

GOVERNMENT

THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 147/2017/ND-CP

Hanoi, December 25, 2017

DECREE

ON AMENDMENTS TO CERTAIN ARTICLES OF THE GOVERNMENT'S DECREE NO. 151/2013/ND-CP DATED NOVEMBER 01, 2013 ON FUNCTIONS, TASKS AND OPERATION MECHANISM OF THE STATE CAPITAL INVESTMENT CORPORATION

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

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

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 Enterprises dated November 26, 2014;

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

At the request of the Minister of Finance;

The Government hereby promulgates a Decree on amendments to certain articles of the Government's Decree No. 151/2013/ND-CP dated November 01, 2013 on functions, tasks and operation mechanism of the State Capital Investment Corporation (SCIC).

Article 1. Amendments to certain articles of the Government's Decree No. 151/2013/ND-CP dated November 01, 2013 on functions, tasks and operation mechanism of SCIC:

1. Point d, Clause 1 of Article 3 is amended as follows:

“d) “Representative of the state capital contributed by SCIC to another enterprise” means a person appointed or authorized by SCIC to exercise rights and assume responsibilities of SCIC for part or whole of state capital contributed by SCIC to another enterprise, including the person who is appointed as a representative by a competent authority and is employed and authorized to continue to act as a representative upon receipt of the right to represent the owner of state capital in an enterprise (below collectively referred to as “Representative”)”.

2. Clause 9 of Article 4 is amended as follows:

“9. Other tasks assigned by the representative of state capital owner”.

3. Article 5 is amended as follows:

“Article 5. Organizational structure of SCIC

The organizational structure of SCIC shall be compliant with its charter and regulations of law”.

4. Article 6 is amended as follows:

“Article 6. Rights and obligations of SCIC

Rights and obligations of SCIC shall be compliant with its charter”.

5. Clauses 1, 2 and 3 of Article 7 are amended as follows:

“1. SCIC shall receive the right to represent the state capital in the following types of enterprises (excluding agriculture and forestry companies after the reorganization method approved by the Prime Minister is adopted); enterprises mainly producing and providing public-utility products and services according to the list of public-utility products and services in accordance with regulations of law; enterprises directly serving national defense and security; state-owned lottery enterprises and some of other enterprises decided by the Prime Minister):

a) Single-member state-owned limited liability companies converted from independent or newly established state-owned companies affiliated to Ministries, ministerial agencies or People’s Committees of provinces;

b) Multi-member limited liability companies converted from wholly state-owned independent or newly established companies affiliated to Ministries, ministerial agencies or People’s Committees of provinces;

c) Joint-ventures with state-contributed capital represented by Ministries, ministerial agencies or People’s Committees of provinces;

d) Joint-stock companies converted from wholly state-owned independent or newly established companies affiliated to Ministries, ministerial agencies or People’s Committees of provinces;

dd) Regarding economic groups, corporations and other cases, the right to represent the state capital owner shall be transferred to SCIC according to the Prime Minister’s Decision or instructional documents.

2. SCIC shall record the value of state-contributed capital in the transferees according to the value of capital determined in the record on transfer of the right to represent the state capital owner between the parties or adjusted record on transfer of the right to represent the state capital owner (if any).

3. Ministries, ministerial agencies and People’s Committees of provinces shall transfer the right to represent the state capital owner in enterprises to SCIC within the following time limits:

a) Regarding the enterprises specified in Point dd, Clause 1 of this Article and joint-stock companies converted from wholly state-owned independent companies:

- Enterprises specified in Point dd, Clause 1 of this Article shall transfer within the time limit specified in the Prime Minister's Decision and documents or within 30 working days from the day on which the written approval of the Prime Minister is available;

- Joint-stock companies converted from wholly state-owned independent companies shall transfer within 30 working days from the day on which the Ministry, ministerial agency or People's Committee of province publishes the actual state capital value at the time such joint-stock companies are issued with the first certificate of enterprise registration in accordance with regulations of the law on conversion of wholly state-owned enterprises into joint-stock companies.

Within the time limit for transfer specified in Point a, Clause 3 of this Article, the Ministry, ministerial agency and People's Committee of the province that are yet to publish the actual state capital value at the time joint-stock companies are issued with the first certificate of enterprise registration shall transfer the state capital value according to the value approved in the equitization plan or decide to adjust the scale and structure of the equitized enterprise's charter capital. After transferring the right to represent the state capital owner, Ministries, ministerial agencies and People's Committees of provinces shall take charge and cooperate with SCIC and enterprises in settling financial issues of the enterprise, making financial statements and publishing the actual state capital value at the time joint-stock companies are issued with the first certificate of enterprise registration in accordance with regulations of the law on conversion of wholly state-owned enterprises into joint-stock companies, and adjust the transferred state capital value (if any).

b) Regarding the remaining enterprises mentioned in Clause 1 of this Article shall transfer within 30 working days from the effective date of this Decree or within 30 working days from the day on which such enterprises are issued with the first certificate of enterprise registration”.

6. Clause 4 of Article 12 is amended as follows:

“4. The starting price for the sale of state capital shall be determined in a manner that the actual state capital value in enterprises is fully recorded, including the value of land use right or receipt of transfer of lawful land use right in accordance with regulations of the Land Law, value of intellectual property rights and other intangible assets (if any) of enterprises in accordance with regulations of law at the time of selling capital”.

7. Article 16 is amended as follows:

“1. SCIC may, on its own initiative, use working capital to invest in projects, fields and sectors according to the following rules:

a) Applicable regulations of law are complied with;

b) SCIC's development strategies, planning and plans approved by the competent authority are conformed to;

c) Investment is made in an effective manner;

d) It is required to be within SCIC's financial capacity;

dd) Capital sources of SCIC are ensured when making investment in the fields specified in Clauses 1 and 2, Article 17 of the Government's Decree No. 151/2013/ND-CP dated November 01, 2013 is made.

2. SCIC shall act as a financial investor and raise domestic and foreign investment in important works and infrastructure projects of the State

3. SCIC must not:

a) invest in, contribute capital to, buy shares or wholly acquire another enterprise whose representative is a spouse, birth parent, adoptive parent, birth child, adopted child, brother, sister, brother-in-law, sister-in-law of the President and member of the Member Council, Controller, Director General, Deputy Director General, Chief Accountant of SCIC;

b) contribute capital with subsidiaries to establish joint-stock companies or limited liability companies or execute a business cooperation agreement”.

8. Article 18 is amended as follows:

“Article 18. The power to decide on investment

1. The Prime Minister shall decide to issue decisions on guidelines for the projects invested in by SCIC and specified in Clauses 1, 2 and 4, Article 31 of the Law on Investment.

2. The Prime Minister shall decide to issue decisions on the guidelines for outward investment in the projects invested in by SCIC and specified in Clause 2, Article 54 of the Law on Investment.

3. Except for the projects subject to issuance of decisions on guidelines for investment by the Prime Minister according to Clauses 1 and 2 of this Article, the Ministry of Finance shall issue decisions on the guidelines for investment in the projects invested in by SCIC and having investment of over 25% of the equity according to the quarterly financial statement or annual financial statement of SCIC at the time closest to the time of issuance of decisions on guidelines for investment or higher than the investment in a Group B project in accordance with regulations of the Law on Public Investment; approve the guidelines for outward investment within its power in accordance with regulations of the Law on Public Investment.

4. The Member Council shall decide or assign the Director General of a company to decide on each investment project with investment of no more than 25% of the equity according to the quarterly financial report or annual financial report at the time closest to the time of issuance of

decisions on guidelines for investment but not exceeding the investment in a Group B project in accordance with regulations of the Law on Public Investment; decide the projects specified in Clauses 1, 2 and 3 of this Article after the guidelines for investment are approved by the competent authority”.

9. Article 20 is amended as follows:

“Article 20. Rights and responsibilities of SCIC to the enterprise 100% of charter capital of which is held by SCIC

Rights and responsibilities of SCIC to the enterprise 100% of charter capital of which is held by SCIC shall be compliant with its charter”.

10. Article 22 is amended as follows:

“Article 22. Rights and responsibilities of SCIC to the enterprise that is a joint-stock company or multi-member limited liability company owning capital of SCIC

Rights and responsibilities of SCIC to the enterprise that is a joint-stock company or multi-member limited liability company owning capital of SCIC shall be compliant with its charter”.

11. Clause 4 of Article 31 is amended as follows:

“4. Provisions made in accordance with regulations of law, among which provisions for impairments of financial investment shall be made as follows:

a) Make provisions for received capital and capital invested by SCIC in companies that are listed or registered on securities market (regardless of short-term or long-term investment). Make provisions according to the par value of shares on the market at the time of making provisions.

b) Make provisions for received capital and capital invested in unlisted companies by SCIC (regardless of short-term or long-term investment), make provisions according to the equity specified in the annual financial statement of the enterprise invested in by SCIC at the time of making provisions. At the time of making provisions, if SCIC is yet to receive the annual financial statement of the enterprise before provisions are made, the annual or quarterly financial statements received at the nearest time shall be used to determine the level of provision”.

12. Article 32 is amended as follows:

“Article 32. Salary, remuneration and bonus provided for employees and managers of SCIC

1. Salary, remuneration and bonus shall be provided for employees and managers of SCIC in accordance with regulations of law and in a manner that is suitable for the nature of SCIC. Salary provided for employees shall be ensured during enterprise restructure, sale of state capital and investment under the guidance of the Government.

2. The Ministry of Labor, War Invalids and Social Affairs shall take charge and cooperate with relevant ministries in providing guidance on salary, remuneration and bonus provided for employees and managers of SCIC in a manner that is suitable for the nature of SCIC.”

13. Point c, Clause 1 of Article 34 is amended as follows:

“c) The remaining profit after making the deductions specified in Points a and b, Clause 1, Article 34 of the Government’s Decree No. 151/2013/ND-CP dated November 01, 2013 shall be distributed as follows:

- Up to 30% of the profit shall be contributed to the development investment fund of SCIC;
- Part of the profit shall be contributed to the reward and social security fund for employees of SCIC in accordance with regulations of law;
- Part of the profit shall be contributed to the reward fund for enterprise managers and controllers of SCIC in accordance with regulations of law;
- In the event the remaining profit after making contributions to the development investment fund is not enough for making contributions to the reward fund, social security fund and reward fund for enterprise managers and controllers, SCIC may decrease the contribution to the development investment fund and increase contributions to the reward fund, social security fund and reward fund for enterprise managers and controllers to meet the requirements. The decrease shall not exceed the contribution to the development investment fund in the fiscal year;
- Part of the profit shall be contributed to the bonus fund for capital sale achievements, which are equal to 10% of the difference between total proceeds from the sale of received capital in the year and the price re-determined as prescribed in Article 8 of the Government’s Decree No.151/2013/ND-CP dated November 01, 2013, sale expenses and corporate income tax, but not exceeding three months’ salaries.
- The remaining profits after making contributions to SCIC's fund (investment development fund; bonus fund, social security fund; reward fund for enterprise managers and controllers; bonus fund for capital sale achievements) specified in this Clause shall be transferred to the state budget”.

14. Article 37 is amended as follows:

“Article 37. Rights and responsibilities of state capital owner to SCIC

Rights and responsibilities of the Government, Prime Minister, Ministry of Finance and Member Council to SCIC shall be compliant with its charter”.

15. Clause 3 of Article 38 is added as follows:

“e) Determine and inform SCIC of the list of enterprises subject to transfer of the right to represent the state capital owner to SCIC within 15 days from the end of the quarter;

g) Take responsibility to the Prime Minister for financial issues arising and relevant losses (if any) in accordance with regulations of law in case Ministries, ministerial agencies and People’s Committees of provinces fail to make the transfer as prescribed in this Decree”.

Article 2. Responsibility for implementation

Ministers, heads of ministerial agencies, heads of Governmental agencies, People’s Committees of provinces and Member Council of the State Capital Investment Corporation are responsible for the implementation of this Decree.

Article 3. Implementation clause

1. This Decree comes into force from the signing date.

2. Clause 8, Article 4, Point a, Clause 4, Article 14, Article 23 and Article 28 of the Government’s Decree No. 151/2013/ND-CP dated November 01, 2013 are null and void./.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Xuan Phuc