

MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

No.: 59/2018/TT-BTC

Hanoi, July 16, 2018

CIRCULAR

AMENDING AND SUPPLEMENTING CERTAIN ARTICLES OF THE CIRCULAR NO. 219/2015/TT-BTC DATED DECEMBER 31, 2015 BY THE MINISTER OF FINANCE ON STATE CAPITAL INVESTMENT IN ENTERPRISES, USE AND MANAGEMENT OF CAPITAL AND ASSETS IN ENTERPRISES

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

Pursuant to the Law on use and management of state capital invested in manufacturing and business operations of enterprises dated November 26, 2014;

Pursuant to 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 Government's Decree No. 32/2018/ND-CP dated March 08, 2018 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;

Pursuant to the Government's Decree No. 87/2017/ND-CP dated July 26, 2017 defining functions, tasks, powers and organizational structure of the Ministry of Finance;

At the request of the Director of the Corporate Finance Department;

The Minister of Finance promulgates the Circular on amending and supplementing certain articles of the Circular No. 219/2015/TT-BTC dated December 31, 2015 by the Ministry of Finance providing guidance on certain contents 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 (hereinafter referred to as "the Circular No. 219/2015/TT-BTC").

Article 1. Amending and supplementing certain articles of the Circular No. 219/2015/TT-BTC as follows:

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

“1. This Circular provides guidance on state capital investment in enterprises and financial management by state-owned enterprises as prescribed in the Government's Decree No. 91/2015/ND-CP and the Government's Decree No. 32/2018/ND-CP.”

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

“2. Additional investment of state capital in an operating state-owned enterprise:

a) The operating state-owned enterprise shall record an increase in state capital invested in such enterprise (the owner's equity) and carry out procedures for adjusting the charter capital amount stated in the enterprise registration certificate in accordance with regulations of the Law on enterprises in the following circumstances:

- The enterprise the development investment fund in the enterprise for financing for additional investment in the charter capital. The enterprise shall consult the plan for or the decision on additional investment in the charter capital approved by competent authorities to record an increase in the owner's equity.

- The enterprise is assigned other transferred assets invested by the funding source derived from the state budget. The enterprise shall consult the asset assignment decision issued by a competent authority and the record on asset handover to record an increase in the owner's equity.

- The enterprise receives the government-contributed aids (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 in construction, improvement and refurbishment of manufacturing and trading facilities. The enterprise shall consult the final account of government-contributed aids (the funding amount used for implementing investment projects after these projects have been completed and properly recorded as regulated) to record an increase in the owner's equity.

- In case the enterprise is assigned capital or asset by the government to take part in BCC agreements, the enterprise shall consult the decision on capital or asset assignment to record an increase in the owner's equity.

b) Upon the additional investment of state capital in the enterprise, if the actual owner's equity is greater than the approved charter capital, the enterprise shall submit a report to the owner's representative agency to consider adjusting the enterprise's charter capital on the basis of documents used for recording each additional investment in the charter capital without preparing the application for re-determining the charter capital and the application for additional investment in the charter capital as regulated in Article 9 and Article 10 of the Decree No. 91/2015/ND-CP.”

3. Supplementing Article 2a as follows:

“Article 2a. Recording a decrease in state capital invested in enterprises:

1. The operating state-owned enterprise shall record a decrease in state capital invested in such enterprise in the following circumstances:

a) If the enterprise makes a decreasing adjustment to the charter capital amount, the owner's representative agency shall base on the enterprise's actual operating status, the necessity of reducing the enterprise's operating scale and principles for determining the charter capital of a state-owned enterprise set forth in Clause 1 Article 19 of the Decree No. 91/2015/ND-CP to determine the decreased charter capital amount and report to the Prime Minister on the decision on treatment of decreased charter capital value.

The owner's representative agency shall make decision on decreasing adjustment to the enterprise's charter capital by consulting the Prime Minister's decision on treatment of decreased charter capital value.

If the owner's equity is greater than the enterprise's charter capital after making the decreasing adjustment to the enterprise's charter capital, the following actions must be taken:

- The owner's representative agency shall inform and request the enterprise to transfer such difference to the Enterprise Arrangement and Development Fund within 15 days from the effective date of the decision made by the owner's representative agency on decreasing adjustment to the enterprise's charter capital.

- The enterprise shall record a decrease in the owner's equity based on the re-determination of the enterprise's charter capital.

b) In case of restructuring of state capital invested in the enterprise by splitting the state enterprise, the decrease in state capital invested in the enterprise shall be recorded in accordance with regulations in Point d Clause 2 Article 19 of the Decree No. 91/2015/ND-CP as amended in Clause 6 Article 1 of the Decree No. 32/2018/ND-CP.

c) During the period of application of the adjusted charter capital amount referred to in Point a Clause 1 Article 9 of the Decree No. 91/2015/ND-CP:

- 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, a competent authority shall make the decision on adjustment of the charter capital according to the amount actually contributed to the enterprise.

- If the enterprise is not eligible to receive the state capital due to changes in corporate policies, the competent authority shall make the decision on decreasing adjustment of the enterprise's charter capital. The enterprise shall transfer the difference between the owner's equity and its adjusted charter capital to the Enterprise Arrangement and Development Fund within 15 days from the effective date of the competent authority's decision on decreasing adjustment of the charter capital.

2. In such cases of decreasing adjustment of the charter capital of the operating state-owned enterprise, the enterprise shall carry out procedures for adjusting the charter capital amount stated in the enterprise registration certificate and disclose information thereof in accordance with regulations of the Law on enterprises.”

4. Amending and supplementing Article 3 as follows:

“Article 3. Transfer of state capital, state-owned enterprise’s capital, the right to buy shares or contributed capital to a joint stock company or a multiple-member limited liability company

1. Principles of, authority to decide and approach to transfer of state capital invested in a joint-stock company or a multiple-member limited liability company shall abide by regulations in Clause 15 and Clause 16 Article 1 of the Decree No. 32/2018/ND-CP.

2. Principles of, authority to decide and approach to transfer of outward investment of a state-owned enterprise at a joint-stock company or a multiple-member limited liability company shall abide by regulations in Clause 12 and Clause 13 Article 1 of the Decree No. 32/2018/ND-CP.

If the planned proceeds from such capital transfer are determined according to the actual value of contributed capital portion specified in the financial statement of the receiving enterprise, the actual value appearing in accounting records of contributed capital portion of the state-owned enterprise shall be equal to the percentage of capital contributed by the state-owned enterprise to the receiving enterprise multiplied by the owner’s equity reported in the balance sheet of the quarterly or annual financial statement of the receiving enterprise at the time closest to the time of making capital transfer decision.

3. When making changes in transfer approaches (including open auction, competitive bidding, and agreement approach) to transfer the state capital or the state-owned enterprise's capital invested in a joint-stock company or a multiple-member limited liability company, the owner is not required to re-design the capital transfer plan but must re-determine the start price if the price assessment certificate is no longer valid.

In case such change in transfer approaches results in changes in information, the owner shall disclose additional information (if any).

The floor price which is used as the basis for determining payment price is determined according to the transaction rules of the Stock Exchange.

4. 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 in accordance with regulations in Clause 17 Article 1 of the Decree No. 32/2018/ND-CP. Where:

a) The start price for transfer of the right to buy shares or the capital contribution right by the state capital portion shall be determined according to regulations in Clause 15 Article 1 of the Decree No. 32/2018/ND-CP.

b) The start price for transfer of the right to buy shares or the capital contribution right by the capital portion of the state-owned enterprise shall be determined according to regulations in Clause 12 Article 1 of the Decree No. 32/2018/ND-CP.

c) Principles of the capital owner's financial treatment for transfer of the right to buy shares (at joint-stock companies) and capital contribution right (at multiple-member limited liability companies) are as follows:

- With regard to the capital owner being a state-owned enterprise:

If the difference between the revenue generated from the transfer of the right to buy shares or the capital contribution right and the value of transfer costs and fulfillment of tax obligations in accordance with applicable regulations (if any) is positive, the state-owned enterprise 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, the state-owned enterprise may account for the deficiency in expenses incurred from its financial operations.

- With regard to the capital owner being the owner's representative agency:

The owner's representative agency shall transfer the revenue generated from the transfer of the right to buy shares or the capital contribution right after deducting transfer costs and fulfilling tax obligations in accordance with applicable regulations (if any) to the Enterprise Arrangement and Development Fund.

Where the transfer of the right to buy shares or the capital contribution right is unsuccessful or revenue generated from such transfer is not enough to cover transfer costs, the Enterprise Arrangement and Development Fund may be used to make up for any transfer cost whenever there is no other budget for this as regulated by the Prime Minister.

5. Preparation of documents on and dissemination of information about transfer of state capital and state-owned enterprise's capital shall be performed in accordance with regulations in the Decree No. 32/2018/ND-CP and the following guidelines:

a) In case of transfer of state capital or state-owned enterprise's capital invested in joint-stock companies which have been listed or registered their transactions in securities markets according to order matching principle, the owner of the transferred capital shall disclose information in accordance with regulations in Clause 13 and Clause 16 Article 1 of the Decree No. 32/2018/ND-CP.

b) In case of transfer of state capital or state-owned enterprise's capital invested in enterprises defined in Clause 13 and Clause 16 Article 1 of the Decree No. 32/2018/ND-CP according to the open auction approach, the owner of the transferred capital shall prepare documents on open auction in accordance with applicable regulations.

The owner of transferred capital/ auctioning organization shall disclose information concerning the auctioning documents that they have prepared in accordance with regulations in Clause 13 and Clause 16 Article 1 of the Decree No. 32/2018/ND-CP and submit such auctioning documents to the Ministry of Finance – via the Corporate Finance Department for monitoring, consolidating and reporting (such documents must not sent to the State Securities Commission of Vietnam).

c) In case of transfer of state capital or state-owned enterprise's capital invested at a joint-stock company that is a publicly held company, upon the completion of capital transfer, the owner's representative agency/ the enterprise transferring its capital shall carry out procedures for disclosing changes in shareholders' particulars in accordance with applicable regulations of the law on securities in respect of information disclosure.

6. The start price for capital transfer shall be determined according to regulations in Clause 12 and Clause 15 Article 1 of the Decree No. 32/2018/ND-CP. Where:

a) Valuation organization:

- The hired valuation organization must comply with the law on prices, the law on valuation and relevant law soft during the provision of valuation services as well as performance of contracts signed with customers.

- The valuation organization/ valuation analyst in charge of valuation shall assume legal responsibility for valuation results.

- Determination of the start price must ensure full and strict compliance with applicable provisions of Vietnam's valuation standard system and relevant laws.

b) Determination of value of certain assets of the enterprise:

- The value of the right to use leased land (with annual payment of land rent) must be determined on the basis of the lease agreement signed with a competent authority or the decision made by a competent authority on giving permission to the enterprise to lease land with annual payment of land rent, the lease period, the land rent and other factors (if any).

The difference (if any) between the land rent for the remaining lease period specified in the lease agreement, or the decision on lease of land with land rent calculated according to the land price at the time of entering into the lease agreement, or the decision on land lease, and the land rent for the remaining lease period calculated according to the land rent at the time of determining transfer price shall be taken into account when determining the start price implied factor unlike.

The land price used as the basis for calculating the land rent annually paid shall be determined in

accordance with regulations in Clause 1 Article 3 of the Circular No. 77/2014/TT-BTC date June 16, 2014 by the Ministry of Finance and its amending, supplementing or superseding documents (if any).

- The value of intellectual property rights, including cultural and historical values (if any), shall be determined separately for each right by employing appropriate valuation approaches in accordance with regulations of the law on valuation. Where documents are insufficient for determining cultural and historical values, the owner of transferred capital shall consider the influence or impact of such cultural and historical values on the enterprise's image or position, or the enterprise's business results, to determine the ratio of such values (at least 1%) to total state-contributed capital or total capital of the state-owned enterprise, which shall be used as the basis for determining the start price, and assume responsibility for the decided ratio.

7. Organizations and individuals that buy shares (including the receipt of transfer of the right to buy shares) according to the approaches to transfer of state capital or state-owned enterprise's capital prescribed in Clause 13, Clause 16 Article 1 of the Decree No. 32/2018/ND-CP are not required to carry out tender offer procedures.

8. If the transfer prescribed in the plan for transfer of state capital, state-owned enterprise's capital, right to buy shares or capital contribution right at a joint-stock company or multiple-member limited liability company approved under regulations in the Decree No. 91/2015/ND-CP is not yet carried out after the Decree No. 32/2018/ND-CP comes into force (on May 01, 2018), the owner of transferred capital shall review and modify that transfer plan in conformity with the Decree No. 32/2018/ND-CP for implementation. Costs incurred during the modification of the capital transfer plan approved before May 01, 2018 shall be aggregated with other expenses for determining the transfer result."

5. Supplementing Article 3a as follows:

“Article 3a. Transfer or a state-owned enterprise's investment capital under BCC agreements

A state-owned enterprise is allowed to transfer its investment capital under BCC agreements in accordance with regulations in Clause 13 Article 1 of the Decree No. 32/2018/ND-CP and the following guidelines:

1. If the state-owned enterprise is allowed to transfer capital to serve its divestment purpose, the authority competent to make decision on capital transfer shall consult specific terms and provisions of the BCC agreement to decide an appropriate capital transfer approach. To be specific:

a) If only BCC parties are allowed to receive the transferred capital, the capital shall be transferred according to the approach to transfer of state-owned enterprise's capital at a multiple-member limited liability company prescribed in Clause 13 Article 1 of the Decree No. 32/2018/ND-CP.

b) If there is no provision stipulating that the capital must be transferred to BCC parties only, the capital shall be transferred by applying the approach to transfer of state-owned enterprise's capital at an unlisted joint-stock company prescribed in Clause 13 Article 1 of the Decree No. 32/2018/ND-CP.

2. Where a state-owned enterprise contributes its capital to take part in a BCC agreement by using the value of land use right (including the right to use leased land and allocated land) but carries out transfer of its capital to discontinue participating in that BCC agreement, real property treatment must conform to soft laws on land.

If the capital transfer is associated with the value of land use right (including the right to use leased land and allocated land), the value of land use right must be determined accurately according to the market price and aggregated with the value of transfer capital portion which shall be used as the basis for determining the start price."

6. Amending and supplementing Article 4 as follows:

a) Amending and supplementing the first paragraph as follows:

"Capital and assets at a state-owned enterprise shall be managed in accordance with regulations in Section 1 Chapter III of the Decree No. 91/2015/ND-CP, Clauses 6, 7, 8, 9, 10 Article 1 of the Decree No. 32/2018/ND-CP and the following regulations:"

b) Amending and supplementing Point a Clause 3 as follows:

"a) The enterprise shall make provisions against risks, including provision against devaluation of inventories, provision against bad debts, provision against devaluation of financial assets, and provision for warranties over products, goods and construction works, in accordance with applicable regulations of the Ministry of Finance and their amending, supplementing or superseding documents (if any)."

7. Supplementing Article 4a as follows:

"Article 4a. Transfer of investment and construction projects in which state-owned enterprises are investors

Where a state-owned enterprise that is an investor in a project under construction which has yet to form any usable asset (in-progress investment and construction) does not continue that project, it may assign (whether part or whole of) that project to another investor as per the Law on investment and regulations laid down in Clause 10 Article 1 of the Decree No. 32/2018/ND-CP. Where:

1. The authority to make decision on project transfer: the enterprise shall itself decide the transfer of project based on the source of funding invested in the project and investment objectives or request a competent authority to make a decision on project transfer in accordance with applicable laws.

2. The transfer of a project that is associated with the transfer of land use right must conform to applicable regulations of the Law on land and the Law on real property business (with regard to the real property business project).”

8. Amending and supplementing Article 5 as follows:

a) Amending and supplementing the first paragraph as follows:

“A state-owned enterprise’s capital invested in a joint-stock company or limited liability company shall be managed in accordance with regulations in Section 2 Chapter III of the Decree No. 91/2015/ND-CP, Clauses 11, 12 Article 1 of the Decree No. 32/2018/ND-CP and the following regulations:”

b) Amending and supplementing Clause 2 as follows:

“2. If the subsidiary company is a single-member limited liability company whose charter capital is wholly owned by the state-owned enterprise, the state-owned enterprise shall annually consider approving financial statements and decide the distribution and utilization of after-tax profits and the collection of after-tax profits from the subsidiary company in accordance with the approved financial regulations. Where the owner’s equity at the subsidiary company is greater than the approved charter capital amount, the difference shall be transferred to the state-owned enterprise (by transferring the balance of the development investment fund or undistributed after-tax profits at that subsidiary company) and recorded as other income of the state-owned enterprise in accordance with regulations in Clause 11 Article 1 of the Decree No. 32/2016/ND-CP. This difference shall be paid to the development investment fund of the parent company and the remainder (if any) shall be paid to the state budget in accordance with applicable laws.”

9. Amending and supplementing Article 8 as follows:

“Article 8. Distribution of profits of a state-owned enterprise

The state-owned enterprise shall distribute its profits in accordance with regulations laid down in Article 31 of the Decree No. 91/2015/ND-CP, Article 2 of the Decree No. 32/2018/ND-CP and the following provisions:

1. An enterprise with a positive operating profit (including its nontaxable incomes) may offset its accumulated loss in the previous year in accordance with applicable regulations of the Law on corporate income tax. The profit after being used for making up for prior-year losses shall be used for making contributions to the scientific and technological development fund under legal regulations, and paying corporate income tax; the remaining amount of profit shall be distributed in accordance with regulations laid down in Clauses 1, 2, 3 Article 31 of the Decree No. 91/2015/ND-CP and Article 2 of the Decree No. 32/2018/ND-CP.

2. Grounds for setting aside the reward and welfare fund for the enterprise’s staff, and the reward fund for the enterprise’s managers and comptrollers:

a) Classification of enterprises into A, B, C ranks to use as the basis for setting aside funds shall conform to the Government's regulations on supervision of state capital invested in enterprises, financial supervision and performance assessment in state-owned enterprises and disclosure of financial information by state-owned enterprises and state-invested enterprises and the Ministry of Finance's guidelines.

b) Monthly salary used as the basis for setting aside funds:

- For the reward and welfare fund of a state-owned enterprise: Based on the enterprise's realized payroll for employees in the financial year which is determined according to regulations laid down in the Government's Decree No. 51/2016/ND-CP dated June 13, 2016 and its amending, supplementing or superseding documents (if any) and divided by 12 months.

- For the reward fund for the enterprise's managers and comptrollers: Based on the realized payroll and remuneration paid to managers (including full-time and part-time managers) which is determined according to regulations laid down in the Government's Decree No. 52/2016/ND-CP dated June 13, 2016 and its amending, supplementing or superseding documents (if any) and divided by 12 months."

10. Supplementing Article 10a as follows:

"Article 10a. Representative person of state capital invested in a joint stock company or a multiple-member limited liability company

If the person representing state capital asks for opinions from the owner's representative agency on the annual plan for distribution of dividends and after-tax profits of the enterprise 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 Clause 14 Article 1 of the Decree No. 32/2016/ND-CP, the representative agency shall consult the charter on operation and organization, the annual financial statements duly audited, the annual business strategies or business plans of the enterprise invested by the state-owned enterprise and other necessary documents to send a written request for opinions from the same-level financial agency (the owner's representative agency must specify its opinions about relevant contents in its written request for opinions). Within the duration of 05 working days from the receipt of the written request from the owner's representative agency, important fact mistake such same-level financial agency must give its opinions based on which the owner's representative agency appoints the person representing state capital in the 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."

11. Amending and supplementing Clause 3 Article 11 as follows:

"3. Distribution of after-tax profits and making of funds by the enterprise shall conform to regulations laid down in Article 31 of the Decree No. 91/2015/ND-CP and Article 2 of the Decree No. 32/2018/ND-CP."

Article 2. Article 6 of the Circular No. 219/2015/TT-BTC is abrogated.

Article 3. Entry into force

1. This Circular comes into force from September 01, 2018.
2. Difficulties that arise during the implementation of this Circular should be reported to the Ministry of Finance for consideration./.

**PP. MINISTER
DEPUTY MINISTER**

Huynh Quang Hai