

MINISTRY OF FINANCE

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SOCIALIST REPUBLIC OF VIETNAM

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No.40/2018/TT-BTC

Hanoi, may 04, 2018

## CIRCULAR

### PROVIDING GUIDELINES FOR INITIAL OFFERING OF SHARES AND MANAGEMENT AND USE OF PROCEEDS FROM EQUITIZATION OF STATE-OWNED ENTERPRISES AND SINGLE-MEMBER LIMITED LIABILITY COMPANIES WITH 100% CHARTER CAPITAL INVESTED BY STATE-OWNED ENTERPRISES

*Pursuant to the Enterprise Law No.68/2014/QH13 dated November 26, 2014;*

*Pursuant to the Law No. 69/2014/QH13 on Management and use of state capital invested in enterprises' production and business activities dated November 26, 2014;*

*Pursuant to Decree No.87/2017/ND-CP dated on July 26, 2017 of the Government on functions, missions, rights and organizational structure of the Ministry of Finance;*

*Pursuant to Decree No.126/2017/ND-CP dated November 16, 2017 of the Government on equitization of state-owned enterprises and single-member limited liability companies with 100% charter capital invested by state-owned enterprises;*

*Pursuant to Decree No.58/2012/ND-CP dated July 20, 2017 of the Government prescribing detailed regulations and providing guidelines for some articles of the Law on Securities and the Law on amendments to the former;*

*Pursuant to Decree No.60/2015/ND-CP dated June 26, 2015 which amends Decree No.58/2012/ND-CP dated July 20, 2012 of the Government prescribing detailed regulations and providing guidelines for some articles of the Law on Securities and the Law on amendments to the former;*

*At the request of Director of the Department of Cooperate Finance*

*The Ministry of Finance provides guidelines for initial share offering and management and use of proceeds from the equitization of state-owned enterprises and single-member limited liability companies with 100% charter capital invested by state-owned enterprises as follows:*

## Chapter I -

### GENERAL REGULATIONS

#### Article 1. Scope and regulated entities

1. This Circular provides guidelines for:

a) the order, procedure and forms for initial offering of shares and management, use of proceeds from equitization; registration of share auction in connection with registration, depository, registration or listing purchased at auction from equitized enterprises as prescribed in Article 2 in Decree No.126/2017/ND-CP.

b) preparation of final accounts and handling of the balance of the Business Arrangement Support Fund in parent companies of state-owned economic groups, parent companies of state corporations and parent companies in groups of parent companies - subsidiaries at the time of December 31, 2017.

2. Regulated entities:

a) Enterprises prescribed in clause 2 and 3 in Article 2 of Decree No.126/2017/ND-CP (hereinafter referred to as equitized enterprises).

b) Representative authorities and relevant agencies, organizations and individuals prescribed in clause 1 and 4 in Article 2 of Decree No.126/2017/ND-CP.

## **Article 2. Definitions**

1. "initial offering of shares" means sale of shares in forms prescribed in this Circular held by equitized enterprises to convert into joint-stock companies.

2. A share auction will be considered unsuccessful if:

a) no investor registers to attend such auction

b) only one investor registers to attend such auction.

c) none of the investors submit the auction entry slip.

d) all of the successful bidders refuse to purchase the shares.

3. "underwriting organization" may be a single securities company or a group of securities companies licensed to underwrite the share issuance for enterprises in accordance to provisions of the law on securities and securities market.

4. "deposit" means a money amount paid in advance by an investor engaged in the offering of shares to protect his/her right to purchase such shares

## **Chapter II -**

### **PARTICULAR REGULATIONS**

## **SECTION I –ELIGIBLE BUYERS AND SELLING PRICES**

### **Article 3. Eligible buyers**

1. Domestic or foreign investors prescribed in clause 1 and 2 in Article 6 of Decree No.126/2017/ND-CP including organizations and individuals, even employees working in equitized enterprises.
2. Domestic and foreign strategic investors meeting requirements as prescribed in point a in clause 3 in Article 6 of Decree No.126/2017/ND-CP.

For equitized enterprises running business in sectors or trades subject to Conditional Business Investment of the law on Investment, the steering committee in charge of the equitization (hereinafter referred to as the steering committee) shall notify the representative authority for considering and adding the condition for selecting strategic investors in same business sectors or trades of such enterprises and other conditions in consistent with relevant law provisions.

3. Entities prescribed in Article 42 of Decree No.126/2017/ND-CP.
4. Trade unions of equitized enterprises prescribed in point b in clause 2 in Article 33 of Decree No.126/2017/ND-CP. Trade unions authorize a competent person to carry out procedures relating to the sale of shares.

### **Article 4. Entities not eligible for purchasing initially issued shares**

Organizations and individuals not eligible for purchasing initially issued shares from equitized enterprises prescribed in clause 4 in Article 6 of Decree No.126/2017/ND-CP.

### **Article 5. Selling prices in the initial offering of shares**

1. The selling price offered to investors through the auction is the price they offer in such auction and is identified as the winning price according to the auction results prescribed in clause 5 in Article 7 of this Circular. For the case in which the equitized enterprise sell its shares through issuance underwriting, the steering committee shall come to an agreement with the underwriting organization on the underwriting price but not lower than the reserve price approved by the representative authority.
2. The selling prices of preferential shares offered to entities prescribed in clause 1 in Article 42 of Decree No.126/2017/ND-CP include:
  - a) the selling price offered for entities prescribed in point a and c in clause 1 in Article 42 of Decree No.126/2017/ND-CP which is equal to 60% of face value of a share (VND 10 thousand per a share)

b) the selling price offered to entities prescribed in clause 2 in Article 42 of Decree No.126/2017/ND-CP which is the reserve price approved in the equitization plan by the representative authority

3. The selling price of preferential shares offered to the trade union of the equitized enterprise shall be equal to the face value of a share (VND 10 thousand per share)

4. The selling price offered to strategic investors:

a) With regard to the auction among strategic investors, the selling price is the successful bid but not lower than the average winning price in the public auction or the price agreed with the investor in case of public offering with only one investor or not lower than the reserve price in the successful public offering and must adhere to the principle for selecting the investor in the descending order of prices offered to make sure there will be enough shares for sale.

b) For the case in which two or more strategic investors subscribe for shares with the purchasing number equal to or smaller than number of shares expected to be sold according to the approved equitization plan or only one investor subscribes for shares, the selling price will be decided by the steering committee or the organization authorized by the steering committee and each investor but not lower than the average winning price in the public offering or not lower than the price agreed with the investor in the public offering with only one investor or not lower than the reserve price in the successful public offering.

## **SECTION II – INITIAL OFFERING OF SHARES**

### **Article 6. Initial offering of shares**

1. Depending on the equitization plan approved by the representative authority (according to Appendix 1 issued together with this Circular including the English version), the steering committee shall instruct the equitized enterprise to launch the plan for initial offering of shares in the forms approved in the equitization plan, where:

a) Public auction shall be applied for initial offering of shares including the number of shares offered to investors but failed to be sold according to the equitization plan.

b) Direct negotiation will be applied in the following cases:

- Selling to strategic investors in the following cases:

+ Strategic investors subscribe for shares with the purchasing number smaller than number of shares expected to be sold according to the approved equitization plan.

+ Only one strategic investor subscribes for shares.

- Selling to the investors the number of unsold shares as prescribed in clause 2 and 4 in Article 37 of Decree No.126/2017/ND-CP.

- Selling to employees and trade unions

c) Issuance underwriting shall be applied when selling the initially issued shares of the equitized enterprise.

d) Book-building shall comply with the special guidance of the Ministry of Finance.

2. The equitized enterprise must finish the initial offering of share in the form that has been approved within 4 months from the day on which the equitization plan is approved. For the case in which the equitization plan is revised as prescribed in clause 3 in Article 6 of this Circular, the time for the equitized enterprise to finish the initial offering of shares will be calculated from the day on which the decision on revising the equitization plan is approved by the representative authority.

3. The offering of shares to strategic investors shall comply with regulations in clause 3 in Article 6 of Decree No.126/2017/ND-CP. Where:

a) The selection and registration of share purchase by strategic investors must be organized before the time publishing information on the public auction as prescribed in Article 7 of this Circular.

b) For the case in which the strategic investors do not subscribe for all shares offered, the steering committee shall request the representative authority to make a decision on revising the equitization plan to sell the remaining shares to share at public auction.

#### **Article 7. Public auction**

1. General principles:

a) When registering the initial offering of shares through the auctioneering organization, the equitized enterprise is also required to make the registration, depository and registration of trading or listing shares on stock exchanges if eligible for listing share in accordance to provisions of the law on securities.

b) The Vietnam Securities Depository Center and Stock Exchanges shall organize the registration, depository and trading or listing registration for the winning shares have been paid. The number of shares sold to strategic investors and employees working in the equitized enterprise shall be registered and deposited under the guidance of Vietnam Securities Depository Center and registered to be traded or listed on the securities market in accordance to provisions of the law on securities in force.

c) The Vietnam Securities Depository Center shall organize the registration for the winning shares that have been paid and deposit such shares into the depository account of the investors according to information provided by the auctioneering organization.

2. Organization of auction of shares:

a) The auction sale of share shall be organized publicly at Stock Exchanges. If total face value of share to be sold of the equitized enterprise is under VND 10 billion, the representative authority may consider and decide to organize the auction at the securities company or service centers or enterprises in charge of property auction in accordance to provisions of the law on property auction (hereinafter referred to as the broker).

b) The auction for strategic investors shall be organized at the Stock Exchanges.

c) The location of the auction shall be prescribed in the regulations on share auction.

### 3. Auction preparation:

a) The auctioneering organization shall issue a decision on establishing a council for share auction and regulations on share auction as regulated. The Chairperson of the council may be the Head of the steering committee or the member of the steering committee authorized in writing by the Head of such steering committee.

b) The steering committee shall publish the information on the equitized enterprise before the auction at least 20 working days. The information to be published is prescribed in Appendix 2 issued together with this Circular.

For equitized enterprises selling shares at Stock Exchanges, information published according to Appendix 2 issued together with this Circular must include an English version.

c) The representative authority shall decide or authorize the steering committee to decide the reserve price in the decision on approval for equitization plan and publish such reserve price together with the information on the equitized enterprise.

d) The steering committee shall cooperate with the auctioneering organization in giving a presentation on the equitized enterprise to investors (if necessary).

### 4. Conducting an auction:

a) The investors shall subscribe the purchasing number of shares and submit the deposit as prescribed in point a in clause 1 in Article 11 of this Circular in the time prescribed in the regulation on auction sale. Auction entry slips will be given to investors by the auctioneering organization.

With regard to foreign investors, the provision of such slips must comply with regulations in clause 2 in Article 6 of Decree No.126/2017/ND-CP.

b) The investors must fill out the slip as required including information on the bid price and send it to the auctioneering organization by:

- submitting the slip directly to the broker if the auction is organized by such broker and to auction agents if the auction is organized by the Stock Exchanges.

- submitting the slip by post as prescribed in the regulation on share auction.

5. Determination of auction results:

a) The determination of auction results must adhere to the principle of selecting the bids in the descending order to make sure that there will be enough shares offered to the investors but not lower than the reserve price. At the lowest successful bid, if different investors (even foreign investors) offer the same bid but the number of remaining shares is less than total number of shares subscribed at the lowest successful bid, the number of shares purchased by each investor will be identified as follows:

$$\text{The number of shares purchased} = \frac{\text{The remaining shares offered}}{\text{Total number of shares subscribed}} \times \frac{\text{The number of shares subscribed by each investor}}{\text{Total number of shares subscribed}}$$

Where there is a regulation on the maximum number of purchased share for foreign investors, the auction results shall be determined in accordance to the above-mentioned principle but the number of shares purchased by foreign investors must not exceed the maximum number in compliance with law in force.

b) When the auction ends, according to its results, the auctioneering organization, auction council, representative of the steering committee and representative of the equitized enterprise shall make and sign the minutes of auction result determination according to Appendix 3 issued together with this Circular.

c) The steering committee and auctioneering organization shall cooperate with each other in publishing the auction results and refunding the deposit to investors attending such auction but failing in bid in accordance to the auction regulations within 3 working days from the day on which the minutes of auction result determination is made.

6. If the auction of shares is not successful, the equitized enterprise shall comply with regulations in clause 2 in Article 9 of this Circular.

7. Investors are not entitled to have their deposit refunded if violating the regulations on auction. Violations against the auction regulations include offering a price lower than the reserve price; abolishing the right to purchase winning shares in the auction and other acts prescribed in the auction regulations.

8. Registration, depository of the winning shares in the auction at Vietnam Securities Depository Center and registration of trading/listing at the stock exchange:

a) The auctioneering organization shall send a written notification of the average price paid for purchasing shares and a list of owners of paid winning shares to the Vietnam Securities Depository Center and Hanoi Stock Exchange within 15 days from the payment due date. The list of winning share owners must specify their full names, subscribe number, address, depository

account and the number of shares owned. The Vietnam Securities Depository Center must provide a share trading code for the equitized enterprise based on the request of such enterprise which is specified in its Application form for auction of shares (according to Appendix 5 issued together with this Circular).

b) According to the notification of the auctioneering organization as prescribed in point a in clause 8 in this Article, Hanoi Stock Exchange shall put the shares in trading on the trading system of Unlisted Public Company Market (UpCoM) within 90 days from the due date of payment for purchasing winning shares. The reference price on the first day on the UpCoM trading system will be the average winning price of the public auction.

c) If the equitized enterprise has its enterprise registration certificate granted before 90 days from the payment due date, such enterprise must send a written notification to Hanoi Stock Exchange within 5 working days from the day on which the enterprise registration certificate is granted. Hanoi Stock Exchange must put the shares in trading on the UpCoM trading system within 5 working days from the day on which the notification of the equitized enterprise is received.

d) For the case in which the equitized enterprise is eligible for listing share at the Stock Exchange, it must submit an application for listing to the Stock Exchange to list shares as regulated and notify the results of initial offering of shares to the State Securities Commission within 90 days from the finish date of the initial offering of shares.

#### **Article 8. Issuance underwriting**

1. Within 20 days from the day on which the equitization plan is approved by competent authorities, the steering committee shall negotiate with the underwriting organization for the number of shares, price for underwriting and send a report to the representative authority for them to approve or authorize the steering committee to approve within 10 days from the day on which the written notification of the steering committee is received. The underwriting price must not be lower than the reserve price offered in the share auction. For the case in which the share is sold in the form of underwriting after being sold at the public auction, the underwriting price must not be lower than the average successful bid in such public auction.

2. The steering committee shall sign a contract with the underwriting organization within 5 working days from the day receiving the approval or authorization from the representative authority.

3. The underwriting organization shall distribute and sell the number of shares underwritten as agreed in the underwriting contract. If the shares fail to be sold out, the underwriting organization is required to purchase all remaining shares at the underwriting price agreed in the underwriting contract.

4. The underwriting organization may earn an underwriting fee under the agreement with the steering committee but not exceed the maximum fee prescribed in the regulations on underwriting fees issued by the Ministry of Finance. The underwriting fee must be stipulated in the underwriting contract and count towards the equitization expenses.



5. The underwriting price is prescribed in the underwriting contract and paid in Vietnam Dong.

6. When the process of selling and distributing shares ends, the steering committee shall cooperate with the equitized enterprise and underwriting organization in verifying and reviewing the underwriting contract for liquidating such contract as regulated.

## **Article 9. Direct negotiation**

### 1. Selling shares to strategic investors by negotiation

a) Within 15 days from the payment due date of the investors attending in the public auction, the steering committee shall cooperate with the equitized enterprise in negotiating with strategic investors for the number of shares to be sold and selling price then send a report to the representative authority for them to approve or authorize the steering committee to approve within 10 days from the day on which the report of the steering committee is received.

b) According to the results of such negotiation, the steering committee shall instruct the equitized enterprise and strategic investors to sign the purchase/sales contract within 5 days from the results of negotiation is approved by the representative authority.

### 2. Selling shares through negotiation in case of unsuccessful public auction:

a) For the case in which no investor subscribes for shares in the public auction:

The auctioneering organization must notify the unsuccessful auction to the steering committee and equitized enterprise within 3 working days from the deadline for subscribing for the shares. The steering committee shall send a report to the representative authority to finish the sale of shares to employees and trade unions according to the approved equitization plan within 20 days from the deadline for registration for share auction. And the equitized enterprise must carry out procedures to convert into a joint-stock company.

For unsold shares including the number of shares refused by employees and trade unions, the steering committee shall request the representative authority to revise the charter capital structure, the charter capital (if any) and make a divestment as required after the enterprise converts into a joint-stock company.

b) For the case in which only one investor subscribes for shares in the public auction:

The auctioneering organization must notify the unsuccessful auction to the steering committee and equitized enterprise within 3 working days from the deadline for subscribing for shares in the auction.

The steering committee shall negotiate with the investor subscribing for shares for selling the shares at the price not lower than the reserve price with the satisfactory purchasing number subscribed.

According to the results of the negotiation with the investor, the steering committee shall instruct the equitized enterprise and such investor to sign a purchase/sales contract within 5 days from the day on which the selling price as well as the number of shares to be sold are mutually decided.

For unsold shares including the number of shares refused by employees and trade unions, the steering committee shall request the representative authority to revise the charter capital structure, the charter capital (if any) and make a divestment as required after the enterprise converts into a joint-stock company.

c) For the case in which none of the winning bidders wishes to purchase shares after the public auction:

The auctioneering organization must notify the auction results to the steering committee and equitized enterprise within 3 working days from the due date of payment for purchasing shares. The steering committee shall send a report to the representative authority for implementation as prescribed in point a in clause 2 in this Article.

3. Selling unsold shares from the public auction through negotiation (including the number of winning shares but refused by the investors):

Within 3 working days from the payment due date as prescribed in the regulations on share auction, according to the number of unsold shares in the public auction, the steering committee shall instruct the equitized enterprise to make a list and notify all investors attending the auction, exclusive winning bidders in such public auction, for the purpose of starting a negotiation on selling the number of shares subscribed in the auction at the price offered in the announced auction selected in the descending order to make sure all remaining share is sold.

According to the results of the negotiation with the investors attending the auction, the steering committee shall instruct the equitized enterprise and such investor to sign a purchase/sales contract within 20 days from the payment due date.

b) For the case in which the shares fail to be sold out to the investors through negotiation as prescribed in point a in clause 3 in this Article:

Within 5 working days from the due date of payment for purchasing shares as agreed in the signed purchase/sales contract, according to the number of unsold shares, the steering committee shall instruct the equitized enterprise to make a list and notify all winning bidders in the public auction, exclusive those refusing the share purchase, for the purpose of starting a negotiation on selling such shares at the price offered by each investor in the announced auction selected in the descending order to make sure all remaining share is sold.

According to the results of the negotiation with investors attending the auction, the steering committee shall instruct the equitized enterprise and such investor to sign a purchase/sales contract within 10 days from the day such investors subscribe for shares.

c) For the case in which the shares fail to be sold out as prescribed in point b in clause 3 in this Article, the steering committee must send a report to the representative authority to take action in accordance to regulations in point a in clause 2 in this Article.

4. For the number of share that are refused by employees and trade unions, the steering committee must send a report to the representative for handling as prescribed in clause 3 in this Article.

#### **Article 10. Share auction intended for strategic investors**

1. Where two or more than two strategic investors eligible to attend the auction subscribe for shares and total number of shares subscribed is more than number of share expected to be sold according to the approved equitization plan, the steering committee shall notify the representative authority for holding an auction for strategic investors at the Stock Exchange.

2. The reserve price in the auction intended for strategic investors may be the average winning price in the public auction or the price agreed with the investor in case only one investor subscribes for shares in the public auction or the reserve price offered in the unsuccessful public auction.

3. Strategic investors may deposit an amount equal to 20% of the value of share subscribed at the reserve price in the approved equitization plan or be underwritten by the credit institution or branch of the foreign bank as regulated by law. Strategic investors must put the deposit into the account for proceeds from sale of share of the equitized enterprise or open a deposit account or sign the underwriting contract with credit institutions or braches of foreign banks within 5 working days from the deadline for subscribing for shares.

4. The auctioneering organization must issue a decision founding a council for share auction as well as regulations on share auction as required. The Chairperson of the share auction council may be the Head of steering committee or the member of steering committee who is authorized in writing by the Head of steering committee.

5. Determination of auction results:

a) The determination of auction results must comply with regulations in point a in clause 5 in Article 7 of this Circular.

b) When the auction ends, the auctioneering organization, auction council, representative of the steering committee and representative of the equitized enterprise take responsibility to make and sign the minutes of auction result determination according to Appendix 4 issued together with this Circular.

c) The steering committee shall cooperate with the Stock Exchange in publishing the auction results right after signing the minutes of auction result determination.

d) The steering committee shall instruct the equitized to refund the deposit to the eligible investors attending the auction but fail in bid as prescribed in point a in clause 1 in Article 11 of this Circular.

6. According to the results of the share auction for strategic investors, the equitized enterprise shall send a report to the representative authority for consideration and sign the official contract with strategic investors winning in bids within 15 days from the day on which the auction result is published.

7. The equitized enterprise must pay the proceeds from the sale of shares to strategic investors into the Business Arrangement and Development Support Fund within 5 working days from the payment due date.

### **SECTION III – MANAGEMENT AND USE OF PROCEEDS FROM THE EQUITIZATION**

#### **Article 11. Management of deposit and payment for purchasing share**

##### 1. Management of deposit

###### a) In case of share auction:

The investors must pay a deposit amount equal to 10% of the value of the subscribed shares at the reserve price into the account of the auctioneering organization at least 5 working days before the auction as prescribed in the auction regulations. With regard to the auction for strategic investors, the management of deposit will comply with regulations in clause 3 in Article 10 of this Circular.

The auctioneering organization (or the equitized enterprise in case of share auction intended for strategic investors) must refund the deposit to the investors attending the auction but failing to purchase shares.

###### b) In case of direct negotiation:

- With regard to the sale of shares to strategic investors, the management of deposit will comply with regulations in clause 3 in Article 10 of this Circular.

- Where the share is sold to strategic investors in the form prescribed in point b in clause 2 in Article 9 of this Circular, the investors must pay an amount of deposit equal to 10% of the value of the share subscribed at the offered price approved by the representative authority into the account for proceeds from the equitization of the enterprise at the same time subscribing for shares from such enterprise.

- Where the share is sold to strategic investors in the form prescribed in point a and b in clause 3 in Article 9 of this Circular, the investor must pay an amount of deposit equal to 10% of the value of the share subscribed according to the selling price offered to each investor prescribed in

point a and b in clause 3 in Article 9 of this Circular into the account for proceeds from the equitization of the enterprise at the same time subscribing for shares from such enterprise..

- The equitized enterprise must refund the deposit to the investors subscribing for shares but failing to purchase them within 4 working days from the finish date of the share sale through direct negotiation. The remaining money amount shall be handled in accordance to regulations on management and use of proceeds from the equitization in this Circular.

c) In case of underwriting:

The underwriting organization must submit an amount of deposit equal to 10% of the value of share underwritten as agreed in the underwriting contract into the account for proceeds from the equitization of the equitized enterprise at the time signing the underwriting contract.

2. Payment for purchasing shares:

a) The investors must pay the price to purchase shares in accordance to the following regulations:

- With regard to the public auction conducted by the auctioneering organization including the auction for strategic investors conducted at the Stock Exchange, the investors must finish the procedure for purchasing shares and transfer the money amount for purchasing such shares into the banking account of the auctioneering organization or into the account for proceeds from the equitization of the enterprise in case of auction for strategic investors in accordance to the auction regulations within 10 days from the day on which the auction result is published.

- In case of direct negotiation:

The investors (including strategic investors) shall make the payment for purchasing shares within 5 working days from the day on which the purchase/sales contract is signed.

- In case of underwriting:

The underwriting organization must transfer the money as prescribed in clause 2 in Article 12 of this Circular within 10 days from the finish date of sale/purchase of shares under the underwriting contract.

b) The deposit shall be deducted from the total payment for purchasing shares. If the deposit is more than the payables, the difference between such deposit and payable shall be refunded to the investors within 3 working days from the payment due date.

c) After the payment due date, investors fail to make payment or fail to make full payment may not have their deposit for the number of shares unpaid refunded. The unpaid shares will be considered unsold shares and handled in accordance to regulations in clause 3 in Article 9 of this Circular.

3. The shares must be sold/purchased in Vietnam Dong. The payment shall be made in cash or through transfer.

## **Article 12. Proceeds from the sale of shares**

1. In case of share auction:

Within 5 working days from the payment due date of the investors attending the auction, the auctioneering organization is required to:

a) transfer the proceeds from the sale of shares to the equitized enterprise as follows:

- With regard to state-owned enterprises (hereinafter referred to as graded I enterprises): transfer the proceeds from the sale of shares corresponding to the funding for implementing the policy on redundant employees and the equitization expenses according to the cost estimate determined in the equitization plan.

- With regard to enterprises with 100% of capital invested by state-owned enterprises (hereinafter referred to as graded II enterprises): transfer the proceeds from the sale of shares corresponding to the funding for implementing the policy on redundant employees and the equitization expenses according to the cost estimate determined in the equitization plan and payment for tax liabilities (if any)

b) transfer all remaining proceeds from the sale of shares into the Business Arrangement and Development Support Fund, including the deposit amount not refunded to the investors, if any.

2. In case of underwriting:

Within 10 days from the finish date of sale/purchase of shares under the underwriting contract, the underwriting organization is required to:

a) transfer the proceeds from the sale of shares to the equitized enterprise as follows:

- With regard to graded I enterprises: transfer the proceeds from the sale of shares corresponding to the funding for implementing the policy on redundant employees and the equitization expenses according to the cost estimate determined in the equitization plan.

- With regard to graded II enterprises: transfer the proceeds from the sale of shares corresponding to the funding for implementing the policy on redundant employees and the equitization expenses according to the cost estimate determined in the equitization plan as well as payment for tax liabilities (if any).

b) transfer all remaining proceeds from the sale of shares into the Business Arrangement and Development Support Fund, including the deposit amounts not refunded to the investors, if any.

3. With regard to the sale of shares to investors through negotiation or the sale of preferential shares to trade unions and employees, the equitized enterprise is required to submit the proceeds from the sale of shares into the Business Arrangement and Development Support Fund within 5 working days from the payment due date.

4. For the case in which total proceeds from the sale of shares prescribed in clause 1, 2 and 3 in this Article is lower than the costs for equitization of each type of enterprise prescribed in point in clause 1 in this Article, the equitized enterprise is entitled to keep all such proceeds for the purpose of covering expenses according to the approved cost estimate and prepare an official final accounts at the time receiving the initial enterprise registration certificate.

### **Article 13. Settlement of proceeds from equitization at the official date of equitization**

1. Proceeds from the equitization of the state-owned enterprise include:

a) the difference between the value of state capital recorded in the accounting book at the time of enterprise valuation and the charter capital specified in the equitization plan approved by competent authorities.

b) the proceeds from the sale of shares, including the deposit not refunded to the investors as prescribed in this Circular.

c) the difference in the value of state capital increasing from the date of enterprise valuation to the official date of equitization.

d) the profits deducted from the Development Investment Fund as prescribed in clause 6 in Article 21 in Decree No.126/2017/ND-CP.

dd) the balance of the reward fund intended for the managers and controllers of the enterprise at the official date of equitization after covering all expenses as regulated (if any)

2. Proceeds from equitization of the state-owned enterprise at the official date of equitization shall be settled as prescribed in clause 2 in Article 39 of Decree No.126/2017/ND-CP, to be specific:

a) In case of sale of state capital:

The proceeds from equitization will be used to pay the costs of equitization and cover the expenses incurred on the implementation of the policy towards redundant employees as required. The remaining, including the difference among the selling prices of shares, will be submitted to the Business Arrangement and Developments Support Fund.

b) In case of remaining of state capital and issuance of additional stocks for increasing the charter capital, the proceeds from equitization shall be handled as follows:

- The proceeds value equivalent to the value of number of additional shares will be kept at the enterprise.

- The capital surplus from additional shares will be used to pay the costs of equitization and cover all expenses incurred on the implementation of the policy towards redundant employees, where:

$$\text{Capital surplus from additional shares} = \text{Number of additional shares} \times \left| \begin{array}{l} \text{Successful} \\ \text{bid} \end{array} \right| - \left| \begin{array}{l} \text{Reserve} \\ \text{price} \end{array} \right|$$

The remaining money amount of the capital surplus (if any) equivalent to the number of additional shares in the charter capital structure will be kept at the joint-stock company and submitted to the Business Arrangement and Development Support Fund. Where, the money amount kept at the joint-stock company which is equivalent to the additional shares in the charter capital structure (hereinafter referred to A) shall be determined as follows:

$$A = \frac{\text{Number of additional shares}}{\text{Total shares in the charter capital of the company}} \times \left| \begin{array}{l} \text{Capital surplus} \\ \text{from additional} \\ \text{shares} \end{array} \right| - \left| \begin{array}{l} \text{Equitization} \\ \text{expenses} \\ \text{according to the} \\ \text{final accounts} \\ \text{approved by} \\ \text{competent} \\ \text{authorities} \end{array} \right| - \left| \begin{array}{l} \text{Funding for the} \\ \text{redundancy} \\ \text{policy} \\ \text{according to} \\ \text{final accounts} \\ \text{approved by} \\ \text{competent} \\ \text{authorities} \end{array} \right|$$

c) In case of sale of state capital in combination with issuance of additional shares, the proceeds from equitization shall be handled as follows:

- The proceeds from sale of state shares, including the difference in the selling prices, will be submitted to the Business Arrangement and Development Support Fund.

- The remaining money will be handled as prescribed in point b in clause 1 in this Article.

3. At the official date of equitization, if any difference in the actual value of the state capital arises from the date of enterprise valuation to the official date of equitization, such difference will be handled as prescribed in clause 6 and 7 in Article 21 of Decree No.126/2017/ND-CP.

4. For the case in which the proceeds from sale of preferential shares to employees, trade unions, strategic investors and other investors fail to cover relevant expenses, including the equitization expenses, assistance for settlement of the policy towards redundant employees, incentives for employees, under the final accounts approved by competent authorities, the settlement will comply with regulations in point d in clause 2 in Article 39 of Decree No.126/2017/ND-CP.

5. With regard to graded II enterprises:

5.1. In case of sale of capital invested by graded I enterprises:



The proceeds from equitization will be used to refund the book value of sold shares and tax payables as required (if any) to graded I enterprises. The remainings, after deducting the equitization expenses, expenses incurred on the settlement of redundancy policy, discount prices of shares sold to employees, shall be submitted to the Business Arrangement and Development Support Fund.

5.2. In case of remaining of the capital invested by graded I enterprises and issuance of additional stocks, the proceeds from equitization shall be handled as follows:

- a) The proceeds equivalent to the number of additional stocks will be kept at the enterprise.
- b) The capital surplus from additional shares will be used to pay the costs of equitization and cover all expenses incurred on the implementation of the policy towards redundant employees and make up for share value of preferential shares sold to the employees.

The remaining money amount of the capital surplus (if any) equivalent to the value of additional stocks in the charter capital structure will be kept at the joint-stock company and the remaining will be submitted to the Business Arrangement and Development Support Fund.

The capital surplus from additional shares and the remaining money equivalent to the value of additional shares in the charter capital structure kept at the joint-stock company will be determined as prescribed in point b in clause 2 in this Article.

- c) For the case in which the proceeds from equitization fail to offset expenses under the final accounts approved by competent authorities (including equitization expenses, expenses incurred on the settlement of redundancy policy, incentives for employees), the graded I enterprise must make up for the deficit which will count towards the expenses in financial activities of such enterprise and such expenses will be deducted when determining the corporate income tax.

5.3. In case of sale of a portion of capital invested by graded I enterprises in combination with issuance of additional shares, the proceeds from equitization shall be handled as follows:

- a) The proceeds from equitization will be used to refund the book value of sold shares equivalent to the capital invested by graded I enterprises and tax payables as required (if any) to such enterprises.
- b) The remaining money will be handled as prescribed in point a in clause 5.2 in this Article.

For the case in which the proceeds from equitization fail to offset expenses under the final accounts approved by competent authorities (including the book value of sold shares equivalent to the capital invested by graded I enterprises and tax payables (if any) refunded to such enterprises, equitization expenses, expenses incurred on the settlement of redundancy policy, incentives for employees), the graded I enterprise must make up for the deficit which will count towards the expenses in financial activities of such enterprise and such expenses will be deducted when determining the corporate income tax.

6. The equitized enterprise must calculate the proceeds from equitization itself and submit them to the Business Arrangement and Development Support Fund as prescribed in this Circular within 90 days from the day on which the initial enterprise registration certificate is granted.

7. The equitization enterprise must submit the difference increasing from the amount paid prescribed in clause 6 in this Article (if any) to the Business Arrangement and Development Support Fund within 5 working days from the day on which the decision on approval for the value of state capital at the official date of equitization and the final accounts of the proceeds from equitization is issued.

#### **Article 14. Equitization expenses**

Equitization expenses shall be determined as prescribed in Article 8 of Decree No.126/2017/ND-CP, to be specific:

1. Equitization expenses mean expenses calculated from the date of equitization decision to the official date of equitization.
2. Equitization expenses will be covered by the proceeds from equitization as prescribed in Article 39 of Decree No.126/2017/ND-CP and under the guidance provided in this Circular.
3. For equitization of agriculture or forestry companies prescribed in Decree No,118/2014/ND-CP dated December 17, 2014 of the Government, equitization expenses will be determined and handled in accordance to guidelines provided in this Circular and relevant guiding documents.

#### **SECTION IV – PREPARATION OF FINAL ACCOUNTS FOR BUSINESS ARRANGEMENT SUPPORT FUND**

##### **Article 15. Preparation of final accounts for the proceeds submitted to the Business Arrangement Support Fund of parent companies of state-owned economic corporations, state corporations, parent companies in groups of parent companies and subsidiaries (hereinafter referred to as parent companies)**

The parent company shall take responsibility to send a report of final accounts prepared for Business Arrangement Support Fund in accordance to the following regulations:

1. Make comparisons and verify all liabilities of the Business Arrangement Support Fund at the time of December 31, 2017
2. Make a report of the final accounts prepared for the Business Arrangement Support Fund at the time of- December 31, 2017 which sufficiently and truthfully features the revenues-expenses, liabilities (including late payment interests) and unsolved issues in the fund management and send it to the representative authority and the Ministry of Finance. According to such report, the proceeds submitted to the Business Arrangement Support Fund of the parent company before the day on which Decree No.126/2017/ND-CP comes into force (January 01, 2018) shall be handled as follows: 2.1. Proceeds from equitization:

a) With regard to graded II enterprise converting into joint-stock company before January 01, 2018 but not having its final accounts for capital approved at the official date of equitization:

- The parent company must prepare the final accounts for the proceeds from equitization and decide to publish the actual value of its capital at the official date of equitization in accordance to regulations in Decree No.59/2011/ND-CP dated July 18, 2011, Decree No.189/2013/ND-CP dated November 20, 2013 and Decree No.116/2015/ND-CP dated November 11, 2015 of the Government and relevant guiding documents, where, deductions from the proceeds from equitization includes the book value of sold shares refunded to the parent company.

- The parent company shall instruct the graded II enterprise to submit the proceeds from equitization to the Business Arrangement and Development Support Fund within 5 working days from the day on which the decision on publication of the real value of the capital invested by the parent company at the official date of equitization is issued. For the case in which the proceeds from equitization of graded II enterprise fail to offset expenses as required, including the book value of sold shares refunded to the parent company, the parent company must make up for the deficit which will count towards the expenses in financial activities of such parent company.

b) With regard to graded II enterprise having its equitization plan approved but not officially converting into the joint-stock company before January 01, 2018, the final accounts for the proceeds from equitization at the official date of equitization will be prepared in accordance to regulations in Decree No.126/2017/ND-CP and guidelines provided in this Circular.

2.2. Proceeds from other forms of arrangement or conversion:

The proceeds from other forms of arrangement or conversion of graded II enterprise will be determined in compliance with provisions of the law on business arrangement and conversion. The graded II enterprise must submit the proceeds from other forms of arrangement or conversion to the Business Arrangement and Development Support Fund within the time limit prescribed in the regulations on management and use of the Business Arrangement and Development Support Fund.

#### **Article 16. Settlement of the Business Arrangement and Development Support Fund at the time of December 31, 2017**

1. The parent company must pay all balance of the Business Arrangement Support Fund at the time of December 31, 2017 into the Business Arrangement and Development Support Fund (of the Ministry of Finance) before June 30, 2018 as prescribed in clause 7 in Article 48 of Decree No.126/2017/ND-CP and Resolution No.131/NQ-CP dated December 6, 2017 of the Government at the Government's Regular Meeting – November 2017. In case of late payment, the parent company must pay the late payment interests in accordance to the regulations on management and use of the Business Arrangement and Development Support Fund.

2. According to the final accounts prepared for the Business Arrangement Support Fund as prescribed in Article 15 of this Circular, the parent company must collect all liabilities and pay into the Business Arrangement and Development Support Fund. If the liabilities fail to be

collected, the parent company must pay all liabilities of the Business Arrangement Support Fund according to the report of the final accounts prepared for the Business Arrangement and Development Support Fund before June 30, 2018. After which, it has to pay the late payment interests in accordance to regulations on management and use of the Business Arrangement and Development Support Fund.

### **Chapter III -**

## **IMPLEMENTATION**

### **Article 17. Responsibilities of the steering committee**

1. Submit the criteria for selecting eligible strategic investors, number of shares and the reserve price to the representative authority.
2. Verify and collect all information relating to the equitization
3. Publish and provide the auctioneering organization with sufficient and accurate information on the equitized enterprise before the sale of shares as regulated.
4. Register the auction as follows:
  - a) Submit an application form for auction and documents regarding the equitization to the auctioneering organization according to the form and the list of documents prescribed in Appendix 5 issued together with this Circular and the Vietnam Securities Depository Center, Hanoi Stock Exchange to make a registration of share auction at the same time of registration of share code, depository and registration of trading the winning shares in the auction.
  - b) Sign or authorize to the equitized enterprise to sign the contract for provision of auction service with the auctioneering organization-
5. Cooperate with the auctioneering organization in informing the investors of information relating to the equitized enterprise and the auction not later than 20 working days before the auction.
6. Supervise the share auction if such auction is conducted at stock exchanges or by brokers.
7. Confidentially protect all the bid prices offered by investors until the official date of result publication.
8. Sign the minutes of determination of public auction results and the minutes determining the results of the auction among strategic investors as prescribed in this Circular. Make a consolidated report of the auction results and send it to the representative authority.
9. Send a report to the representative authority and the Ministry of Finance (the Department of Corporate Finance).

10. The steering committee shall take responsibility to comply with all regulations in this Circular.

### **Article 18. Responsibilities of the equitized enterprise**

1. Provide sufficient and accurate information and documents about the enterprise, including the equitization plan, draft of regulations on organization and operation of the joint-stock company before the sale of shares as prescribed in this Circular.
2. Sign the minutes determining the auction results and the minutes determining the results of the auction among strategic investors as prescribed in this Circular.
3. Make a preparation of final accounts for the equitization expenses and funding for redundancy policy and send it to the steering committee as well as representative authority when the equitization ends.
4. Submit the proceeds from equitization in accordance to regulations in this Circular. Pay the late payment interests as prescribed in clause 3 in Article 39 of Decree No.126/2017/ND-CP in case of late payment.
5. Make a registration of official information with the Vietnam Securities Depository Center in accordance to provisions of the law on securities and the guidance of the Vietnam Securities Depository Center, including the information on the share issuance organization, the issued shares, the list of organizations or individuals owning the shares and the number of shares owned (number of shares sold to strategic investors, trade unions and employees) within 15 days from the official date of equitization (the day on which the enterprise registration certificate is granted).
6. Pay all unused provision for warranty on products, goods and construction projects (with regard to signed contract with unexpired warranty after the issuance date of the initial enterprise registration certificate) into the Business Arrangement and Development Support Fund within 30 days from the expiration date of warranty agreed in the contract.
7. Make a report of the progress of payment for publishing information as prescribed in clause 1 in Article 11 of Decree No.126/2017/ND-CP and send it to the Ministry of Finance (the Department of Corporate Finance) and the representative authority as follows:
  - a) The equitized enterprise must send a report of the progress of payment of proceeds from the sale of shares according to Appendix 8 issued together with this Circular within 5 working days from the end date of initial offering of shares.
  - b) The enterprise must itself determine the proceeds paid into the Business Arrangement and Development Support Fund as prescribed in point a in clause 2 in Article 39 of Decree No.126/2017/ND-CP and send a report of the progress of payment of proceeds from equitization at the official date of equitization according to Appendix 9 issued together with this Circular within 5 working days from the final date of 90 day-period.

c) The equitized enterprise must send a report of the progress of payment of the proceeds from equitization after receiving an approval according to Appendix 10 issued together with this Circular within 5 working days from the day on which the final accounts prepared for the proceeds from equitization is approved by the representative authority.

8. Publicly and transparently provide information on the equitization as prescribed in clause 1 in Article 11 of Decree No.126/2017/ND-CP.

9. When losses are incurred due to violations against or false implementation of regulations in this Circular, the equitized enterprise and relevant individuals take responsibility to compensate in accordance to provisions of laws.

### **Article 19. Responsibilities of the auctioneering organization, Vietnam Securities Depository Center and Hanoi Stock Exchange**

1. The auctioneering organization is required to:

a) request the equitized enterprise to provide all documents and information about the equitization as required.

b) make and issue a decision on founding a council for share auction and regulations on share auction as prescribed in point a in clause 3 in Article 7 and clause 4 in Article 10 of this Circular.

c) notify the time and place of the auction to the steering committee and equitized enterprise.

d) publish the information relating to the sale of shares at least 20 working days before the auction (according to Appendix 6 issued together with this Circular including an English version) at the equitized enterprise, auction place and on public media, for instance, on 3 consecutive volumes of a single newspaper issued nationwide and on a newspaper issued at the locality in which the head office of the enterprise is located.

dd) provide the investors with the information relating to the equitized enterprise (according to Appendix 2 issued together with this Circular including an English version), equitization plan, draft of regulations of the joint-stock company, application form for attending the auction (according to Appendix 7a and 7b issued together with this Circular including an English version) and other information concerning the auction as required.

The auctioneering organization must compensate in compliance with provisions of laws if publishing false information which is different from the information and data provided by the steering committee and the equitized enterprise.

a) receive the application form for attending the auction, verify the eligibility for auction and give auction entry slips to eligible investors.

The auctioneering organization must inform and refund the deposit to investors ineligible for the auction (if they have deposited).

g) cooperate with relevant organizations and individuals in making and signing the minutes determining the public auction results, the minutes determining the results of the auction among strategic investors, publishing the auction results and collecting the money for purchasing shares as regulated.

h) Confidentially protect all bid prices offered by investors until the date of official result publication. Take responsibility for the auction result determination as regulated.

i) submit the proceeds from the sale of shares of the enterprise as prescribed in this Circular. Pay the late payment interests as prescribed in clause 3 in Article 39 of Decree No.126/2017/ND-CP in case of late payment.

2. The Vietnam Securities Depository Center is required to:

Issue codes for the auction shares; provide the services of registration, depository and clearing for winning shares that have been paid of the equitized enterprise selling shares through auction. These codes will be used constantly in the auction, registration, depository and trading registration.

3. Hanoi Stock Exchange is required to:

conduct the trading of winning shares of the equitized enterprise that have made all payment in accordance to regulations in this Circular.

#### **Article 20. Responsibilities of the representative authority**

1. Grant an approval for the equitization plan for starting the sale of share and manage, use the proceeds from equitization in compliance with regulations in this Circular.

2. Verify and supervise the steering committee and equitized enterprise in selling shares according to the approved plan and manage, use the proceeds from equitization as regulated.

3. Instruct and urge the equitized enterprise to pay the proceeds from equitization into the Business Arrangement and Development Support Fund as prescribed in this Circular.

4. Grant an approval for the final accounts prepared for equitization expenses, funding for redundancy policy and the proceeds from equitization and send it to the Ministry of Finance (the Department of Corporate Finance)

5. Instruct and urge parent companies to handle the balance and prepare the final accounts for the Business Arrangement Support Fund as prescribed in Article 15 and 16 of this Circular.

6. Verify and prepare the final accounts for management and use of the Business Arrangement Support Fund of the parent company until December 31, 2017 and send a report to the Ministry of Finance.

7. Instruct and urge the representative of the state capital of the parent company (if the state capital still remain) to pay the balance of provision for warranty on products, goods and construction projects as prescribed in clause 6 in Article 18 of this Circular.

#### **Article 21. Responsibilities of the Ministry of Finance**

1. Instruct equitized enterprises, organizations to sell shares and manage as well as use the proceeds from equitization in accordance to regulations in this Circular and relevant documents.
2. Cooperate with equitized enterprises, organization in dealing with issues incurring during the sale of shares, management and use of the proceeds from equitization.
3. Assign the State Securities Commission of Vietnam to formulate and issue regulations on public auction and share auction among strategic investors as regulated.

#### **Article 22. Responsibilities of investors**

Investors subscribing for shares, including strategic investors, must comply with regulations on the right to purchase shares, share auction regulations and regulations in this Circular.

#### **Article 23. Effect**

1. This Circular comes into force from June 16, 2018 and replaces Circular No.196/2011/TT-BTC dated December 26, 2011 of the Ministry of Finance guiding initial offering of shares, management and use of proceeds from equitization of wholly state-owned enterprises; Circular No.115/2016/TT-BTC dated June 30, 2013 of the Ministry of Finance providing guidelines for the mechanism for management and use of the Business Arrangement Support Fund of parent companies of economic corporations, state corporations and parent companies in groups of parent companies and subsidiaries. This Circular abolishes guiding documents of the Ministry of Finance relating to the proceeds from equitization against regulations in this Circular.
2. Enterprises have their equitization plans approved by competent authorities before the day on which Decree No.126/2017/ND-CP comes into force may continue to sell their shares according to the approved equitization plan. The management and preparation of final accounts of the proceeds from equitization at the official date of equitization must comply with regulations in Decree No.126/2017/ND-CP and guidelines provided in this Circular.
3. Timely inform the Ministry of Finance if there is any question arising during the implementation.

**PP. MINISTER  
DEPUTY MINISTER**



**Tran Van Hieu**

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