

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

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# LAW ON ENTERPRISES

To contribute to the promotion of internal forces for the cause of industrialization and modernization of the country; to promote strongly economic reform; to ensure freedom and equality in business of enterprises from all economic sector before the law; to protect lawful rights and interests of investors; to reinforce the effectiveness of State administration of business activities;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;

This Law provides for limited liability companies, shareholding companies, partnerships and private enterprises.

## CHAPTER I

### General Provisions

#### **Article 1** *Governing scope*

1. This Law provides for the establishment, management organization and operation of these forms of enterprise: limited liability companies, shareholding companies, partnerships and private enterprises.
2. State owned enterprises, enterprises of political organizations, socio-political organizations shall, upon being converted into limited liability companies or shareholding companies, be subject to this Law. The Government shall stipulate the rules and procedures for such conversion.

#### **Article 2** *Application of the Law on Enterprises and relevant laws*

The establishment, management organization and operation of enterprises within the territory of Vietnam shall comply with this Law and other relevant provisions of the law.

Where this Law and a specialized law differ with respect to the same issue, the provisions of the specialized law shall apply.

### **Article 3** *Interpretation of terms*

In this Law, the following terms shall be construed as follows:

1. *Enterprise* means an economic organization having its own name, having assets and a permanent transaction office, and having business registration in accordance with law for the purpose of conducting business operations.
2. *Business* means the conduct of one, several or all of the stages of the investment process, from production to sale of products or provision of services in the market for profits.
3. *Regular documents* means documents comprising all papers as required by this Law, having complete and true content as required by law.
4. *Capital contribution* means the transfer of assets into a company so as to become the owner or a joint owner of the company. Capital contribution may be in the form of Vietnamese currency, freely convertible foreign currency, gold, value of land use rights, value of intellectual property, technology, technical know how, or other assets recorded in the charter of the company as being contributed by the members to form the capital of the company.
5. *Share of capital contribution* means the ratio of capital contributed by the owner or the joint owners of the company to the charter capital.
6. *Charter capital* means the amount of capital contributed by all members and stated in the charter of the company.
7. *Legal capital* means the minimum amount of capital required by law for the establishment of an enterprise.
8. *Voting capital* means the amount of capital contribution entitling the owner to vote on matters decided by the Members' Council or the General Meeting of Shareholders.
9. *Dividend* means the amount paid from the profits of the company for each share annually.
10. *Founding member* means a person involved in approving the first charter of the company. *Founding shareholder* means a founding member of a shareholding company.

11. *Unlimited liability partner*<sup>1</sup> means a partner who is liable for the obligations of the company to the extent of all his or her assets.
12. *Manager of an enterprise* means the owner of a private enterprise, unlimited liability partner of a partnership, a member of the Members' Council, chairman of a company, a member of the Board of Management, director (general director) and other key managerial positions as stated in the charter in the cases of a limited liability company or a shareholding company.
13. *Re-organization of an enterprise* means the division, separation, merger, consolidation and conversion of an enterprise.
14. *Related person* means persons related to each other in the following cases:
  - (a) A parent enterprise and a subsidiary enterprise;
  - (b) An enterprise and a person or a group of persons being able to control its decision-making process and operations through the management bodies of the enterprise;
  - (c) An enterprise and its manager;
  - (d) A group of persons who agree to hold together the shares of equity, shares or interests in a company or to control the decision-making process of the company;
  - (dd) Husband, wife, father, adoptive father, mother, adoptive mother, children, adopted children, siblings of any manager of an enterprise, any member of a company, or any shareholder holding a controlling share.

**Article 4** *State guarantees<sup>2</sup> for enterprises and managers of enterprises*

1. The State shall recognise the long term existence and development of types of enterprise provided for in this Law, ensure the equality of enterprises before the law, and recognise the lawful profit-making nature of business activities.
2. The State shall recognise and protect the ownership of assets, investment, income and other lawful rights and interests of an enterprise and its owner.

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<sup>1</sup> The literal translation is "partnership member".

<sup>2</sup> An alternative translation is "assurances".

3. The lawful assets and investment capital of an enterprise and its owner shall not be nationalized or expropriated by administrative action.

Where the State decides to acquire or requisition the assets of an enterprise for essential reasons of national defence or security and in the national interest, the owner or joint owners of the enterprise shall be paid or compensated at the market price determined at the time of the decision of acquisition or requisition and shall be given favourable conditions to invest and conduct business in the appropriate field or area.

**Article 5** *Vietnamese Communist Party organizations, trade unions and other socio-political organizations in enterprises*

Vietnamese Communist Party organizations in enterprises shall operate in accordance with the Constitution, the laws and the regulations of the Vietnamese Communist Party.

Trade union organizations and other socio-political organizations in enterprises shall operate in accordance with the Constitution and the laws.

**Article 6** *Lines of business*

1. In accordance with law, an enterprise may autonomously register and conduct lines of business other than those provided in clauses 2, 3 and 4 of this article.
2. Lines of business adversely affecting national defence, security, social order and safety, historical, cultural and ethical traditions, Vietnamese fine customs and traditions and the people's health shall be prohibited. The Government shall publish the list of prohibited lines of business.
3. Where a law, ordinance or decree prescribes conditions for the conduct of a line of business, an enterprise may only conduct such line of business if it satisfies all of the prescribed conditions.
4. Where a law, ordinance or decree requires an amount of legal capital or a practising certificate for the conduct of a line of business, an enterprise may only register such line of business if it has sufficient capital or a practising certificate as required by law.

**Article 7** *Rights of enterprises*

In accordance with law, an enterprise operating under this Law shall have the following rights:

1. To possess, use and dispose of assets of the enterprise;
2. To take initiative in selecting the line of business and area for investment and the form of investment, including joint venture with or capital contribution in other enterprises, and to expand the scope and lines of business;
3. To take initiative in seeking markets and customers and signing contracts;
4. To select the form and manner of raising capital;
5. To conduct import and export business;
6. To recruit, employ and use labour in accordance with business requirements;
7. To conduct business autonomously, to apply modern and scientific management methods in order to improve efficiency and competitiveness;
8. To refuse and report any demand by any individual, body or organization for supply of any resources not sanctioned by law, except for voluntary contributions for public or humanitarian purposes;
9. Other rights as provided for by law.

**Article 8** *Obligations of enterprises*

An enterprise operating under this Law shall have the following obligations:

1. To conduct business strictly in accordance with the registered lines of business;
2. To keep accounting records, to make entries in accounting records, invoices, source documents and to prepare financial statements truthfully and accurately;
3. To register, declare and pay taxes and to perform other financial obligations as provided for by law;
4. To ensure the quality of goods in accordance with registered standards;
5. To declare and periodically report fully and accurately information relating to the enterprise and its financial position with the business registration body; to

correct promptly the information with the business registration body upon discovery of any inaccurate, incomplete or falsified declaration or report of information;

6. To give priority to domestic labour, to ensure rights and interests of employees in accordance with labour laws; to respect the rights of trade union organizations in accordance with the laws on trade unions;
7. To comply with laws on national defence, security, social order and safety, protection of natural resources and the environment, protection of historical and cultural sites and places of interests;
8. To perform other obligations as provided for by law.

## CHAPTER II

### **Establishment and Registration of Business**

#### **Article 9** *Right to establish and manage enterprises*

Organizations and individuals shall have the right to establish and manage enterprises, except for the following:

1. State bodies, units of people's armed forces using State assets and public funds to establish enterprises to make profits for their own bodies or units;
2. State officials and employees in accordance with the laws on State officials and employees;
3. Officers, non-commissioned officers, career servicemen, national defence workers in bodies and units of the People's Army; officers, career non-commissioned officers in bodies and units of the People's Police;
4. Management personnel, professional management personnel in State owned enterprises, except for those appointed to be representatives to manage the State's share of equity in other enterprises;
5. Minors; adults whose capacity for civil acts is restricted or lost;
6. Persons being the subject of criminal prosecution or in the process of serving prison sentences or having their practising rights revoked by a court for having committed smuggling, producing fake goods, trading in fake goods, conducting illegal business, tax evasion, defrauding clients and other offences as provided for by law;

7. The owner of a private enterprise, an unlimited liability partner of a partnership, the director (general director), chairman and members of the Board of Management or the Members' Council of an enterprise which has been declared bankrupt may not establish an enterprise, may not act as manager of an enterprise for one to three years from the date of declaration of bankruptcy of the enterprise, except in the cases provided for in the *Law on Business Bankruptcy*;
8. Foreign organizations and individuals not having permanent residence in Vietnam.

**Article 10** *Right to contribute capital*

1. Organizations and individuals may contribute capital to limited liability companies, shareholding companies and partnerships, except for the following:
  - (a) State bodies, units of people's armed forces using State assets and public funds to contribute capital to enterprises to make profits for their own bodies and units;
  - (b) Those who may not contribute capital to enterprises in accordance with the laws on State officials and employees.
2. Foreign organizations, foreign individuals not having permanent residence in Vietnam and Vietnamese residing overseas may contribute capital to limited liability companies, shareholding companies and partnerships in accordance with the *Law on Promotion of Domestic Investment*.

**Article 11** *Contracts which may be signed prior to business registration*

1. A founding member or a representative authorized by the group of founding members may sign contracts for the purpose of the establishment of the enterprise.
2. Where the enterprise is established, the enterprise shall assume the rights and obligations arising from the signed contracts referred to in clause 1 of this article.
3. Where the enterprise is not established, the person(s) who signed the contracts under clause 1 of this article shall be solely or jointly liable for the performance of such contracts.

**Article 12** *Procedures for establishment of enterprises and registration of business*

1. The founder of an enterprise must prepare and submit all of the business registration documents as prescribed by this Law to the business registration body which is part of the people's committee of the city or province under central authority where the enterprise has its head office and shall be responsible for the accuracy and truthfulness of the business registration documents.
2. A business registration body may not require the founder of an enterprise to submit additional documents other than those provided by this Law for each type of enterprise. A business registration body shall be responsible only for the regularity of the business registration documents.
3. A business registration body shall be responsible for registering the business within fifteen (15) days from the date of receipt of the documents; where the business registration certificate is refused, the founder of the enterprise must be notified in writing. The notice must specify the reasons and the amendments or additions required.

**Article 13** *Business registration documents*

Business registration documents shall comprise:

1. Application for business registration;
2. Charter in the case of companies;
3. List of members in the case of a limited liability company, list of unlimited liability partners in the case of a partnership, list of founding shareholders in the case of a shareholding company;
4. In the case of enterprises conducting lines of business requiring legal capital, certification of capital issued by the authorized body or organization in accordance with law.

**Article 14** *Content of applications for business registration*

1. An application for business registration must contain the following main particulars:
  - (a) Name of the enterprise;
  - (b) Address of the head office of the enterprise;



- (c) Objectives and lines of business;
  - (d) Charter capital in the case of a company, or initial investment of the owner of the enterprise in the case of a private enterprise;
  - (dd) Share of equity contributed by each member in the case of a limited liability company or a partnership; number of shares subscribed for by the founding shareholders, types of shares, face value of shares and total number of shares of each type to be offered in the case of a shareholding company;
  - (e) Full name, signature, permanent address of the owner of the enterprise in the case of a private enterprise; of the legal representative in the case of a limited liability company or a shareholding company; of all unlimited liability partners in the case of a partnership.
2. An application for business registration shall be made in the standard form prescribed by the business registration body.

**Article 15** *Contents of the charter of a company*

The charter of a company must contain the following main particulars:

1. Name, addresses of the head office, branch, representative office (if any);
2. Objectives and lines of business;
3. Charter capital;
4. Full names and addresses of all unlimited liability partners in the case of a partnership; names and addresses of members in the case of a limited liability company; names and addresses of founding shareholders in the case of a shareholding company;
5. Share of equity and its value of each member in the case of a limited liability company or a partnership; number of shares subscribed for by founding shareholders, face value of shares and total number of shares of each type to be offered in the case of a shareholding company;
6. Rights and obligations of members in the case of a limited liability company or a partnership; of shareholders in the case of a shareholding company;
7. Management and organizational structure;

8. Legal representative in the case of a limited liability company or a shareholding company;
9. Procedures for passing resolutions of the company; rules for resolution of internal disputes;
10. Circumstances in which a member may require the company to redeem its share of equity in a limited liability company or shares in a shareholding company;
11. Types of funds and limits of each fund to be established in the company; rules for distribution of profits, payment of dividends and loss bearing in the business;
12. Cases of dissolution, procedures for dissolution and procedures for liquidation of the assets of the company;
13. Procedures for amendments of or additions to the charter of the company;
14. Signatures of all unlimited liability partners in the case of a partnership; of the legal representative or all members in the case of a limited liability company; of the legal representative or all founding shareholders in the case of a shareholding company.

Other matters included in the charter of the company shall be agreed by the members or shareholders but may not be inconsistent with provisions of the law.

**Article 16** *List of members of a limited liability company or partnership, list of founding shareholders of a shareholding company*

The list of members of a limited liability company or partnership, the list of founding shareholders of a shareholding company must contain the following main particulars:

1. Names and addresses of members in the case of a limited liability company or a partnership; of founding shareholders in the case of a shareholding company;
2. Share of equity and its value, type of assets, quantity, residual value of each type of asset contributed as capital, time schedule for capital contribution in the case of a limited liability company or a partnership; number of shares, type of shares, types of asset, quantity of assets, residual value of each asset contributed to the share capital, time schedule for contribution to the share capital in the case of a shareholding company;
3. Full names and signatures of the legal representative or all of the members or founding shareholders in the case of a limited liability company or a

shareholding company; of all unlimited liability partners in the case of a partnership.

**Article 17** *Conditions for issuance of business registration certificates and time of commencement of business*

1. An enterprise shall be issued with a business registration certificate if it satisfies all of the following conditions:
  - (a) The line of business is not prohibited;
  - (b) The name of the enterprise complies with the provisions of article 24.1 of this Law;
  - (c) Having regular business registration documents in accordance with law;
  - (d) Payment in full of the prescribed business registration fee.
2. An enterprise may conduct business from the date of issuance of the business registration certificate. Where a line of business may only be conducted subject to conditions, an enterprise may only conduct business from the date of issuance of the business registration certificate by the authorized State body or when it satisfies all of the prescribed conditions.

**Article 18** *Contents of business registration certificates*

A business registration certificate must contain the following main particulars:

1. Name, addresses of the head office of the enterprise, branch or representative office (if any);
2. Objectives and lines of business;
3. Charter capital in the case of a limited liability company, shareholding company or partnership; initial investment in the case of a private enterprise; legal capital in the case of a line of business for which legal capital is required;
4. Full name and permanent address of the legal representative of the enterprise;
5. Names and addresses of members in the case of a limited liability company or founding shareholders in the case of a shareholding company; full names and permanent residential addresses of unlimited liability partners in the case of a partnership.

**Article 19** *Alterations of business registration*

1. In the case of any changes to the name or addresses of the head office, branch, representative office (if any), objectives and line of business, charter capital, investment capital of the owner of the enterprise, change of the manager, legal representative of the enterprise and other matters included in the business registration documents, the enterprise must register with the business registration body no later than fifteen (15) days prior to the change taking place.
2. Where any alteration is made to the contents of the business registration certificate, the enterprise shall be issued with a new business registration certificate; in the case of other changes, the enterprise shall be issued with a certificate of business registration alteration.

**Article 20** *Providing information relating to business registration*

1. Within seven days from the date of issuance of the business registration certificate or the certificate of business registration alteration, the business registration body must send a copy of such certificate to the tax office, the statistics office, the economic or technical administrative body at the same level, the people's committee of the district, township or provincial city where the enterprise has its head office.
2. Organizations and individuals may require the business registration body to provide information relating to business registration, issue a copy of a business registration certificate or certificate of business registration alteration or an extract of business registration and must pay fees as prescribed by law.
3. The business registration body shall be obliged to provide fully and promptly any information relating to business registration required by organizations and individuals pursuant to clause 2 of this article.

**Article 21** *Publication of business registration*

1. Within thirty (30) days from the date of issuance of a business registration certificate, the enterprise must cause to be published in a local newspaper or a daily central newspaper in three consecutive issues the following main particulars:
  - (a) Name of the enterprise;
  - (b) Addresses of the head office of the enterprise, branch, representative office (if any);

- (c) Objectives and lines of business;
  - (d) Charter capital in the case of a limited liability company, shareholding company or partnership; initial investment capital in the case of a private enterprise;
  - (dd) Names and addresses of the owner, all founding members;
  - (e) Full name and permanent address of the legal representative of the enterprise;
  - (g) Place of business registration.
2. Where any alteration is made to the business registration, the enterprise must arrange for the publication of such alteration as stipulated in clause 1 of this article.

**Article 22** *Transfer of ownership of assets*

1. Following the issuance of the business registration certificate, persons who undertake to contribute capital to a limited liability company, shareholding company or partnership must transfer assets to the company for the purpose of capital contribution in accordance with the following provisions:
- (a) In respect of registered assets or the value of land use rights, the person contributing capital must transfer the ownership of such assets or the value of land use rights to the company by completing the procedures at the authorized State body.

Registration fees shall not be payable in respect of changes of ownership of assets contributed as capital.

- (b) In respect of assets the ownership of which is not registered, capital contribution shall be made by the transfer and receipt of assets, as evidenced by minutes.

The minutes of such transfer and receipt must contain the following main particulars: name and head office address of the company; name and address of the person making the capital contribution; type of asset and number of units of asset contributed as capital; total value of assets contributed as capital and percentage of the total value of such assets in the charter capital of the company; date of transfer and receipt; signature of the person making the capital contribution and the legal representative of the company.

- (c) Shares or capital contribution in the form of assets other than Vietnamese currency, freely convertible foreign currency or gold shall be deemed to have been contributed when the legal ownership of the asset contributed as capital is transferred to the company.
2. Where an asset is used for the business of a private enterprise, the procedures for transfer of the property to the private enterprise shall not be required.

**Article 23** *Valuation of assets contributed as capital*

1. Assets contributed as capital which are not Vietnamese currency, freely convertible currency or gold must be valued.
2. For assets contributed to the enterprise upon its establishment, all of the founding members shall value such assets. The value of assets contributed as capital must be approved on the basis of the principle of unanimity.
3. During the course of operations, the Board of Management of a shareholding company, the Members' Council of a limited liability company, all of the unlimited liability partners of a partnership shall value assets contributed as capital.
4. Persons valuing assets referred to in clauses 2 and 3 of this article must be responsible for the accuracy and truthfulness of the value of assets contributed as capital. Where an asset contributed to the capital is valued higher than its actual value at the time of contribution, the person contributing such asset and the valuer must contribute in full the amount of the valuation; if damage is caused to any other person, they must be jointly liable for compensation.

Where a person having related rights, obligations or interests proves that an asset contributed as capital was not valued at its actual value at the time of contribution, such person may require the business registration body to force the valuer to revalue the asset or to appoint a valuation organization to revalue the asset contributed as capital.

**Article 24** *Name, address and seal of enterprises*

1. The name of an enterprise must:
  - (a) not be the same as, or cause confusion with, the name of another enterprise which has registered its business;
  - (b) not contravene national historical traditions, culture, ethics and fine customs;

- (c) be written in Vietnamese, and in addition may be written in one or more foreign languages in smaller letters;
  - (d) in addition to the provisions in the above sub-clauses (a), (b) and (c) of this clause, the type of enterprise must be specified: for a limited liability company, the phrase "limited liability" shall be abbreviated as "TNHH"; for a shareholding company, the word "shareholding" shall be abbreviated as "Cp"; for a partnership, the word "partnership" shall be abbreviated as "HD"; for a private enterprise, the word "private" shall be abbreviated as "TN".
2. The head office of an enterprise must be located within the territory of Vietnam; must have a definite address, including house number, street name (or alley) or name of village, commune, ward, township; district, provincial town; province or city under central authority; telephone and facsimile numbers (if any).
  3. An enterprise shall have its own seal in accordance with the regulations of the Government.

**Article 25** *Representative offices and branches of an enterprise*

1. A representative office shall be a dependent unit of the enterprise, having the task of acting as the authorized representative in the interests of the enterprise and protecting such interests. The operations of a representative office must be in accordance with the operations of the enterprise.
2. A branch shall be a dependent unit of the enterprise, having the task of performing all or a number of the functions of the enterprise, including the function of an authorized representative. The line of business of the branch must be in accordance with the lines of business of the enterprise.
3. An enterprise shall have the right to establish branches and representative offices overseas. The Government shall provide for the procedures for establishment of branches and representative offices.

## CHAPTER III

**Limited Liability Companies**

## SECTION I

**Limited Liability Companies with Two or More Members****Article 26** *Limited liability companies*

1. A limited liability company is an enterprise in which:
  - (a) A member shall be liable for the debts and other property obligations of the enterprise within the amount of capital that it has undertaken to contribute to the enterprise;
  - (b) The capital contribution of each member may only be assigned in accordance with article 32 of this Law;
  - (c) A member may be an organization or an individual; the number of members shall not exceed fifty (50).
2. A limited liability company may not issue shares.
3. A limited liability company shall have legal entity status from the date of issuance of the business registration certificate.

**Article 27** *Capital contribution and issuance of capital contribution certificates*

1. Members must contribute capital in full and on time as undertaken. Where a member fails to contribute in full and on time as undertaken, the unpaid amount shall be considered as a debt owed by that member to the company; such member must be liable for compensation for any damage arising from its failure to contribute capital in full and on time as undertaken.

The legal representative of the company must notify the business registration body in writing of an event referred to in paragraph 1 of this clause within thirty (30) days from the date on which the contribution was due. If no written notice is delivered to the business registration body after this time-limit, any member which has not contributed capital in full and the legal representative of the company must be jointly liable to the company for the unpaid amount and any damage arising from the failure to contribute capital in full and on time as undertaken.



2. Upon payment in full of capital contribution, the company shall issue a member with a capital contribution certificate. A capital contribution certificate must contain the following main particulars:
  - (a) Name, office of the company;
  - (b) Number and date of issuance of the business registration certificate;
  - (c) Charter capital of the company;
  - (d) Name and address of the member;
  - (dd) Share of equity and its value of the member;
  - (e) Number and date of issuance of the capital contribution certificate;
  - (g) Signature of the legal representative of the company.
3. Where a capital contribution certificate is lost, torn, burnt or otherwise destroyed, the member shall be issued by the company with a new capital contribution certificate and must pay fees as stipulated by the company.

**Article 28** *Register of members*

1. A company must establish a register of members immediately after business registration. A register of members must contain the following main particulars:
  - (a) Name, office of the company;
  - (b) Names, addresses, signatures of members or their legal representatives;
  - (c) Value of equity at the time of contribution and share of equity of each member; time of capital contribution; types of asset contributed as capital, quantity, value of each type of asset contributed as capital;
  - (d) Number and date of issuance of capital contribution certificates of each member.
2. The register of members shall be retained at the head office of the company, or elsewhere provided that written notice shall be given to the business registration body and all members.

**Article 29** *Rights of members*

1. A member of a limited liability company shall have the rights:
  - (a) To be distributed with profits after the company has paid taxes and discharged other financial obligations as provided for by law in proportion to its share of equity in the company;
  - (b) To attend meetings of the Members' Council, to discuss, make recommendations and vote on the matters within the authority of the Members' Council;
  - (c) To have the number of votes in proportion to its share of equity;
  - (d) To have access to the register of members, books of account, annual financial reports, other documents of the company and to receive extracts or copies of these documents;
  - (dd) To be distributed with the remainder of the value of assets of the company in proportion to its share of equity in the company upon dissolution or bankruptcy of the company;
  - (e) To be given priority in making additional capital contributions to the company upon any increase of capital; to be entitled to assign a part or all of its share of equity;
  - (g) To commence a court action against the director (general director) in the event that the director (general director) fails to perform fully his or her obligations and causes damage to the interests of such member;
  - (h) Other rights stipulated in this Law and the charter of the company.
2. A member or a group of members holding more than thirty five (35) per cent of the charter capital, or a smaller percentage as stipulated in the charter of the company, shall have the right to request that a meeting of the Members' Council be convened to deal with issues within its authority.

**Article 30** *Obligations of members*

1. To contribute in full and on time the amount of capital as undertaken and to be liable for the debts and other property obligations of the company within the amount of capital it undertakes to contribute to the company.
2. To comply with the charter of the company.
3. To observe decisions of the Members' Council.

4. To perform other obligations stipulated in this Law and the charter of the company.

**Article 31** *Redemption of shares of equity*

1. A member may demand the company to redeem its share of equity if such member votes against, or objects in writing to, a decision of the Members' Council on the following issues:
  - (a) Amendment of or addition to the provisions of the charter of the company relating to the rights and obligations of members and the rights and duties of the Members' Council;
  - (b) Re-organization of the company;
  - (c) Other cases stipulated in the charter of the company.

The demand for redemption of shares of equity must be made in writing and sent to the company within fifteen (15) days from the date on which a decision is made on an issue stipulated in sub-clauses (a), (b) and (c) of this clause.

2. Where a member makes a demand as stipulated in clause 1 of this article and a price cannot be agreed, the company must redeem the share of equity of such member at the market price or at the price calculated in accordance with the provisions of the charter of the company within fifteen (15) days from the date of receipt of such demand.

Payment may only be made if, after the full payment for such redeemed share of equity, the company is still able to meet all debts and other property obligations.

**Article 32** *Assignment of shares of equity*

A member of a limited liability company shall have the right to assign a part or all of its share of equity to other persons in accordance with the following provisions:

1. A member wishing to assign a part or all of its share of equity shall offer to sell such share of equity to all other members in proportion to their shares of equity in the company on the same terms;
2. Assignment to non-members shall only be permitted where the other members of the company do not purchase or do not purchase in full.

**Article 33** *Dealing with shares of equity in other cases*

1. In the case of a member being an individual who is dead or who is declared dead by a court, his or her heir may become a member of the company subject to approval of the Members' Council.
2. In cases where the capacity for civil acts of a member is restricted or lost, the rights and obligations of such member in the company shall be exercised by his or her guardian subject to the approval of the Members' Council.
3. Where an heir referred to in clause 1 of this article is not approved by the Members' Council or does not wish to become a member, where the guardian of a member referred to in clause 2 of this article is not approved by the Members' Council, or where a member being an organization is dissolved or declared bankrupt, the share of equity of such member shall be redeemed by the company in accordance with article 31 of this Law or be assigned in accordance with article 32 of this Law.
4. Where a member being an individual dies intestate or where his or her heir disclaims the inheritance or the right to inherit is deprived, the company shall pay the value of such share of equity to the State Budget.

**Article 34** *Organizational and managerial structure of companies*

A limited liability company of two or more members shall have a Members' Council, a chairman of the Members' Council and a director (general director). A limited liability company of more than eleven (11) members must have an Inspection Committee. The powers, obligations and working regulations of the Inspection Committee and the head of the Inspection Committee shall be stipulated in the charter of the company.

**Article 35** *Members' Councils*

1. The Members' Council shall comprise all members and shall be the highest decision-making authority of the company. Where a member is an organization, such member shall appoint its representative to be on the Members' Council. The Members' Council shall meet at least once a year.
2. The Members' Council shall have the following rights and duties:
  - (a) To make decisions on development policies of the company;
  - (b) To make decisions on the increase or reduction of the charter capital and on the timing and method of raising additional capital;

- (c) To make decisions on the form of investment and investment projects valued at more than fifty (50) per cent of the total value of assets recorded in the accounting books of the company, or a smaller percentage as stipulated in the charter of the company;
- (d) To approve loan agreements and contracts for sale of assets valued at fifty (50) or more per cent of the value of assets recorded in the accounting books of the company, or a smaller percentage as stipulated in the charter of the company;
- (dd) To elect, remove or dismiss the chairman of the Members' Council; to make decisions on the appointment, removal and dismissal of the director (general director), chief accountant and other important managers stipulated in the charter of the company;
- (e) To make decisions on salary and other benefits for the director (general director), chief accountant and other important managers stipulated in the charter of the company;
- (g) To approve annual financial statements, plans for use and distribution of profits or plans for dealing with losses of the company;
- (h) To make decisions on the organizational and management structure of the company;
- (i) To make decisions on the establishment of branches and representative offices;
- (k) To make amendments of or additions to the charter of the company;
- (l) To make decisions on re-organization of the company;
- (m) To make decisions on dissolution of the company;
- (n) Other rights and duties stipulated in this Law and in the charter of the company.

**Article 36** *Chairman of the Members' Council*

1. The Members' Council shall elect a member to be its chairman. The chairman of the Members' Council may concurrently work as the director (general director) of the company.

2. The chairman of the Members' Council shall have the following rights and duties:
  - (a) To prepare working programs and plans of the Members' Council;
  - (b) To prepare programs, agenda<sup>3</sup> and documents for meetings of the Members' Council or for consulting members;
  - (c) To convene and preside over meetings of the Members' Council or to consult members;
  - (d) To supervise the implementation of decisions of the Members' Council;
  - (dd) To sign decisions of the Members' Council on behalf of the Members' Council;
  - (e) Other rights and duties stipulated in this Law and the charter of the company.
3. The term of the chairman of the Members' Council shall not exceed three years. The chairman of the Members' Council may be re-elected.
4. Where the charter of the company provides that the chairman of the Members' Council is the legal representative, such provision shall be clearly stated in all transaction documents.

**Article 37** *Convening meetings of the Members' Council*

1. A meeting of the Members' Council may be convened at any time upon request by the chairman of the Members' Council or request by a member or a group of members as stipulated in article 29.2 of this Law.
2. The agenda and documents for a meeting must be sent to members of the company prior to the opening day of the meeting. Such prior period shall be stipulated in the charter of the company.

**Article 38** *Conditions and procedures for conducting meetings of the Members' Council*

1. A meeting of the Members' Council shall be conducted where the attending members represent at least sixty five (65) per cent of the charter capital. The specific percentage shall be stipulated in the charter of the company.

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<sup>3</sup> The literal translation is "content".

2. Where a meeting does not take place because the condition stipulated in clause 1 of this article is not satisfied, the meeting may be convened for a second time within fifteen (15) days from the date on which the first meeting was intended to be opened. A meeting of the Members' Council which is convened for a second time shall be conducted where the attending members represent at least fifty (50) per cent of the charter capital. The specific percentage shall be stipulated in the charter of the company.
3. Where a meeting which has been convened for a second time does not take place because the condition stipulated in clause 2 of this article is not satisfied, it may be convened for a third time within ten (10) days from the date on which the second meeting was intended to be opened. In this case, the meeting of the Members' Council shall be conducted irrespective of the number of attending members.
4. A member may authorize another member in writing to attend a meeting of the Members' Council. The procedures for conducting meetings of the Members' Council and the voting method shall be stipulated in the charter of the company.

**Article 39** *Decisions of the Members' Council*

1. The Members' Council shall pass resolutions within its authority by way of voting at meetings or obtaining written opinions.
2. A resolution of the Members' Council shall be passed in a meeting where:
  - (a) It is approved by the number of votes representing at least fifty one (51) per cent of the capital of the attending members. The specific percentage shall be stipulated in the charter of the company.
  - (b) In respect of decisions relating to the sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the accounting books of the company, or a smaller percentage as stipulated in the charter of the company, the amendment of and addition to the charter of the company, the re-organization or dissolution of the company, the approval by a number of votes representing at least seventy five (75) per cent of the capital of the attending members shall be required. The specific percentage shall be stipulated in the charter of the company.
3. A resolution of the Members' Council shall be passed by way of obtaining written opinions if it is approved by members representing at least sixty five (65) per cent of the charter capital. The specific percentage shall be stipulated in the charter of the company.

**Article 40** *Minutes of meetings of the Members' Council*

1. All meetings of the Members' Council shall be recorded in the book of minutes of the company.
2. Minutes of each meeting of the Members' Council shall be completed and approved prior to the closing of the meeting. The minutes must include the following main particulars:
  - (a) Time and venue of the meeting;
  - (b) Total number of attending members and percentage of charter capital they represent;
  - (c) Agenda;
  - (d) Summary of statements made in the meeting;
  - (dd) Matters voted upon, results of voting on each matter and resolutions passed;
  - (e) Full name and signature of the chairman of the Members' Council or of the person authorized by the chairman of the Members' Council to preside over the meeting.

**Article 41** *Director (General Director)*

1. The director (general director) of the company is the person who manages the day-to-day business operation of the company and is responsible to the Members' Council for the exercise of his or her rights and the performance of his or her obligations. Where the charter of the company does not provide for the chairman of the Members' Council to be the legal representative, the director (general director) shall be the legal representative of the company.
2. The director (general director) shall have the following rights:
  - (a) To organize the implementation of resolutions of the Members' Council;
  - (b) To make decisions on all matters relating to the day-to-day business operation of the company;
  - (c) To organize the implementation of the business plan and investment plan of the company;
  - (d) To issue the regulations on internal management of the company;



- (dd) To appoint, remove or dismiss management personnel in the company, except for those within the authority of the Members' Council;
  - (e) To sign contracts in the name of the company, except for those within the authority of the chairman of the Members' Council;
  - (g) To make recommendations with respect to the organizational structure of the company;
  - (h) To submit the final annual financial report to the Members' Council;
  - (i) To recommend the plan for use of profits or for dealing with losses in business;
  - (k) To recruit employees;
  - (l) Other rights stipulated in the charter of the company and in the labour contract which the director (general director) enters into with the company and in accordance with resolutions of the Members' Council.
3. The director (general director) shall have the following obligations:
- (a) To exercise the delegated rights and perform his or her delegated duties honestly and diligently in the lawful interests of the company;
  - (b) Not to abuse his or her position and power nor to use assets of the company for the personal benefit of himself or herself or other persons; not to disclose secrets of the company, except where approved by the Members' Council;
  - (c) Where the company fails to pay in full all debts and other property obligations which are due and payable, to inform all members and creditors of the company of the financial situation of the company; not to increase salary or to pay bonuses to employees of the company, including managers; to be personally liable for any damage caused to creditors due to failure to perform the obligations stipulated in this sub-clause; and to make recommendations on how to remedy the financial difficulties of the company;
  - (d) To perform other obligations stipulated by law and the charter of the company.

**Article 42** *Contracts which must be approved by the Members' Council*

1. All members of a company must be informed of all economic, labour and civil contracts between the company and any member, the director (general director) or any of related person thereof no later than fifteen (15) days prior to signing.
2. Where a member discovers an element of personal gain in any contract, it may demand that the Members' Council consider and make a decision. In this case, the contract may only be signed after a decision has been made by the Members' Council. If the contract is signed without prior approval of the Members' Council, such contract shall be void and be dealt with in accordance with law. Persons causing damage to the company must compensate for such damage and return to the company any benefits gained from the performance of such contract.

**Article 43** *Increases and reductions of charter capital*

1. By resolution of the Members' Council, the company may increase its charter capital by way of:
  - (a) Increasing the equity of members;
  - (b) Increasing the charter capital relative to the increased value of assets of the company;
  - (c) Raising equity from new members.
2. In the case of increase of equity of members, the additional equity shall be allocated to each member in proportion to its share of equity in the charter capital of the company. If a member does not contribute additional equity, such share of equity shall be divided amongst other members in proportion to their respective shares of equity.
3. By resolution of the Members' Council, the company may reduce its charter capital by way of:
  - (a) Returning part of the equity to members in proportion to their respective shares of equity in the charter capital of the company;
  - (b) Reducing the charter capital relative to the reduced value of assets of the company.

The company may only reduce its charter capital in accordance with sub-clause (a) of this clause if, after following such return of equity to the members, the company is still able to satisfy all debts and other property obligations.

**Article 44** *Conditions for distribution of profits*

A limited liability company may only distribute profits to its members when it generates profits from its business and has fulfilled its tax and other financial obligations in accordance with law and where, after such distribution of profits, the company is still able to satisfy all debts and other property obligations due and payable.

**Article 45** *Recovery of returned shares of equity or distributed profits*

Where part of equity is returned as a result of a reduction of charter capital other than in accordance with article 43.3 of this Law or where profits are distributed to members other than in accordance with article 44 of this Law, all members must surrender to the company the amount of money or other assets they received or shall be jointly liable for a debt equal to the reduction of capital or the distribution of profits in proportion to their respective shares of equity.

## SECTION II

**One Member Limited Liability Companies****Article 46** *One member limited liability companies*

1. A one member limited liability company is an enterprise owned by one organization (hereinafter referred to as *company owner*); the owner shall be liable for all debts and other property obligations of the enterprise within the amount of the charter capital of the enterprise.
2. The company owner may assign all or part of the charter capital of the company to other organizations and individuals.
3. One member limited liability companies may not issue shares.
4. One member limited liability companies shall have legal entity status from the date of issuance of the business registration certificate.

**Article 47** *Rights and obligations of company owners*

1. A company owner shall have the following rights:
  - (a) To make decisions on the contents of, amendments of and additions to the charter of the company;

- (b) To make decisions on the organizational and management structure of the company, to appoint, remove or dismiss management personnel of the company as stipulated in article 49 of this Law;
  - (c) To make decisions on adjustments of the charter capital of the company;
  - (d) To make decisions on investment projects valued at fifty (50) or more per cent of the total value of the assets recorded in the accounting books of the company;
  - (dd) To make decisions on sale of assets valued at fifty (50) or more per cent of the total value of the assets recorded in the accounting books of the company;
  - (e) To organize supervision, monitoring and assessment of the business operation of the company;
  - (g) To make decisions on the use of profits;
  - (h) To make decisions on re-organization of the company;
  - (i) Other rights stipulated in this Law and the charter of the company.
2. A company owner shall have the following obligations:
- (a) To contribute capital in full and on time as registered;
  - (b) To comply with the charter of the company;
  - (c) To comply with the laws in relation to contracts with respect to any purchase, sale, borrowing, lending, lease or rent between the company and the owner;
  - (d) To perform other obligations in accordance with law.

**Article 48** *Restrictions on rights of company owners*

1. A company owner may not directly withdraw a part or all of the capital already contributed to the company.
2. A company owner may only withdraw capital by way of assignment of a part or all of the capital to other organizations and individuals.

3. The company owner may not withdraw profits of the company in cases where the company has not paid in full all debts and other property obligations due and payable.

**Article 49** *Organizational and management structure of companies*

1. Depending on the scale and line of business, the organizational and management structure of a one member limited liability company shall comprise the Board of Management and the director (general director) or the chairman of the company and the director (general director).
2. Rights and obligations of the Board of Management or the chairman of the company and of the director (general director) of a one member limited liability company shall be stipulated in the charter of the company based on this Law and other relevant provisions of the law.

**Article 50** *Increases and reductions of charter capital*

One member limited liability companies may increase or reduce the charter capital by way of:

1. Increasing or reducing the capital contributed by the company owner;
2. Adjusting the charter capital corresponding to the value of assets of the company.

## CHAPTER IV

### Shareholding Companies

**Article 51** *Shareholding companies*

1. A shareholding company is an enterprise in which:
  - (a) The charter capital shall be divided into equal portions called shares;
  - (b) Shareholders shall be liable for the debts and other property obligations of the enterprise within the amount of capital contributed to the enterprise;
  - (c) Shareholders may freely assign their shares to other persons, except in the cases stipulated in articles 55.3 and 58.1 of this Law;

- (d) Shareholders may be organizations or individuals; the minimum number of shareholders shall be three and there shall be no restriction on the maximum number.
- 2. Shareholding companies may issue securities to the public in accordance with legislation on securities.
- 3. Shareholding companies shall have legal entity status from the date of issuance of the business registration certificate.

**Article 52** *Classes of shares*

- 1. Shareholding companies must have ordinary shares. Owners of ordinary shares shall be called ordinary shareholders.
- 2. Shareholding companies may have preference shares. Owners of preference shares shall be called preference shareholders.

Preference shares shall be of the following classes:

- (a) Voting preference shares;
  - (b) Dividend preference shares;
  - (c) Redeemable preference shares;
  - (d) Other preference shares stipulated in the charter of the company.
- 3. Only organizations authorized by the Government and founding shareholders may hold voting preference shares. The voting preference of founding shareholders shall be valid for only three years from the date of issuance of the business registration certificate of the company. After that period, voting preference shares of founding shareholders shall be converted into ordinary shares.
  - 4. Persons who are entitled to purchase dividend preference shares, redeemable preference shares and other preference shares shall be stipulated in the charter of the company or decided by the General Meeting of Shareholders.
  - 5. Each share of the same class shall entitle its holder to the same rights, obligations and interests.
  - 6. Ordinary shares may not be converted into preference shares. Preference shares may be converted into ordinary shares pursuant to a resolution of the General Meeting of Shareholders.

**Article 53** *Rights of ordinary shareholders*

1. Ordinary shareholders shall have the rights:
  - (a) To attend and vote on all matters which fall within the authority of the General Meeting of Shareholders; each ordinary share shall carry one vote;
  - (b) To receive dividends at the rate decided by the General Meeting of Shareholders;
  - (c) To be given priority in subscribing for new shares offered for sale in proportion to the number of ordinary shares each shareholder holds in the company;
  - (d) Upon dissolution of the company, to receive a part of the remaining assets in proportion to the number of shares held in the company after the company has paid its creditors and shareholders of other classes;
  - (dd) Other rights stipulated in this Law and the charter of the company.
2. A shareholder or a group of shareholders holding more than ten (10) per cent of the ordinary shares for a consecutive period of six months or more, or holding a smaller percentage as stipulated in the charter of the company, shall have the rights:
  - (a) To nominate candidates to the Board of Management and the Inspection Committee (if any);
  - (b) To request the convening of a General Meeting of Shareholders;
  - (c) To sight and receive a copy or extract of the list of shareholders entitled to attend General Meetings of Shareholders;
  - (d) Other rights stipulated in this Law and the charter of the company.

**Article 54** *Obligations of ordinary shareholders*

1. To pay in full for the shares subscribed for and to be liable for debts and other property obligations of the company within the amount of capital contributed to the company.
2. To comply with the charter and the internal management rules of the company.

3. To observe resolutions of the General Meeting of Shareholders and the Board of Management.
4. To perform other obligations as stipulated in this Law and the charter of the company.

**Article 55** *Voting preference shares and rights of voting preference shareholders*

1. A voting preference share is a share which shall carry more votes than an ordinary share. The number of votes per voting preference share shall be stipulated in the charter of the company.
2. Voting preference shareholders shall have the rights:
  - (a) To vote on matters which fall within the authority of the General Meeting of Shareholders with the number of votes in accordance with clause 1 of this article;
  - (b) Other rights as ordinary shareholders, subject to the exception in clause 3 of this article.
3. Voting preference shareholders may not assign such shares to other persons.

**Article 56** *Dividend preference shares and rights of dividend preference shareholders*

1. A dividend preference share is a share for which dividend shall be paid at a rate higher than that paid for an ordinary share or at an annual fixed rate. Annually paid dividends shall include fixed dividends and bonus dividends. Fixed dividends shall not depend on the outcome of the business of the company. The specific rate of fixed dividends and method for determination of bonus dividends shall be stated in the certificate of dividend preference shares.
2. Dividend preference shareholders shall have the rights:
  - (a) To receive dividends at the rates stipulated in clause 1 of this article;
  - (b) Upon dissolution of the company, to receive a part of the remaining assets in proportion to the number of shares held in the company after the company has paid in full its creditors and redeemable preference shareholders;
  - (c) Other rights as ordinary shareholders, subject to the exception in clause 3 of this article.



3. Dividend preference shareholders shall not have the right to vote, the right to attend General Meetings of Shareholders or the right to nominate candidates to the Board of Management and the Inspection Committee.

**Article 57** *Redeemable preference shares and rights of redeemable preference shareholders*

1. A redeemable preference share is a share which shall be redeemed by the company at any time upon demand by its owner or in accordance with the conditions stated in the redeemable preference share certificate.
2. Redeemable preference shareholders shall have other rights as ordinary shareholders, subject to the exception in clause 3 of this article.
3. Redeemable preference shareholders shall not have the right to vote, the right to attend General Meetings of Shareholders or the right to nominate candidates to the Board of Management and the Inspection Committee.

**Article 58** *Ordinary shares of founding shareholders*

1. Within the first three years from the date of issuance of the business registration certificate of the company, founding shareholders must together hold at least twenty (20) per cent of the number of ordinary shares which may be offered for sale; ordinary shares of founding shareholders may be assigned to persons not being shareholders if approved by the General Meeting of Shareholders. Shareholders intending to assign shares may not vote on the assignment of such shares.
2. After the period of three years referred to in clause 1 of this article, all restrictions on ordinary shares of founding shareholders shall be lifted.

**Article 59** *Share certificates*

Certificates issued by a shareholding company or book entries certifying the ownership of one or more shares of such company shall be called share certificates. Share certificates may or may not indicate names.

A share certificate must contain the following main particulars:

1. Name and office of the company;
2. Number and date of issuance of the business registration certificate;
3. Number of shares and classes of shares;

4. Par value of each share and total par value of shares included in the share certificate;
5. Name of shareholder in cases where the share certificate indicates the name;
6. Summary of procedures for share assignment;
7. Sample signature of the legal representative and seal of the company;
8. Registration number in the register of shareholders of the company and date of issuance of the share certificate;
9. Preference share certificates shall also include other details as stipulated in articles 55, 56 and 57 of this Law.

**Article 60** *Register of shareholders*

1. A shareholding company shall establish and maintain a register of shareholders from the date of issuance of the business registration certificate. The register of shareholders may be in the form of a document or an electronic file, or both.  
A register of shareholder must contain the following main particulars:
  - (a) Name and office of the company;
  - (b) Total number of shares to be offered for sale, classes of shares to be offered for sale and number of shares of each class to be offered for sale;
  - (c) Total number of shares of each class already sold and value of equity already contributed;
  - (d) Name of shareholders, address, number of shares of each class of each shareholder and date of share registration.
2. The register of shareholders shall be retained at the office of the company, or elsewhere provided that the business registration body and all shareholders are informed in writing

**Article 61** *Offer and assignment of shares*

1. The Board of Management shall determine the price at which shares shall be offered. The price at which shares shall be offered shall not be lower than the market value at the time of offering, except in the following cases:
  - (a) Initial offering of shares after business registration;
  - (b) Shares offered to all shareholders in proportion to the respective numbers of shares they hold in the company;
  - (c) Shares offered to brokers or underwriters<sup>4</sup>. In this case, the offered selling price of shares shall not be lower than the market price minus (-) the commission for brokers or underwriters. The commission shall be determined as a percentage of the value of shares at the time of offering.
2. Shares shall be deemed to have been sold or assigned upon correct and full entry of the details stipulated in article 60.1(d) of this Law in the register of shareholders; from such point of time, the purchaser or assignee of shares shall become a shareholder of the company.
3. After the shares subscribed for have been fully paid for, the company shall issue share certificates upon demand by the shareholders. Where a share certificate is lost, torn, burnt or otherwise destroyed, the shareholder must immediately inform the company thereof and may demand the company to issue a new share certificate subject to a fee stipulated by the company.

A company may sell shares without share certificates. In this case, the information about a shareholder stipulated in article 60.1(d) of this Law recorded in the register of shareholders shall be sufficient to certify the ownership of shares of such shareholder in the company.

4. The procedures for offering shares shall comply with the legislation on securities.

**Article 62** *Issue of bonds*

1. A shareholding company may issue bonds, convertible bonds and other classes of bonds in accordance with the law and the charter of the company.
2. The Board of Management shall make decisions on the class of bonds, total value of bonds and timing of issue.

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<sup>4</sup> The literal translation is "guarantors".

**Article 63** *Purchase of shares and bonds*

Shares and bonds of shareholding companies may be paid for in Vietnamese dong, freely convertible foreign currency, gold, value of land use rights, value of intellectual property, technology, technical know-how, or other assets stipulated in the charter of the company, and shall be paid in full in one instalment.

**Article 64** *Redemption of shares upon demand by shareholders*

1. A shareholder voting against the re-organization of the company or against a change to the rights and obligations of shareholders stipulated in the charter of the company may demand the company to redeem its shares. Such demand must be made in writing and specify the name and address of the shareholder, the number of shares of each class, the intended selling price, and the reason for demanding redemption by the company. Such demand must be sent to the company within ten (10) days from the date on which the General Meeting of Shareholders passed a resolution on a matter referred to in this clause.
2. The company must redeem shares upon demand by the shareholder as stipulated in clause 1 of this article at the market price or the price determined on the basis of the principle stipulated in the charter of the company within a period of ninety (90) days from the date of receipt of the demand. Where there is disagreement relating to the price, the parties may request resolution by arbitration or a court in accordance with law.

**Article 65** *Redemption of shares pursuant to a resolution of the company*

A company may redeem no more than thirty (30) per cent of the total number of ordinary shares sold, and part or all of the shares of other classes sold in accordance with the following provisions:

1. The redemption of more than ten (10) per cent of the total number of shares of each class already sold shall be decided by the General Meeting of Shareholders. In other cases, redemption of shares shall be decided by the Board of Management.
2. The Board of Management shall decide on the price for redemption of shares. The price for redemption of ordinary shares shall not be higher than the market price at the time of redemption, subject to the exception in clause 3 of this article. In respect of shares of other classes, unless otherwise provided in the charter of the company or agreed between the company and the relevant shareholders, the price for redemption shall not be lower than the market price.

3. The company may redeem shares of each shareholder in proportion to the number of shares each holds in the company. In this case, the resolution to redeem shares of the company shall be notified to all shareholders within thirty (30) days from the date on which such resolution is passed. The notice shall include the name and address of the company, total number of shares and class of shares to be redeemed, price for redemption or principle for determination of the price for redemption, procedures and time-limit for payment, and procedures and time-limit for shareholders to offer to sell their shares to the company. Shareholders must send an offer to sell their shares to the company within thirty (30) days from the date of notice.

**Article 66** *Conditions for payment and dealing with redeemed shares*

1. A company may only pay shareholders for redeemed shares in accordance with articles 64 and 65 of this Law if, after such redeemed shares are paid for, the company shall still be able to satisfy in full its debts and other property obligations.
2. All shares redeemed in accordance with articles 64 and 65 of this Law shall be considered shares not yet sold amongst the shares which may be offered for sale.
3. After the redeemed shares are fully paid for, if the total value of assets recorded in the accounting books of the company is reduced by more than ten (10) per cent, the company must notify all creditors thereof within fifteen (15) days from the date on which the redeemed shares are fully paid for.

**Article 67** *Payment of dividends*

1. A shareholding company may only pay dividends to shareholders when the company generates profits in its business and has fulfilled its tax and other financial obligations in accordance with law and where, after the payment of such dividends, the company is still able to satisfy its debts and other property obligations.
2. The Board of Management shall prepare a list of shareholders to be paid dividends and determine the rate of dividend paid for each share and the time-limit and method of payment no later than thirty (30) days prior to each payment of dividends. The notice on payment of dividends shall be sent to all shareholders no later than fifteen (15) days prior to the actual payment of dividends. The notice shall specify the name of the company, the name and address of the shareholder, the number of shares of each class held by such shareholder, the dividend rate for each share and the total dividends to be paid to such shareholder, and the time and method for payment of dividends.

3. Where shares are assigned between the completion of the list of shareholders and the time of payment of dividends, the assignor shall receive dividends from the company.

**Article 68** *Recovery of payments for redeemed shares or dividends*

Where a payment for redeemed shares is made other than in accordance with article 66.1 of this Law or where dividends are paid other than in accordance with article 67.1 of this Law, all shareholders shall surrender to the company the monies or other assets received; where a shareholder cannot surrender same to the company, such shareholder and members of the Board of Management shall be jointly liable for the debts of the company.

**Article 69** *Organizational and management structure of shareholding companies*

Shareholding companies shall have a General Meeting of Shareholders, a Board of Management and a director (general director); and shareholding companies of more than eleven (11) shareholders must have an Inspection Committee.

**Article 70** *General Meeting of Shareholders*

1. The General Meeting of Shareholders shall include all shareholders which may vote and shall be the highest decision-making authority of a shareholding company.
2. The General Meeting of Shareholders shall have the following rights and duties:
  - (a) To make decisions on the classes of shares and total number of shares of each class to be offered; to make decisions on the rate of annual dividend for each class of shares;
  - (b) To elect, remove or dismiss members of the Board of Management and members of the Inspection Committee;
  - (c) To consider and deal with breaches by the Board of Management and the Inspection Committee which cause damage to the company and its shareholders;
  - (d) To make decisions on re-organization and dissolution of the company;
  - (dd) To make decisions on amendments of and additions to the charter of the company, except for adjusting the charter capital as a result of sale of new shares within the number of shares which may be offered as stated in the charter of the company;

- (e) To approve annual financial statements;
- (g) To approve the development policies of the company, to make decisions on sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the accounting books of the company;
- (h) To make decisions on redemption of more than ten (10) per cent of the total number of shares of each class already sold;
- (i) Other rights and duties stipulated in this Law and the charter of the company.

**Article 71** *Authority to convene General Meeting of Shareholders*

1. The General Meeting of Shareholders shall take place at least once a year.
2. The General Meeting of Shareholders shall be convened:
  - (a) Pursuant to a resolution of the Board of Management;
  - (b) Upon request by a shareholder or a group of shareholders as stipulated in article 53.2 of this Law or by the Inspection Committee where the Board of Management commits a serious breach of the obligations of managers stipulated in article 86 of this Law, or where the Board of Management passes a resolution beyond its delegated authority, or in other cases stipulated in the charter of the company.
3. The Board of Management must convene a General Meeting of Shareholders within thirty (30) days from the date of receipt of the request stipulated in clause 2(b) of this article.

Where the Board of Management fails to convene, the Inspection Committee shall replace the Board of Management in convening the General Meeting of Shareholders in accordance with this Law.

Where the Inspection Committee fails to convene, the requesting shareholder or group of shareholders stipulated in clause 2(b) of this article may replace the Board of Management and the Inspection Committee in convening the General Meeting of Shareholders in accordance with this Law.

All costs for convening and conducting the General Meeting of Shareholders shall be reimbursed by the company.

4. The convenor must prepare a list of shareholders entitled to attend the General Meeting of Shareholders, provide information and deal with complaints relating to the list of shareholders, prepare the program and

agenda of the meeting, prepare documents, determine the time and venue of the meeting, and send an invitation to the meeting to each shareholder entitled to attend the meeting in accordance with this Law.

**Article 72** *List of shareholders entitled to attend General Meeting of Shareholders*

1. The list of shareholders entitled to attend the General Meeting of Shareholders shall be prepared based on the register of shareholders of the company. The list of shareholders entitled to attend the General Meeting of Shareholders shall be prepared where a decision to convene a meeting is made and shall be completed no later than ten (10) days prior to the opening date of the General Meeting of Shareholders.
2. The list of shareholders entitled to attend the General Meeting of Shareholders shall include the full name and permanent address in respect of individuals; and the name and office in respect of organizations; and the number of shares of each class of each shareholder.
3. Each and every shareholder may be provided with the information relating to itself stated in the list of shareholders entitled to attend the General Meeting of Shareholders.
4. The shareholder or group of shareholders stipulated in article 53.2 of this Law shall have the right to sight the list of shareholders entitled to attend the General Meeting of Shareholders.
5. A shareholder may demand correction of wrong information or supplement necessary information relating to itself in the list of shareholders entitled to attend the General Meeting of Shareholders.

**Article 73** *Program and agenda of General Meeting of Shareholders*

1. The convenor of the General Meeting of Shareholders must prepare the program and agenda for the meeting.
2. The shareholder or group of shareholders stipulated in article 53.2 of this Law may recommend items to be included in the agenda of the General Meeting of Shareholders. The recommendation must be made in writing and be sent to the company no later than three days prior to the date of opening. The recommendation must specify the name of shareholder(s), the number of shares of each class of shareholder and the items recommended to be included in the agenda.



3. The convenor of the General Meeting of Shareholders may only refuse the recommendation stipulated in clause 2 of this article in any of the following cases:
  - (a) The recommendation is not sent on time, is insufficient, or is in relation to an irrelevant matter;
  - (b) The item recommended does not fall within the decision-making authority of the General Meeting of Shareholders;
  - (c) Other cases stipulated in the charter of the company.

**Article 74** *Invitations to General Meeting of Shareholders*

1. The convenor of the General Meeting of Shareholders shall send a written invitation to all shareholders entitled to attend the meeting no later than seven days prior to the date of opening.
2. The invitation shall be accompanied by the agenda and discussion documents as the basis for passing resolutions.

**Article 75** *Right to attend General Meeting of Shareholders*

1. Shareholders may attend the General Meeting of Shareholders in person or authorize another person in writing to do so.
2. Where shares are assigned between the date of completion of the list of shareholders and the opening date of the General Meeting of Shareholders, the assignee shall be entitled to attend the General Meeting of Shareholders in place of the assignor in respect of the assigned shares.

**Article 76** *Conditions and procedures for conducting General Meeting of Shareholders*

1. The General Meeting of Shareholders shall be conducted where the number of attending shareholders represents at least fifty one (51) per cent of the voting shares. The specific percentage shall be stipulated in the charter of the company.
2. Where the first meeting cannot take place because the condition stipulated in clause 1 of this article is not satisfied, the meeting may be convened for a second time within thirty (30) days of the intended opening of the first meeting. The General Meeting of Shareholders which is convened for a second time shall be conducted where the number of attending shareholders represents at least thirty (30) per cent of the voting shares. The specific percentage shall be stipulated in the charter of the company.

3. Where a meeting convened for a second time cannot take place because the condition stipulated in clause 2 of this article is not satisfied, it may be convened for a third time within twenty (20) days from the date of the intended opening of the second meeting. In this case, the General Meeting of Shareholders shall be convened irrespective of the number of attending shareholders.
4. Only the General Meeting of Shareholders may make changes to the agenda accompanying the invitation to the meeting as stipulated in article 74.2 of this Law.
5. The procedures for conducting the General Meeting of Shareholders and the form of voting shall be stipulated in the charter of the company.

**Article 77** *Passing of resolutions of General Meeting of Shareholders*

1. The General Meeting of Shareholders shall pass resolutions which fall within its power by way of voting in the meeting or obtaining written opinions.
2. A resolution of the General Meeting of Shareholders shall be passed in a meeting where:
  - (a) It is approved by a number of shareholders representing at least fifty one (51) per cent of the total voting shares of all attending shareholders. The specific percentage shall be stipulated in the charter of the company.
  - (b) In respect of resolutions on classes of shares and number of shares of each class to be offered; on amendments of and additions to the charter of the company; on re-organization or dissolution of the company; on sale of more than fifty (50) per cent of the total value of assets recorded in the accounting books of the company, the approval by a number of shareholders representing at least sixty five (65) per cent of the total voting shares of all attending shareholders shall be required. The specific percentage shall be stipulated in the charter of the company.
3. Where a resolution is passed by obtaining written opinions, a resolution of the General Meeting of Shareholders shall be approved when it is approved by a number of shareholders representing at least fifty one (51) per cent of the total voting shares. The specific percentage shall be stipulated in the charter of the company.

4. Resolutions of the General Meeting of Shareholders shall be notified to shareholders entitled to attend the General Meeting of Shareholders within fifteen (15) days from the date of approval thereof.
5. The procedures for conducting the General Meeting of Shareholders and the form of voting shall be stipulated in the charter of the company.

**Article 78** *Minutes of General Meeting of Shareholders*

1. The General Meeting of Shareholders shall be recorded in the minute book of the company. A minute must contain the following main particulars:
  - (a) Time and venue of the General Meeting of Shareholders;
  - (b) Agenda;
  - (c) Chairman and secretary;
  - (d) Summary of opinions stated in the General Meeting of Shareholders;
  - (dd) Issues discussed and voted on in the General Meeting of Shareholders; number of approving votes, number of disapproving votes and number of blank votes; and approved issues;
  - (e) Total number of votes of attending shareholders;
  - (g) Total number of votes for each issue voted on;
  - (h) Full names and signatures of the chairman and secretary.
2. The minutes of the General Meeting of Shareholders shall be completed and approved prior to the closing of the meeting.

**Article 79** *Demand for cancellation of resolutions of General Meeting of Shareholders*

Within ninety (90) days from the date on which a resolution is passed, shareholders, members of the Board of Management, the director (general director) and the Inspection Committee may demand that a court consider and cancel a resolution of the General Meeting of Shareholders in the following cases:

1. The procedures for convening the General Meeting of Shareholders do not comply with this Law and the charter of the company;
2. The content of the resolution breaches the law or the charter of the company.

**Article 80** *Board of Management*

1. The Board of Management is the body managing the company and shall have full authority to make decisions in the name of the company on all issues relating to the objectives and benefits of the company, except for issues which fall within the authority of the General Meeting of Shareholders.
2. The Board of Management shall have the following rights and duties:
  - (a) To make decisions on development strategies of the company;
  - (b) To recommend the classes of shares and total number of shares of each class to be offered;
  - (c) To make decisions on offering new shares within the number of shares of each class which may be offered; to make decisions on raising additional fund in other forms;
  - (d) To make decisions on investment plans;
  - (dd) To make decisions on solutions for market expansion, marketing and technology; to approve contracts for purchase, sale, borrowing, lending and other contracts valued at fifty (50) or more per cent of the total value of assets recorded in the accounting book of the company, or a smaller percentage stipulated in the charter of the company;
  - (e) To appoint, dismiss or remove the director (general director) and other key managers of the company; to make decisions on the salaries and other benefits of such managers;
  - (g) To make decisions on the organizational structure and internal management rules of the company, to make decisions on the establishment of subsidiary companies, the establishment of branches and representative offices and the capital contribution to or purchase of shares from other enterprises;
  - (h) To submit annual final financial reports to the General Meeting of Shareholders;
  - (i) To recommend the dividend rates to be paid, to make decisions on the time-limit and procedures for payment of dividends or for dealing with losses incurred in the business operation;
  - (k) To make decisions on the price offered for sale of shares and bonds of the company; to value assets contributed as capital which are not Vietnamese currency, freely convertible foreign currency or gold;

- (l) To approve the agenda and documents of the General Meeting of Shareholders; to convene the General Meeting of Shareholders or to carry out the procedures for obtaining comments for approval of the General Meeting of Shareholders;
  - (m) To make decisions on redemption of not more than ten (10) per cent of the quantity of shares of each type which have been sold;
  - (n) To recommend re-organization or dissolution of the company;
  - (o) Other rights and duties stipulated in this Law and the charter of the company.
3. The Board of Management shall pass resolutions by way of voting at meetings, obtaining written comments, or otherwise as stipulated in the charter of the company. Each member of the Board of Management shall have one vote.
4. The Board of Management shall have no more than eleven (11) members. The term, qualifications and specific number of members of the Board of Management shall be stipulated in the charter of the company.

**Article 81** *Chairman of the Board of Management*

1. The Board of Management shall elect the chairman of the Board of Management from its members. The chairman of the Board of Management may act concurrently as the director (general director) of the company, unless otherwise stipulated in the charter of the company.
2. The chairman of the Board of Management shall have the following rights and duties:
- (a) To prepare working plans and programs of the Board of Management;
  - (b) To prepare programs, agenda and documents for meetings of the Board of Management; to convene and preside over meetings of the Board of Management;
  - (c) To organize for resolutions of the Board of Management to be passed in other manners;
  - (d) To monitor the implementation of resolutions of the Board of Management;
  - (dd) To preside over the General Meetings of Shareholders;

- (e) Other rights and duties stipulated in this Law and the charter of the company.
3. Where the chairman of the Board of Management is absent or has lost the capacity to perform his or her delegated duties, a member authorized by the chairman of the Board of Management shall exercise the rights and perform the duties of the chairman of the Board of Management. Where no one is authorized, the remaining members shall select one of them to hold temporarily the position of the chairman of the Board of Management.

**Article 82** *Meetings of the Board of Management*

1. The chairman of the Board of Management may convene meetings of the Board of Management:
- (a) At least once every quarter, and may convene extraordinary meetings where necessary;
  - (b) At the request of the Inspection Committee or other persons as stipulated in the charter of the company.
2. A meeting of the Board of Management shall be conducted where there are two thirds (2/3) or more of the total members attending. A resolution of the Board of Management shall be passed when it is approved by the majority of the attending members. In the case of a tied vote, the final decision shall be made in favour of the vote of the chairman of the Board of Management.
3. The procedures for convening and conducting a meeting of the Board of Management shall be stipulated in the charter or the internal management rules of the company.
4. Meetings of the Board of Management shall be fully recorded in the minute book. The chairman and the secretary shall be jointly responsible for the accuracy and truthfulness of minutes of meetings of the Board of Management.

**Article 83** *Rights of members of the Board of Management to be provided with information*

1. Members of the Board of Management may demand the director (general director), deputy director (deputy general director) and managers of other units in the company to provide information and documents on the financial situation and business operation of the company and of units in the company.

2. A manager receiving such a demand must provide all information and documents promptly and accurately as demanded by members of the Board of Management.

**Article 84** *Dismissal, removal and addition of members of the Board of Management*

1. A member of the Board of Management shall be removed in the following cases:
  - (a) Loss or restriction of capacity for civil acts;
  - (b) Resignation;
  - (c) Other cases stipulated in the charter of the company.
2. Members of the Board of Management may be dismissed pursuant to a resolution of the General Meeting of Shareholders.
3. Where the number of members of the Board of Management is reduced to less than one third (1/3) of the number stipulated in the charter of the company, the Board of Management shall convene a General Meeting of Shareholders within sixty (60) days to elect additional members of the Board of Management.

In other cases, the next General Meeting of Shareholders shall elect new members of the Board of Management to replace members of the Board of Management who have been removed or dismissed.

**Article 85** *Director (general director) of the company*

1. The Board of Management shall appoint one of its members or another person as the director (general director). The chairman of the Board of Management may concurrently act as the director (general director) of the company. Where the charter of the company does not provide that the chairman of the Board of Management is the legal representative, the director (general director) shall be the legal representative of the company.

The director (general director) shall manage the day-to-day operation of the company and shall be responsible to the Board of Management for the exercise of his or her delegated powers and the performance of his or her delegated duties.

2. The director (general director) shall have the following powers and duties:

- (a) To make decisions on all issues relating to the day-to-day operation of the company;
- (b) To organize the implementation of resolutions of the Board of Management;
- (c) To organize the implementation of business plans and investment plans of the company;
- (d) To make recommendations with respect to the organizational structure and internal management rules of the company;
- (dd) To appoint, remove and dismiss management personnel in the company, except for those appointed, removed or dismissed by the Board of Management;
- (e) To make decisions on salary and allowances (if any) for employees of the company, including managers who may be appointed by the director (general director);
- (g) Other powers and duties in accordance with provisions of the law, the charter of the company and the resolutions of the Board of Management.

**Article 86** *Obligations of managers of the company*

The Board of Management, the director (general director) and other managers shall, within their respective responsibilities and powers, have the following obligations:

1. To exercise their delegated powers and perform their delegated duties honestly and diligently in the interests of the company and of shareholders of the company;
2. Not to abuse their positions and powers or to use assets of the company for the personal benefit of themselves or other persons; not to give away assets of the company to others; not to disclose secrets of the company, except where approved by the Board of Management;
3. Where the company fails to pay all debts and other property obligations due and payable:
  - (a) To inform all creditors of the financial situation of the company;
  - (b) Not to increase salaries or to pay any bonus to employees of the company, including managers;



- (c) To be personally liable for any damage suffered by creditors due to the failure to perform the obligations stipulated in sub-clauses (a) and (b) of this clause;
  - (d) To make recommendations on how to remedy the financial difficulties of the company;
4. Other obligations as stipulated by law and the charter of the company.

**Article 87** *Contracts which must be approved by the General Meeting of Shareholders or Board of Management*

1. Economic and civil contracts between the company and members of the Board of Management, the director (general director), members of the Inspection Committee, shareholders holding more than ten (10) per cent of the voting shares or related persons thereof may only be entered into in accordance with the following provisions:
- (a) Contracts valued at equal to more than twenty (20) per cent of the total value of assets recorded in the accounting books of the company must be approved by the General Meeting of Shareholders prior to signing. Shareholders which sign such contracts or have related persons signing such contracts shall not be entitled to vote;
  - (b) Contracts valued at equal to twenty (20) per cent or less of the total value of assets recorded in the accounting books of the company must be approved by the Board of Management prior to signing. Board members who sign such contracts or have related persons signing such contracts shall not be entitled to vote.
2. Any contract referred to in clause 1 of this article which is signed without prior approval of the General Meeting of Shareholders or the Board of Management shall be void and be dealt with in accordance with law. Persons causing damage to the company must be liable for compensation.

**Article 88** *Rights and duties of Inspection Committee*

1. A shareholding company having over eleven (11) shareholders must have an Inspection Committee of three to five members, of whom at least one member must be a professional accountant. The Inspection Committee shall elect one of its members to be the head; and the head of the Inspection Committee must be a shareholder. The rights and duties of the head of the Inspection Committee shall be stipulated in the charter of the company.
2. The Inspection Committee shall have the following rights and duties:

- (a) To inspect the lawfulness and propriety in management and administration of business activities, in books of accounts and financial statements;
- (b) To evaluate annual financial statements of the company; to inspect each and every specific issue relating to the management and administration of the activities of the company where it deems necessary or pursuant to a resolution of the General Meeting of Shareholders or as demanded by a shareholder or group of shareholders as stipulated in article 53.2 of this Law;
- (c) To inform the Board of Management regularly of the results of the operations; to consult the Board of Management prior to submission of reports, conclusions and recommendations to the General Meeting of Shareholders;
- (d) To report to the General Meeting of Shareholders with respect to the accuracy, truthfulness and legality of the manner in which books of account, financial statements and other reports of the company are maintained and recorded; and the honesty and lawfulness of management and administration of the business operation of the company;
- (dd) To recommend the changes and improvements of the organizational structure, management and administration of the business operation of the company;
- (e) Other rights and duties as stipulated by this Law and the charter of the company.

The inspections stipulated in sub-clauses (a) and (b) of this clause may not disrupt the normal activities of the Board of Management and shall not interrupt the administration of the day-to-day business operation of the company.

**Article 89** *Provision of information to Inspection Committee*

The Board of Management, members of the Board of Management, director (general director) and other managers must provide promptly all information and documents relating to the business operation of the company upon demand by the Inspection Committee, except where otherwise decided by the General Meeting of Shareholders.

The Inspection Committee and its members may not disclose secrets of the company.

**Article 90** *People who may not serve on Inspection Committee*

1. Members of the Board of Management and the director (general director); related persons of members of the Board of Management and of the director (general director), and the chief accountant of the company.
2. Persons who are under criminal prosecution, are serving prison sentences, or whose practising right has been revoked by a court due to committing smuggling, producing fake goods, trading in fake goods, conducting illegal business, tax evasion, defrauding clients, and other offences as stipulated by law.

**Article 91** *Other issues related to Inspection Committee*

The term of the Inspection Committee and the working regulations and remuneration for its members shall be stipulated in the charter of the company or decided by the General Meeting of Shareholders.

The Inspection Committee shall be accountable to the General Meeting of Shareholders for breaches in the course of its duty causing damage to the company.

**Article 92** *Auditing requirements*

In respect of shareholding companies which are required by law to be audited, annual financial statements must be verified by an independent auditing organization prior to submission to the General Meeting of Shareholders for consideration and approval.

**Article 93** *Disclosure of information of shareholding companies*

1. Within ninety (90) days after the end of a fiscal year, a shareholding company must submit its annual financial statements approved by the General Meeting of Shareholders to the tax office and the business registration body.
2. The summary of annual financial statements must be sent to all shareholders.
3. All organizations and individuals may, subject to payment of fees, sight or copy annual financial statements of shareholding companies at the business registration office.

**Article 94** *Documents to be retained by shareholding companies*

1. Shareholding companies must retain the following documents:
  - (a) Charter of the company; amendments of and additions to the charter of the company; internal management rules of the company; and register of shareholders;

- (b) Business registration certificate; certificate of business registration alteration; certificate of industrial property rights; certificate of registration of product quality;
  - (c) Documents and papers certifying ownerships of assets of the company;
  - (d) Minutes of meetings of General Meetings of Shareholders and the Board of Management; resolutions passed;
  - (dd) Prospectus for issue of securities;
  - (e) Reports of the Inspection Committee, conclusions of inspection bodies, conclusions of independent auditing organizations;
  - (g) Books of accounts, accounting records, annual financial statements;
  - (h) Other documents as stipulated by law.
2. Shareholding companies must retain the documents referred to in clause 1 of this article at their head offices, or elsewhere provided that shareholders and the business registration body are informed thereof. The documents shall be retained for the duration prescribed by law.

## CHAPTER V

### Partnerships

#### **Article 95** *Partnerships*

1. A partnership is a business in which:
- (a) There must be at least two unlimited liability partners, in addition to whom there may be limited liability partners<sup>5</sup>;
  - (b) Unlimited liability partners must be individuals who have professional qualifications and credibility and shall be liable for the obligations of the partnership to the extent of all their assets;
  - (c) Limited liability partners shall only be liable for the debts of the partnership to the extent of the amount of capital they have contributed to the company.

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<sup>5</sup> The literal translation is "capital contributing partners".

2. Partnerships may not issue any type of securities.

**Article 96** *Rights and obligations of unlimited liability partners*

1. Unlimited liability partners may manage the partnership; conduct business activities in the name of the partnership; and jointly be liable for the obligations of the partnership.
2. Limited liability partners shall be entitled to distribution of profits in accordance with the ratio stipulated in the charter of the partnership; may not be involved in the management of the partnership or conduct business activities in the name of the partnership.
3. Partners of a partnership shall have other rights and obligations in accordance with law and the charter of the partnership.

**Article 97** *Management of partnerships*

1. The organizational and management structure of a partnership shall be agreed by unlimited liability partners in the charter of the partnership.
2. Unlimited liability partners shall have equal right upon making decisions on issues of management of the partnership.

**Article 98** *Specific provisions on establishment, organization, management and operation of partnerships*

Based on this Law and other relevant provisions of the law, the Government shall provide specific provisions on the establishment, organization, management and operation of partnerships.

## CHAPTER VI

### Private Enterprises

**Article 99** *Private enterprises*

A private enterprise is an enterprise owned by one individual who shall be liable for all activities of the enterprise to the extent of all his or her assets.

**Article 100** *Investment capital of enterprise owners*

1. The investment capital of the owner of a private enterprise shall be declared by himself or herself. The owner of a private enterprise shall be obliged to

declare accurately the total investment capital, specifying the amount of capital denominated in Vietnamese dong, in freely convertible foreign currency, in gold or in other assets; in respect of contributions in other assets, the types of asset, quantity and residual value of each type of assets must be specified.

2. All capital and assets, including loans and leased assets, used for the business operations of an enterprise shall be recorded fully in its books of accounts and financial statements.
3. In the course of operation, the owner of a private enterprise may increase or reduce the capital invested in the business operation of the enterprise. The increase or reduction of the investment capital of the enterprise owner must be recorded fully in the books of account. The owner of a private enterprise may only reduce the investment capital below the amount of invested capital registered after declaration with the business registration body.

#### **Article 101** *Management of enterprises*

1. The owner of a private enterprise shall have total discretion in making all business decisions of the enterprise; and total discretion in deciding on the use of profits after payment of taxes and performance of other financial obligations as stipulated by law.

The owner of a private enterprise may manage and administer the business operations or employ other persons to do so. Where another person is employed as the director managing the enterprise, the owner of a private enterprise must declare same with the business registration body and shall remain responsible for all business activities of the enterprise.

2. The owner of a private enterprise shall be the plaintiff, defendant, or person having related rights, obligations and interests in arbitration or court proceedings in disputes relating to the enterprise.
3. The owner of a private enterprise shall be the legal representative of the enterprise.

#### **Article 102** *Lease of enterprises*

The owner of a private enterprise may lease his or her whole enterprise provided that a written report and a notarized copy of the lease contract must be submitted to the business registration body and the tax office. During the term of the lease, the owner of the private enterprise shall remain responsible before the law as the owner of the enterprise. The rights and responsibilities of the owner and the lessee with respect to the business activities of the enterprise shall be provided for in the lease contract.

**Article 103** *Sale of private enterprises*

1. The owner of a private enterprise may sell his or her enterprise to another person. No later than fifteen (15) days prior to the date of transfer of the enterprise to the purchaser, the owner of the enterprise must provide written notice to the business registration body. Such notice shall specify the name and office of the enterprise; the name and address of the purchaser; the total amount of unpaid debts of the enterprise; the name, address, the amount of the debt and the time the debt is due and payable with respect to each creditor; labour contracts and any other contracts which have been signed but not yet fully performed, and the methods of dealing with such contracts.
2. After the enterprise is sold, the owner of the private enterprise shall remain liable for all debts and other property obligations which have not yet been performed by the enterprise, except where otherwise agreed by the purchaser, the seller and creditors of the enterprise.
3. The purchaser and seller of an enterprise must comply with the provisions of the law.
4. The purchaser of an enterprise must re-register the business in accordance with the provisions of this Law.

**Article 104** *Suspension of operation*

The owner of a private enterprise may suspend the business operation of the enterprise and provide written notice to the business registration body and the tax office of the duration of such suspension no later than fifteen (15) days prior to suspension of the business operations of the enterprise. During the suspension of operation, the owner of the enterprise shall pay in full the taxes due and payable, shall remain liable to creditors and shall be responsible for performing contracts signed with customers and employees, except where otherwise agreed by the owner of the enterprise, customers and employees.

## CHAPTER VII

### **Re-organization, Dissolution and Bankruptcy of Enterprises**

**Article 105** *Division of enterprises*

1. Limited liability companies and shareholding companies may be divided into a number of companies of the same type.
2. Procedures for division of limited liability companies and shareholding companies shall be as follows:

- (a) The Member's Council, the owner of the company or the General Meeting of Shareholders of the company being divided shall pass a resolution on division of the company in accordance with the provisions of this Law and the charter of the company. The resolution on division of the company shall have the following main particulars: the current name and office of the company; the number of companies to be established; the principles and procedures for division of assets of the company; the plan for employment of employees; the time-limit and procedures for transfer of shares of equity, shares and bonds of the company being divided to the newly-established companies; the principles for dealing with the obligations of the company being divided; and the time-limit for implementing the division of the company. The resolution on division of the company shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing.
  - (b) Unlimited liability partners, owners of companies or shareholders of newly-established companies shall approve the charter, elect or appoint the chairman of the Member's Council, chairman of the company, the Board of Management, director (general director); and carry out business registration in accordance with this Law. In this case, the business registration documents shall include the resolution on division of the company referred to in sub-clause (a) of this clause.
3. After registration of the business of the new companies, the company being divided shall cease to exist. New companies shall be jointly liable for unpaid debts, labour contracts and other property obligations of the company being divided.

**Article 106** *Separation of enterprises*

1. Limited liability companies and shareholding companies may be separated by transferring part of the assets of the existing company (hereinafter referred to as the *company being separated*) to establish one or more new companies of the same type (hereinafter referred to as the *separate company*); transferring a part of the rights and obligations of the company being separated to the separate company(ies) without terminating the existence of the company being separated.
2. Procedures for separation of limited liability companies and shareholding companies shall be as follows:
  - (a) The Member's Council, the owner of the company or the General Meeting of Shareholders of the company being separated shall pass a resolution on separation of the company in accordance with the



provisions of this Law and the charter of the company. The resolution on separation of the company shall have the following main particulars: the name and office of the company being separated; the number of separate companies to be established; the plan for employment of employees; the value of assets, rights and obligations to be transferred from the company being separated to the separate company(ies); and the time-limit for implementing the separation of the company. The resolution on separation of the company shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing.

- (b) Members, owners of companies or shareholders of the separate companies shall approve a charter, elect or appoint a chairman of the Member's Council, chairman of the company, the Board of Management, director (general director); and register business in accordance with this Law. In this case, the business registration document shall include the resolution on separation of the company referred to in sub-clause (a) of this clause.
3. After business registration, the company being separated and the separate company(ies) shall be jointly liable for unpaid debts, labour contracts and other property obligations of the company being separated.

**Article 107** *Consolidation of enterprises*

1. Two or more companies of the same type (hereinafter referred to as *companies being consolidated*) may be consolidated into a new company (hereinafter referred to as the *consolidated company*) by way of transferring all lawful assets, rights, obligations and interests to the consolidated company and at the same time, terminating the existence of the companies being consolidated.
2. Procedures for consolidation of companies shall be as follows:
  - (a) Companies being consolidated shall prepare a consolidation contract. The consolidation contract shall have the following main particulars: the names and offices of the companies being consolidated; the name and office of the consolidated company; the procedures and conditions for consolidation; the plan for employment of employees; the time-limit, procedures and conditions for conversion of assets; for conversion of shares of equity, shares and bonds of the companies being consolidated into shares of equity, shares and bonds of the consolidated company; the time-limit for implementing the consolidation, and the draft charter of the consolidated company.

- (b) Members, owners or shareholders of companies being consolidated shall approve the consolidation contract and the charter of the consolidated company, elect or appoint the chairman of the Member's Council, chairman of the company, the Board of Management, the director (general director) of the consolidated company; and register the business of the consolidated company in accordance with this Law. In this case, the business registration document shall include the consolidation contract. The consolidation contract shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its approval.
3. Companies being consolidated shall cease to exist after business registration. The consolidated company shall assume the lawful rights and interest and be liable for unpaid debts, labour contracts and other property obligations of the companies being consolidated.

**Article 108** *Merger of enterprises*

1. One or more companies of the same type (hereinafter referred to as *merging companies*) may be merged into another company (hereinafter referred to as the *merged company*) by way of transfer of all lawful assets, rights, obligations and interests to the merged company and, at the same time, termination of the existence of the merging companies.
2. Procedures for merger of companies shall be stipulated as follows:
  - (a) Merging companies shall prepare a merger contract and charter of the merged company. The merger contract must have the following main particulars: the name and office of the merged company; the name(s) and office(s) of the merging company(ies); the procedures and conditions for the merger; the plan for employment of employees; the time-limit, procedures and conditions for conversion of assets; for conversion of shares of equity, shares and bonds of the merging company(ies) to shares of capital, shares and bonds of the merged company; and the time-limit for implementing the merger.
  - (b) Members, company owners or shareholders of related companies shall approve the merger contract and the charter of the merged company; and register the business of the merged company in accordance with this Law. In this case, the business registration document shall include the merger contract. The merger contract shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its approval.

- (c) After business registration, the merged company shall assume the lawful rights and interest and be liable for unpaid debts, labour contracts and other property obligations of the merging companies.

**Article 109** *Conversion of companies*

Limited liability companies may be converted into shareholding companies and *vice versa*. The procedures for converting a limited liability company or shareholding company (hereinafter referred to as *company being converted*) into a shareholding company or limited liability company (hereinafter referred to as *converted company*) shall be as follows:

1. The Member's Council, company owners or the General Meeting of Shareholders shall pass a resolution on conversion and approve the charter of the converted company. The resolution on conversion must have the following main particulars: the name and office of the company being converted; the name and office of the converted company; the time-limit and conditions for conversion of assets, shares of equity, shares and bonds of the company being converted into assets, shares of capital, shares and bonds of the converted company; the plan for employment of employees; and the time-limit for implementing the conversion.
2. The resolution on conversion shall be sent to all creditors and notified to employees within fifteen (15) days from the date of its passing.
3. The business of the converted company shall be registered in accordance with this Law. In this case, the business registration documents shall include the resolution on conversion.

After business registration, the company being converted shall cease to exist. The converted company shall assume all lawful rights and interests and be liable for unpaid debts, labour contracts and other property obligations of the company being converted.

**Article 110** *Conversion of one member limited liability companies*

1. Where a company owner assigns a part of the charter capital to another organization or individual, within fifteen (15) days from the date of assignment, the company owner and the assignee must register the change in the number of members with the business registration body. From the date of registration of the change stipulated in this clause, the company shall be managed and shall operate in accordance with the provisions relating to limited liability companies with two or more members.
2. Where a company owner assigns all of the charter capital to one individual, within fifteen (15) days from the date of completion of the procedures for

assignment, the company owner must require the business registration body to remove the name of the company from the business register, and the assignee must register the business as a private enterprises in accordance with this Law. The assignee shall assume all obligations and all lawful rights and interests of the limited liability company, except where otherwise agreed by the company owner, the assignee and the creditors of the company.

**Article 111** *Cases of dissolution of enterprises*

1. The operational duration stated in the charter expires and there is no decision to extend.
2. As decided by the enterprise owner in the case of private enterprises; of all unlimited liability partners in the case of partnerships; of the Members' Council or the company owner in the case of limited liability companies; of the General Meeting of Shareholders in the case of shareholding companies.
3. The company does not have the minimum number of members stipulated in this Law for a period of six consecutive months.
4. The business registration certificate is revoked.

**Article 112** *Procedures for dissolution of enterprises*

Dissolution of enterprises shall be carried out in accordance with the following provisions:

1. A resolution on dissolution of an enterprise shall be passed in accordance with this Law. The resolution on dissolution of an enterprise must have the following main particulars:
  - (a) Name and office of the enterprise;
  - (b) Reasons for dissolution;
  - (c) Time-limit and procedures for discharging contracts and paying debts of the enterprise; time-limit for paying debts and discharging contracts shall not exceed six months from the date on which the resolution on dissolution is passed;
  - (d) Plan for dealing with obligations arising from labour contracts;
  - (dd) Establishment of an asset liquidation group the rights and duties of which shall be stipulated in an appendix to the resolution on dissolution;

- (e) Signature of the legal representative of the enterprise.
2. Within seven days after being passed, the resolution on dissolution shall be sent to the business registration body, all creditors, persons having related rights, obligations or interests, and employees in the enterprise. The resolution must be publicly posted at the head office of the enterprise and published in three consecutive issues of a local or central daily newspaper.

The resolution on dissolution must be sent to creditors together with a notice of the settlement of the debt. The notice shall include the name and address of the creditor; the amount of the debt, the time-limit, location and method of payment of such debt; the method and time-limit for dealing with complaints of creditors.

3. Realizing the assets and paying the debts of the enterprise.
4. Within seven days after all debts of the enterprise are fully paid, the liquidation group must send the documents relating to the dissolution of the enterprise to the business registration body.

Within seven days from the date of receipt of the documents relating to the dissolution of the enterprise, the business registration body shall remove the name of the enterprise from the business register.

5. Where the business registration certificate of an enterprise is revoked, the enterprise must be dissolved within six months from the date of revocation of the business registration certificate. The procedures for dissolution shall be carried out in accordance with the provisions in this article.

**Article 113** *Bankruptcy of enterprises*

The bankruptcy of enterprises shall be carried out in accordance with the legislation on enterprise bankruptcy.

## CHAPTER VIII

### State Administration of Enterprises

**Article 114** *Contents of State administration of enterprises*

1. To issue, disseminate and organize the implementation of legal instruments on enterprises.

2. To organize business registration; to provide guidelines for business registration to ensure the implementation of strategies, planning, policies and plans for socio-economic development.
3. To organize and manage professional training and retraining and enhancement of the business ethics of enterprise managers and the professional, ethical and political quality of officials in charge of State administration of enterprises; and training and building up a force of skilled workers.
4. To implement incentive policies for enterprises in accordance with the policies and objectives of the strategies, planning and plans for socio-economic development.
5. To examine and inspect enterprises; and to supervise the business operations of enterprises by way of a system of regular financial statements and other reports.

**Article 115** *Bodies in charge of State administration of enterprises*

1. The Government shall exercise uniform State administration of enterprises.
2. Ministries, ministerial equivalent bodies and Government bodies shall, within their respective duties and powers, be responsible for exercising State administration of enterprises in their delegated fields.

The Government shall provide for the co-ordination between ministries, ministerial equivalent bodies and Government bodies with respect to State administration of enterprises.

3. People's committees of provinces and cities under central authority shall have the following responsibilities:
  - (a) To exercise State administration of enterprises within their respective localities in accordance with law;
  - (b) To organize business registration; to inspect, examine and supervise the operation of enterprises within their respective localities;
  - (c) To guide and instruct people's committees of districts, towns and provincial cities in the co-ordination of the exercise of State administration of enterprises.
4. Business registration bodies shall be as provided for by the Government.

**Article 116** *Powers and responsibilities of business registration bodies*

1. To effect business registration and to issue business registration certificates in accordance with law.
2. To establish and manage a system of information on enterprises; to provide information to State bodies, organizations and individuals upon demand in accordance with law.
3. To require enterprises to report on their business conditions where it deems necessary for implementation of the provisions of this Law; to promote the implementation of the reporting regime by enterprises.
4. To examine directly, or request the competent State body to examine, enterprises with respect to the matters in the business registration documents.
5. To deal with breaches of the regulations on business registration in accordance with law. To revoke business registration certificates and to demand dissolution of enterprises in accordance with this Law.
6. To be responsible before the law for breaches committed in the course of business registration.
7. To exercise other powers and perform other responsibilities in accordance with law.

**Article 117** *Inspection of business operations of enterprises*

1. The inspection of the business operation of enterprises shall be carried out in accordance with the functions and powers and in accordance with law.

Financial inspection shall be conducted no more than once each year for each enterprise. The duration of inspection shall not exceed thirty (30) days and may be extended in special cases as decided by the competent superior authority, but not exceeding thirty (30) days.

Unannounced inspections shall only be conducted where there are grounds indicating breaches of the law by the enterprise.

2. An inspection may only be conducted pursuant to a decision of the competent authority; minutes recording conclusions of the inspection must be prepared when the inspection is completed. The head of the inspection team shall be responsible for the contents of the minutes and conclusions of the inspection.
3. Where a person issues an inspection decision other than in accordance with law or takes advantage of the inspection to gain personal benefits or to harass or obstruct the operation of an enterprise, such person shall, depending on the

seriousness of the breach, be subject to disciplinary action or criminal prosecution; and must compensate the enterprise for any damage caused in accordance with law.

**Article 118** *Fiscal year and financial statements of enterprises*

1. The fiscal year of enterprises shall commence on 1 January and end on 31 December of a Gregorian year. The first fiscal year of an enterprise shall commence on the date of issuance of the business registration certificate and end on the last day of the same year.
2. Annual financial statements of an enterprise shall comprise the balance sheet and the profit and loss statement.
3. Within thirty (30) days in the case of private enterprises and partnerships, and ninety (90) days in the case of limited liability companies and shareholding companies, after the final day of the fiscal year, annual financial statements of enterprises must be sent to the competent tax office and the business registration body; where an enterprise has any subsidiaries, a notarized copy of the financial statements of each subsidiary for the same year must also be included.

## CHAPTER IX

### **Rewards and Dealing with Breaches**

**Article 119** *Rewards*

Organizations, individuals and enterprises achieving excellent results in business or in the improvement of the efficiency and competitiveness of enterprises or making major contribution to the construction, protection and development of the country shall be rewarded in accordance with law.

**Article 120** *Breaches of the Law on Enterprises*

1. To issue business registration certificates to persons not satisfying the conditions or to refuse to issue business registration certificates to persons satisfying the conditions stipulated in this Law.
2. To breach the provisions on examination and inspection of the operation of enterprises.
3. To conduct business in the form of an enterprise in accordance with this Law without carrying out business registration, or to continue to conduct business after the business registration certificate has been revoked.



4. To declare dishonestly, inaccurately or in an untimely manner the contents of or the alterations to the business registration documents of an enterprise.
5. To value deliberately assets contributed as capital at higher than their actual value.
6. Not to submit annual financial statements to the competent State body in accordance with this Law or to submit untrue or inaccurate statements.
7. To prevent members, owners or shareholders from exercising their rights in accordance with this Law and the charter of the company.
8. Other acts breaching the provisions of this Law.

**Article 121** *Forms of dealing with breaches*

1. Depending on the nature and seriousness of each breach, persons committing breaches of the provisions of this Law shall be subject to disciplinary action, administrative penalty or criminal prosecution in accordance with law.
2. Where a breach causes damage to the interests of an enterprise, its owners, members or shareholders, or other persons, the person in breach must compensate in accordance with law.
3. The business registration certificate of an enterprise shall be revoked in the following cases:
  - (a) Failure to conduct business activities for a duration of one year from the date of issuance of the business registration certificate;
  - (b) Cessation of business activities for one full year without informing the business registration body;
  - (c) Failure to report on business activities of the enterprise to the business registration body for two consecutive years;
  - (d) Failure to send reports stipulated in article 116.3 of this Law to the business registration body within six months from the date of written demand;
  - (dd) Conducting prohibited lines of business.

## CHAPTER X

**Implementing Provisions****Article 122** *Effectiveness*

1. This Law shall be of full force and effect as of 1 January 2000.
2. This Law shall replace the *Law on Companies* and the *Law on Private Enterprises* dated 21 December 1990, the *Law on Amendment of and Addition to a Number of Articles of the Law on Companies* and the *Law on Amendment of and Addition to a Number of Articles of the Law on Private Enterprises* dated 22 June 1994.
3. All previous provisions which are inconsistent with this Law are hereby repealed.

**Article 123** *Application to enterprises established prior to the effective date of this Law*

1. Limited liability companies, shareholding companies and private enterprises established under the *Law on Companies* and the *Law on Private Enterprises* dated 21 December 1990, the *Law on Amendment of and Addition to a Number of Articles of the Law on Companies* and the *Law on Amendment of and Addition to a Number of Articles of the Law on Private Enterprises* dated 22 June 1994 shall not be required to carry out the procedures for business re-registration.

Limited liability companies and shareholding companies the charters of which are not in accordance with this Law must amend or supplement their charters within two years from the date of effectiveness of this Law. Where charters of companies are not amended or supplemented within this term, such charters shall be considered irregular.

2. The Government shall guide and facilitate large scale sole traders which are currently operating under Decree 66-HDBT of the Council of Ministers dated 2 March 1992 to convert into enterprises, register business and operate in accordance with this Law.

Small scale sole traders shall register business and operate under regulations of the Government.

**Article 124** *Guidelines for implementation*

The Government shall provide detailed provisions and guidelines for the implementation of this Law.

*This Law was passed by Legislature X of the National Assembly of the Socialist Republic of Vietnam at its 5th session on 12 June 1999.*

Chairman of the National Assembly

NONG DUC MANH