

THE GOVERNMENT

No. 32/2018/ND-CP

THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, March 8, 2018

DECREE

AMENDING AND SUPPLEMENTING CERTAIN ARTICLES OF THE GOVERNMENT'S
DECREE NO. 91/2015/ND-CP DATED OCTOBER 13, 2015 ON STATE CAPITAL
INVESTMENT IN ENTERPRISES, USE AND MANAGEMENT OF CAPITAL AND
ASSETS IN ENTERPRISES

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 use of state-owned capital invested in manufacturing and business operations of enterprises dated November 26, 2014;

Upon the request of the Minister of Finance;

The Government hereby issues the Decree on amending and supplementing certain articles of the Government's Decree No. 91/2015/ND-CP dated October 13, 2015 on state capital investment in enterprises, use and management of capital and assets in enterprises.

Article 1. Amending and supplementing certain articles of the Government's Decree No. 91/2015/ND-CP dated October 13, 2015 on state capital investment in enterprises, use and management of capital and assets in enterprises shall be as follows:

1. Supplementing Article 4 with Clause 7, 8 and 9 as follows:

“7. Owner of state capital or state enterprise's capital (hereinafter referred to as capital owner) refers to an owner's representative entity or a state enterprise having transferable capital.

8. Open auction refers to a mechanism for transferring share capital of the state or a state enterprise invested in joint-stock companies or multiple-member limited liability companies, including ordinary auction or lot-type auction.

- Ordinary auction is an auction in which there is no limit on the number of shares or capital contributions for which an investor bids at a share capital transfer auction.

- Lot-type auction refers to an auction in which the number of shares to be auctioned is divided into a single lot or multiple lots, and an attending investor is required to bid for at least one lot. Splitting of total shares into lots put up for auction shall be decided by a capital owner.

9. Date of completion of capital transfer refers to the date on which the Vietnam Securities Depository completes transfer of ownership interest in shares to investors who have already bought shares of transferable capital according to corresponding methods of transferring share capital applied at joint-stock companies (with respect to those who are registered as publicly held companies); or the date on which investors are named in the shareholder register (with respect to joint-stock companies which have not yet been registered as publicly held companies), the member register (with respect to multiple-member limited liability companies) after having already bought shares of capital contributed by the state or state enterprises."

2. Amending and supplementing Article 5 as follows:

“Article 5. Scope of state capital investment for establishment of state enterprises

1. State enterprises supplying public products and services, and ensure social security, including:

a) Public postal services;

b) Publishing (exclusive of publication printing and release sector);

c) Agricultural and forestry operations under the Government’s regulations;

d) Management and operation of inter-province or inter-district water resources and agricultural irrigation facilities, and sea embankments, subject to the Prime Minister's decision;

dd) Management, use and administration of national and urban rail infrastructural facilities; administration of national and urban rail transport;

e) Air traffic, aeronautical information, emergency rescue and response services;

g) Maritime safety services (exclusive of dredging and maintenance of public navigable channels);

h) Others, subject to the Prime Minister’s decision.

2. State enterprises involved in the field of providing direct assistance for national defence and security under the Government’s regulations.

3. State enterprises involved in the field of natural monopoly, including:

a) National power transmission, national load dispatch and distribution power grid management services; large and multiple-objective hydropower plants; nuclear power plants which have special importance in socio-economic, national defence and security aspects;

b) Manufacturing and trading of industrial explosive materials;

c) Printing of paper money and coining of currency as well as manufacture of gold bars and gold keepsakes;

d) Lottery business;

dd) State enterprises that have functions such as state capital investment and debt trading and treatment for restructuring, macroeconomic regulation and stabilization purposes;

e) Others, subject to the Prime Minister's decision.

4. State enterprises that apply high technologies, make large investments, stimulate rapid growth of other industries and sectors and the whole economy”.

3. Supplementing Article 10 with Clause 5 as follows:

“5. With respect to the chartered capital increase plan which has been approved by a competent authority to use the development investment fund of each enterprise for such increase, state enterprises shall, based on the redetermined level of chartered capital, the capital amount to be increased and the development investment fund which each enterprise establishes in accordance with regulations in force, account for an increase in owner's share capital (contributed capital) included in the chartered capital which is redetermined (enterprises shall not be obliged to request a competent authority to provide supplementary chartered capital under Clause 1 of this Article). After accounting for increase in owner's equity capital, enterprises shall report to the owner's representative entity to seek its decision on adjustment to the actual contributed capital amount specified in the enterprise registration certificate in accordance with the Law on Enterprises”.

4. Amending and supplementing Point b Clause 3 Article 11 as follows:

“b) Where an enterprise receives other assets formed by the funding derived from the state budget or governmental aids (e.g. those used for residential resettlement, rearrangement, real property treatment and investment in technical infrastructural facilities of industrial zones) in order to implement projects for investment, construction, improvement and renovation of manufacturing and trading facilities, enterprises shall consult the asset assignment decision issued by the competent authority and the record on asset handover to account for government-contributed aids and record an increase in state capital invested in such enterprises. Upon an increase in state capital invested in enterprises, if the owner's actually contributed capital is greater than the approved charter capital amount, enterprises shall report to the owner's representative entity to seek its decision on adjustment to their chartered capital amount based on documents on accounting for such increase without having to establish documents on redetermination of the chartered capital and applications for supplementary investment as per Article 9, Article 10 of this Decree.”

5. Amending and supplementing Clause 2 Article 12 as follows:

“2. Enterprises will be eligible for additional state capital investment in maintaining the rate of state-owned share and contributed capital as stipulated in Clause 1 of this Article if they are engaged in the following industries and sectors:

- a) Management and operation of airports and runways; airfield operation;
- b) Management and maintenance of road and inland waterways systems; maintenance of national rail infrastructure systems;
- c) Navigation and surveillance services, and air weather services;
- d) Large-scale mining prescribed in enforceable regulations on classification of mine scales;
- dd) Exploration, prospecting and development of mines, and petroleum extraction;
- e) Satisfaction of essential needs for manufacturing development and improvement of material and physical lives for ethnic people living at extremely underprivileged socio-economic areas, mountains, remote and isolated areas;
- g) Cultivation and processing of rubber and coffee trees at extremely underprivileged socio-economic areas, strategic areas, mountains, remote and isolated areas, associated with national defence and security.”

6. Amending and supplementing Clause 2 Article 19 as follows:

“2. With regard to currently active state enterprises:

- a) If they make an adjustment to the chartered capital amount, redetermination of the chartered capital amount must conform to principles referred to in Clause 1 of this Article;
- b) With respect to state enterprises making an increasing adjustment to the chartered capital amount:
 - The method of redetermination of the chartered capital and determination of the increased chartered capital amount shall be subject to provisions laid down in Article 9 hereof.
 - Processes and procedures for preparation and approval of the application for supplementary investment of state capital in the chartered capital as per Article 10 and Article 11 of this Decree.
- b) If state enterprises make a decreasing adjustment to the chartered capital amount, enterprise owners' representative entities shall report to the Prime Minister on the decision on treatment of decreased chartered capital value.
- d) In case of restructuring of state capital invested in enterprises by splitting state enterprises, based on the plan for splitting of enterprises which has been approved by competent authorities under the provisions of the Law on Management and Use of state capital invested in business

operations of enterprises, and the report on transfer of asset and capital upon splitting of enterprises, the owner's capital actually contributed to the chartered capital of split enterprises and separately run enterprises.

dd) During the period of application of the adjusted chartered capital amount referred to in Point a Clause 1 Article 9 of the Decree, if the supplementary source of funding is not sufficient to provide supplements so that the supplemented capital is equal to the approved adjusted capital amount, or due to changes in corporate policies, enterprises are not eligible for receiving state capital, competent authorities shall make the decision on adjustment of their chartered capital amount."

7. Amending and supplementing Point b Clause 1 Article 21 as follows:

"b) State enterprises shall not be allowed to use capital assets and right to use the leased land to contribute their capital to or invest in real estate (except those whose main businesses are types of real estate stipulated in the Law on Real Estate Business), or contribute their capital or buy shares of banks, insurance companies, securities companies, venture investment funds, securities investment funds or securities investment companies, except for special cases decided by the Prime Minister."

8. Amending and supplementing Point b Clause 1 Article 23 as follows:

"b) With regard to investment in and shopping for external fixed assets for use (including means of transport used for business and service operations), such state enterprises must comply with legal regulations on procurement and other relevant laws".

9. Amending and supplementing Clause 1 Article 26 as follows:

"1. State enterprises shall be vested with the right to lease out, offer their assets as pledges or collateral by adhering to the principle that efficiency, capital conservation and development is assured in accordance with laws, whereby:

a) The Board of Members or the Chairperson of a state enterprise shall decide on each contract for leasing, mortgaging and pledging of an asset of which the value is restricted to under 50% of the equity reported in the quarterly or annual financial report at the time closest to the time of making decision to lease out, mortgage and pledge such assets, and of which the residual value does not exceed the investment outlay financing group-B projects in accordance with regulations enshrined in the Law on Public Investment.

The Board of Members or the Chairperson of a state enterprise shall delegate authority to the General Director or Director to decide on contracts for leasing, mortgaging and pledging of assets under the provisions of statutes or financial regulations of that enterprise.

a) Where contracts for leasing, mortgaging and pledging of asset have value exceeding the limit specified in point a of this clause, the Board of Members or the Chairperson shall report to the owner's representative entity to seek its decision to be made before signing these contracts."

10. Supplementing Clause 2 Article 27 with Point e as follows:

“e) Where enterprises who are investors in projects under construction which have yet to form any usable asset (in-process investment and construction) do not continue projects, they may assign (whether part or whole of) these projects to other investors as per the Law on Investment. Assignment of real property business projects must be subject to provisions laid down in the Law on Real Property Business.”

11. Amending and supplementing Point b Clause 1 Article 28 as follows:

“b) Revenues earned from outward investments of a state enterprise which are accounted for as other revenue of that enterprise include:

- Revenues prescribed in Point a Clause 1 of this Article.

- Profits and dividends distributed by using proceeds from investment of capital in joint-stock companies and multiple-member limited liability companies; investment made under the business cooperation contract without establishment of independent legal entity (BCC contracts); proceeds from dissolution and bankruptcy of enterprises that have capital contributed by state enterprises and proceeds from other outward investments.

- In particular, revenues earned from transformation of single-member limited liability companies whose chartered capital is wholly owned by state enterprises into joint-stock companies shall be subject to the Government's regulations on equitization.”

12. Amending and supplementing Article 29 as follows:

“Article 29. Principles of and authority to decide transfer of outward investment of state enterprises at joint-stock companies and multiple-member limited liability companies

1. Transfer principles:

The transfer of outward investments of state enterprises shall comply with regulations laid down in Clause 1 Article 31 of the Law on Management and Use of state capital invested in the enterprise’s operations and the following regulations:

a) The transfer of outward invested capital of state enterprises must be aligned with the plan for restructuring of enterprises which has been approved by competent authorities; such transfer is carried out irrespective of the amount of investment and whether profit or loss of enterprises having capital contributed by state enterprises; organization of transfer of capital and preparation of documents on capital transfer, dissemination of information about capital transfer, report on capital transfer results, procedures for transfer of the ownership of shares of transferred capital and delivery of documents and reports on results of capital transfer to regulatory authorities must be subject to provisions laid down in this Decree.

Where state enterprises transfer capital invested in joint-stock companies whose statutes prescribe that share transfer is restricted under the provisions of the Law on Enterprises (in the event that shareholders are allowed to transfer their shares only to organizations and individuals that are existing shareholders in the enterprise), transfer of shares aimed at transferring state enterprise's capital shall be carried out in order in terms of transfer approaches specified in this Decree with respect to existing shareholders.

b) This transfer must adhere to the principle of market, public disclosure, transparency and conservation of outward investment of state enterprise at the highest level as well as maximum restriction on losses incurred from investment activities.

c) Determination of the start price at which capital is transferred: State enterprises chooses to sign a contract to hire an accredited valuation organization to determine the start price and ensure compliance with regulations on valuation; determine full actual value of state enterprise's portion of outward investment, including value formed by the right to use land which is allocated in return for land occupancy fee, the right to use land which is legally transferred or the right to use leased land (one-off payment of land rent for the entire lease duration or annual payment of land rent), value of intellectual property rights comprising cultural, other historical value, value of brands and commercial names (if any) in accordance with laws.

Determination of the start price at which capital is transferred at joint-stock companies which have been listed/register their transactions on stock exchanges must be subject to the aforesaid regulations. Where the start price is determined under aforesaid regulations is less than the average reference price within 30 consecutive transaction days on stock exchanges before the date of dissemination of information about sale of transferred capital shares, this average reference price shall be used as the start price at which capital is transferred for transactions performed on stock exchanges and off-the-exchange transactions for transfer of capital at listed joint-stock companies.

Use of a single start price for capital transfers according to approaches specified in this Decree must ensure that such start price is existing not later than 06 months from the effective date of the valuation certificate to the final transaction date (applicable to the case in which transactions are performed on stock exchanges); or is valid till the date of declaration of the winning bid (applicable to the open auction and competitive bidding approach) or till the date of signing of the capital transfer contract (according to the agreement approach).

d) Transfer of state enterprise's capital invested in other enterprise related to the land use right must conform to laws on land. In the process of transfer of state enterprise's capital invested in other enterprise, state enterprises shall be responsible for reviewing corporate handover documents moved from state enterprises to other ones (e.g. joint-stock companies and multiple-member limited liability companies) in conformity with regulations (including reports on enterprise's use of land) and actual use of land by other enterprises that have capital contributed by state enterprises, as the basis for determination of value of the land use right included in the start price at which capital is transferred.

dd) State enterprises choose to sign a contract to hire an accredited auctioning organization or hire another consultancy organization that provide services related to capital transfer to organize necessary activities of transfer of state enterprise's capital invested in joint-stock companies and multiple-member limited liability companies.

e) When transferring state enterprise's capital invested in joint-stock commercial banks under the provisions of this Decree, state enterprises must ensure disclosure of eligibility conditions for a winning bidder to be accepted as a shareholder of a joint-stock commercial bank under laws on credit institutions related to transfer of capital contributed by shareholders to joint-stock commercial banks for bidder's information and compliance.

Where, after winning at auction, the winning bidder is not eligible for being accepted as a shareholder of a joint-stock commercial bank in accordance with laws on credit institutions, that bidder shall not be bound to pay state enterprises for their shares. If payment has been made, they shall be refunded (including advance sums); and in this case, the number of shares for which payments have not been made or have been made but refunded shall be under state enterprise's ownership.

g) State enterprises shall rely on the list of capital transfers according to the approved plan for restructuring of enterprises, prepare the plan for transfer of capital for submission to the competent authority to seek its decision on approval of capital transfer. Capital transfer plan includes the following major contents:

- Legal bases and capital transfer objectives.
- Assessment of investment of capital, gained benefits and effects of transfer of capital invested by state enterprises in other enterprises.
- Financial conditions, business outcomes of enterprises having capital contributed by state enterprises and market needs for investment of capital in enterprises having assignable capital. Proposed value gained after capital transfer.
- Capital transfer approach (in case of an lot-type auction, it is obligatory that bases for determination of cases in which lot-type auctions must be clearly informed in accordance with regulations in force).
- Proposed time of implementation and completion of capital transfer.

h) State enterprises shall not be required to re-establish the plan for transfer of capital upon conversion of capital transfer approaches in accordance with enforceable regulations (e.g. open auction, competitive bidding and arrangement).

i) Foreign investors that wish to buy shares and contributed capital of state enterprises held at joint-stock companies and multiple-member limited liability companies must ensure that the rate of ownership of actual contributed capital included in the chartered capital of joint-stock companies and multiple-member limited liability companies is relevant to specific legal

specialties or international treaties of which Vietnam is a member. Opening and using investment accounts of foreign investors related to purchase of shares and contributed capital at Vietnamese enterprises when state enterprises transfer shares of contributed capital at joint-stock companies and multiple-member limited liability companies shall be subject to relevant regulations in force.

k) The Board of Members or the Chairperson and the owner's representative entity shall be responsible for resolving difficulties, complaints and denunciations related to the process of transfer of state enterprise's capital within their jurisdiction and applicable laws.

2. Authority to make a decision on state capital transfer:

Authority to decide transfer of capital invested in joint-stock companies and multiple-member limited liability companies shall be subject to provisions laid down in Clause 3 Article 31 of the Law on Management and Use of state capital invested in manufacturing and business operations at enterprises and the following regulations:

a) The owner's representative entity shall approve the list of capital shares in joint-stock companies and multiple-member limited liability companies subject to transfer under the decision on approval of the plan for restructuring of state enterprise in accordance with the Prime Minister's regulations.

The Board of Members or the Chairperson shall have authority to decide the plan for transfer of capital shares in joint-stock companies and multiple-member limited liability companies according to the list of capital shares subject to transfer which has been approved by the owner's representative entity.

Where outward capital transfer is not in the list of investments subject to transfer which has been approved, the Board of Members and the Chairperson shall report to the owner's representative entity for consideration of grant of its decision.

Where the enterprise restructuring plan is assessed and submitted to the Prime Minister for his approval by the owner's representative entity, the assessment plan has to define the list of transferrable investment capital.

The Board of Members or the Chairperson shall decide the plan for transfer of state enterprise's capital invested in joint-stock companies and multiple-member limited liability companies in the list of capital shares included in the plan for restructuring of enterprise after that structuring plan has been approved by the Prime Minister.

b) In the process of setting up the capital transfer plan, if proceeds from such capital transfer are equal to the actual value of contributed capital portion specified in the financial statement of the receiving enterprise, or are equal to the cost of shares of joint-stock companies transacted on the exchange, or are equal to the value defined by the accredited valuation organization, but remain less than the investment value appearing in accounting records of state enterprises and those that already set aside provisions, decision on the capital transfer plan shall be subject to the following regulations:

- If the aforesaid provisions are equal to or greater than the difference between the value that may be gained and the value reported on accounting records, the Board of Members or the enterprise's Chairperson shall have authority to make a capital transfer decision.

- If the aforesaid provisions remain less than the difference between the value of invested capital reported on accounting records and the intended transfer proceeds, the Board of Members or the enterprise's Chairperson must report to the owner's representative entity on causes for that difference so that the owner's representative entity may consider charging any organization or individual related to management of outward investment capital (if any) and have authority to decide to approve the plan for transfer of investment capital."

13. Supplementing Article 29a as follows:

"Article 29a. Approaches to transfer of outward investment of state enterprises at joint-stock companies and multiple-member limited liability companies

Approach to transfer of capital invested in joint-stock companies and multiple-member limited liability companies shall be subject to provisions laid down in Clause 2 Article 31 of the Law on Management and Use of state capital invested in manufacturing and business operations of enterprises and the following regulations:

1. Transfer of capital in joint-stock companies which have been listed or registers their transactions on stock exchanges according to approaches to trading of shares on stock exchanges shall be organized by the Stock Exchange and ensure that the trade price (floor price) is not less than the start price defined as per Point c Clause 1 Article 29 hereof.

a) When transferring capital through transfer of shares on stock exchanges, state enterprises are required to send the following written documents to the Stock Exchange to publicly disclose information about transaction of shares intended for capital transfer:

- Decision granted by a competent authority on approval of the plan for restructuring of state enterprise and decision on approval of the capital transfer plan;

- Information declaration according to the form given in Appendix I hereto attached;

- Documents evidencing that the enterprise having shares auctioned for capital transfer purposes are the legal owner of the number of shares listed for sale.

b) Money transfer used for payment of shares purchases, sales and transfer of ownership of shares shall be subject to regulations on securities.

c) Transfer of capital in joint-stock companies which have been listed or registers their transactions in securities markets, but not on stock exchanges shall be carried out by employing open auction, competitive bidding and arrangement methods (including off-the-exchange transactions).

The selling price of shares that investors must pay state enterprises for off-the-exchange trades is the price which is determined according to regulations relevant to specific transfer approaches (e.g. open auction, competitive bidding and arrangement); where the price of trading of shares of joint-stock companies based on the floor price is higher than the payment price which is determined according to specific transfer approaches (e.g. open auction, competitive bidding and arrangement) on the date of opening of public auction, competitive bidding or signing of capital transfer contract (with respect to arrangement approach), investors shall be obliged to pay state enterprises for shares at the trading price which is the floor price defined on that day; where the price of trading of shares of joint-stock companies based on the floor price is less than the payment price which is determined according to specific transfer approaches (e.g. open auction, competitive bidding and arrangement) on the date of opening of public auction, competitive bidding or signing of capital transfer contract (with respect to arrangement approach), or the floor price does not exist in the absence of transactions, investors shall be bound to pay state enterprises for shares at the price specific to capital transfer approaches (e.g. open auction, competitive bidding and arrangement).

d) State enterprises shall be required to disclose information about the selling price of shares for capital transfer at joint-stock companies which have been listed or registered their transactions on stock exchanges with respect to off-the-exchange transactions to investors for their information and compliance.

dd) With regard to transfer of state enterprise's capital invested in joint stock companies which have been listed or registered for transactions on the stock exchange, the permitted duration within which investors are required to make payment shall vary depending on specific transaction methods, but duration for transmission of money shall be subject to enforceable regulations in the case of transfer of state capital at joint-stock companies which have not been yet listed or registered their transactions on stock exchanges as prescribed in Article 39 of the Decree No. 91/2015/ND-CP.

2. Transfer of capital in joint-stock companies which have not been listed yet (or have listed or registered their transactions in securities markets, but not on stock exchanges) shall be carried out according to the open auction approach; if such open auction is failed, the competitive bidding approach shall apply; if the competitive bidding is failed, the arrangement approach shall be used.

3. Open auction approach

a) Preparing documents for participation in auctions:

- Decision granted by a competent authority on approval of the plan for restructuring of state enterprise and decision on approval of the capital transfer plan;

- Information declaration according to the form given in Appendix I hereto attached;

- Documents evidencing that the enterprise having shares auctioned for capital transfer purposes are the legal owner of the number of shares listed for sale.

- Rules for auctioning shares.

b) Organizing auction activities:

- After a competent authority grants a decision on the capital transfer plan, state enterprises inform the plan for transfer of their shares to joint-stock companies having investments of these state enterprises; state enterprises then prepare necessary documents for participation in an open auction in accordance with regulations in force.

- State enterprises sign a contract to hire a stock exchange, securities company, service center and property auctioning enterprise in accordance with laws on property auction (hereinafter referred to as auctioneer) to organize capital transfer activities according to the following principles:

+ If the face value of shares held at auction for the purpose of outward capital transfer is at least VND 10 billion, state enterprises may hire the Stock Exchange to act as an auctioneer.

+ If the face value of shares held at auction for the purpose of outward capital transfer is less than VND 10 billion, state enterprises may have such options as the Stock Exchange, securities companies, property auctioning companies that they can designate as an auctioneer.

The auction shall be held at the office of the auctioneer, state enterprise having shares to be transferred or any other location depending on arrangements between state enterprises and the auctioneer.

- The auctioneer shall be responsible for issuing rules of auctioning of shares and relevant sample documents prior to an auction after receipt of consent from state enterprises; these rules must ensure that capital transfer conforms to laws on management and use of state capital invested in manufacturing and business operations as well as other relevant regulations; the rules must clearly specify responsibilities and authority of parties concerned in the process of auctioning of shares for capital transfer purposes; the rules must prescribe disclosure of information about the auction (e.g. which information to be revealed and which means of communications to be used); the rules must prescribe eligible bidders, procedures for participation and notification of auctioning results (e.g. such information as duration of payment, payment details, receiving entity, address and account number), procedures for transfer of ownership of auctioned shares, penalties for violations and other regulations to be issued to meet managerial demands and must be aimed at ensuring public awareness, transparency and legality of such auction.

- State enterprises/auctioneers shall disclose auctioning documents which have been prepared in accordance with regulations in force to investors within the period of at least 20 days before the auction date at the main office of state enterprise or the main office of joint-stock company having capital transferred by state enterprises, and auction location through mass media (on three successive articles of a newspaper published nationwide and a newspaper of a locality where main offices of state enterprises and joint-stock companies are located) and post these

information on the website of the share auctioneer, state enterprise and joint-stock company having capital transferred by state enterprise (if any).

- State enterprise/auctioneer shall, while disclosing information about auctioning of shares for capital transfer, send auctioning documents that they have prepared in accordance with regulations in force to the owner's representative entity and the Ministry of Finance (Department of Corporate Finance).

- Within the duration specified in auction rules, state enterprise, auctioneer and investors shall implement procedures for participation in auction; (both organizational and individual) investors who are qualified for participation in auction shall receive the participation registration form from state enterprise/auctioneer to register the amount of shares that they can buy and pay advance sums. Investors shall receive the auction participation slip from state enterprise/auctioneer (after paying advance sums) to be able to make a bid.

- Within the duration specified in auctioning rules, investors shall write down their bid in the auction participation slip and send it through to state enterprise/auctioneer by voting directly at the auction venue or voting by post as per rules for auctioning of shares.

- Open auction shall be carried out only if there are at least 02 investors qualified for participation who have submitted valid documents and implemented all required procedures for participation in auction under auctioning rules.

c) Determining auctioning results and transferring ownership of shares and reporting on capital transfer.

- Auction winning result shall be determined according to the principle of selection of bids in ascending order to the last transferrable share but shall not be less than the starting price.

- Where, at the lowest winning price, there are various investors (including foreign ones) submitting different bids, but the remaining number of shares is less than total amount of shares that these investors have registered to buy at the lowest winning price, the number of shares that each investor is entitled to buy shall be determined according to the following formula:

$$\text{The number of shares that investors are entitled to buy} = \frac{\text{The remaining number of shares offered for sale}}{\text{Total shares that each investor registers to buy at the equal price}} \times \frac{\text{The number of shares that each investor registers to buy at the equal price}}{\text{Total shares that each investor registers to buy at the equal price}}$$

Where the maximum rate of shares that a foreign investor is entitled to buy is prescribed, determination of the auctioning result shall be subject to the aforesaid principles, but the number of shares that a foreign investor is entitled to buy shall not exceed the maximum rate stipulated in applicable regulations, and the excess number of shares (if any) shall be distributed for sale to other investors according to the abovementioned formula.

- Right after completion of an auction, based on the auctioning result, the auctioneer shall be responsible for making a record of determination of the auctioning result; the auctioneer, state enterprise and representative of the auctioning council (if any) shall endorse this record by using the form given in the Appendix II hereto attached.

- Within the maximum period of 05 working days from the date of preparation of the record, state enterprise/auctioneer shall collaborate in publicly releasing the auctioning result at the auctioning venue and on the website of the auctioneer and state enterprise having transferrable capital, and informing investors of the auction winning result and full payment for purchase of shares within the maximum duration of 07 days from the date of announcement of the result of auctioning of shares. The winning investor shall pay for shares an amount from which their advance sum has been deducted.

Payment amount for purchase of shares with respect to transfer of capital at joint-stock companies listed or registering their transactions on stock exchanges, but performing their trades out of stock exchanges, shall be subject to the principles of payment price referred to in Clause 1 of this Article.

- After an investor has finished paying for shares, within the duration of 05 working days, state enterprise shall send documents including the decision on approval of the plan for capital transfer, granted by competent authorities, the written request and the record of determination of the winning investor, to the Vietnam Securities Depository (applicable to the case in which capital transfer occurs at joint-stock companies already registering shares at the Vietnam Securities Depository) for completion of procedures for transfer of ownership of securities. Within the duration of 05 days of receipt of the application documents for capital transfer from state enterprises, the Vietnam Securities Depository shall be responsible for transferring ownership of shares that state enterprises wish to transfer to other individuals or organization according to the documents submitted by state enterprises to the Vietnam Securities Depository.

- Where state enterprises transfer their capital at joint-stock companies which have not yet registered their shares with the Vietnam Securities Depository, procedures for transferring ownership of shares between state enterprises and investors after investors' completion of payment for purchase of shares shall be subject to the Law on Enterprises and joint-stock company's statutes. State enterprises shall have the burden of collaborating with joint-stock companies in completing procedures for transfer of ownership of shares to investors, and informing investors of procedures and specific time of completion of transfer of ownership of shares to investors when organizing capital transfer activities.

- Within the maximum duration of 15 days after completion of a capital transfer, state enterprises shall report on the result of auctioning of shares for outward capital transfer to the owner's representative entity and the Ministry of Finance (Department of Corporate Finance).

d) Lot-type auction:

- Cases in which the lot-type auction for capital transfer is needed:

Transfer of shares/shares of capital subject to transfer restrictions imposed as per the Law on Enterprises.

+ Transferring capital associated with guarantee for borrowing of funds.

+ Transferring all of shares that are held at enterprises in an auction if the open auction approach is difficult to be taken. In this case, the plan for capital transfer must provide analysis and assessment of efficiency compared with the plan for sale of shares according to the open auction approach and shall be subject to approval granted by competent authorities.

+ Transferring capital and receivables with respect to state enterprises having competence in buying and selling debts. The Ministry of Finance shall be authorized to provide guidance on this case.

+ Carrying out other transfer under the Prime Minister's decision.

- Preparation and submission of documents, implementation, determination of results, transfer of ownership of shares and report on capital transfer in case of a lot-type auction shall be carried out in the similar manner to regulations on the open auction performed at Point a, Point b and Point C Clause 3 of this Article. The following provisions shall be obeyed:

+ Capital to be transferred must be in the list approved by competent authorities under Article 29 of this Decree.

+ Total amount of shares out of capital amount to be transferred according to the lot-type auction may be divided into different lots to be auctioned, based on value of transferrable capital and market conditions existing at the time of development of the plan for capital transfer.

+ Investors participating in a lot-type auction shall be required to bid for at least one lot (or all of shares in a lot to be auctioned).

dd) Open auction (ordinary or lot-type auction) which is unsuccessful:

Cases in which open auctions (ordinary or lot-type auctions) are unsuccessful include the followings: No investors or only one investor registers their participation after the registration deadline expires; there is no investors submitting auction participation slips within the period from the time of payment of advance sum to expiration of the deadline for submission of auction participation slips; there is no investors making bids at auctions or the investor's highest bid is lower than the start price; either one or all of investors who win the auction has refused to buy shares; all of investors violate auctioning rules.

e) If an open auction (ordinary or lot-type auction) is unsuccessful or successful but there is still the remaining number of shares to be sold for capital transfer, the competitive bidding approach shall be used instead.

4. Competitive bidding approach:

- Competitive bidding is an approach in which shares are offered for sale at the competitive price for the purpose of transfer of state enterprise's capital contributed to joint-stock companies (after the open auction is unsuccessful or successful but has yet to sell all shares up).

- The competitive bidding shall be carried out only if there are at least 02 participating investors who have submitted their valid documents and completed procedures for participation in a competitive bidding session under rules of competitive bidding session.

- Investors who participate in a competitive bidding session shall have the option of distributing total shares into multiple portions for which that they bid.

- Investors determine a buying price at which each portion of shares may be bought and such price shall not be less than the start price.

- Implementation, determination of results, payment for shares, preparation and submission of documents on transfer of ownership of shares and report on capital transfer according to the competitive bidding approach shall be subject to respective regulations applied to the open auction as provided in Point b, Point c Clause 3 of this Article.

- Competitive bidding which is unsuccessful:

Cases in which the competitive bidding is unsuccessful include those that are similar to regulations on the open auction which is unsuccessful as provided in Point dd, Clause 3 Article 29a of this Decree.

- If the competitive bidding is unsuccessful, the arrangement approach shall be used instead.

5. Arrangement approach:

- Arrangement approach is defined as an approach to capital transfer in which state enterprises directly make arrangement with investors in the event that the competitive bidding is unsuccessful and which is applied if only one investor who is an eligible participant has already submitted valid documents and fully completed procedures for participation in a competitive bidding session in accordance with rules of competitive bidding sessions.

- The selling price shall be agreed upon, based on the price determined according to provisions laid down in Point c Clause 1 Article 29 of this Decree.

- When transferring state capital under a direct arrangement, persons accorded authority to decide state capital transfer shall not be entitled to make the decision on transfer of capital, either to receiving enterprises where spouses, natural/foster parents, natural/adopted children, children-in-law, younger/elder siblings, siblings-in-law are managers, or to individuals with whom the abovementioned relationships exist.

- After an arrangement is made and a capital transfer contract is signed, payment on sale of shares shall be made within the maximum duration of 05 working days from the date of signing of such contract.

- After an investor has finished paying for shares, within the duration of 05 working days, state enterprise shall send documents on transfer of ownership of shares to investors, including the decision on approval of the plan for capital transfer, granted by competent authorities, the written request of state enterprise and the capital transfer contract. Submission of documents on transfer of ownership of shares and the report on capital transfer according to the arrangement approach shall be subject to respective regulations applied to the open auction as provided in Point c Clause 3 of this Article.

6. If the number of state capital to be transferred is not sold up even after completion of the open auction, the competitive bidding and arrangement approach, the owner's representative entity shall measure the market demands to choose the proper time to continue to transfer of the remaining amount of shares according to various transactional approaches and order of implementation of such approaches as provided by this Decree.

7. In addition to the aforesaid approaches, state enterprises may apply the "book-building" approach to transfer capital under the Prime Minister's decision. For application of the "book-building" approach to capital transfer, it must prove more effective than the open auction approach or trading of shares through stock exchanges.

8. Approaches to transfer of state enterprise's capital at multiple-member limited liability companies shall be subject to the 2014 Law on Enterprises as follows:

a) With respect to capital transfer subject to Article 52 of the 2014 Law on Enterprises (requiring that companies repurchase state enterprise's contributed capital in these companies), the price of shares transferred to companies is the price agreed according to the principles of market price; the agreed selling price is determined on the basis of valuation result given by an accredited valuation organization as stipulated in Point c Clause 1 Article 29 of this Decree.

Where companies fail to reach an agreement on the price of repurchase of state enterprise's contributed capital at these companies, state enterprises shall be entitled to transfer such capital to other members or organizations or individuals other than members of companies according to the capital transfer approaches which are the same as those applied to transfer of state enterprise's capital at unlisted joint-stock companies referred to in Clause 2, Clause 3, Clause 4 and Clause 5 of this Article.

b) Where companies refuse to buy contributed capital of state enterprises after receiving the request for this from these state enterprises, state enterprises shall be entitled to transfer part or all of contributed capital in accordance with Article 53 of the 2014 Law on Enterprises, including the following regulations:

- If capital is transferred to other members of companies at the ratio equivalent to their portion of contributed capital at companies under the 2014 Law on Enterprises, the agreed transfer price

shall be applied to transfer of such capital to other members according to the principles of market price. The agreed selling price shall be determined on the basis of valuation results prescribed in Point c Clause 1 Article 29 of this Decree.

- If capital is transferred to organizations or individuals other than members of companies (after company members refuse to buy or do not buy it up), state enterprises may transfer capital according to the transfer approach which is the same as the approach applied to transfer of state enterprise's capital at joint-stock companies that have not yet been listed or registered their transactions on stock exchanges in accordance with Clause 2, 3, 4 and 5 of this Article.

c) Within the maximum duration of 15 days after completion of transfer of capital that state enterprises invest in multiple-member limited liability companies, state enterprises shall report on capital transfer results and send such report to the owner's representative entity and the Ministry of Finance (Department of Corporate Finance).

9. Principles of financial treatment for outward transfer of state enterprise' investments

If the difference between revenue generated from the transfer of a state enterprise's outward invested capital and the value of invested capital specified in accounting records, transfer costs and fulfillment of tax obligations in accordance with applicable regulations (if any) is positive, state enterprises shall be entitled to account for that difference into income from financial operations. If that difference is negative, provisions may be used for offset. If such provisions are still in shortage, state enterprises may account for the deficiency in expenses incurred from their financial operations.

10. As for types of debentures and bonds that a state enterprise has invested in to earn profits, the transfer shall be governed under the same regulations as applied to the issue of these ones, or accord with the issue method of the issuing organization or entity. If a state enterprise transfers bonds prior to the maturity date, the transfer price must adhere to the principle of capital conservation. Transfer of bonds which have been deposited, listed or traded on the stock market shall be governed under laws on securities.

11. As for state enterprise's outward investment under the BCC model, according to provisions laid down in the Law on Investment, this investment is a form of investment without establishment of independent legal entity; when state enterprises contribute capital by using money or property (even when they are charged with accounting of transactions under BCC agreements) to take part in BCC agreements, state enterprise's receivables must be recorded; when state enterprises receive contributed capital from BCC parties (even when they are charged with accounting of transactions under BCC agreements), state enterprise's payables must be recorded and shall not be recorded in state enterprise's owner's equity.

Parties to BCC agreements shall, upon termination of BCC agreement, be bound to carry out contract settlement as per laws. State enterprises authorized by the state to supplement capital and property to contribute capital to BCC agreement shall record an increase in state capital invested in enterprises; when state enterprises contribute their capital to take part in BCC agreement by using value of land use right (including the right to use leased land and allocated

land) but carry out transfer of their capital to discontinue participating in BCC agreement, real property treatment must conform to laws on land.

When transferring investment capital in BCC agreement (even when they are authorized as owners of BCC projects, and are charged with accounting of transactions under BCC agreement), state enterprises shall be entitled to apply principles and rules of capital transfer referred to in Article 31 of the Law on Management and Use of state capital invested in manufacturing and business activities; authorities having competence in making a decision on capital transfer shall consult specific terms and conditions of BCC agreement to decide to apply the capital transfer approach referred to in the Law No. 69/2014/QH13 where appropriate. Delegation of authority to decide outward capital transfer of state enterprises in the BCC form shall be the same as delegation of authority to decide outward investment referred to in Clause 4 Article 28 of the Law on management and use of state capital invested in the enterprise's operations."

14. Amending and supplementing Clause 3 Article 37 as follows:

"3. Rights, responsibilities, wage, remuneration, bonus and other benefits of the representative person shall be governed under Article 48 and 50 of the Law on management and use of state capital invested in the enterprise's operations. The following provisions shall be obeyed:

The person representing state enterprise's contributed capital in enterprises of which at least 36% of shares and contributed capital is held by the state shall expect opinions from the owner's representative entity on the annual plan for distribution of dividends and after-tax profits of enterprises that (s)he represents to give his/her opinions, cast his/her vote and make his/her decision in the Shareholders' General Meeting or the meeting of the Board of Members in accordance with regulations in force. Before appointing the representative person to give his/her opinions, cast his/her vote and make his/her decision in the Shareholders' General Meeting or the meeting of the Board of Members, the owner's representative entity shall request in writing opinions of same-level finance authorities, and within the duration of 05 working days of receipt of the written request from the owner's representative entity, such authorities must give their opinions based on which the owner's representative entity appoints the person representing state capital in enterprise to give his/her opinions, cast his/her vote and make his/her decision in the Shareholders' General Meeting or the meeting of the Board of Members.

- The person representing the state contributed capital shall prepare regular reports within the maximum duration of 15 days from the end date of each quarter and 30 days from the end date of a year, and ad-hoc reports upon the request of the owner's representative entity and same-level finance authorities, on manufacturing, business and financial conditions, and give recommended solutions that may be applied in enterprises that (s)he is appointed to act on behalf as the state capital representative person. All reports that the representative person sends to the owner's representative entity and same-level finance authorities shall be made by using the form given in the Appendix III to this Decree."

15. Amending and supplementing Article 38 as follows:

“Article 38. Transfer of state capital invested in joint stock companies or multiple-member limited liability companies

1. State capital transfer principles:

Approach to transfer of capital invested in joint-stock companies and multiple-member limited liability companies shall be subject to provisions laid down in Clause 1 Article 39 of the Law on Management and Use of state capital invested in manufacturing and business operations of enterprises and the following regulations:

a) The transfer of outward invested capital of state enterprises must be aligned with the list of enterprises having state capital carrying out capital transfer which has been approved by competent authorities according to criteria for classification of state enterprises, enterprises having state capital and the list of state enterprises subject to restructuring in stages, which are released by the Prime Minister; such transfer is carried out irrespective of the amount of investment and whether profit or loss of enterprises having capital contributed by state enterprises; organization of transfer of capital and preparation of documents on capital transfer, dissemination of information about capital transfer, report on capital transfer results, procedures for transfer of the ownership of shares of transferred capital and delivery of documents and reports on results of capital transfer to regulatory authorities must be subject to provisions laid down in this Decree.

Where the owner’s representative entity transfers capital invested in joint-stock companies whose statutes prescribe that share transfer is restricted under the provisions of the Law on Enterprises (in the event that shareholders are allowed to transfer their shares only to organizations and individuals that are existing shareholders in the enterprise), transfer of shares aimed at transferring state enterprise’s capital shall be carried out in order in terms of transfer approaches specified in this Decree with respect to existing shareholders.

b) This transfer must adhere to the principle of market, public disclosure, transparency and state capital conservation at the highest level as well as maximum restriction on losses incurred from capital transfer.

c) Determination of the start price at which transfer of state capital is carried out:

The owner’s representative entity or the competent authority authorized or tasked by the owner’s representative entity in writing shall choose to sign a contract to hire an accredited price assessment organization to determine the start price and ensure compliance with regulations on price assessment; determine full actual value of state enterprise’s portion of outward investment, including value formed by the right to use land which is allocated in return for land occupancy fee, the right to use land which is legally transferred or the right to use leased land (one-off payment of land rent for the entire lease duration or annual payment of land rent), value of intellectual property rights comprising cultural, other historical value, value of brands and commercial names (if any) in accordance with laws.

Determination of the start price at which capital is transferred at joint-stock companies which have been listed/register their transactions on stock exchanges must be subject to the aforesaid regulations. Where the start price is determined under aforesaid regulations is less than the average reference price within 30 consecutive transaction days on stock exchanges before the date of dissemination of information about sale of transferred capital shares, this average reference price shall be used as the start price at which capital is transferred for transactions performed on stock exchanges and off-the-exchange transactions for transfer of capital at listed joint-stock companies.

Use of a single start price for capital transfers according to approaches specified in this Decree must ensure that such start price is existing not later than 06 months from the effective date of the price assessment certificate to the final transaction date (applicable to the case in which transactions are performed on stock exchanges); or is valid till the date of declaration of the winning bid (applicable to the open auction and competitive bidding approach) or till the date of signing of the capital transfer contract (according to the agreement approach).

d) Transfer of state enterprise's capital invested in enterprises related to the land use right must conform to laws on land. In the process of transfer of state enterprise's capital invested in enterprises, the owner's representative entity shall be responsible for reviewing corporate handover documents moved from state enterprises to other ones (e.g. joint-stock companies and multiple-member limited liability companies) in conformity with regulations (including reports on enterprise's use of land) and actual use of land by other enterprises that have capital contributed by state enterprises, as the basis for determination of value of the land use right included in the start price at which capital is transferred.

dd) The owner's representative entity or the competent authority authorized and tasked by the owner's representative entity in writing shall hire an accredited auctioning organization or hire another consultancy organization that provide services related to capital transfer to organize necessary activities of transfer of state enterprise's capital invested in joint-stock companies and multiple-member limited liability companies.

e) When transferring state enterprise's capital invested in joint-stock commercial banks under the provisions of this Decree, the owner's representative entity shall be responsible for ensuring full disclosure of eligibility conditions for a winning bidder to be accepted as a shareholder of a joint-stock commercial bank under laws on credit institutions related to transfer of capital contributed by shareholders to joint-stock commercial banks for bidder's information and compliance.

Where, after winning at auction, the winning bidder is not eligible for being accepted as a shareholder of a joint-stock commercial bank in accordance with laws on credit institutions, that bidder shall not be bound to pay the owner's representative entity for shares that intend to buy. If their payment has been made, they shall be refunded (including advance sums); and in this case, the number of shares for which payments have not been made or have been made but refunded shall be under ownership of the owner's representative entity.

g) The owner's representative entity shall consult the list of enterprises having state capital that are subject to capital transfer, which has been decided by the Prime Minister in stages, to direct

competent authorities to draw up the plan for capital transfer which is then reported to the owner's representative entity to make its decision on capital transfer. Capital transfer plan includes the following major contents:

- Legal bases and capital transfer objectives.
- Assessment of capital investment, benefits and effects of transfer of state capital invested in enterprises.
- Financial conditions, business outcomes of enterprises having capital contributed by state enterprises and market needs for investment of capital in enterprises having transferrable state capital. Proposed value gained after capital transfer.
- Capital transfer approach (in case of an lot-type auction, it is obligatory that bases for determination of cases in which lot-type auctions must be clearly informed in accordance with regulations in force).
- Proposed time of implementation and completion of capital transfer.

h) The owner's representative entity shall not be required to re-establish the plan for transfer of capital upon conversion of capital transfer approaches in order prescribed by regulations in force (e.g. open auction, competitive bidding and arrangement approaches).

i) Foreign investors that wish to buy shares and contributed capital of state enterprises held at joint-stock companies and multiple-member limited liability companies must ensure that the rate of ownership of actual contributed capital included in the chartered capital of joint-stock companies and multiple-member limited liability companies is relevant to specific legal specialties or international treaties of which Vietnam is a member. Opening and using investment accounts of foreign investors related to purchase of shares and contributed capital at Vietnamese enterprises when state enterprises transfer shares of contributed capital at joint-stock companies and multiple-member limited liability companies shall be subject to relevant regulations in force.

k) The owner's representative entity shall decide and assume legal responsibility for costs relating to transfer of state capital (including valuation, auction organization and other costs directly related to capital transfer activities). These costs shall be deducted from revenue generated from transfer of state capital. Where transfer of state capital is unsuccessful or revenue received from transfer of capital is not enough to offset capital transfer costs, the Enterprise Arrangement and Development Fund may be used to make up for any capital transfer cost whenever there is no other budget for this.

l) The owner's representative entity shall be responsible for resolving difficulties, complaints and denunciations related to the process of transfer of state enterprise's capital within its jurisdiction and applicable laws.

2. Authority to make a decision on state capital transfer:

a) The Prime Minister shall have authority to decide the list of enterprises having state capital that are subject to capital transfer in stages.

b) The owner's representative entity shall have authority to draw the roadmap and decide the plan and implement the plan for transfer of capital in joint stock companies and multiple-member limited liability companies in conformity with the list of enterprise having state capital that are subject to capital transfer, which is decided by the Prime Minister.

In the event of transfer of state capital invested in enterprises that are not in the list of enterprises having state capital that are subject to capital transfer, which has been decided by the Prime Minister, the owner's representative entity shall report to the Prime Minister to seek his decision before formulation and implementation of the plan for transfer of state capital at these enterprises.”

16. Supplementing Article 38a as follows:

“Article 38a. Approach to transfer of state capital invested in joint stock companies and multiple-member limited liability companies

The approach to transfer of capital invested in joint-stock companies and multiple-member limited liability companies shall be subject to provisions laid down in Clause 2 Article 39 of the Law on Management and Use of state capital invested in manufacturing and business operations of enterprises and the following regulations:

1. Transfer of capital in joint-stock companies which have been listed or registers their transactions on stock exchanges according to approaches to trading of shares on stock exchanges shall be organized by the Stock Exchange and ensure that the trade price (floor price) is not less than the start price defined as per Point c Clause 1 Article 38 hereof.

a) Once transferring capital through transfer of shares on stock exchanges, the owner's representative entity shall be required to send the following written documents to the Stock Exchange to publicly disclose information about transaction of shares intended for capital transfer:

- Decision granted by a competent authority on approval of the plan for restructuring of state enterprise and decision on approval of the capital transfer plan;

- Information declaration according to the form given in Appendix I hereto attached;

- Documents evidencing that the enterprise having shares auctioned for capital transfer purposes are the legal owner of the number of shares listed for sale.

b) Money transfer used for payment of shares purchases, sales and transfer of ownership of shares shall be subject to regulations on securities.

c) Transfer of capital in joint-stock companies which have been listed or registers their transactions in securities markets, but not on stock exchanges shall be carried out by employing open auction, competitive bidding and agreement methods (including off-the-exchange transactions).

The selling price of shares that investors must pay state enterprises for off-the-exchange trades is the price which is determined according to regulations relevant to specific transfer approaches (e.g. open auction, competitive bidding and arrangement); where the price of trading of shares of joint-stock companies based on the floor price is higher than the payment price which is determined according to specific transfer approaches (e.g. open auction, competitive bidding and arrangement) on the date of opening of public auction, competitive bidding or signing of capital transfer contract (with respect to arrangement approach), investors shall be obliged to pay state enterprises for shares at the trading price which is the floor price defined on that day; where the price of trading of shares of joint-stock companies based on the floor price is less than the payment price which is determined according to specific transfer approaches (e.g. open auction, competitive bidding and arrangement) on the date of opening of public auction, competitive bidding or signing of capital transfer contract (with respect to arrangement approach), or the floor price does not exist in the absence of transactions, investors shall be bound to pay state enterprises for shares at the price specific to capital transfer approaches (e.g. open auction, competitive bidding and arrangement).

d) The owner's representative entity shall be required to disclose information about the selling price of shares for capital transfer at joint-stock companies which have been listed or registered their transactions on stock exchanges with respect to off-the-exchange transactions to investors for their information and compliance.

dd) With regard to transfer of state enterprise's capital invested in joint stock companies which have been listed or registered for transactions on the stock exchange, the permitted duration within which investors are required to make payment shall vary depending on specific transaction methods, but duration for transmission of money to the Enterprise Arrangement and Development Fund shall be subject to enforceable regulations in the case of transfer of state capital at joint-stock companies which have not been yet listed or registered their transactions on stock exchanges as prescribed in Article 39 of the Decree No. 91/2015/ND-CP.

2. Transfer of capital in joint-stock companies which have not been listed yet (or have listed or registered their transactions in securities markets, but not on stock exchanges) shall be carried out according to the open auction approach; if such open auction is failed, the competitive bidding approach shall apply; if the competitive bidding is failed, the arrangement approach shall be used.

3. Open auction approach

a) Preparing documents for participation in auctions:

- Decision granted by a competent authority on approval of the list of enterprises having state capital that are subject to capital transfer and the decision on approval of the capital transfer plan;

- Information declaration according to the form given in Appendix I hereto attached;
- Documents evidencing that the owner's representative entity having the number of shares to be auctioned for capital transfer purposes are the legal owner of the number of shares registered for sale.
- Rules for auctioning shares.

b) Organizing auction activities:

- Upon receipt of the decision on the capital transfer plan, the owner's representative entity informs joint-stock companies having capital invested in by state enterprises of the plan for transfer of their shares; the owner's representative entity then prepares documents necessary for an open auction in accordance with regulations in force.

- The owner's representative entity or the competent authority authorized in writing by the owner's representative entity signs a contract to hire a stock exchange, securities company, service center and property auctioning enterprise in accordance with laws on property auction (hereinafter referred to as auctioneer) to organize capital transfer activities according to the following principles:

+ In the event of auctioning of shares for state capital transfer purposes of which the face value is at least VND 10 billion, the owner's representative entity may hire the Stock Exchange to act as an auctioneer.

+ In the event of auctioning of shares for state capital transfer purposes of which the face value is less than VND 10 billion, the owner's representative entity may hold auction on their own or have the option of hiring the Stock Exchange, a securities company or property auctioning company as an auctioneer.

The auction shall be held at the office of the auctioneer, the owner's representative entity or the enterprise having state capital to be transferred or any other location depending on arrangements between the owner's representative entity and the auctioneer.

- The auctioneer shall be responsible for issuing rules of auctioning of shares and relevant sample documents prior to an auction after receipt of consent from the owner's representative entity; these rules must ensure that capital transfer conforms to laws on management and use of state capital invested in manufacturing and business operations as well as other relevant regulations; the rules must clearly specify responsibilities and authority of parties concerned in the process of auctioning of shares for capital transfer purposes; the rules must prescribe disclosure of information about the auction (e.g. which information to be revealed and which means of communications to be used); the rules must prescribe eligible bidders, procedures for participation and notification of auctioning results (e.g. such information as duration of payment, payment details, receiving entity, address and account number), procedures for transfer of ownership of auctioned shares, penalties for violations and other regulations to be issued to meet

managerial demands and must be aimed at ensuring public awareness, transparency and legality of such auction.

- The owner's representative entity/the auctioneer shall disclose auctioning documents which have been prepared in accordance with regulations in force to investors within the period of at least 20 days before the auction date at the main office of joint-stock company having state capital to be transferred and the auction venue through mass media (on three successive articles of a newspaper published nationwide and a newspaper of a locality where the main office of the owner's representative entity or the enterprise having state capital is located) and post these information on the website of the auctioneer of shares, the owner's representative entity and the joint-stock company having state capital to be transferred (if any).

- The owner's representative entity/the auctioneer shall, while disclosing information about auctioning of shares for capital transfer purposes, send auctioning documents that they have prepared in accordance with regulations in force to the Ministry of Finance (Department of Corporate Finance).

- Within the duration specified in auction rules, the owner's representative entity, the auctioneer and investors shall implement procedures for participation in auction; (both organizational and individual) investors who are qualified for participation in auction shall receive the participation registration form from the owner's representative entity/the auctioneer to register the amount of shares that they can buy and pay advance sums. Investors shall receive the auction participation slip from the owner's representative entity/the auctioneer (after paying advance sums) to be able to make a bid.

- Within the duration specified in auctioning rules, investors shall write down their bid in the auction participation slip and send it through to the owner's representative entity/the auctioneer by voting directly at the auction venue or voting by post as per rules for auctioning of shares.

- Open auction shall be carried out only if there are at least 02 investors qualified for participation who have submitted valid documents and implemented all required procedures for participation in auction under auctioning rules.

c) Determination of auctioning results, payment for shares, transfer of ownership of shares and report on capital transfer carried out by the owner's representative entity/the auctioneer shall be subject to Point c Clause 3 Article 29a of this Decree.

d) Lot-type auction:

In case of auctioning of shares in lots for state capital transfer purposes, preparation and submission of documents, implementation, determination of auctioning results, payment for shares, transfer of ownership of shares and report on capital transfer shall be carried out in the similar manner to the lot-type auction for transfer of state enterprise's capital as prescribed in Point d Clause 3 Article 29a of this Decree.

dd) Open auction (ordinary or lot-type auction) for transfer of state capital which is unsuccessful shall be determined like the unsuccessful auction for transfer of capital of state enterprises which is prescribed in Point dd Clause 3 Article 29a of this Decree.

e) If an open auction is unsuccessful or successful but there is still the remaining number of shares to be sold for state capital transfer purposes, the competitive bidding approach shall be used instead.

4. Competitive bidding approach:

- Transfer of state capital according to the competitive bidding approach shall be similar to that used for transfer of state enterprise's capital as prescribed in Clause 4 Article 29a of this Decree.

- If the competitive bidding is unsuccessful, the arrangement approach shall be used instead.

5. Arrangement approach:

- Arrangement approach is defined as an approach to capital transfer in which the owner's representative entity directly make arrangement with investors in the event that the competitive bidding is unsuccessful and which is applied if only one investor who is an eligible participant has already submitted valid documents and fully completed procedures for participation in a competitive bidding session in accordance with rules of competitive bidding sessions.

- The selling price shall be agreed upon, based on the price determined according to provisions laid down in Point c Clause 1 Article 38 of this Decree.

- When transferring state capital under a direct arrangement, persons accorded authority to decide state capital transfer shall not be entitled to make the decision on transfer of capital, either to receiving enterprises where spouses, natural/foster parents, natural/adopted children, children-in-law, younger/elder siblings, siblings-in-law are managers, or to individuals with whom the abovementioned relationships exist.

- After an arrangement is made and a capital transfer contract is signed, payment on sale of shares shall be made within the maximum duration of 05 working days from the date of signing of such contract.

- After the investor has finished paying for shares, within the duration of 05 working days, the owner's representative entity shall send documents on transfer of ownership of shares to investors, including the decision on approval of the plan for capital transfer, granted by competent authorities, the written request of the owner's representative entity and the capital transfer contract. Submission of documents on transfer of ownership of shares and the report on capital transfer according to the arrangement approach during the process of transferring state capital shall be subject to respective regulations applied to the open auction for transfer of state enterprise's capital as provided in Point c Clause 3 Article 29a of this Decree.

6. If the number of state capital to be transferred is not sold up even after completion of the open auction, the competitive bidding and arrangement approach, the owner's representative entity shall measure the market demands to choose the proper time to continue to transfer of the remaining amount of shares according to various transactional approaches and order of implementation of such approaches as provided by this Decree.

7. In addition to the aforesaid approaches, the owner's representative entity may apply the "book-building" approach to transfer capital under the Prime Minister's decision. For application of the "book-building" approach to capital transfer, it must prove more effective than the open auction approach or trading of shares through stock exchanges.

8. Approaches to transfer of state capital at multiple-member limited liability companies shall be subject to the 2014 Law on Enterprises as follows:

a) With respect to capital transfer subject to Article 52 of the 2014 Law on Enterprises (requiring that companies repurchase state enterprise's contributed capital in these companies), the price of shares transferred to companies is the price agreed according to the principles of market price; the agreed selling price is determined on the basis of valuation result given by an accredited valuation organization as stipulated in Point c Clause 1 Article 38 of this Decree.

Where companies fail to reach an agreement on the price of repurchase of state enterprise's contributed capital at these companies, the owner's representative entity shall be entitled to transfer such capital to other members or organizations or individuals other than members of companies according to the capital transfer approaches which are the same as those applied to transfer of state enterprise's capital at joint-stock companies that are unlisted or have not yet registered their transactions on stock exchanges as referred to in this Article.

b) Where companies refuse to buy state contributed capital after receiving the request for this from these state enterprises, the owner's representative entity shall be entitled to transfer part or all of contributed capital in accordance with Article 53 of the 2014 Law on Enterprises, including the following regulations:

- If capital is transferred to other members of companies at the ratio equivalent to their portion of contributed capital at companies under the 2014 Law on Enterprises, the agreed transfer price shall be applied to transfer of such capital to other members according to the principles of market price. Determination of the agreed price shall be based on valuation results as prescribed in Point c Clause 1 Article 38 of this Decree.

- If capital is transferred to organizations or individuals other than members of companies (after company members refuse to buy or do not buy it up), the owner's representative entity may transfer capital according to the transfer approach which is the same as the approach applied to transfer of state capital at joint-stock companies that have not yet been listed or registered their transactions on stock exchanges in accordance with this Article.

- Within the permitted duration of 15 days after completion of transfer of state capital at multiple-member limited liability companies, the owner's representative entity shall report on

capital transfer results and send such report to the Ministry of Finance (Department of Corporate Finance).

9. Periodic review reports on state capital transfer:

Within the maximum duration of 15 working days after end of each quarter, the owner's representative entity shall be responsible for reporting to the Ministry of Finance on results of transfer of state capital invested in enterprises according to the approved list of transferrable capital for the purposes of carrying out examination and preparation of a general report to the Prime Minister, Government and National Assembly as per laws."

17. Supplementing Article 38b as follows:

"Article 38b. Implementation of transfer of the right to buy shares and the capital contribution right

Where the capital owner has made investments in enterprises which are not in the list of sectors and industries needing more investments, or have to transfer capital according to the classification requirements and list of state enterprises adopted by the Prime Minister, and during the process of implementation of transfer of capital, receive the right to buy shares (at joint-stock companies) and capital contribution right (at multiple-member limited liability companies) as per the Law on Enterprises, the capital owner shall consider granting the decision on transfer of their right to buy shares and their capital contribution right to other organizations and individuals.

The principle applied to the transfer of the right to purchase shares or the right to contribute capital shall be the same as the principle applied to the open auction. Determination of the start price at an open auction of the right to buy shares and the capital contribution right shall be subject to Point c Clause 1 Article 38 of this Decree.

In the event that the permitted duration within which shareholders or capital contributing members exercise the right to purchase shares or the right to contribute capital according to the stock issuing plan of the issuing enterprise is too short to hold an auction intended for transfer purposes, the owner of transferrable capital shall consider granting the decision on the price at which the right to buy shares and the capital contribution right are transferred, transfer under direct arrangement, and ensure compliance with the principles of market price and efficiency.

The person representing state capital/the person representing state enterprise's capital shall consult the plan for offering and amount of capital to be offered for sale by issuing organizations to report to the capital owner to grant their decision on approach to transfer of the right to buy shares and the capital contribution right according to the open auction or arrangement approaches.

The selling price shall be agreed upon, based on the price determined according to provisions laid down in Point c Clause 1 Article 38 of this Decree.

The person accorded authority to decide to transfer the right to purchase shares or the right to contribute capital shall not be allowed to decide to transfer state capital to the transferred enterprise of which wife, husband, father, foster father, mother, foster mother, natural son/daughter, son/daughter-in-law, adopted son/daughter, younger/elder brother, sister, or younger/elder son/daughter-in-law, is a manager and shall not be entitled to make his/her decision to transfer such rights to those with whom he/she has the abovementioned relationships.”

18. Amending and supplementing Clause 4 Article 42 as follows:

“4. Political organizations and socio-political organizations can apply provisions laid down in this Decree to implementation of financial management of enterprises owned by these organizations.

Public entities making their outward investments in joint-stock companies and multiple-member limited liability companies shall, when transferring outward investment, adopt the approach to transfer of state enterprise’s outward investment in joint-stock companies and multiple-member limited liability companies prescribed in this Decree.”

Article 2. Repealing provisions laid down in Point a Clause 3 Article 31 of the Government’s Decree No. 91/2015/ND-CP dated October 13, 2015 on state capital investment in enterprises, use and management of capital and assets in enterprises.

Article 3. Implementary provisions

1. This Decree shall enter into force from May 1, 2018.
2. The Prime Minister’s Decision No. 51/2014/QD-TTg dated September 15, 2014 addressing divestment, sale of shares and registration of transactions and listing on stock exchanges with respect to state enterprises; the Prime Minister's Decision No. 41/2015/QD-TTg dated September 15, 2015 on sale of shares in lots and regulations issued by Ministries and Ministry-level agencies in breach of this Decree, shall be repealed.
3. State enterprises that were previously allowed to set aside their after-tax profits to establish particular funds under the Prime Minister’s Decision which still have money left by end of the financial year 2017 shall be entitled to continue using these funds to implement and fulfill the plan and objectives approved by competent authorities in accordance with regulations in force.
4. Ministers, Heads of Ministry-level agencies, Heads of Governmental agencies, Presidents of the People’s Committees of centrally-affiliated cities and provinces, the Boards of Members of parent companies controlling economic incorporations, state general companies, state enterprises, and persons representing state capital, shall be responsible for enforcing this Decree./.

**PP. THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Xuan Phuc

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