, the value of land use rights shall be added to the equitized enterprise in accordance with the enterprise value aggregated in accounting records.

c) If the enterprise having the land allocated including the land area used for providing public or welfare services/goods such as: green parks, urban environment works, coach stations or irrigation works, etc. shall not pay for land levy under regulations of law on land, such area shall be excluded when determining the value of land use rights to add to the equitized enterprise value. The land area used for public works having safety corridors in accordance with regulations of law on land shall be considered excluding by a competent authority. The equitized enterprise shall manage and use such land area in compliance with the purposes of land use determined and regulations of law on land.

2. In case of other land area (after excluding the land area mentioned in Clause 1 this Article) stated in the plan for land use made by the equitized enterprise approved by the competent state authority, the enterprise shall lease land in fixed-term according to regulations of law on land and pay for annual land rent under the particular land price at the location where the enterprise has land leased out by the provincial People's Committee in accordance with the provisions of Clause 3 and Point d Clause 4 Article 114 of the Land Law.

The joint-stock enterprise shall be entitled to continue leasing land for the remaining land lease term in case of the land area that the State allocates rented land in lump-sum to the enterprise and

the land area that the enterprise receives from transfer is derived from rented land having lump-sum land rent paid to the State. The payment that the enterprise has made to receive transfer of land use rights not aggregated with the income from the date of enterprise valuation shall be treated as the prepaid amount deducted from the land rent that the JSC must pay annually under the particular prices decided by the provincial People's Committee.

Levied land area that the State allocates and land area that the enterprise receives from transfer is derived from levied land allocates by the State but now treated as rented land under provisions of the 2013 Land Law shall be repurposed as rented land. The payment that the enterprise has made when the State allocates land or to receive transfer of land use rights not aggregated with the income from the date of enterprise valuation shall be the prepaid amount and deducted from the land rent that the JSC must pay annual according to the particular land price decided by the provincial People's Committee.

3. In case of land area that a national security enterprise equitized uses is included in the land planning used for national security purposes without demand for using, the Ministry of National Defense and the Ministry of Public Security shall cooperate with the provincial People's Committee where the enterprise has land area for use in considering whether the enterprise continues to use until a decision on appropriation given by a competent state authority under the provision of Clause 3 Article 148 of the 2013 Land Law.

4. Within 60 days from the date of obtaining the certification of first registration of JSC, the equitized enterprise shall follow procedures for land allocation or lease out by the State under regulations of law on land.

5. The JSC converted from the enterprise stated in Clause 2 and Clause 3 Article 2 herein shall manage and use land for the proper purposes and use plan for the entire land area approved by a competent authority in accordance with regulations of law on land.

6. Responsibilities of the provincial People's Committee:

a) Within 30 working days from the day on which the application is received, the provincial People's Committee shall decide whether the enterprise will continue to use the entire land area after equitization and the particular price stated in this Article under regulations of law on land.

b) If the proposal for using land submitted by the enterprise fails to meet the local general planning and purposes of land use according to a competent state authority's decision on rearrangement or disposal of housing and land under state ownership, the enterprise shall transfer land to the State and the provincial People's Committee shall cooperate with the representative authority in handling relevant problems.

c) The provincial People's Committee shall direct law enforcement authorities to provide guidelines for the equitized enterprise in order to follow all procedures for conclusion of the land lease agreement and issue the certificate of land use rights, house ownership and other property on land under regulations of law on land.

Article 31. Goodwill

1. The goodwill of the equitized enterprises includes the brand value and development potential value.

2. The goodwill of the equitized enterprise shall be determined as follows:

a) The brand value shall be determined on the basis of actual expenses for creating and protecting the brand and trade names in the operation of the enterprise over 5 years before the date of enterprise valuation, including costs of establishing the enterprise, employee training, commercial, nationwide and international dissemination, product or company introduction; or developing the enterprise’s website.

In case of a special enterprise, the consulting firm shall request the representative authority to identify the brand value depending on its background and tradition.

b) The development potential value added to the equitized enterprise value means the development potential of the enterprise assessed on the basis of the enterprise’s profitability in the future when comparing the rate of return of the enterprise with the interest rate of the sovereign bond as follows:

$$\text{Development potential value} = \frac{\text{State capital value stated in accounting records on the date of enterprise valuation}}{\text{Rate of return after tax over state capital for 5 years on average before the date of enterprise valuation}} - \text{Interest rate of the successful bid of sovereign bond for 5 years quoted by the Ministry of Finance on the last date before the date of enterprise valuation}$$

Where:

- The state capital value stated in accounting books on the date of enterprise valuation shall be the total actual value after deducting debt payables and unused funds (if any) and excluding the exchange gain due to reassessment of currency items derived from the foreign currency mentioned in Clause 3 Article 17 herein.

- The state capital shall be determined according to the unused funds of investments by the owner – account No. 411; development investment fund – account No. 414 and capital construction investments – account No. 441 stated in the Circular No. 200/2014/TT-BTC dated December 22, 2014 by the Ministry of Finance on providing guidelines for enterprise accounting. The state capital of equitized enterprises that are credit institutions shall be determined according to the guidelines of the State Bank of Vietnam.

- The rate of return after tax shall be determined as follows:

$$\text{Rate of return after tax} = \frac{\text{Rate of return after tax for 5 years on average}}{\text{Rate of return after tax for 5 years on average}} \times 100\%$$

over state capital for 5
years on average before
the date of enterprise
valuation

preceding the date of enterprise valuation
State capital stated in accounting records for
5 years on average preceding the date of
enterprise valuation

The state capital stated in accounting records for 5 years on average shall be determined according to the total annual state capital on average divided by (:) 5. The annual state capital on average shall be determined according to the state capital at the beginning of year plus the state capital at the end of year divided by (:) 2.

Article 32. Determination of the equitized enterprise's stakes in other enterprises

1. The stake that the equitized enterprise invests in a single-member LLC 100% of capital of which is contributed by the equitized enterprise shall be determined as follows:

a) The stake that the equitized enterprise invests in the level II enterprise shall be have its value recalculated according to provisions of Chapter II and Chapter III herein.

b) Where the level II enterprise has a stake in another single-member LLC (hereinafter referred to as "level III enterprise"), the stake of the level II enterprise in the level III enterprise shall be determined according to provisions of Points a, b and c Clause 3 this Article.

c) Where the level II enterprise is an overseas enterprise, the stake in such enterprise shall determined in accordance with in Points a, b and c Clause 3 this Article.

The value of the equitized enterprise's stakes in overseas level II and level III enterprises shall be converted at the foreign exchange buying rate quoted by the equitized enterprise's regular commercial bank on the date of enterprise valuation.

2. The stake that the equitized enterprise invested in the JSC listed on the stock market shall be determined according to the reference price of the share certificates offered on the stock market on the date of enterprise valuation. If there is no transaction made on the date of enterprise valuation, the stake shall be determined according to the reference price of the transaction preceding the day on which the enterprise value is determined.

The stake that the equitized enterprise invested in the JSC registered on the UPCOM shall be treated as the average selling price on the system on the date of enterprise valuation. If there is no transaction made on the date of enterprise valuation, the stake shall be determined according to the average selling price of the system on the day preceding the day on which the enterprise value is determined. If the share certificates of the JSC registered on the UPCOM but there is no transaction made within 30 days before the date of enterprise valuation, the stake shall be determined according to provisions of Points a, b and c Clause 3 this Article.

If the price on the stock market or on the UPCOM is lower than the par value of VND 10,000 but the JSC having stake invested by the equitized enterprise that operates profitably, the stake of the

equitized enterprise invested in the JSC shall be determine according to provisions of Points a and b Clause 3 this Article.

3. The stake of the equitized enterprise invested in other enterprise (except for the enterprises stated in Clause 1 and Clause 2 this Article) shall be determined on the basis of the rate of actual stake multiplied (x) by the equity value of other enterprises as follows:

a) The rate of actual stake of the equitized enterprise shall be the rate (%) of the actual stake invested by the equitized enterprise over the total actual stake (the equity) of other enterprises;

b) The equity value of other enterprises shall be determined according to financial statements audited on the date of determining the equitized enterprise. If such financial statements have not been audited, the equity value shall be determined according to unaudited financial statements on the date of determining the equitized enterprise. If the organization having stake invested by the equitized enterprise fails to make the financial statement on the date of enterprise valuation, the equity value shall be based on the financial statement made on the day preceding the day on which the enterprise value is determined;

c) The stake that the equitized enterprise invested in other enterprises when being reassessed or recalculated having the actual value lower than that stated in accounting records of the equitized enterprise shall be determined according to the actual value recalculated provided that it is at least VND 0 (zero).

d) The conversion of the stake that the equitized enterprise invested in the JSC or a multi-member LLC operating in a foreign country shall be carried out according to the foreign exchange buying rate of the commercial bank where the equitized enterprise regularly makes transactions on the date of enterprise valuation.

Chapter IV

INITIAL OFFERING, MANAGE AND USE OF REVENUE EARNED FROM EQUITIZATION

Article 33. Determination of charter capital and first share structures

1. According to the state capital value stated in accounting records of the equitized enterprise and business plans in the following years after it is converted into the JSC, the representative authority shall decide the scale of the charter capital as follows:

a) If the state capital value stated in accounting records of the enterprise higher than the charter capital used for the enterprise operation, the representative authority shall determine the charter capital in accordance with the actual needs. The difference between the state capital value stated in accounting records of the enterprise and the determined charter capital shall be transferred to the Enterprise Assistance and Development Fund.

b) In case of additional issuance of shares, the charter capital shall be determined according to the state capital value stated in accounting records and value of additionally issued shares based on the par value of share certificates.

2. According to the charter capital that has been determined, the representative authority shall decide the first equity structure including:

a) Shares held by the State in accordance with state-owned enterprise classification criteria announced by the Prime Minister in each period.

In case of special enterprises playing an important part in economic development of areas and serving development strategy of economy or state-owned economic groups, such as: seaport management and operations or the cases where the State holds 36% of the charter capital and other specific cases, the representative authority shall request the Prime Minister to make a specific decision on the number of shares that the State continue to hold and the number of preference shares voted in accordance with provisions of Clause 3 Article 113 and Article 116 of the Law on Enterprises.

b) Shares offered to labor unions of the equitized enterprises.

The labor union of the equitized enterprise shall be entitled to use its budget (according to Article 26 of the 2012 Law on Labor union; not mobilizing or applying for loan) to purchase shares provided that they are not exceeding 3% of the charter capital. Such shares shall be held by the labor union provided that they are not be transferred within 3 years from the date of equitization.

The selling price of shares offered to the labor union of the equitized enterprise shall be VND 10,000 per share.

c) Shares offered to employees of the enterprise stated in Clause 1 and Clause 2 Article 42 herein.

d) Shares offered to strategic investors (if any) stated in Clause 3 Article 6 herein.

dd) Shares offered at public auctions accounting for at least 20% of the charter capital.

3. If the number of preference shares offered to the enterprise employees (according to the maximum preference rate) is more than the number of remaining shares estimated to offered (after deducted from the number of shares held by the State and the number of shares offered to investors or labor unions mentioned in Points a, b, d and dd Clause 2 this Article) and the enterprise does not have shares governed by the State, the representative authority shall consider reducing the number of shares held by the State to increase the number of preference shares offered to employees.

Article 34. Public auctions

1. A public auction is available to all investors whether they are organizations or individuals, domestic or foreign.

2. The public auction shall be held at the stock exchange. If the par value of shares offered (by the equitized enterprise) is under VND 10 billion, the representative authority may consider conducting the auction at a securities company, an auction center or auctioneering enterprise in accordance with regulations of law on asset auction.

3. The steering committee shall cooperate with the stock exchange or the auctioneering organization in publishing information at the enterprise, stock exchange, through mass media and on the Government's website at least 20 working days before the initial offering.

4. The selling price shall be the successful bid offered by each investor. The investor shall be entitled to purchase shares at his/her successful bid, provided it is not lower than the starting price.

Article 35. Underwriting

1. Underwriting means a guarantee provided by an underwriter that the number of offered shares approved by a competent authority will be distributed.

The underwriting services provided for foreign investors shall ensure conformity with regulations of law on the rights to purchase or contribute capital of foreign investors in Vietnamese enterprises.

If the shares are not completely sold, the underwriter shall purchase the remaining shares at the agreed price under the underwriting agreement provided that it is over or equal to the starting price.

2. Rights and obligations of the underwriter shall be fulfilled according to regulations of law on securities and stock market and underwriting agreement concluded between the underwriter and a competent representative of the equitized enterprise.

Article 36. Direct negotiation

1. Direct negotiation means the method of offering shares to investors through negotiation between the steering committee (or an organization authorized by the steering committee) and each investor.

2. The selling price shall be agreed upon according to provisions of Points d and e Clause 3 Article 6 and Clause 2 and Clause 4 Article 37 herein.

Article 37. Settlement of unsold shares

1. If there is no investor subscribing for shares, the steering committee shall offer shares to employees and labor union of the enterprise according to the equitization plan approved and shall

follow procedures for converting the enterprise into the JSC. The number of stagnant shares shall be readjusted according to the charter capital and its structure and divested after the enterprise has been operating in the form of the JSC.

2. If there is only one investor subscribing for shares, the steering committee shall reach an agreement on share offering with such investor with the selling price over or equal to the starting price of the number of shares legally subscribed. If the investor has no demand for subscribing for shares, the equitized enterprise shall comply with the provision of Clause 1 this Article.

3. If all investors having successful bids (successful bidders) reject to subscribe for shares after the public auction is held, the equitized enterprise shall comply with the provision of Clause 1 this Article.

4. If part of the shares offered in the public auction has been sold, the unsold shares (including the number of shares rejected by successful bidders) shall be dealt with as follows:

a) The steering committee shall continue to inform investors that have legally attended the auction (excluding successful bidders in the public auction) of share offering to such investors in accordance with the number of shares and price subscribed in the auction. Shares will be sold to investors in order of their offered prices from highest to lowest

a) The steering committee that fails to completely sell all shares to investors after the agreement shall continue to inform successful bidders (excluding those who reject to subscribe for shares) of the agreement on offering such investors with the selling price subscribed at the auction. Shares will be sold to investors in order of their offered prices from highest to lowest

c) The equitized enterprise shall deal with the unsold shares mentioned in Points a and b this Clause in accordance with Clause 1 this Article.

Article 38. Time limit for sale of shares

Shares shall be sold within 4 months from the day on which the equitization plan is approved (by both underwriting and direct negotiation).

Article 39. Management and use of the revenue earned from equitization

1. Determination of the revenue earned from the initial offering

a) Within 5 working days from the deadlines for payment by the bidders, the auctioneering organization shall transfer the revenue earned from the initial offering to the equitized enterprise in order to settle redundancy policies and make payment for equitization expenses under the cost estimate stated in the equitization plan approved by the competent authority; the remainder shall be transferred to the Enterprise Assistance and Development Fund.

b) Within 20 working days from the deadlines for payment by the bidders, the steering committee shall direct the enterprise to complete the sale of shares to the labor union and

employees in accordance with provisions stated herein and the equitization plan approved. The steering committee shall direct the enterprise to transfer the revenue earned from the sale of shares to the labor union and employees to the Enterprise Assistance and Development Fund within 5 days from the deadlines for payment.

c) Within 20 days from the deadlines for payment by the bidders, the steering committee shall direct the enterprise to complete the sale of shares in accordance with the provision of Clause 4 Article 37. Within 5 days from the deadlines for payment, the steering committee shall direct the enterprise to transfer the revenue earned from such sale of shares to the Enterprise Assistance and Development Fund.

d) Within 30 days from the deadlines for payment by the bidders, the steering committee shall direct the enterprise to complete the sale of shares by reaching an agreement with the strategic investor stated herein. The equitization steering committee shall transfer the revenue earned from such sale of shares to the Enterprise Assistance and Development Fund within 5 days from the deadlines for payment.

dd) Within 30 days from the deadlines for payment by the bidders, the steering committee shall direct the enterprise to cooperate with the auctioneering organization to in completing the auction for the strategic investor. The steering committee shall transfer the revenue earned from such sale of shares to the Enterprise Assistance and Development Fund within 5 days from the deadlines for payment.

e) Where the total revenue earned from the initial offering mentioned in Points a, b, c, d or dd Clause 1 this Article is lower than the estimate of expenses for redundancy policies and estimate of equitization expenses stated in the approved equitization plan, the equitized enterprise shall retain all of such revenue to pay for other expenses under the approved estimate and make official statements from the day on which the enterprise obtains the certification of first registration of JSC.

2. Determination of the revenue earned from sale of shares on the date of equitization

a) Within 90 days from the date of obtaining the certification of first registration of JSC, the enterprise shall determine the payables to the Enterprise Assistance and Development Fund according to the financial statement on such date to operate in the form of the JSC and guidance on settlement of financial issues on the date of converting into the JSC stated in Article 21 herein. The amounts retained at the enterprise include:

- The value equivalent to the number of additional shares offered under the par value.

- The extra capital from additional shares shall be used to make payment for equitization expenses and settle redundancy policies (or handled according to the provision of Point d this Clause if inadequate); the remaining amount of money (if any) shall be transferred to the JSC under the rate equivalent to additional shares offered in the charter capital structure, where:

$$\text{Extra capital from} = \text{Number of additional} \times \left| \text{Successful} - \text{Starting price} \right|$$

additional shares

shares

| bid |

b) Within 5 working days from the day on which the decision on the contents stated in Clause 4 Article 21 herein is given by the representative authority, the enterprise shall continue to transfer the difference in the amount transferred that is determined under Point a Clause 2 this Article (if any) to the Enterprise Assistance and Development Fund.

c) If the amount transferred to the Enterprise Assistance and Development Fund stated in the terminal statement made by the representative authority is under the amount determined and transferred by the enterprise as mentioned in Point a Clause 2 this Article, the enterprise shall make an official dispatch to request the Ministry of Finance to refund the amount transferred by the enterprise. According to the official dispatch made by the enterprise and documents stated in regulations on management and use of the Enterprise Assistance and Development Fund, the Ministry of Finance shall decide to refund the enterprise within 10 working days.

d) According to the IPO results, if the net revenue earned from offering of preference shares to employees, labor union, the strategic investor and other investors fails to offset relevant expenses (including equitization expenses, expenses for redundancy policies and incentives for employees) under the terminal statement approved by a competent authority, the representative authority shall consider reducing the state capital contributed in the JSC (if the JSC still remain the state capital), charter capital and its structure of the JSC to meet actual needs through the General meeting of shareholders. If there is no state capital after the adjustment, the enterprise shall request the representative authority and the Ministry of Finance to extract the Enterprise Assistance and Development Fund to refund the enterprise the inadequate amount stated in Point c this Clause.

3. After the time limits mentioned in Clause 1 and Clause 2 this Article, if the auctioneering organization and enterprise fail to transfer money to the Enterprise Assistance and Development Fund, they shall bear the interest according to the mechanism for management and use of such fund. Such interest shall not be added to reasonable expenses when calculating corporate income tax and use the profit after tax to offset after deducting from compensation and relevant board of members, board of directors and entities shall take responsibilities for the interest (if any).

4. The Prime Minister shall decide the mechanism for management and use of the Enterprise Assistance and Development Fund. The Ministry of Finance shall organize the management of the Enterprise Assistance and Development Fund in accordance with the mechanism regulated by the Prime Minister.

5. The representative authority shall direct the steering committee and the equitized enterprise to report fully and promptly the management and use of receivables from the equitization to the Ministry of Finance.

Article 40. Charter of the JSC

1. The steering committee shall direct the enterprise to cooperate with the consulting firm providing equitization services in drawing up and publishing the charter of JSC to investors

before offering shares. The draft of the charter of JSC shall not be against provisions of the Law on Enterprises and regulations of relevant law.

2. The charter of JSC shall be adopted by the first General meeting of shareholders when there are at least 65% of the total votes approved by investors participating in the meeting and contributing capital to subscribe for shares.

Article 41. First General meeting of shareholders and enterprise registration

1. Within 30 working days from the expiration of the time limit for selling shares, the equitized enterprise shall hold the first General meeting of shareholders to convert the enterprise into the JSC and apply for enterprise registration in accordance with regulations of law.

2. The application for enterprise registration shall include the decision on conversion into the JSC made by a competent authority, decision on appointment of the state capital representative of the JSC made by the representative authority (if any) and the charter of JSC with the legal representative's signature of the JSC.

Chapter V

EMPLOYEE POLICIES WHEN ENTERPRISES ARE EQUITIZED

Article 42. Policies on offering shares to employees

1. Discounted shares

a) People eligible to buy discounted shares include:

- Employees working under labor contracts and managers of equitized enterprises on the date of enterprise valuation.

- Employees working for equitized enterprises on the date of enterprise valuation and appointed to be representatives of capital in other enterprises that have not been eligible to purchase preference shares from other enterprises.

- Employees working under labor contracts and managers of level II enterprises that have not been eligible to purchase preference shares from other enterprises on the date of enterprise valuation in case of the enterprises mentioned in Point a Clause 2 Article 2 herein.

b) The individuals mentioned in Point a Clause 1 this Article shall be entitled to purchase up to 100 shares for each year working in state sectors with the selling price equal to 60% of the share value which is VND 10,000 per share.

c) An employee that represents a household business to receive fix funding on the date of enterprise valuation and has reached a long-term agreement on receiving fix funding with an agricultural or forestry company when converting into the JSC shall be entitled to purchase 100

shares for each year receiving fix funding with the selling price equal to 60% of the share value which is VND 10,000 per share.

d) The difference between the selling price offered to the employee and the par value of share stated in Clause 1 this Article shall be deducted from the state capital value when making statements on the official date of equitization.

dd) The employee shall hold the number of preference shares stated herein and shall not transfer it within 3 years from the day on which preference shares are subscribed.

2. From the date of enterprise valuation, the employee working under the labor contract and the manager of the equitized enterprise that have committed to work for the enterprise for at least 3 years (from the date of obtaining the certification of first registration of JSC) shall be entitled to purchase additional shares as follows:

a) The employee shall purchase 200 shares per year but not exceeding 2,000 shares.

The employee that is a qualified expert shall be entitled to purchase 500 shares per year but not exceeding 5,000 shares. The equitized enterprise, according to characteristics of its business lines, shall develop and decide criteria for determining qualified experts that are agreed upon by the employee conference of the enterprise before carrying out equitization.

b) The selling price for the employee that wishes to purchase additional shares mentioned in Point a this Clause shall be the starting price approved by the representative authority through the equitization plan.

c) Each employee shall only be entitled to purchase additional shares according to the specific number of shares mentioned in Point a this Clause.

d) The number of additional shares that the employee purchases stated in Point a Clause 2 this Article shall be converted into common shares after the commitment term expires.

In the cases where the JSC changes structures, technology, relocate or narrow factories or stores upon request of a competent state authority that makes the employee terminate the labor contract, quit or lose his/her job according to provisions of the Labor Code before the committed term, the number of additional shares purchased shall be converted into common shares. If the employee wishes to resell the number of such shares to the enterprise, the JSC shall acquire it with the price close to the selling price on the market.

The employee that terminates the labor contract before the committed term shall resell the entire number of additional shares purchased to the JSC with the price close to the selling price on the market provided that it does not exceed the price on the date of carrying out equitization.

3. The employee carrying out restructuring to convert the enterprise into the JSC through the DATC stated in Clause 2 Article 4 herein shall apply to the policies mentioned in Clause 1 and

Clause 2 this Article in accordance with specific conditions of the enterprise and the equitization plan approved by the competent authority.

4. The employee wishing to purchase additional shares apart from the shares purchased stated in Clause 1 and Clause 2 this Article shall subscribe shares from auctions in accordance with regulations as same as those applied to other investors.

Article 43. Redundancy policies

1. The employee working under the labor contract or the employee working for the equitized enterprise on the date of enterprise valuation and appointed to be the representative of capital in another enterprise and not provided a job vacancy in the JSC under the plan for managing employees shall be entitled to enjoy redundancy policies according to regulations of law.

2. The representative authority shall consider arranging a job for the enterprise manager. If the representative authority fails to provide a job vacancy, the redundant employee shall be entitled to enjoy redundancy policies applied to officials.

3. The board of members or the chairperson of the state-owned enterprise shall consider providing job vacancies for the level II enterprise manager stated in Clause 2 Article 2 herein or carry out policies in accordance with regulations of law on labor if it fails to provide a job vacancy for the redundant employee.

Chapter VI

IMPLEMENTATION

Article 44. Conversion from wholly state-owned single-member LLCs into JSCs

1. The board of members of chairperson of the state-owned enterprise stated in Clause 2 Article 2 shall comply with provisions of this Decree to convert the level II enterprise into the JSC.

2. From the date of enterprise valuation, redundant assets that have not been disposed of, except for the assets that shall not be excluded from the enterprise value mentioned in Clause 3 Article 14 herein, the level II enterprise shall aggregate the remaining value stated in books of such assets with business expenses of the enterprise and transfer such assets to the parent company in order to continue the management and liquidation or sale of such assets. The parent company shall aggregate the proceeds earned from liquidation or sale of assets with the company's income.

3. On the basis of the enterprise value for equitization that has been determined by the consulting firm and comments of the representative authority, the State Audit Office of Vietnam shall audit the enterprise value and settle financial issues before carrying out assessment for the level II enterprise having equity stated in accounting records on the date of enterprise valuation of at least VND 1,800 billion.

4. The revenue earned from offering shares of the level II enterprise shall be stated in the terminal statement approved by a competent authority after deducting the prime cost (value stated in books) of the number of offered shares, equitization expenses, expenses for redundancy policies, incentives for employees or tax obligations (if any), the remaining amount shall be transferred to the Enterprise Assistance and Development Fund within 5 working days from the day on which a decision made by the competent authority is given.

If the revenue earned from equitization of the level II enterprise fails to pay for expenses when such enterprise is equitized (equitization expenses, expenses for redundancy policies or incentives for employees), the parent company shall offset the inadequate amount and add it to finance expenses of the parent company.

Article 45. Rights and responsibilities when carrying out equitization

1. The Prime Minister shall:

- a) Adopt the list of enterprises mentioned in Clause 2 and Clause 3 Article 2 herein to convert into JSCs.
- b) Make decisions on approval for equitization plans for economic groups, state corporations or enterprises having state capital stated in accounting records of at least VND 1,800 billion and level II enterprises having equity stated in accounting records of at least VND 1,800 billion.
- c) Select representative authorities of state capital after equitization carried out in the organizations mentioned in Point b Clause 1 this Article apart from level II enterprises.
- d) Consider and handle particular problems or contents arising in the course of equitization carried out in each enterprise that has not been specified herein at the request of representative authorities.

2. The representative authority, according to the list of equitized enterprises approved by the Prime Minister, shall:

- a) Set up steering committees to assist representative authorities in carrying out equitization stated herein.

Set up steering committees to assist the Prime Minister in carrying out equitization for the organizations mentioned in Point b Clause 1 this Article.

- b) Provide guidelines, carry out inspections and supervision of the equitization process for organizations stated herein.
- c) Select equitization consulting firms, choose auctioneering organizations, publish the enterprise value and request the Prime Minister to adopt equitization plans for the organizations mentioned in Point b Clause 1 this Article.

d) Select equitization consulting firms, choose auctioneering organizations; publish the enterprise value and make decisions on equitization plans for enterprises under their management and drafts of charters of JSCs developed in accordance with provisions of the Law on Enterprises and regulations of relevant law.

dd) Make decisions on approval for debt sale plans to restructure enterprises and equitization plans for enterprises sustaining losses after reaching agreements with the DATC and creditors of enterprises on debt sale plans to restructure enterprises stated in Clause 2 Article 4 herein.

Time limit for completing approval for debt sale plans to restructure enterprises or equitization plans for enterprises sustaining losses stated in Clause 2 Article 4 herein shall be 3 months from the date of publishing the enterprise value.

e) Adjust the state capital for JSCs; transfer surplus assets (if any) to the DATC according to the provision of Clause 4 Article 10 herein.

g) Make decisions on approval for plans to manage employees and settle redundancy policies for equitized enterprises.

h) Within the time limit stated in Clause 4 Article 21 herein, representative authorities shall cooperate with relevant authorities in approving financial statements; terminal statements on equitization expenses, expenses for redundancy policies; the revenue earned from equitization and publishing the actual state capital value from the date of obtaining the certification of first registration of JSC (including the organizations mentioned in Point b Clause 1 this Article).

i) Settle complaints at equitized enterprises within their competence.

k) Direct equitized enterprises to follow procedures for depository or registration of shares of the successful bid at the Vietnam Securities Depository and transaction registration at stock exchanges.

l) Direct equitized enterprises to prepare documents and transfer state capital ownership at JSCs (after converted from state-owned enterprises) to the State Capital Investment Corporation.

m) Make decisions on approval for criteria and selection of strategic investors for enterprises offering shares to strategic investors including enterprises stated in Point b Clause 1 this Article.

3. The board of members or chairperson of a state-owned enterprise mentioned in Clause 2 Article 2 herein shall:

a) Implement plans for equitization of level II enterprises on the list of equitized enterprises approved by the Prime Minister.

b) Set up a steering committee to assist the board of members/chairperson of the enterprise in carrying out equitization of level II enterprises, apart from the organizations mentioned in Point b Clause 1 this Article.

c) Select consulting firms or auctioneering organizations to settle financial issues, publish the enterprise value, approve equitization plans, adopt employee use plans; make decision on approval for financial statements; terminal statements on equitization expenses, expenses for redundancy policies and revenue earned from equitization; and publishing the actual state capital value from the date of obtaining the certification of first registration of JSC of level II enterprises stated herein, except for the organizations mentioned in Point b Clause 1 this Article.

d) Provide guidance, carry out inspections and supervision of the equitization of organizations under their management in accordance with this Decree.

dd) Make decisions on approval for criteria and selection of strategic investors for level II enterprises offering shares to strategic investors, excluding the enterprises stated in Point b Clause 1 this Article.

4. Rights, responsibilities and members of steering committees:

a) Rights and responsibilities of the steering committee:

- Assist authorities deciding equitization in directing and carrying out equitization for one or some enterprises stated herein to:

- Use the seal of the representative authority when performing tasks.

- Set up the assistance team to carry out equitization for the enterprise.

- According to the approved equitization plan, the steering committee shall direct the enterprise to:

+ Prepare legal documents on the enterprise's property (including housing and land); land use plan after equitization; carry out stocktaking and verify debts on the date of making financial statements.

+ Prepare the equitization schedule (including time marks for each task) to request the representative authority for approval. The steering committee of the enterprise that fails to meet such schedule shall be considered not fulfilling tasks.

- Direct to handle financial or personnel problems and determine the enterprise value according to provisions stated herein.

- Request the representative authority to select methods of initial offering.

- Direct to develop the equitization plan and the first draft of the charter of JSC.

- Direct to develop the plan for managing employees to request the representative authority (for the state-owned enterprise) or the board of members/chairperson of the state-owned enterprise

(for the level II enterprise) in carrying out equitization for the level II enterprises, apart from the organizations mentioned in Point b Clause 1 this Article) for approval.

- Verify and request the representative authority to select equitization consulting firms, choose auctioneering organizations, publish the enterprise value or adopt equitization plans.
- Direct the equitized enterprise to cooperate with auctioneering organizations in conducting auctions of shares.
- Direct the equitized enterprise to determine the revenue earned from equitization in accordance with the form of equitization of the enterprise, make terminal statements (financial statements made on the official date of equitization, terminal statements on equitization expenses, expenses for redundancy policies, incentives for employees and the labor union) in order to request a competent authority for approval.
- Consolidate and report results of offering shares to the representative authority.
- Consolidate and request the representative authority to adjust the equitization plan or the enterprise value after the enterprise is converted into the JSC.
- Cooperate with relevant authorities in verifying and requesting the representative authority to approve financial statements; terminal statements on equitization expenses, expenses for redundancy policies or revenue earned from equitization; and publishing the actual state capital value from the day on which the JSC obtains the certification of first registration of JSC.
- Consider and request the representative authority to appoint a representative of state capital at the equitized enterprise.
- Direct the equitized enterprise to publish promptly and fully the equitization process on the Government's website and send it to the Ministry of Finance and the steering committee of enterprise reform and development.

b) The steering committee shall be decided by ministers, heads of ministerial and governmental authorities, Chairpersons of provincial People's Committees or boards of members of parent companies.

In case of the organizations mentioned in Point b Clause 1 this Article, the steering committee shall have the steering committee of enterprise reform and development and the Ministry of Finance.

5. The labor union of the equitized enterprise shall cooperate with the steering committee in:

- a) Disseminate and mobilize officials and public employees of the equitized enterprise to follow equitization policies of the State.
- b) Supervise the equitization process.

c) Appoint a representative of the labor union capital to self-nominate to the board of directors or board of supervisors of the JSC.

d) Use the labor union fund to purchase shares from the enterprise, manage the enterprise as a shareholder and protect benefits of employees working for the enterprise.

Article 46. Reporting

Ministers, heads of ministerial and governmental authorities, Chairpersons of provincial People's Committees, boards of members/chairpersons of parent companies shall promptly report to the steering committee of enterprise reform and development and the Ministry of Finance relevant contents in the course of equitization such as: results of settling financial issues, enterprise value, publishing of the enterprise value and adjustment thereof, equitization plans, results of offering shares, terminal statements on equitization expenses, terminal statements on conversion into JSCs and violations committed by consulting firms in the equitization process (if any) and direct equitized enterprises to publish promptly and fully the contents mentioned in Clause 1 Article 11 herein.

Article 47. Equitization procedures

Equitization shall follow the procedures provided in Appendix II attached hereto including the following basic steps:

1. Developing the equitization plan

a) Establish the steering committee and assistance team.

b) Prepare relevant documents (including the land use plan approved by the competent authority).

c) Carry out stocktaking, settle financial issues and determine the enterprise value.

d) Make decisions on and publish the enterprise value.

dd) Complete the equitization plan to request a competent authority for approval.

2. Implementing the equitization plan

3. Finalizing the equitization.

a) Hold the first General meeting of shareholders and register the enterprise.

b) Make financial statements and convert to the JSC.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 48. Transitional provisions

1. The enterprise whose decision on publishing the enterprise value is given but the equitization plan has not been approved before the effective date of this Decree shall develop the equitization plan and implement it under provisions stated herein. The enterprise mentioned in Clause 1 Article 26 herein shall carry out state audit and readjust the published enterprise value if there is any difference arising.

2. The enterprise whose decision on equitization plan has been approved by a competent authority before the effective date of this Decree shall continue to implement such plan. Financial handling and terminal statements on the revenue earned from equitization on the date of obtaining the certification of first registration of JSC shall comply with provisions stated herein.

3. The enterprise that has been equitized before the effective date of the Government's Decree No. 59/2011/ND-CP dated July 18, 2011 shall report any issues arising while deducting the advantage value of points from the annual land rent to the Prime Minister.

4. The enterprise whose plan for offering shares to strategic investors has been approved by a competent authority before the effective date of this Decree shall continue to implement such plan. In case of the remaining shares (difference between the number of actual shares offered to the strategic investor and the total number of shares expected to offer thereto according to the approved equitization plan), the representative authority shall adjust and restructure charter capital and before the first General meeting of shareholders is held to continue transferring capital in accordance with regulations of law on transfer of state capital to JSCs.

5. The equitized enterprise that has been converted into the form of a JSC before the effective date of this Decree shall not comply with provisions stated herein.

Within 90 working days from the effective date of this Decree, the representative authority shall cooperate with relevant authorities in settling financial issues or approving financial statements; terminal statements on equitization expenses, expenses for redundancy policies or the revenue earned from equitization; publishing the actual state capital value from the day on which the JSC obtains the certification of first registration of JSC and directing transfer to the JSC according to the Decree No. 59/2011/ND-CP dated July 18, 2011, Decree No. 189/2013/ND-CP dated November 20, 2013 and the Decree No. 116/2015/ND-CP dated November 11, 2015 by the Government.

6. The enterprises mentioned in Clause 1 and Clause 2 this Article whose plans for land use have not been approved by a competent authority stated in provisions of the Government's Decree No. 01/2007/ND-CP dated January 06, 2017 on amendments to certain decrees specifying implementation of the Land Law shall have their plans for land use approved before the day on which the JSC obtains the certification of first registration of JSC.

The representative authority shall cooperate with the provincial People's Committee where land area is requested for allocating or leasing by the enterprise in directing the enterprise and law enforcement authorities to consider approving the plan for land use made by the equitized enterprise.

7. The enterprise assistance fund for the parent company still available until December 31, 2017 (including receivables and unused funds) shall be transferred to the Enterprise Assistance and Development Fund. The parent company whose additional charter capital has been approved from the enterprise assistance fund by a competent authority before the effective date of this Decree shall be entitled to add the charter capital in accordance with the approved plan.

Article 49. Implementation provisions

1. This Decree comes into force from January 01, 2018 and replaces the Government's Decree No. 59/2011/ND-CP dated July 18, 2011 on conversion from wholly state-owned enterprises into JSCs; Decree No. 189/2013/ND-CP dated November 20, 2013 and Decree No. 116/2015/ND-CP dated November 11, 2015 by the Government on amendments to certain articles of the Decree No. 59/2011/ND-CP. The previous regulations on equitization against provisions stated herein shall be invalidated.

2. Single-member LLCs with 100% of charter capital held by socio-economic organizations or socio-political organizations established and operating in accordance with the Law on Enterprises shall comply with provisions stated herein to convert into JSCs.

Article 50. Responsibility for implementation

1. Ministry of Finance, Ministry of Labor - War Invalids and Social Affairs, Ministry of Natural Resources and Environment, Ministry of Planning and Investment; State Bank of Vietnam; Vietnam Social Security; State Audit Office of Vietnam and relevant authorities shall provide guidance on implementation of this Decree within their competence.

2. Ministers, heads of ministerial and governmental authorities, Chairpersons of provincial People's Committees, boards of members of economic groups and corporations established by the Prime Minister's decision shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Xuan Phuc

APPENDIX I

PROCEDURES FOR SELECTING STRATEGIC INVESTORS FOR EQUITIZED ENTERPRISES

(Attached to the Government's Decree No. 126/2017/ND-CP dated November 16, 2017)

Procedures for selecting a strategic investor for the equitized enterprise include the following steps:

Step 1. According to the scale of charter capital, nature of business lines and requirements for enterprise expansion and development, the steering committee of the assistance team shall cooperate with the enterprise and a consulting firm (if any) in developing selection criteria, rate of shares offered and target of offering shares to the strategic investor to add to the equitization plan.

If the equitized enterprise is on the list of conditional business lines specified in regulations of law on investment, requirements for selecting whether the strategic investor has the same business lines shall be considered when developing selection criteria.

Step 2. The steering committee shall assess procedures for sale of shares for the strategic investor to request the representative authority to approve the equitization plan (specifying selection criteria, rate of sale and selling prices for the strategic investor).

Step 3. Within 5 working days from the day on which the representative authority approves the equitization plan, the equitized enterprise shall publish through mass media (both in English and Vietnamese) contents related to offering shares for the strategic investor of the equitized enterprise including:

- Enterprise introduction;
- Purposes of selecting the strategic investor;
- Criteria for selecting the strategic investor;
- Rate of shares offered to the strategic investor;
- Rights and obligations of the strategic investor of the equitized enterprise (stated in Article 6 herein);
- Application for becoming the strategic investor;
- Time and place for submitting the application.

Step 4. Within 20 days from the day on which the notification is given, the equitized enterprise shall review the application for becoming the strategic investor and consolidate the list of strategic investors eligible for purchasing shares and request the steering committee and the

representative authority for approval. The equitized enterprise shall inform strategic investors so that they make plans for studying and consulting contents related to business and finance, etc. of the enterprise.

Selection of strategic investors eligible for purchasing shares shall be made before the auction of IPO is held.

Step 5. On the basis of the list of strategic investors approved by the representative authority, the steering committee shall develop the selling plan and offer shares for strategic investors in accordance with the contents mentioned in Clause 3 Article 6 herein.

Step 6. According to the results of consolidation of shares offered to strategic investors, the equitized enterprise shall consolidate and request the representative authority to consider concluding an official commitment agreement with strategic investors that have won the bid and transfer revenue earned from offering shares to strategic investors to the Enterprise Assistance and Development Fund mentioned in Article 39 herein.

APPENDIX II

PROCEDURES FOR CONVERTING FROM STATE-OWNED ENTERPRISES INTO JOINT-STOCK COMPANIES

(Attached to the Government's Decree No. 126/2017/ND-CP dated November 16, 2017)

Procedures for converting from the state-owned enterprise into the JSC include the following steps:

Step 1. Developing the equitization plan

1. Establishment of the steering committee and assistance team.

a) According to the equitization plan on the list of state-owned enterprise management approved by the Prime Minister, the representative authority shall equitize the decision on establishing the steering committee and plan and roadmap to carry out the equitization.

b) The head of steering committee shall select and make a decision on establishing the equitization assistance team within 5 working days from the day on which the decision on establishing the steering committee is given.

2. Preparation of documents.

The steering committee shall direct the assistance team to cooperate with the enterprise in preparing the following documents:

- Legal documents on establishment of the enterprise.

- Legal documents on assets, sources of capital and debts of the enterprise.
- Financial statements and terminal tax statements of the enterprise on the date of enterprise valuation.
- Estimate of equitization expenses.
- Plan for using the land managed by the enterprise in accordance with regulations of law on land, rearrangement and disposal of housing or land under state ownership in each period approved by the competent state authority.
- List and plan for managing employees working for the enterprise.
- Methods, options for methods of and time for determining the enterprise value satisfying requirements for the enterprise and physical guidance related to equitization.

3. The steering committee shall direct the assistance team to cooperate with the enterprise in preparing for relevant documents to request the representative authority for approval for estimate of equitization expenses or select equitization consulting services.

4. Stocktaking, financial handling and determination of the enterprise value.

The enterprise shall cooperate with the consulting firm in:

- a) carry out stocktaking, classifying assets and making financial statements or terminal tax statements and cooperate with relevant authorities in settlement of financial issues until the date of enterprise valuation;
- b) sending the land use plan approved and all relevant documents to the provincial People's Committee to ask for land prices as the basis for determination of the enterprise value;
- c) determining the enterprise value.

The steering committee shall direct the assistance team to cooperate with the enterprise and consulting firm in determining the enterprise value. The consulting firm providing assessment services may be hired to provide lump-sum services including the equitization plan, determination of the enterprise value and offering shares.

5. Decisions on and publishing of the enterprise value.

The steering committee shall assess results of stocktaking, classification of property and the enterprise value and request the representative authority to make a decision on publishing the enterprise value.

In case of the enterprises mentioned in Clause 1 Article 26 herein, the steering committee shall request the representative authority to decide the enterprise value and send documents and

application to the State Audit Office of Vietnam to audit the enterprise value and settle financial issues before officially publishing the equitized enterprise value.

The decision on publishing the enterprise value shall specify amounts of debts and assets excluded when determining the enterprise value to transfer to the DATC stated in Clause 2 Article 14, Clause 2 and Clause 3 Article 15 this Decree.

6. Completion of the equitization plan to request a competent authority for approval.

a) According to the decision on publishing the equitized enterprise value and actual situation of the enterprise, the steering committee shall direct the assistance team to cooperate with the enterprise and consulting firm in determining the enterprise value. The equitization plan shall include the following contents:

- Actual situation of the enterprise on the date of enterprise valuation.
- The enterprise value and issues that need settling.
- Form of equitization and charter capital upon business requirements of the JSC.
- Structure of charter capital, starting price and methods of offering shares.
- Draft of the charter of organization and operation of the JSC under regulations of the Law on Enterprises and applicable legal documents.
- Plan for rearrangement of employees approved by the representative authority.
- Plan for business operation in 3 – 5 succeeding years.
- Land use plan approved by the competent authority.

b) The steering committee shall direct the assistance team and the enterprise to cooperate with the consulting firm in making the equitization plan publicly available and send it to each division of the enterprise to study before an (extraordinary) employee conference is held.

After the employee conference, the assistance team and the enterprise shall cooperate with the consulting firm in completing the equitization plan to request the representative authority for approval.

c) The steering committee shall assess the equitization plan to request the representative authority to approve the approved equitization plan.

If the enterprise has the actual enterprise value lower than the payables stated in Clause 2 Article 4 herein, the representative authority shall direct the steering committee and the enterprise to cooperate with the DATC and creditors of the enterprise in developing a plan for restructuring

the enterprise. The representative authority shall approve the plan for restructuring the enterprise to convert the enterprise into the JSC according to efficiency and feasibility of such plan.

Step 2. Implementation of the equitization plan

1. The steering committee shall direct the enterprise to cooperate with intermediate consulting firms in offering shares under the equitization plan approved and stated herein.
2. The steering committee shall direct the enterprise to offer preference shares for employees and the labor union of the enterprise (if any) under the approved plan.
3. According to results of consolidation of shares offered to entities stated in the equitization plan, the steering committee shall direct the enterprise to transfer the revenue earned from equitization to the enterprise fund.

If the shares are not completely sold to intended buyers specified in the approved equitization plan, the steering committee shall request the representative authority that has approved the equitization plan to adjust the scale and structure of shares of the equitized enterprise.

4. The steering committee shall request the representative authority to appoint a representative of the capital of the equitized enterprise having state capital to continue engaging in the JSC and take responsibility for executing rights and fulfill obligations of the representative authority of state capital.

Step 3. Finalizing the equitization

1. Holding the first General meeting of shareholders and enterprise registration.
 - a) The steering committee shall direct the assistance team or representative of state capital (if any) and the enterprise to hold the first General meeting of shareholders so as to adopt the charter of organization and operation, business plan, voting for the board of directors, board of supervisors and executive structure of the JSC;
 - b) The board of directors of the JSC shall apply for enterprise registration in accordance with results of the first General meeting of shareholders.
2. Making terminal statements and transfer between the enterprise and the JSC.
 - a) Within 90 days from the date of obtaining the certification of first registration of JSC, the steering committee shall direct the assistance team and the enterprise to make financial statements from the day on which the JSC obtains the certification of first registration of JSC, make terminal tax statements, audit financial statements, make terminal statements on equitization expenses and report to the representative authority.

b) According to results of redetermination of the state capital value on the date of enterprise registration of the representative authority, the steering committee shall direct the assistance team and the enterprise to convert from the enterprise to the JSC.

c) The JSC shall be launched and published through mass media.

In the course of implementation, the authority deciding equitization, steering committee, assistance team and the enterprise may take multiple steps in order to accelerate the progress of enterprise equitization.