

LAW ON ENTERPRISES

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and supplemented by Resolution 51-2001-QH10 dated 25 December 2001 of Legislature X of the National Assembly at its 10th session.

This Law provides for enterprises.

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Law provides for the establishment, management organization and operation of limited liability companies, shareholding companies, partnerships and private enterprises in all economic sectors (hereinafter referred to as enterprises); provides for corporate groups.

Article 2 *Applicability*

1. Enterprises of all economic sectors.
2. Organizations and individuals involved in the establishment, management organization and operation of the enterprises.

Article 3 *Application of the law on Enterprises, international treaties and relevant legislation*

1. The establishment, management organization and operation of enterprises in all economic sectors shall comply with this Law and other relevant provisions of the law.
2. In special cases where the establishment, management organization and operation of an enterprise are regulated by another law, the provisions of such law shall apply.
3. If an international treaty of which the Socialist Republic of Vietnam is a member contains provisions which are different from the provisions in this Law, the provisions of such international treaty shall apply.

Article 4 *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 stable transaction office, and having business registration in accordance with law for the purpose of conducting business operations.

2. *Business* means the continuous 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. *Valid documents* mean documents comprising all papers as required by this Law, providing all information 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 rights, 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.
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 or shares entitling the owner to vote on matters which fall under the powers to decide of the Members' Council or the General Meeting of Shareholders.
9. *Dividend* means the amount of net profits distributed to each share in cash or in the form of other assets from the remaining profits of the company after discharge of financial obligations.
10. *Founding member* means a person contributing capital and involved in formulating, approving and signing the first charter of a limited liability company or partnership.
11. *Shareholder* means a person holding at least one share already issued by the shareholding company.
Founding shareholder means a shareholder involved in formulating, approving and signing the first charter of a shareholding company.
12. *Unlimited liability partner*¹ means a partner who is liable for the obligations of the partnership to the extent of all his or her assets.
13. *Manager of an enterprise* means the owner or director of a private enterprise, unlimited liability partner of a partnership, chairman of the Members' Council, chairman of a company, a member of the Board of Management, director or general director and other managerial positions as stipulated in the charter of a company.
14. *Authorized representative* means an individual who is authorized in writing by a member or shareholder being an organization of a limited liability company or shareholding company to exercise its rights in the company in accordance with this Law.

1 Phillips Fox Note: The literal translation is "partnership member".

15. A company shall be deemed to be a parent company of another company in one of the following cases:
- (a) Holding over fifty (50) per cent of the charter capital of or of total ordinary shares already issued by such company;
 - (b) Having the right to directly or indirectly appoint a majority or all of members of the board of management, director or general director of such company;
 - (c) Having the right to decide on amendment or addition to the charter of such company.
16. *Re-organization of an enterprise* means the division, separation, merger, consolidation or conversion of an enterprise.
17. *Related person* means organization or persons related directly or indirectly to an enterprise in the following cases:
- (a) A parent company, the managers of the parent company and the person who has the power to appoint such managers, and a subsidiary company;
 - (b) A subsidiary company and a parent company;
 - (c) A person or a group of persons being able to control the decision-making process and operations of such enterprise through the management bodies of the enterprise;
 - (d) A manager of the enterprise;
 - (dd) Husband, wife, father, adoptive father, mother, adoptive mother, children, adopted children, siblings of any manager of an enterprise, any member, or any shareholder holding a share of capital contribution or controlling share;
 - (e) An individual who is authorized to act as the representative of the persons stipulated in paragraphs (a), (b), (c), (d) and (dd) of this clause;
 - (g) An enterprise in which the persons as stipulated in paragraphs (a), (b), (c), (d), (dd), (e) and (h) of this clause holding shares to the level that they can control the decision-making process of the management bodies of such enterprise;
 - (h) Any group of persons who agree to co-ordinate to take over shares of capital contribution, shares or interests in the company or control the decision-making process of the company.
18. *Portion of State owned capital contribution* means the portion of capital contribution invested from the State Budget and other capital sources of the State of which a State body or economic organization acts as the representative of the owner;
- State owned shares* mean shares for which payment is made with capital from the State Budget or other State capital sources of which a State body or economic organization acts as the representative of the owner.
19. *Market price of the share of capital contribution or shares* means the transaction price on the securities market or price determined by a professional valuation organization.

20. *Nationality of an enterprise* means the nationality of the country or territory in which the enterprise is established and registers its business.
21. *Residence address* means the registered address of the head offices in the case of organizations; registered address of permanent residence or address of the work place or other address of an individual who has registered such address with the enterprise as the contact address.
22. *State owned enterprise* means an enterprise in which the State owns over fifty (50) per cent of the charter capital.

Article 5 *State guarantees² for enterprises and owners 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, regardless of their form of ownership and economic sector; recognise the lawful profit-making nature of business activities.
2. The State shall recognise and protect the ownership of assets, investment capital, income and other lawful rights and interests of an enterprise and its owner.
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 acquires or requisitions the assets of an enterprise for essential reasons of national defence or security and in the national interest, the enterprise shall be paid or compensated at the market price determined at the time of declaration of the acquisition or requisition. The payment or compensation must ensure the interest of the enterprise without discrimination between forms of enterprise.

Article 6 *Political organizations and socio-political organizations in enterprises*

1. Political organizations and socio-political organizations in enterprises shall operate within the framework of the Constitution, the laws and the regulations of respective organizations which are consistent with law.
2. An enterprise shall be obliged to respect and facilitate its employees to establish and participate in activities of organizations stipulated in clause 1 of this article.

Article 7 *Lines of business and business conditions*

1. Enterprises in all economic sectors shall have the right to conduct lines of business which are not prohibited by law.
2. With respect to lines of business which are subject to conditions stipulated by the law on investment or relevant legislation, an enterprise shall be only allowed to conduct such lines of business if it satisfies all of the stipulated conditions.

Business condition means a requirement which an enterprise must satisfy or perform when it conducts a specific line of business and which shall be demonstrated by way of a business licence, certificate of satisfaction of conditions for business, practicing certificate,

2 Phillips Fox Note: An alternative translation is "assurances".

certificate of professional indemnity insurance, requirement for legal capital or other requirements.

3. Business activities adversely affecting national defence, security, social order and safety, historical, cultural and ethical traditions, fine customs and traditions of Vietnam and the people's health or deteriorating natural resources or destroying the environment shall be prohibited.

The Government shall specify the list of prohibited lines of business.

4. The Government shall periodically review and reassess all or part of business conditions; shall abolish or propose the abolishment of conditions which no longer are suitable; shall amend or propose the amendment of unreasonable conditions; shall issue or propose the issuance of new business conditions in accordance with the requirements of State administration.
5. Ministries, ministerial equivalent bodies, people's councils and people's committees at all levels shall not be permitted to stipulate conditional lines of business and business conditions.

Article 8 *Rights of enterprises*

1. To conduct business autonomously; to take initiative in selecting the line of business and area for investment and the form of investment, to take initiative in expanding the scope and lines of business; to be encouraged and facilitated by and to enjoy favorable treatment of the State to participate in production and supply of public services and products.
2. To select the form and manner of raising, allocating and using capital.
3. To take initiative in seeking markets and customers and signing contracts.
4. To conduct import and export business.
5. To recruit, employ and use labour in accordance with business requirements.
6. To take initiative in applying modern technology and science in order to improve business efficiency and competitiveness.
7. To decide autonomously on business affairs and internal relations.
8. To possess, use and dispose of assets of the enterprise.
9. To refuse any demand for supply of any resources not sanctioned by law.
10. To lodge complaints and denunciations in accordance with the law on complaints and denunciations.
11. To participate directly or via the authorized representative in legal proceedings in accordance with law.
12. Other rights as provided for by the law.

Article 9 *Obligations of enterprises*

1. To conduct business strictly in accordance with the lines of business recorded in the business registration certificate; to satisfy business conditions in accordance with law if it conducts a conditional line of business.
2. To organize accounting works, to prepare and submit truthful and accurate financial statements on time in accordance with the law on accounting.
3. To register tax code, declare and pay taxes and to perform other financial obligations as provided for by law.
4. To ensure rights and interests of employees in accordance with labour legislation; to implement the regimes of social insurance, medical insurance and other insurance for employees in accordance with the law on insurance.
5. To ensure and be responsible for the quality of goods or services in accordance with registered or published standards.
6. To perform the regime of statistics in accordance with the law on statistics; to periodically report fully information relating to the enterprise and its financial position in the stipulated forms with the authorized State body; to amend and add in a timely manner the information upon discovery of any inaccurate or incomplete declaration or report of information.
7. To comply with the law 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.

Article 10 *Rights and obligations of enterprises involved in production or provision of public services or products*

1. The rights and obligations specified in articles 8 and 9 and in other relevant provisions of this Law.
2. To conduct cost accounting and be entitled to cost recovery at the price for tender implementation, or collect charges for provision of services in accordance with the regulations of the authorized State body.
3. To be guaranteed an appropriate period for production and supply of products or provision of services in order to recover its investment capital and gain reasonable profits.
4. To produce and supply products or provide services in correct quantity and quality and on time as agreed at the price or charge rate stipulated by the authorized State body.
5. To ensure that the same equitable and favorable conditions are applicable to all types of customers.
6. To be responsible before the law and customers for quantity, quality, terms of supply and prices, charges for supply of products or provision of services.
7. Other rights and obligations as stipulated by the law.

Article 11 *Prohibited practices*

1. To issue business registration certificates to persons not satisfying the conditions or refusing to issue business registration certificates to persons satisfying the conditions stipulated in this Law; to cause any delay, trouble, obstruction, or hassle to persons requesting business registration or business activities of enterprises.
2. 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.
3. To declare dishonestly or inaccurately the contents of the business registration documents; to declare dishonestly, inaccurately or in an untimely manner the alterations to the business registration documents.
4. To declare wrongly the registered capital or failing to contribute capital in full and on time as registered; to deliberately value assets contributed as capital not at their actual value.
5. To operate illegally or to deceive; to conduct prohibited lines of business.
6. To conduct conditional lines of business without satisfying all the business conditions stipulated by law.
7. To prevent owners, members or shareholders from exercising their rights in accordance with this Law and the charter of the company.
8. Other prohibited practices as stipulated by law.

Article 12 *Document retention regime of enterprises*

1. Subject to the form of enterprise, an enterprise 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 members or register of shareholders;
 - (b) Business registration certificate; certificate of protection of industrial property rights; certificate of registration of product quality; other licences and certificates;
 - (c) Documents and papers certifying ownerships of assets of the company;
 - (d) Minutes of meetings of Members' Council, General Meetings of Shareholders and the Board of Management; decisions of the enterprise;
 - (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. An enterprise must retain the documents referred to in clause 1 of this article at its head office; the documents shall be retained for the duration prescribed by law.

CHAPTER II

Establishment and Business Registration

Article 13 *Right to establish, contribute capital, purchase shares and manage enterprises*

1. Vietnamese organizations or individuals and foreign organizations or individuals shall have the right to establish and manage enterprises in Vietnam in accordance with this Law, except for the cases set out in clause 2 of this article.
2. The following organizations and individuals shall not have the right to establish and manage enterprises in Vietnam:
 - (a) State bodies, units of people's armed forces of Vietnam using State assets to establish business enterprises to make profits for their own bodies or units;
 - (b) State officials and employees in accordance with the law on State officials and employees;
 - (c) Officers, non-commissioned officers, career servicemen, national defence workers in bodies and units of the People's Army of Vietnam; officers, career non-commissioned officers in bodies and units of the People's Police;
 - (d) Management personnel, professional management personnel in enterprises with one hundred (100) per cent State owned capital, except for those appointed to be authorized representatives to manage the State's share of capital contribution in other enterprises;
 - (dd) Minors; persons whose capacity for civil acts is restricted or lost;
 - (e) Persons serving prison sentences or who are prohibited by a court from conducting business;
 - (g) Other cases as stipulated by the law on bankruptcy.
3. Organizations and individuals shall have right to purchase shares of shareholding companies and contribute capital to limited liability companies and partnerships in accordance with this Law, except for the cases stipulated in clause 4 of this article.
4. The following organizations and individuals shall not be allowed to purchase shares of shareholding companies and contribute capital to limited liability companies and partnerships in accordance with this Law:
 - (a) State bodies, units of people's armed forces of Vietnam using State assets 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 law on State officials and employees

Article 14 *Contracts [signed] prior to business registration*

1. A member, founding member or an authorized representative may sign contracts for the purpose of the establishment and operation of the enterprise prior to business registration.

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 liable or jointly liable for the performance of such contracts

Article 15 *Procedures for registration of business*

1. The founder of an enterprise shall submit all of the business registration documents as prescribed by this Law to the competent business registration body and shall be responsible for the accuracy and truthfulness of the business registration documents.
2. A business registration body shall be responsible for considering the business registration documents and shall issue a business registration certificate within a time-limit of ten (10) working days from the date of receipt of such 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.
3. Business registration bodies shall consider and be responsible for the regularity of business registration documents upon issue of business registration certificates; may not require the founder of an enterprise to submit additional documents not provided in this Law.
4. The time-limit for issuance of a business registration certificate attached to a specific investment project shall be subject to the law on investment.

Article 16 *Business registration documents for private enterprises*

1. Request for business registration in the standard form published by the authorized business registration body.
2. Copy of people's identity card, passport or other lawful personal identification.
3. Document of an authorized body or organization certifying the legal capital in respect of enterprises conducting lines of business for which legal capital is required by law.
4. Practicing certificates of the director and other individuals in respect of enterprises conducting lines of business for which a practicing certificate is required by law.

Article 17 *Business registration documents for partnerships*

1. Request for business registration in the standard form published by the authorized business registration body.
2. Draft charter of the company³.
3. List of partners⁴, copy of people's identity card, passport or other lawful personal identification of each partner.
4. Document of an authorized body or organization certifying the legal capital in respect of enterprises conducting lines of business for which legal capital is required by law.

3 Phillips Fox Note: The literal Vietnamese term for "partnership" is "partnership company".

4 Phillips Fox Note: This is the same term in Vietnamese as "member" of a limited liability company.

5. Practicing certificates of unlimited liability partners and other individuals in respect of partnerships conducting lines of business for which a practicing certificate is required by law.

Article 18 *Business registration documents for limited liabilities companies*

1. Request for business registration in the standard form published by the authorized business registration body.
2. Draft charter of the company.
3. List of members and the following attached documents:
 - (a) With respect to members being an individual, a copy of people's identity card, of passport or other lawful personal identification;
 - (b) With respect to members being an organization, a copy of the establishment decision, business registration certificate or other equivalent document; power of attorney, people's identity card, of passport or other lawful personal identification of the authorized representative.

With respect to members being a foreign organization, a copy of the business registration certificate which is certified by the body at which the organization has made the registration within three months before the date of submission of the business registration documents.

4. Document of an authorized body or organization certifying the legal capital in respect of enterprises conducting lines of business for which legal capital is required by law.
5. Practicing certificates of the director or general director and other individuals in respect of enterprises conducting lines of business for which a practicing certificate is required by law.

Article 19 *Business registration documents for shareholding companies*

1. Request for business registration in the standard form published by the authorized business registration body.
2. Draft charter of the company.
3. List of founding shareholders and the following attached documents:
 - (a) With respect to shareholders being an individual, a copy of people's identity card, passport or other lawful personal identification;
 - (b) With respect to shareholders being an organization, a copy of the establishment decision, business registration certificate or other equivalent document of the organization; power of attorney, people's identity card, passport or other lawful personal identification of the authorized representative.

With respect to a shareholder being a foreign organization, a copy of the business registration certificate must be certified by the body at which the organization registered within three months before the date of submission of the business registration documents.

4. Document of an authorized body or organization certifying the legal capital in respect of enterprises conducting lines of business for which legal capital is required by law.
5. Practicing certificates of the director or general director and other individuals in respect of enterprises conducting lines of business for which a practicing certificate is required by law.

Article 20 *Documents, procedures, conditions for and contents of business or investment registration of foreign investors making the first investment in Vietnam*

Documents, order, procedures, conditions for and contents of business or investment registration of foreign investors making the first investment in Vietnam shall be subject to this Law and the law on investment. The investment certificate shall also be the business registration certificate.

Article 21 *Contents of requests for business registration*

1. Name of the enterprise.
2. Address of the head office of the enterprise; telephone number, facsimile number, email transaction address (if any).
3. Lines of business.
4. Charter capital in the case of a company, or initial investment of the owner of the enterprise in the case of a private enterprise.
5. Share of capital contribution of each member in the case of a limited liability company or a partnership; number of shares of founding shareholders, classes of shares, face value of shares and total number of shares of each class which may be offered for sale in the case of a shareholding company;
6. Full name, signature, permanent address, nationality and number of people's identity card, passport or other lawful personal identification of the owner of the enterprise in the case of a private enterprise; of the company owner or of the authorized representative of the company owner in the case of a one member limited liability company; of members or of the authorized representative of members in the case of a limited liability company with two or more members; of the founding shareholders or of the authorized representative of the founding shareholders in the case of a shareholding company; of unlimited liability partners in the case of a partnership.

Article 22 *Contents of the charter of a company*⁵

1. Name, addresses of the head office, branch, representative office.
2. Lines of business.
3. Charter capital; method of increasing and reducing the charter capital.
4. Full names, addresses, nationality and other basic characteristics of all unlimited liability partners in the case of a partnership; of the company owner or of members in the case of a limited liability company; of founding shareholders in the case of a shareholding company.

5 Phillips Fox Note: This term in Vietnamese may also cover "partnerships".

5. Share of capital contribution 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 which may be offered for sale 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. Bases and method of calculating remuneration, wages and bonuses of managers and members of the inspection committee or of inspectors.
11. Circumstances in which a member may require the company to redeem its share of capital contribution in a limited liability company or shares in a shareholding company;
12. Rules for distribution of after tax profits and dealing with losses in the business;
13. Cases of dissolution, procedures for dissolution and procedures for liquidation of the assets of the company;
14. Procedures for amendments of or additions to the charter of the company;
15. Full names and signatures of all unlimited liability partners in the case of a partnership; of the legal representative, of the company owner, of members or of the authorized representative in the case of a limited liability company; of the legal representative of founding shareholders in the case of a shareholding company.
16. Other matters as agreed by the members or shareholders but may not be inconsistent with provisions of the law.

Article 23 *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 be prepared in the standard form published by the business registration body and contain the following main particulars:

1. Full names, addresses, nationalities, permanent addresses and other basic characteristics 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 capital contribution and its value, type of assets, quantity, value of each type of asset contributed as capital, time schedule for capital contribution by each member in the case of a limited liability company or a partnership; number of shares, type of shares, types of asset, quantity of assets, value of each asset contributed by each founding shareholder to the share capital in the case of a shareholding company;

3. Full names and signatures of the legal representative of the members or of founding shareholders of the authorized representative in the case of a limited liability company or a shareholding company; of all unlimited liability partners in the case of a partnership.

Article 24 *Conditions for issuance of business registration certificates*

An enterprise shall be issued with a business registration certificate when it satisfies all of the following conditions:

1. Its line of business to be registered does not fall within the sectors in which business is prohibited;
2. The name of the enterprise complies with the provisions of articles 31, 32, 33 and 34 of this Law;
3. Having its head office in accordance with article 35.1 of this Law;
4. Having valid business registration documents in accordance with law;
5. Having paid in full the prescribed business registration fee in accordance with law.

Business registration fees shall be determined on the basis of the number of lines of business for which business registration is made; the Government shall provide specific fee rates.

Article 25 *Contents of business registration certificates*

1. Name, addresses of the head office of the enterprise, branch or representative office;
2. Full name, permanent address, nationality and number of people's identity card, passport or other lawful personal identification of the legal representative of the enterprise.
3. Full names, permanent addresses, nationalities and numbers of people's identity cards, passports or other lawful personal identification of members or founding shareholders being individuals; number of establishment decision or number of business registration of the company owner, of members or founding shareholders being organizations in the case of a limited liability company or shareholding company; full names, permanent addresses, nationalities and numbers of people's identity cards, passports or other lawful personal identification of unlimited liability partners in the case of a partnership; full name, permanent address, nationality and number of people's identity card, passport or other lawful personal identification of the company owner being an individual or of the owner of a private enterprise.
4. Charter capital in the case of a limited liability company or partnership; quantity of shares and value of share capital already contributed and quantity of shares which may be offered for sale in the case of a shareholding company; initial investment in the case of a private enterprise; legal capital in the case of an enterprise conducting a line of business for which legal capital is required;
5. Lines of business.

Article 26 *Alterations to contents of business registration*

1. In the case of any changes to the name or addresses of the head office, branch, representative office, objectives and lines of business, charter capital, quantity of shares which may be offered for sale, investment capital of the owner of an enterprise, change of

the legal representative of an enterprise and other matters included in the business registration documents, the enterprise must register with the business registration body within a period of ten (10) working days from the date the alteration is decided upon.

2. Where any alteration is made to the contents of a business registration certificate, the enterprise shall be issued with a new business registration certificate.
3. Where a business registration certificate is lost, damaged, burned or otherwise destroyed, the enterprise shall be re-issued with a business registration certificate and must pay fees therefor.

Article 27 *Providing information relating to contents of business registration*

1. Within seven working days from the date of issuance of a business registration certificate or a certificate of business registration alteration, the business registration body must notify the contents of such certificate to the tax office, the statistics office, other competent State bodies at the same level, the people's committee of the district, town or provincial city and the people's committee of the commune, ward or township 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 the 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 contents of business registration required by organizations and individuals pursuant to clause 2 of this article.

Article 28 *Announcement of contents 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 the network of information on enterprises of the business registration body or a written or electronic 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;
 - (c) Lines of business;
 - (d) Charter capital in the case of a limited liability company or partnership; quantity of shares and value of share capital already contributed and quantity of shares to be issued in the case of a shareholding company; initial investment capital in the case of a private enterprise; legal capital in the case of an enterprise engaged in a line of business for which legal capital is required.
 - (dd) Names, addresses, nationalities, numbers of people's identity cards, passports or other lawful personal identification of the owner, founding members or shareholders;
 - (e) Full name permanent address, nationality, number of people's identity card, passport or other lawful personal identification of the legal representative of the enterprise;
 - (g) Place of business registration.

2. Where any alteration is made to contents of business registration, the enterprise must announce such alteration within the time-limit and in the manner as stipulated in clause 1 of this article.

Article 29 *Transfer of ownership of assets*

1. Members of a limited liability company or partnership and shareholders of a shareholding company must transfer ownership of assets to the company for the purpose of capital contribution in accordance with the following provisions:

- (a) In respect of registered assets or 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 transfer of ownership of assets contributed as capital;

- (b) In respect of assets the ownership of which is not registered, capital contribution must be made by handing over assets contributed as capital, as evidenced by minutes.

The minutes of such hand-over must specify the name and address of the head office of the company; full name, permanent address, number of people's identity card, passport or other lawful personal identification, number of establishment decision or registration of the person making the capital contribution; type of assets and number of units of assets 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 hand-over; signature of the person making the capital contribution or of the authorized representative of the person making the capital contribution and the legal representative of the company;

- (c) Shares or share of capital contribution in the form of assets other than Vietnamese currency, freely convertible foreign currency or gold shall be deemed to have been contributed only when the legal ownership of the assets contributed as capital has been transferred to the company.

2. Where an asset is used for the business operations of the owner of a private enterprise, the procedures for transfer of ownership to the enterprise shall not be required.

Article 30 *Valuation of assets contributed as capital*

1. Assets contributed as capital which are not Vietnamese currency, freely convertible currency or gold must be valued by members, founding shareholders or professional valuation organization.
2. Assets contributed to an enterprise upon its establishment shall be valued by members or founding shareholders on an agreed basis; where the assets contributed as capital are valued more than their actual value at the time of capital contribution, the members or founding shareholders shall be jointly responsible for debts and other property obligations of the company for an amount equal to the difference between the agreed value and the actual value of the assets contributed as capital at the time of completion of the valuation.
3. Assets contributed as capital during the course of operations shall be valued on the basis of agreement between the enterprise and the person making the capital contribution or by

a professional valuation organization. Where a professional valuation organization conducts the valuation, the value of the assets contributed as capital must be accepted by the person making the capital contribution and the enterprise; where the assets contributed as capital are valued more than their actual value at the time of capital contribution, the person making the capital contribution or the valuation organization and the legal representative of the enterprise shall be jointly responsible for debts and other property obligations of the company for an amount equal to the difference between the agreed value and the actual value of the assets contributed as capital at the time of completion of the valuation.

Article 31 *Name of enterprises*

1. The name of an enterprise must be written in Vietnamese, can contain numbers and signs, must be pronounceable and contain at least the two following elements:
 - (a) Type of enterprise;
 - (b) Proper name.
2. The name of an enterprise must be written or attached at the head offices, branch, representative office of the enterprise. The name of the enterprise must be printed or written on transaction papers, documents, materials and printed matters issued by the enterprise.
3. Pursuant to the provisions in this article and articles 32, 33 and 34 of this Law, the business registration body has the right to reject the proposed name for registration of the enterprise. The decision of the business registration body shall be final.

Article 32 *Prohibited practices in naming enterprises*

1. To use names which are identical to, or cause confusion with, the name of a registered enterprise.
2. To use the name of a State body, a unit of the people's armed forces, the name of a political organization, a socio-political organization, an occupational socio-political organization, a social organization, a socio-occupational organization as the whole or a part of the proper name of an enterprise except where such body, unit or organization so approves.
3. To use terms which contravene national historical traditions, culture, ethics and fine customs.

Article 33 *Names of enterprises written in foreign languages and abbreviated names of enterprises*

1. The name of an enterprise written in a foreign language is the name which is translated from Vietnamese into the corresponding⁶ foreign language. When translated into a foreign language, the proper name of an enterprise may be retained or the corresponding meaning may be translated into such foreign language.
2. The name of an enterprise in a foreign language shall be printed or written in smaller size than that of its Vietnamese name at the premises of the enterprise or on transaction papers, documents, materials and printed matters issued by the enterprise.

6 Phillips Fox Note: This is the literal translation.

3. The abbreviated name of an enterprise may be an abbreviation of its Vietnamese name or its name in a foreign language.

Article 34 *Identical names and names which cause confusion*

1. Identical names mean that the name of an enterprise requesting registration, when written and pronounced in Vietnamese, is completely identical to the name of a registered enterprise.
2. The following cases shall be considered as names which cause confusion with the name of a registered enterprise:
 - (a) The Vietnamese name of an enterprise requesting registration is pronounced the same as the name of a registered enterprise;
 - (b) The Vietnamese name of an enterprise requesting registration is different from the name of a registered enterprise only by the sign "&;
 - (c) The abbreviated name of an enterprise requesting registration is identical to the abbreviated name of a registered enterprise;
 - (d) The name in foreign language of an enterprise requesting registration is identical to the name in foreign language of a registered enterprise;
 - (dd) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise by an ordinal number, a cardinal number or Vietnamese letters immediately after the proper name of such enterprise, except where the enterprise requesting registration is a subsidiary company of the registered enterprise;
 - (e) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise by the word "tan" immediately preceding or the word "moi"⁷ immediately after the proper name of a registered enterprise;
 - (f) The proper name of an enterprise requesting registration is different from the proper name of a registered enterprise only by the words "the North", "the South", "the Central part", "the West", "the East"⁸ or words of similar meanings, except where the enterprise requesting registration is a subsidiary company of the registered enterprise;

Article 35 *Head office of enterprises*

1. The head office of an enterprise is the place for contact and transaction of the enterprise; must be located within the territory of Vietnam, have a definite address, including house number, street name (or alley) or name of commune, ward, township, district, provincial town, provincial city, province or city under central authority; telephone and facsimile numbers and email address (if any).
2. An enterprise must notify the business registration body of the opening hours at its head office within fifteen (15) days from the date of issue of the business registration certificate.

7 Phillips Fox Note: Both of these words mean "new", but "tan" is a Vietnamese-Chinese word and thus is usually placed before a noun (according to Chinese grammar) while "moi" is a pure Vietnamese word and is placed after the noun it complements.

8 Phillips Fox Note: These indicate the geographical areas of Vietnam, not directions.

Article 36 *Seal of enterprises*

1. An enterprise shall have its own seal. The seal of an enterprise must be retained and preserved at the head office of such enterprise. The form and content of the seal, the conditions for having a seal made and the usage of the seal shall be in accordance with the regulations of the Government.
2. A seal is an asset of an enterprise. The legal representative of an enterprise must be responsible for the management and use of the seal in accordance with law. Where necessary and upon agreement of the seal issuing body, an enterprise may have a second seal.

Article 37 *Representative offices, branches and business locations 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 organization and operations of a representative office shall be in accordance with law.
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 lines of business of the branch must conform with the lines of business of the enterprise.
3. A business location is the location where specific business activities of an enterprise are performed. A business location may be different from the registered address of the head office.
4. A branch, representative office and business location must bear the name of its enterprise and a corresponding supplemental part identifying such branch, representative office and business location.
5. An enterprise shall have the right to establish branches and representative offices in Vietnam and overseas. An enterprise may establish one or more representative offices and branches in one locality by administrative boundary. The Government shall provide for the order and procedures for establishment of branches and representative offices.

CHAPTER III

Limited Liability Companies

SECTION I

Limited Liability Companies with Two or More Members

Article 38 *Limited liability companies with two or more members*

1. A limited liability company is an enterprise in which:
 - (a) A member may be an organization or an individual; the number of members shall not exceed fifty (50);
 - (b) 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;

- (c) The share of capital contribution of each member may only be assigned in accordance with articles 43, 44 and 45 of this Law;
- 2. A limited liability company shall have legal entity status from the date of issuance of the business registration certificate.
- 3. A limited liability company may not issue shares.

Article 39 *Capital contribution and issuance of capital contribution certificates*

- 1. Members must contribute capital in full and on time in the type of asset contributed as capital as undertaken. Where a member changes the undertaken type of asset contributed as capital, approval of the remaining members must be obtained; the company shall notify the business registration body of such change in writing within seven working days from the date of approval of the change.

The legal representative of the company must notify the business registration body in writing the progress of capital contribution within fifteen (15) days from the date undertaken for capital contribution, and must bear personal responsibility for any damage to the company and to other persons due to late notification, inaccurate, untruthful or incomplete notification.

- 2. 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.
- 3. Where any member fails to contribute in full the amount of capital as undertaken after the final time-limit as undertaken, the unpaid amount shall be dealt with in one of the following manners:
 - (a) One or more members agree to contribute the unpaid amount in full;
 - (b) Capital shall be raised from other persons to be contributed to the company;
 - (c) The remaining members contribute the unpaid amount in full in proportion to their share of capital contribution in the charter capital of the company.

Upon payment in full of the unpaid capital in accordance with this clause, the member who fails to contribute capital as undertaken shall automatically cease to be a member of the company and the company must register the change to its business registration in accordance with this Law.

- 4. Upon full payment of the share of capital contribution, a member shall be issued a capital contribution certificate by the company. A capital contribution certificate shall contain the following main particulars:
 - (a) Name, address of the head office of the company;
 - (b) Number and date of issuance of the business registration certificate;
 - (c) Charter capital of the company;

- (d) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a member being an individual; name, permanent address, nationality, number of establishment decision or number of business registration in respect of a member being an organization;
 - (dd) Share of capital contribution and its value of the member;
 - (e) Number and date of issuance of the capital contribution certificate;
 - (g) Full name and signature of the legal representative of the company.
5. Where a capital contribution certificate is lost, torn, burnt or otherwise destroyed, the member shall be re-issued by the company with a capital contribution certificate.

Article 40 *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, address of the head office of the company;
 - (b) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a member being an individual; name, permanent address, nationality, number of establishment decision or number of business registration in respect of a member being an organization;
 - (c) Value of share of capital contribution at the time of contribution and share of capital contribution of each member; time of capital contribution; types of asset contributed as capital, quantity, value of each type of asset contributed as capital;
 - (d) Signatures of members being individuals or of legal representatives of members being organizations;
 - (dd) 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.

Article 41 *Rights of members*

1. A member of a limited liability company with two or more members shall have the following rights:
- (a) To attend meetings of the Members' Council, to discuss, make recommendations and vote on the matters within the authority of the Members' Council;
 - (b) To have the number of votes in proportion to its share of capital contribution;
 - (c) To examine, sight, look up, copy or make an extract of the register of members, transaction monitoring records, books of account, annual financial statements, minutes of meetings of the Members' Council, other papers and documents of the company;
 - (d) To be distributed with profits in proportion to its share of capital contribution after the company has paid taxes in full and discharged all other financial obligations in accordance with law;

- (dd) To be distributed with the remainder of the value of assets of the company in proportion to its share of capital contribution 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 charter capital of the company; to be entitled to assign a part or all of its share of capital contribution in accordance with this Law;
 - (g) To make a complaint or commence a court action against the director or general director in the event that the director or general director fails to perform fully his or her obligations and causes damage to the interests of such member or of the company in accordance with law;
 - (h) To dispose of its share of capital contribution by way of assignment, inheritance, donation or other methods in accordance with law and the charter of the company;
 - (i) Other rights stipulated in this Law and the charter of the company.
2. A member or a group of members holding more than twenty five (25) per cent of the charter capital, or a smaller percentage as stipulated in the charter of the company, except as stipulated in clause 3 of this article, shall have the right to request that a meeting of the Members' Council be convened to deal with issues within its authority.
 3. Where a member of the company holds more than 75% of the charter capital and the charter of the company does not stipulate a smaller percentage as provided in clause 2 of this article, the minority members joining together shall automatically have the right as stipulated in clause 2 of this article.

Article 42 *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; not to withdraw the contributed capital from the company in any form, except in the cases provided in articles 43, 44, 45 and 60 of this Law.
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.
5. To bear personal responsibility when performing the following acts in the name of the company:
 - (a) To breach the law;
 - (b) To conduct business or other transactions not for the interest of the company and [thereby] causing damage to other persons;
 - (c) To pay premature debts where the company is likely to be in financial danger.

Article 43 *Redemption of shares of capital contribution*

1. A member may demand the company to redeem its share of capital contribution if such member votes against 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 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 capital contribution must be made in writing and sent to the company within fifteen (15) days from the date on which a decision is passed 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 capital contribution 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 capital contribution, the company is still able to meet all debts and other property obligations.
3. Where the company does not redeem the share of capital contribution as stipulated in clause 2 of this article, such member shall have the right to assign its share of capital contribution to another member or a non-member.

Article 44 *Assignment of shares of capital contribution*

Except for the case stipulated in clause 6 of article 45 of this Law, a member of a limited liability company with two or more members shall have the right to assign a part or all of its share of capital contribution to other persons in accordance with the following provisions:

1. [A member wishing to assign a part or all of its share of capital contribution] must offer to sell such share of capital contribution to all other members in proportion to their shares of capital contribution 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 within thirty (30) days from the offering date.

Article 45 *Dealing with shares of capital contribution 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 by will or by law shall be a member of the company.
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.
3. The share of capital contribution of a member shall be redeemed by the company or assigned in accordance with articles 43 and 44 of this Law in the following cases:
 - (a) An heir does not wish to become a member;

- (b) A donee as stipulated in article 5 of this clause is not approved by the Members' Council to become a member;
 - (c) A member being an organization is dissolved or bankrupt.
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, such share of capital contribution shall be dealt with in accordance with provisions of civil legislation.
 5. A member may donate a part or all of its share of capital contribution in the company to other persons.

Where the donee is a person of blood relations [with such member] up to the third generation, the donee shall automatically become a member of the company. In other cases, the donee shall only become a member of the company upon approval of the Members' Council.

6. Where a member uses its share of capital contribution to pay a debt, the payee may use such share of capital contribution in either of the two following manners:
 - (a) To become a member of the company upon approval of the Members' Council;
 - (b) To offer for sale and assign such share of capital contribution in accordance with article 44 of this Law.

Article 46 *Organizational and management 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 or general director. A limited liability company of more than eleven (11) members must have an Inspection Committee; where there are less than eleven (11) members, an Inspection Committee may be established in accordance with the management needs of the company. The powers, obligations, criteria, conditions and working regulations of the Inspection Committee and the head of the Inspection Committee shall be stipulated in the charter of the company.

The chairman of the Members' Council or director or general director shall be the legal representative of the company in accordance with the charter of the company. The legal representative of the company must have permanent residence in Vietnam; where he or she is away from Vietnam for over thirty (30) days, he or she must authorize another person in writing in accordance with the charter of the company to perform the rights and obligations of the legal representative of the company.

Article 47 *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 authorized representative to be on the Members' Council. The charter of the company shall make specific provisions on the frequency of meetings of the Members' Council, but 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 annual business plans and development strategies 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 most recently publicized financial statements of the company, or a smaller percentage as stipulated in the charter of the company;
- (d) To make decisions on solutions for market development, marketing and technology transfer; to approve loan agreements⁹ and contracts for sale of assets valued at fifty (50) or more per cent of the value of assets recorded in the most recently publicized financial statements of the company, or a smaller percentage as stipulated in the charter of the company;
- (dd) To elect, remove or discharge the chairman of the Members' Council; to make decisions on the appointment, removal, dismissal, signing and termination of contracts of the director or general director, chief accountant and other managers stipulated in the charter of the company;
- (e) To make decisions on salary, bonus and other benefits for the chairman of the Members' Council, the director or general director, chief accountant and other 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 subsidiary companies, 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 or to request bankruptcy of the company;
- (n) Other rights and duties stipulated in this Law and in the charter of the company.

Article 48 *Authorized representatives*

1. The appointment of an authorized representative must be in writing, must be notified to the company and the business registration body within seven working days from the date of appointment. The notice must contain the following main contents:
 - (a) Name, address of the head office, nationality, number and date of the decision on establishment or the business registration;
 - (b) The ratio of capital contribution, number and date of the capital contribution certificate;

⁹ Phillips Fox Note: The literal translation is "agreements for providing and for obtaining loans".

- (c) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification of the appointed authorized representative;
- (d) Term of authorization;
- (dd) Full name and signature of the legal representative of the member and of the authorized representative of the member.

The replacement of an authorized representative must be notified in writing to the company and the business registration body within seven working days from the date of decision and shall take effect from the date the company is notified.

2. An authorized representative must meet the following criteria and conditions:
 - (a) To have full capacity for civil acts;
 - (b) Not to be prohibited from establishment and management of enterprises;
 - (c) To have professional qualifications and experience in business management or in the main lines of business of the company;
 - (d) In the case of a subsidiary company where the State share of capital contribution or State owned capital accounts for over 50% of the charter capital, the spouse, father, adoptive father, mother, adoptive mother, children, adopted children and siblings of the managers and of the person authorized to appoint the managers of the parent company may not be appointed as the authorized representative for the subsidiary company.
3. An authorized representative shall perform the rights and obligations of a member of the Members' Council in the name of such member in accordance with this Law. All restrictions of a member on its authorized representative in the performance of the rights of members through the Members' Council shall have no legal validity in respect of a third party.
4. An authorized representative shall be obliged to attend all meetings of the Members' Council; to perform the rights and obligations of a member of the Members' Council in an honest and diligent manner and to his or her best ability for maximum protection of the legitimate interests of the member and the company.
5. An authorized representative shall have the number of votes in proportion to the authorized share of capital contribution.

Article 49 *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 or general director of the company.
2. The chairman of the Members' Council shall have the following rights and duties:
 - (a) To prepare or to organize the preparation of working programs and plans of the Members' Council;

- (b) To prepare or to organize the preparation of programs, agenda¹⁰ and documents for meetings of the Members' Council or for collecting opinions of members;
 - (c) To convene and preside over meetings of the Members' Council or to organize the collection of opinions of members;
 - (d) To supervise or to organize the supervision of 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 five years. The chairman of the Members' Council may be re-elected for an unrestricted number of terms.
 4. Where the charter of the company provides that the chairman of the Members' Council is the legal representative, such provision must be clearly stated in all transaction documents.
 5. In his or her absence, the chairman of the Members' Council shall authorize a member in writing to perform the rights and obligations of the chairman of the Members' Council in accordance with the principles stipulated in the charter of the company. Where no member is authorized or the chairman of the Members' Council is unable to work, all other members shall elect one person from the members to temporarily perform the rights and obligations of the chairman of the Members' Council on the principle of simple majority.

Article 50 *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 clauses 2 and 3 of article 41 of this Law. A meeting of the Members' Council must be held at the head office of the company, except where the charter of the company otherwise stipulates.

The chairman of the Members' Council shall prepare or organize the preparation of programs, agenda and documents and convene meetings of the Members' Council. A member shall have the right to make written recommendation on the agenda. A recommendation must contain the following main particulars:

- (a) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a member being an individual; name, permanent address, nationality, number of establishment decision or number of business registration in respect of a member being an organization; signatures of the member or authorized representative;
- (b) The ratio of capital contribution, number and date of issuance of capital contribution certificate;
- (c) Items recommended for inclusion in the agenda;
- (d) Reason for the recommendation.

10 Phillips Fox Note: The literal translation is "content".

The chairman of the Members' Council must approve a recommendation and include it in the agenda of a meeting of the Members' Council if such recommendation contains all the stipulated particulars and is sent to the head office of the company at least one working day before the date of the meeting of the Members' Council; where a recommendation is submitted immediately prior to a meeting, it shall be approved if the majority of the attending members so agree.

2. The invitation¹¹ to a meeting of the Members' Council may be in the form of letter of invitation, telephone, fax, telex or other electronic means stipulated in the charter of the company and shall be sent directly to each member of the Members' Council. The invitation must specify the time, venue and agenda of the meeting.

The agenda and documents for a meeting must be sent to members of the company prior to the opening day of the meeting. Documents to be used in a meeting relating to resolutions on amendments of or addition to the charter of the company, approval of the development direction of the company, approval of annual financial statements, re-organization or dissolution of the company must be sent to members no later than two working days prior to the date of the meeting. The period for sending other documents shall be stipulated in the charter of the company.

3. Where the chairman of the Members' Council does not convene a meeting of the Members' Council upon the request of a member or group of members as stipulated in clauses 2 and 3 of article 41 of this Law within fifteen (15) days from the date of receipt of such request, such member or group of members shall convene a meeting of the Members' Council; in this case, if considered necessary, shall request the business registration body to supervise the organization and convening of the meeting of the Members' Council; and at the same time, shall have the right to take legal action in their name or in the name of the company against the chairman of the Members' Council for not performing management obligations, causing damage to their legitimate interest.
4. Where it is not stipulated in the charter of the company, the request to convene a meeting of the Members' Council as provided in clause 3 of this article must be in writing and contain the following main particulars:
 - (a) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a member being an individual; name, permanent address, nationality, number of establishment decision or number of business registration in respect of a member being an organization; ratio of capital contribution, number and date of issuance of capital contribution certificate of each requesting member;
 - (b) Reason for the request to convene a meeting of the Members' Council and the issues to be dealt with;
 - (c) Full name and signature of each requesting member or its authorized representative.
5. Where a request to convene a meeting of the Members' Council does not contain all the items stipulated in clause 4 of this article, the chairman of the Members' Council must notify the member or groups of members concerned in writing within seven working days from the date of receipt of the request.

11 Phillips Fox Note: The literal translation is "notice of invitation".

In other cases, the chairman of the Members' Council must convene a meeting of the Members' Council within fifteen (15) working days from the date of receipt of the request.

Where the chairman of the Members' Council does not convene a meeting of the Members' Council as stipulated, he or she must bear personal responsibility before the law for any damage arising to the company and the relevant members of the company. In this case, the requesting member or groups of members have the right to convene a meeting of the Members' Council. The reasonable expenses for convening and conducting a meeting of the Members' Council shall be reimbursed by the company.

Article 51 *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 seventy five (75) per cent of the charter capital; the specific percentage shall be stipulated in the charter of the company.
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) working 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 and of the amount of charter capital represented by attending members.
4. A member or an authorized representative of a member must attend and vote at meetings 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 52 *Resolutions of the Members' Council*

1. The Members' Council shall pass resolutions within its authority by way of voting at meetings, collecting written opinions or other forms as stipulated in the charter of the company.

Where it is not otherwise stipulated in the charter of the company, resolutions on the following issues must be passed by way of voting at meetings of the Members' Council:

- (a) Amendments of or addition to the charter of the company;
- (b) Decisions on the development direction of the company;
- (c) Election, discharge, removal of the chairman of the Members' Council; appointment, dismissal or removal of the director or general director;
- (d) Approval of annual financial statements;
- (dd) Re-organization or dissolution of the company

2. A resolution of the Members' Council shall be passed in a meeting in the following cases:
 - (a) It is approved by the number of votes representing at least sixty five (65) per cent of the aggregate 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 most recent financial statement 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 collection of written opinions if it is approved by members representing at least seventy five (75) per cent of the charter capital; the specific percentage shall be stipulated in the charter of the company.

Article 53 *Minutes of meetings of the Members' Council*

1. All meetings of the Members' Council must be recorded in the book of minutes of the company.
2. Minutes of each meeting of the Members' Council must be completed and approved immediately prior to the closing of the meeting. The minutes must include the following main particulars:
 - (a) Time and venue of the meeting; purposes and agenda of the meeting;
 - (b) Full name, ratio of capital contribution, number and date of issuance of capital contribution certificate of members and authorized representatives attending the meeting; full name, ratio of capital contribution, number and date of issuance of capital contribution certificate of members and authorized representatives not attending the meeting;
 - (c) Matters discussed and voted upon; summary of opinions of members on each of the matter discussed;
 - (d) Total number of votes for, against or abstentions¹² on each matter voted upon;
 - (dd) Resolutions passed;
 - (e) Full names and signature of members and authorized representatives attending the meeting.

Article 54 *Procedures for approval of resolutions of the Members' Council by way of collection of written opinions*

Where it is not stipulated in the charter of the company, the authority and procedures for collection of written opinions of members to pass a resolution shall be carried out as follows:

1. The chairman of the Members' Council makes a decision in writing on collection of written opinions of members of the Members' Council to pass resolutions within his authority;

12 Phillips Fox Note: The literal translation is "vote of no opinion".

2. The chairman of the Members' Council shall be responsible to organize the preparation and delivery of reports and submissions on the issues to be decided upon, draft resolution and opinion form to members of the Members' Council.

An opinion form must contain the following main particulars:

- (a) Name, address of head office, number and date of the business registration certificate, registered business location of the company;
- (b) Full name, address, nationality, number of people's identity card, passport or other lawful personal identification, ratio of capital contribution represented by member of the Members' Council;
- (c) Matters on which opinions are collected and corresponding responses in the order of for, against and no opinion.
- (d) Time-limit for sending the opinion form to the company;
- (dd) Full names and signatures of the chairman and members of the Members' Council.

An opinion form which contains full and accurate particulars and is sent by a member to the company within the stipulated time-limit shall be deemed as valid;

3. The chairman of the Members' Council shall organize the counting of opinion forms, prepare a report thereon and notify the results thereof and the passed resolution to members within seven working days from the time-limit for opinion forms to be sent to the company by members. The report on results of form counting must contain the main particulars stipulated in clause 2 of article 53 of this Law.

Article 55 *Director or general director*

1. The director or 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 duties.
2. The director or general director shall have the following rights and duties:
 - (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 statements 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 or general director enters into with the company and in accordance with resolutions of the Members' Council.

Article 56 *Obligations of members of the Members' Council, director or general director*

1. A member of the Members' Council, the director or general director of the company shall have the following obligations:
 - (a) To exercise the delegated rights and perform the delegated duties honestly and diligently and to his or her best ability to assure the best lawful interests of the company and the company owner;
 - (b) To be loyal to the interest of the company and the company owner; not to use information, know-how or business opportunities of the company; 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 organizations or individuals;
 - (c) To notify the company in a timely, complete and accurate manner of the enterprises of which he or she and his or her related person is the owner or holds shares or a controlling share of capital contribution. This notice shall be displayed at the head office and branches of the company;
 - (d) To perform other obligations stipulated by law and the charter of the company.
2. The director or general director shall not be entitled to any pay rise or bonus when the company is unable to pay all of its due debts.

Article 57 *Criteria and conditions to become a director or general director*

1. A director or general director must meet the following criteria and conditions:
 - (a) To have full capacity for civil acts and not to be prohibited from management of enterprises by this Law;
 - (b) To be an individual owning at least ten (10) per cent of the charter capital of the company, or a non-member, who has professional qualifications and practical experience in corporate management or in the main lines of business of the company, or other criteria and conditions as stipulated in the charter of the company.
2. In the case of a subsidiary company where the State share of capital contribution or State owned capital accounts for over fifty (50) per cent of the charter capital, in addition to the criteria and conditions stipulated in clause 1 of this article, the director or general director may not be the spouse, father, adoptive father, mother, adoptive mother, children,

adopted children or sibling of the managers and of the person authorized to appoint the managers of the parent company.

Article 58 *Remuneration, salary and bonus of members of the Members' Council, director or general director*

1. The company has the right to pay remuneration, salary and bonus to members of the Members' Council, director or general director and other managers in accordance with its business results and efficiency.
2. Remuneration and salary of members of the Members' Council, director or general director and other managers shall be included in business expenses in accordance with provisions of the law on corporate income tax and other relevant legislation, and must be recorded as a separate item in annual financial statements of the company.

Article 59 *Contracts and transactions which must be approved by the Members' Council*

1. A contract or transaction between the company and the following persons must be approved by the Members' Council:
 - (a) Member, the authorized representative of a member, the director or general director or the legal representative of the company;
 - (b) A related person of the persons stipulated in sub-clause (a) of this clause;
 - (c) A manager of the parent company, the person authorized to appoint managers of the parent company;
 - (d) A related person of the persons stipulated in sub-clause (c) of this clause;

The legal representative of the company must send to the members of the Members' Council; and at the same time, display at the head office and branches of the company the draft of such contract or the main contents of the transaction intended to conduct. Where it is not stipulated in the charter, the Members' Council must make a decision on approval of the contract or transaction within fifteen (15) days from the date of display; in this case, the contract or transaction shall be approved where it is so agreed by the members representing at least seventy (75) per cent of the total number of shares with voting rights. The members concerned with such contracts or transactions may not vote.

2. A contract or transaction shall be void and be dealt with in accordance with law where it is not executed in accordance with the provisions in clause 1 of this article. The legal representative of the company, the member concerned and the related persons of such member must compensate for any damage arising and return to the company any benefits gained from the performance of such contract or transaction.

Article 60 *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 contributed capital¹³ of members;

13 Phillips Fox Note: "Equity" is used in our translation of the 1999 Law on Enterprises; this is the literal translation.

- (b) Increasing the charter capital relative to the increased value of assets of the company;
 - (c) Raising contributed capital from new members.
2. In the case of increase of contributed capital of members, the additional contributed capital shall be allocated to each member in proportion to its share of capital contribution in the charter capital of the company. A member who objects to the resolution to increase the charter capital may not¹⁴ contribute additional capital. In this case, such amount of additional contributed capital shall be divided amongst other members in proportion to their respective shares of contributed capital in the charter capital of the company unless otherwise agreed by the members.
- Agreement of members shall be required for an increase of the charter capital by way of accepting new members except where otherwise stipulated in the charter of the company.
3. By resolution of the Members' Council, the company may reduce its charter capital by way of:
- (a) Returning part of the contributed capital to members in proportion to their respective shares of contributed capital in the charter capital of the company if business operation has been carried out continuously for more than two years from the date of business registration; and at the same time ensuring that debts and other property obligations may be paid in full after returning [part of the contributed capital] to members;
 - (b) Redeeming shares of capital contribution as stipulated in article 44 of this Law;
 - (c) Reducing the charter capital corresponding to* the reduced value of assets of the company.
4. Within seven working days from the date of the resolution to increase or decrease the charter capital, the company must notify the business registration body in writing. The notice must contain the following main contents:
- (a) Name, address of head office, number and date of issuance of business registration certificate, registered business location;
 - (b) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification of each member being an individual; name, permanent address, nationality, number of the decision on establishment or number of business registration of each member being an organization; the share of capital contribution of each member;
 - (c) The charter capital; the intended amount of increase or decrease of capital;
 - (d) Timing and form of increase or decrease of capital;
 - (dd) Full names and signatures of the chairman of the Board of Management and the legal representative of the company;

14 Phillips Fox Note: In the sense of "shall have the right not to contribute", not "shall not have the right to contribute".

In the case of an increase of the charter capital, the notice must be accompanied by a resolution of the Members' Council. In the case of a decrease of the charter capital, the notice must be accompanied by a resolution of the Members' Council and the most recent financial statement; in respect of a company with over fifty (50) per cent of foreign owned capital, the financial statements must be certified by an independent auditor.

The business registration body shall register an increase or decrease of charter capital within ten (10) working days from the date of receipt of a notice.

Article 61 *Conditions for distribution of profits*

The company may only distribute profits to its members when it generates profits from its business and has fulfilled its tax obligations and other financial obligations in accordance with law; and at the same time must ensure that debts and other property obligations may be paid in full after distribution of profits.

Article 62 *Recovery of returned shares of capital contribution or distributed profits*

Where part of contributed capital is returned as a result of a reduction of charter capital not in accordance with clauses 3 and 4 of article 60 of this Law or where profits are distributed to members not in accordance with article 61 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 all debts or other property obligations of the company until all members have returned all the money or other assets they received which are equal to the reduced capital or distributed profits.

SECTION II

One Member Limited Liability Companies

Article 63 *One member limited liability companies*

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

Article 64 *Rights and obligations of company owners*

1. A company owner being an organization shall have the following rights:
 - (a) To make decisions on the contents of the charter of the company, amendments of and additions to the charter of the company;
 - (b) To make decisions on strategies for development and annual business plans of the company;
 - (c) To make decisions on the organizational and management structure of the company, to appoint, remove or dismiss managerial positions 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 most recent financial statement of the company or a smaller percentage as stipulated in the charter of the company;
 - (dd) To make decisions on plans of market development, marketing and technology;
 - (e) To approve loan agreements and other contracts, as stipulated in the charter of the company, valued at fifty (50) or more per cent of the total value of the assets recorded in the most recent financial statement of the company or a smaller percentage as stipulated in the charter of the company;
 - (g) 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 most recent financial statement of the company or a smaller percentage as stipulated in the charter of the company;
 - (h) To make decisions on increases in the charter capital of the company; on assignment of all or part of the charter capital of the company to other organizations or individuals;
 - (i) To make decisions on establishment of subsidiary companies or on capital contribution to other companies;
 - (k) To organize supervision and assessment of the business operation of the company;
 - (l) To make decisions on the use of profits after discharge of tax obligations and other financial obligations of the company;
 - (m) To make decisions on re-organization or dissolution and request for bankruptcy of the company;
 - (n) To recover all of the value of assets of the company after the company completes dissolution or bankruptcy [procedures];
 - (o) Other rights stipulated in this Law and the charter of the company.
2. A company owner being an individual shall have the following rights:
- (a) To make decisions on the contents of the charter of the company, amendments of and additions to the charter of the company;
 - (b) To make decisions on investment, business and internal management of the enterprise, unless otherwise stipulated by the charter of the company;
 - (c) To assign all or part of the charter capital of the company to other organizations or individuals;
 - (d) To make decisions on the use of profits after discharge of tax obligations and other financial obligations of the company;
 - (dd) To make decisions on re-organization or dissolution and request for bankruptcy of the company;
 - (e) To recover all of the value of assets of the company after the company completes dissolution or bankruptcy [procedures];

- (g) Other rights stipulated in this Law and the charter of the company.

Article 65 *Obligations of company owners*

1. To contribute capital in full and on time as undertaken; in the case of failure to contribute capital in full and on time as undertaken, to be responsible for debts and other property obligations of the company.
2. To comply with the charter of the company.
3. To identify and separate assets of the company owner from assets of the company.

A company owner being an individual must separate his or her personal expenditures and expenditures for his or her family from the expenditures for him or her as the chairman of the company and the director or general director of the company.

4. To comply with the law on contracts and relevant legislation with respect to any purchase, sale, borrowing, lending, lease or rent and other transactions between the company and the company owner;
5. To perform other obligations in accordance with this Law and the charter of the company.

Article 66 *Restrictions on rights of company owners*

1. A company owner may only withdraw capital by way of assignment of a part or all of the charter capital to other organizations and individuals; in the case of withdrawal of all or part of its contributed capital from the company in another form, [the company owner] must be jointly liable for debts and other property obligations of the company.

In the case of assignment of part of the charter capital to other organizations or individuals, the company must register for conversion into a limited liability company with two or more members within a period of fifteen (15) days from the date of assignment.

2. 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 which become due.

Article 67 *Organizational and management structure of one member companies being organizations*

1. The company owner shall appoint one or several persons as authorized representatives for a term not exceeding five years in order to exercise its rights and obligations in accordance with this Law and relevant legislation. Any authorized representative must meet the criteria and conditions stipulated in clause 2 of article 48 of this Law.
2. The company owner shall have the right to replace an authorized representative at any time.
3. Where at least two persons are appointed as authorized representatives, the organizational and management structure of the company shall comprise the Members' Council, the director or general director and inspectors; in this case, the Members' Council shall comprise all authorized representatives.
4. Where one person is appointed as the authorized representative, such person shall be the chairman of the company; in this case, the organizational and management structure of

the company shall comprise the chairman of the company, the director or general director and inspectors.

5. The charter of the company shall provide for the chairman of the Members' Council or chairman of the company or director or general director to be the legal representative of the company. The legal representative of a company must have permanent residence in Vietnam; must authorize in writing another person to be the legal representative of the company on the principles stipulated in the charter of the company in the case of his or her absence from Vietnam for thirty (30) days or more.
6. The functions, rights and duties of the Members' Council, the chairman of the company, the director or general director and inspectors shall be stipulated in articles 68, 69, 70 and 71 of this Law.

Article 68 *The Members' Council*

1. The Members' Council shall, in the name of the company owner, organize the implementation of rights and obligations of the company owner; shall have the right to implement rights and obligations of the company in the name of the company; shall be responsible before the law and to the company owner for the implementation of delegated rights and obligations in accordance with this Law and relevant legislation.
2. The specific rights, obligations, duties and working regime of the Members' Council in respect of the company owner shall be as stipulated in the charter of the company and relevant legislation.
3. The company owner shall appoint the chairman of the Members' Council. The term of office, powers and duties of the chairman of the Members' Council shall be as stipulated in article 49 and other relevant provisions of this Law.
4. The authority and methods to convene meetings of the Members' Council shall be as stipulated in article 50 of this Law.
5. A meeting of the Members' Council shall be conducted where there are at least two thirds of the members attending. Where it is not stipulated in the charter of the company, each member shall have an equal vote. The Members' Council may pass a resolution by way of collection of written opinions.
6. A resolution of the Members' Council shall be passed when approved by over a half of the attending members. Any amendment of, addition to the charter of the company, re-organization of the company, assignment of a part or all of the charter capital of the company must be approved by at least three quarters of the attending members.

A resolution of the Members' Council shall take legal effect from the date of passing, except where approval of the company owner is required as stipulated in the charter of the company.
7. All meetings of the Members' Council must be recorded in the book of minutes. The content of minutes of meetings of the Members' Council shall be as stipulated in article 53 of this Law.

Article 69 *Chairman of the company*

1. The chairman of the company shall, in the name of the company owner, organize the implementation of rights and obligations of the company owner; shall have the right to

implement rights and obligations of the company in the name of the company; shall be responsible before the law and to the company owner for the implementation of delegated rights and obligations in accordance with this Law and relevant legislation.

2. The specific rights, obligations, duties and working regime of the chairman of the company in respect of the company owner shall be as stipulated in the charter of the company and relevant legislation.
3. A decision of the chairman of the company on the implementation of rights and obligations of the company owner shall take legal effect from the date of approval by the company owner except where otherwise stipulated in the charter of the company.

Article 70 *Director or General Director*

1. The Members' Council or the chairman of the company appoints or employs a director or general director for a term not exceeding five years to manage the day-to-day business operation of the company. The director or general director is responsible before the law and to the Members' Council or to the chairman of the company for the implementation of his or her rights and duties.
2. The director or general director shall have the following rights:
 - (a) To organize the implementation of resolutions of the Members' Council or of the chairman of the company;
 - (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 managerial positions in the company, except for the positions falling within the authority of the Members' Council or of the chairman of the company;
 - (e) To sign contracts in the name of the company, except for cases falling within the authority of the chairman of the Members' Council or of the chairman of the company;
 - (g) To make recommendations with respect to the organizational structure of the company;
 - (h) To submit the final annual financial statements to the Members' Council or the chairman of the company;
 - (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 or general director enters into with the chairman of the company or the chairman of the Members' Council.

3. A director or general director must meet the following criteria and conditions:
 - (a) To have full capacity for civil acts and not to be prohibited from management of enterprises as stipulated in this Law;
 - (b) Not to be a related person of a member of the Members' Council or of the chairman of the company, of the person authorized to directly appoint the authorized representative or of the chairman of the company;
 - (c) To have relevant professional qualifications and experience in business management or in the main lines of business of the company or other criteria or conditions as stipulated in the charter of the company.

Article 71 *Inspectors*

1. The company owner appoints one to three inspectors for a term not exceeding three years. Inspectors shall be responsible before the law and to the company owner for the implementation of its rights and duties.
2. Inspectors shall have the following duties:
 - (a) To check the lawfulness, honesty and care of the Members' Council, the chairman of the company and the director or general director in organizing the implementation of ownership rights and in managing the business of the company;
 - (b) To evaluate financial statements, reports on business situations, reports on assessment of management and other reports before submitting to the company owner or relevant State bodies; to submit evaluation reports to the company owner;
 - (c) To make recommendations to the company owner on solutions for amendments of, additions to, the organizational and management structure and administration of the business of the company;
 - (d) Other duties as stipulated in the charter of the company or as requested or decided by the company owner.
3. An inspector shall have the right to sight any document or paper of the company at the head office or a branch or representative office of the company. Members of the Members' Council, the chairman of the company, the director or general director and other managers shall be obliged to provide in full and on time information on the implementation of ownership rights and on management, administration and the business of the company at the request of an inspector.
4. Inspectors must meet the following criteria and conditions:
 - (a) To have full capacity for civil acts and not to be prohibited from management of enterprises as stipulated in this Law;
 - (b) Not to be a related person of a member of the Members' Council, the chairman of the company, the director or general director or the person authorized to directly appoint an inspector;

- (c) To have professional qualifications or work experience in accounting and auditing or professional qualifications and practical experience in the main lines of business of the company or other criteria or conditions as stipulated in the charter of the company.

Article 72 *Obligations of members of the Members' Council, the chairman of the company, director or general director and inspectors*

1. Members of the Members' Council, the chairman of the company, director or general director and inspectors shall have the following obligations:
 - (a) To comply with the law, the charter of the company and decisions of the company owner in the implementation of delegated rights and duties;
 - (b) To perform delegated rights and duties honestly, diligently and to their best ability to ensure the maximum lawful interest of the company and the company owner;
 - (c) To be loyal to the interests of the company and the company owner; Not to use information, know-how, business opportunities of the company, or 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 organizations or individuals;
 - (d) To notify the company in a timely, complete and accurate manner of the enterprises of which he or she and his or her related person is the owner or holds shares or a controlling share of capital contribution. This notice shall be displayed at the head office and branches of the company;
 - (dd) Other obligations stipulated by this Law and the charter of the company.
2. The director or general director shall not be entitled to any pay rise or bonus when the company is unable to pay all of its due debts.

Article 73 *Remuneration, salary and other benefits of managers of the company and inspectors*

1. Managers of the company and inspectors shall be entitled to remuneration or salary and other benefits in accordance with the business results and efficiency of the company.
2. The company owner shall decide on the rate of remuneration, salary and other benefits of members of the Members' Council, the chairman of the company and inspectors. Remuneration, salary and other benefits of managers of the company and inspectors shall be included in business expenses in accordance with provisions of the law on corporate income tax and other relevant legislation, and be recorded as a separate item in annual financial statements of the company.

Article 74 *Organizational and management structure of one member limited liability company being an individual*

1. A one member limited liability company being an individual shall have a chairman of the company, director or general director. The company owner shall concurrently be the chairman of the company. The chairman of the company or the director or general director shall be the legal representative of the company in accordance with the provisions of the charter of the company.
2. The chairman of the company may work concurrently or employs another person as the director or general director.

3. The specific rights, obligations and duties of the director are provided in the charter of the company and the employment contract which the director or general director enters into with the chairman of the company.

Article 75 *Contracts and transactions of the company with related persons.*

1. Contracts and transactions between a one member limited liability company being an organization with the following subjects must be considered and voted upon by the Members' Council or the chairman of the company, director or general director and inspectors on the principle of majority with one vote for each person:

- (a) The company owner and a related person of the company owner;
- (b) The authorized representative, the director or general director and inspectors;
- (c) A related person of the persons stipulated in sub-clause (b) of this clause;
- (d) Managers of the company owner, the person authorized to appoint such managers;
- (dd) A related person of the persons stipulated in sub-clause (d) of this clause;

The legal representative of the company must send to the Members' Council or the chairman of the company, director or general director and inspectors; and at the same time, display at the head office and branches of the company, the draft of such contract or contents of such transaction.

2. The contracts and transactions stipulated in clause 1 of this article may only be approved upon satisfaction of the following conditions:
 - (a) The parties executing a contract or performing a transaction are independent legal entities with separate rights, obligations, assets and interests;
 - (b) The price used in a contract or transaction is the market price at the time the contract is executed or the transaction is performed;
 - (c) The company owner complies with the obligations stipulated in clause 4 of article 65 of this Law.
3. A contract or transaction shall be void and be dealt with in accordance with law if its execution or performance does not comply with clause 1 of this article. The legal representative of the company and the parties to the contract must compensate for any damage arising and return to the company any benefits gained from the implementation of such contract or transaction.
4. A contract or transaction between a one member limited liability company being an individual with the company owner or a related person of the company owner must be recorded and retained as separate files of the company.

Article 76 *Increases and reductions of charter capital*

1. A one member limited liability company may not reduce its charter capital.

2. A one member limited liability company increases its charter capital by the company owner making additional investment or raising additional capital contributed by other people.

The company owner shall decide on the form of increase and the amount of increase of the charter capital. Where the charter capital is increased by raising additional capital contributed by other people, the company must register to convert into a limited liability company of two or more members within fifteen (15) days from the date the new member undertakes to contribute capital to the company.

CHAPTER IV

Shareholding Companies

Article 77 *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 may be organizations or individuals; the minimum number of shareholders shall be three and there shall be no restriction on the maximum number;
 - (c) Shareholders shall be liable for the debts and other property obligations of the enterprise only within the amount of capital contributed to the enterprise;
 - (d) Shareholders may freely assign their shares to other persons, except in the cases stipulated in clause 3 of article 81 and clause 5 of article 84 of this Law.
2. Shareholding companies shall have legal entity status from the date of issuance of the business registration certificate.
3. Shareholding companies may issue all types of securities to raise funds.

Article 78 *Classes of shares*

1. Shareholding companies must have ordinary shares. Owners of ordinary shares shall be 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 79 *Rights of ordinary shareholders*

1. Ordinary shareholders shall have the following rights:
 - (a) To attend and express opinions at the General Meeting of Shareholders and to exercise the right to vote directly or through an authorized representative; 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) To freely assign their shares to other shareholders and to non-shareholders, except in the cases stipulated in clause 5 of article 84 of this Law;
 - (dd) To sight, look up and make an extract of information in the list of shareholders with voting rights and to request amendment of incorrect information;
 - (e) To sight, look up and make an extract or copy of the charter of the company, the book of minutes of meetings of the General Meeting of Shareholders and resolutions of the General Meeting of Shareholders;
 - (g) Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the number of shares contributed to¹⁵ the company;
 - (h) 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 total 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 following rights:
 - (a) To nominate candidates to the Board of Management and the Inspection Committee (if any);
 - (b) To sight and make an extract of the book of minutes and resolutions of the Board of Management, mid-year and annual financial statements according to the forms of the Vietnamese accounting regime and reports of the Inspection Committee;

15 Phillips Fox Note: The literal translation is "contributed as capital to".

- (c) To request the convening of a General Meeting of Shareholders in the case stipulated in clause 3 of this article;
 - (d) To request the Inspection Committee to inspect each particular issue relating to the management and administration of the operation of the company where it is considered necessary. The request must be in writing, must contain full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification of a shareholder being an individual; name, permanent address, nationality, number of the decision on establishment or number of business registration of a shareholder being an organization; number of shares and time of registration of shares of each shareholder, total number of shares of the group of shareholders and the percentage of ownership in the total number of shares of the company; issues to be inspected and purposes of the inspection;
 - (dd) Other rights stipulated in this Law and the charter of the company.
3. A shareholder or a group of shareholders stipulated in clause 2 of this article shall have the right to request the convening of a General Meeting of Shareholders in the following cases:
- (a) The Board of Management makes a serious breach of rights of shareholders, obligations of managers or makes a decision which falls outside its delegated authority;
 - (b) The term of the Board of Management has expired for more than six months¹⁶ and no new Board of Management has been elected to replace it;
 - (c) Other cases as stipulated in the charter of the company.

The request must be in writing, must contain full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a shareholder being an organization; number of shares and time of registration of shares of each shareholder, total number of shares of the group of shareholders and the percentage of ownership in the total number of shares of the company; and grounds and reasons for the request to convene a meeting of the General Meeting of Shareholders. The request must be accompanied by documents and evidence on the breaches of the Board of Management, the seriousness of such breaches, or on the decision which falls outside its authority.

4. Except where otherwise stipulated in the charter of the company, the nomination of candidates to the Board of Management and the Inspection Committee stipulated in sub-clause (a) of clause 2 of this article shall be carried out as follows:
- (a) Ordinary shareholders who voluntarily form a group which satisfies the stipulated conditions to nominate candidates to the Board of Management and the Inspection Committee must notify attending shareholders of the group formation no later than the beginning of the General Meeting of Shareholders;
 - (b) Based on the number of members of the Board of Management and the Inspection Committee, the shareholders or group of shareholders stipulated in clause 2 of this article shall have the right to nominate one or more persons as decided by the General Meeting of Shareholders as candidates to the Board of Management and

16 Phillips Fox Note: The literal translation is "has exceeded six months".

the Inspection Committee. Where the number of candidates nominated by a shareholder or group of shareholders is lower than the number of candidates they are entitled to nominate as decided by the General Meeting of Shareholders, the remaining candidates shall be nominated by the Board of Management, the Inspection Committee and other shareholders.

Article 80 *Obligations of ordinary shareholders*

1. To pay in full for the shares subscribed for as undertaken within ninety (90) days from the date of issuance of the business registration certificate to the company; to be liable for debts and other property obligations of the company within the amount of capital contributed to the company.

Not to withdraw the capital contributed by ordinary shares from the company in any form, except where shares are redeemed by the company or other persons. Where a shareholder withdraws a part or all of the share capital contributed not in accordance with this clause, members of the Board of Management and the legal representative of the company must be jointly responsible for debts and other property obligations of the company within the value of shares withdrawn.

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.
5. An ordinary shareholder must bear personal responsibility where he or she performs one of the following acts in any form in the name of the company:
 - (a) To breach the law;
 - (b) To conduct business and other transactions for the personal benefit of himself or herself or other organizations or individuals;
 - (c) To pay premature debts where the company is likely to be in financial danger.

Article 81 *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 82 *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 dividend preference share certificates.
2. Dividend preference shareholders shall have the following rights:
 - (a) To receive dividends at the rates stipulated in clause 1 of this article;
 - (b) Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the number of shares contributed to 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 83 *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 84 *Ordinary shares of founding shareholders*

1. Founding shareholders must together register to subscribe at least twenty (20) per cent of the number of ordinary shares which may be offered for sale and must pay in full for the shares registered to subscribe within ninety (90) days from the date of issuance of the business registration certificate of the company.
2. Within ninety (90) days from the date of issuance of the business registration certificate of the company, the company must notify the business registration body of the contribution of share capital. The notice must contain the following main particulars:
 - (a) Name, address of head office, number and date of issuance of business registration certificate, registered location of business;
 - (b) Total number of ordinary shares which may be offered for sale, number of shares registered to be subscribed by founding shareholders;

- (c) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a founding shareholder being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a shareholder being an organization; number of shares registered to subscribe, number of shares and value of shares already paid for, type of assets contributed as share capital of each founding shareholder;
- (d) Total number of shares and value of shares already paid for of founding shareholders;
- (dd) Full name and signature of the legal representative of the company.

The legal representative of the company must bear personal responsibility for any damage to the company and to other persons due to late notification, or untruthful, inaccurate or incomplete notification.

3. Where a founding shareholder fails to pay in full for the number of shares registered to subscribe, such number of shares not yet contributed in full¹⁷ of the founding shareholder shall be dealt with in one of the following manners:
 - (a) All other founding shareholders contribute in full such number of shares in proportion to the ratio of shares they own in the company;
 - (b) One or more founding shareholders agree to contribute in full such number of shares;
 - (c) Another person who is not a founding shareholder is called on and agree to contribute in full such number of shares; such person shall automatically become a founding shareholder of the company. In this case, the founding shareholder who fail to contribute shares as registered shall automatically cease to be a shareholder of the company.

Where the number of shares registered to be contributed by founding shareholders has not yet been contributed in full, the founding shareholders shall jointly be liable for debts and other property obligations of the company within the value of such number of shares not yet contributed in full.

4. Where founding shareholders do not register to subscribe for all the shares offered for sale, the remaining shares must be offered for sale and sold out within a time limit of three years from the date of issuance of the business registration certificate to the company.
5. Within a period of three years from the date of issuance of the business registration certificate to the company, ordinary shares of founding shareholders may be freely assigned to other founding shareholders, but may only be assigned to persons not being founding shareholders if approved by the General Meeting of Shareholders. In this case, shareholders intending to assign shares may not vote on the assignment of such shares and the assignee shall automatically become a founding shareholder of the company.

After three years from the date of issuance of the business registration certificate to the company, all restrictions on ordinary shares of founding shareholders shall be lifted.

17 Phillips Fox Note: This is the literal translation.

Article 85 *Share certificates*

1. Share certificates are certificates issued by a shareholding company or book entries certifying the ownership of one or more shares of such company. Share certificates may or may not indicate names. A share certificate must contain the following main particulars:
 - (a) Name and address of head office of the company;
 - (b) Number and date of issuance of the business registration certificate;
 - (c) Number of shares and classes of shares;
 - (d) Par value of each share and total par value of shares included in the share certificate;
 - (dd) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a shareholder being an organization in the case of a named share certificate;
 - (e) Summary of procedures for share assignment;
 - (g) Sample signature of the legal representative and seal of the company;
 - (h) Registration number in the register of shareholders of the company and date of issuance of the share certificate;
 - (i) Preference share certificates shall also include other details as stipulated in articles 81, 82 and 83 of this Law.
2. Errors in the content and form of a share certificate issued by the company shall not affect the rights and interests of its owner. The chairman of the Board of Management and the director or general director shall be jointly liable for any damage caused by such errors to the company.
3. Where a share certificate is lost, torn, burnt or otherwise destroyed in another form, the shareholder shall be reissued with a share certificate at the request of such shareholder.

A request of a shareholder must contain the following undertakings:

- (a) That the share certificate has really been lost, torn, burnt or otherwise destroyed; in the case of loss, it is additionally undertaken that all best efforts have been exercised to look for the share certificate and if found, such share certificate shall be returned to the company for destruction;
- (b) That (the shareholder) shall be responsible for any disputes arising from the re-issue of a new share certificate.

In the case of a share certificate which has a par value of over ten million Vietnamese dong, before accepting a request for issue of a new share certificate, the legal representative of the company may request that the owner of the share certificate post a notice on the fact that the share certificate has been lost, torn, burnt or otherwise destroyed and make a request to the company to issue a new share certificate within fifteen (15) days from the date of posting the notice.

Article 86 *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.
2. A register of shareholder must contain the following main particulars:
 - (a) Name and address of head office of the company;
 - (b) Total number of shares which may be offered for sale, classes of shares which may be offered for sale and number of shares of each class which may be offered for sale;
 - (c) Total number of shares of each class already sold and value of share capital already contributed;
 - (d) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a member being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a member being an organization
 - (dd) Number of shares of each class of each shareholder and date of share registration.
3. The register of shareholders shall be retained at the head office of the company or at the centre for registration, depository, clearing and payment of securities. Shareholders shall have the right to examine, look up or make an extract or copy of the register of shareholders during business hours of the company or of the centre for registration, depository, clearing and payment of securities.
4. Shareholders owning five or more per cent of the total number of shares must be registered with a competent business registration body within seven working days from the date of acquiring such ownership percentage.

Article 87 *Offer [of shares] for sale and assignment of shares*

1. The Board of Management shall determine the timing and method of and the price at which shares shall be offered for sale for¹⁸ the number of shares which may be offered for sale. The price at which shares shall be offered shall not be lower than the market price at the time of offering or the most recently recorded value in the books of shares, except in the following cases:
 - (a) Initial offering of shares to persons other than founding shareholders;
 - (b) Shares offered to all shareholders in proportion to the respective numbers of shares they currently hold in the company;
 - (c) Shares offered to brokers or underwriters¹⁹. In this case, the specific amount of discount or rate of discount must be approved by the shareholders representing at least seventy five (75) per cent of the total number of shares with voting rights;

18 Phillips Fox Note: The literal translation is "in the number of shares....".

19 Phillips Fox Note: The literal translation is "guarantors".

- (d) Other cases and the rates of discount in such cases shall be stipulated in the charter of the company.
2. In the case the company issues additional ordinary shares and offer such shares to all ordinary shareholders in proportion to the respective percentage of shares they currently hold in the company, the following provisions must be implemented:
- (a) The company must notify shareholders in writing by a method guaranteed to reach their permanent addresses. The notice must be published on newspaper in three consecutive issues within ten (10) working days from the date of notification.
- (b) The notice must contain full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a shareholder being an organization; the current number of shares and percentage of shares of shareholders in the company; total number of shares intended to be issued and number of shares which a shareholder is entitled to subscribe; offered selling price of shares; time-limit for registration to subscribe; full name and signature of the legal representative of the company. The time-limit stated in the notice must be reasonably sufficient for shareholders to register to subscribe for shares. The notice must be accompanied by a registration form for share subscription issued by the company.
- (c) Shareholders have the right to transfer their priority right in subscribing for shares to other people;
- (d) If a registration form for share subscription is not sent to the company within the notified time-limit, the relevant shareholder shall be deemed as having rejected²⁰ the priority right for subscription. Where shareholders and transferees of priority rights for subscription do not register to subscribe for all the shares intended to be issued, the remaining number of shares intended to be issued shall be managed by the Board of Management. The Board of Management may allocate such shares to shareholders of the company or to other people in a reasonable manner with conditions not more favourable than the conditions offered to shareholders, except where otherwise approved by the General Meeting of Shareholders or where shares are sold through a securities transaction centre.
3. Shares shall be deemed to have been sold upon full payment and correct and full entry of the particulars on the purchaser stipulated in clause 2 of article 86 of this Law in the register of shareholders; from such point of time, the purchaser of shares shall become a shareholder of the company.
4. After shares are sold, the company must issue and deliver share certificates to the purchasers. A company may sell shares without delivering share certificates. In this case, the particulars about a shareholder stipulated in clause 2 of article 86 of this Law recorded in the register of shareholders shall be sufficient to certify the ownership of shares of such shareholder in the company.
5. Shares may be freely assigned, except in the cases stipulated in clause 3 of article 81 and clause 5 of article 84 of this Law. Assignment shall be conducted in writing by normal methods or by hand delivery of share certificates. Assignment documents must be signed by the assignor and the assignee or their authorized representatives. The assignor shall

20 Phillips Fox Note: The literal translation is "having not accepted".

remain the owner of the relevant share until the name of the assignee is registered in the register of shareholders.

Where only a number of shares in a share certificate indicating names are assigned, the old share certificate shall be cancelled and the company shall issue a new share certificate recording the number of shares assigned and the remaining number of shares.

6. The conditions, methods and procedures for offering shares to the public shall comply with the law on securities.

The Government shall provide for individual share offering.

Article 88 *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 company may not issue bonds in the following cases except where otherwise stipulated by the law on securities:
 - (a) Payment has not been made in full for the principal and interest of issued bonds, payment has not been made or not been made in full for due debts in three previous consecutive years;
 - (b) The average after tax profit rate of three previous consecutive years is not higher than the interest rate intended to pay for the bonds to be issued.

The issue of bonds to creditors being selected financial institutions is not restricted by the provisions in sub-clauses (a) and (b) of this clause.

3. Where it is not otherwise stipulated in the charter of the company, the Board of Management has the right to make decisions on the class of bonds, total value of bonds and timing of issue, but must report to the General Meeting of Shareholders at its nearest meeting. The report must be accompanied by documents and files to explain the decision of the Board of Management on issue of bonds.

Article 89 *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 90 *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) working 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, such shareholder may sell shares to other people or the parties may request valuation by a professional valuation organization. The company shall recommend at least three professional valuation organizations for the shareholder to select from and such selection shall be the final decision.

Article 91 *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 dividend preference shares sold in accordance with the following provisions:

1. The Board of Management has the right to decide on redemption of more than ten (10) per cent of the total number of shares of each class already sold within each period of twelve (12) months. In other cases, redemption of shares shall be decided by the General Meeting of Shareholders.
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 by a method guaranteed to reach all shareholders within thirty (30) days from the date on which such resolution is passed. The notice must include the name and address of the head office 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 who agree to have their shares redeemed must send an offer to sell their shares by a method guaranteed to reach the company within thirty (30) days from the date of notice. The offer must include full name, permanent address, number of people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a shareholder being an organization; number of shares owned and number of shares offered; payment methods; signature of the shareholder or the legal representative of the shareholder. The company shall only redeem offered shares within the above mentioned time-limit.

Article 92 *Conditions for payment and dealing with redeemed shares*

1. A company may only pay shareholders for redeemed shares in accordance with articles 90 and 91 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 90 and 91 of this Law shall be considered shares not yet sold amongst the shares which may be offered for sale.

3. Share certificates certifying the ownership of redeemed shares must be destroyed immediately after the corresponding shares are paid for in full. The chairman of the Board of Management and the director or general director must be jointly responsible for any damage caused to the company by failure to destroy or delayed destruction of share certificates.
4. 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 93 *Payment of dividends*

1. Dividends paid to preference shares shall be in accordance with the conditions applied separately to each type of preference shares.
2. Dividends paid to ordinary shares shall be determined on the basis of the net profit performed and payment for dividends shall be sourced from profits retained by the company. A shareholding company may only pay dividends to shareholders when the company has fulfilled its tax obligations and other financial obligations in accordance with law; has appropriate all funds of the company and fully covered previous losses in accordance with law and the charter of the company; and upon payment of all intended dividends, the company is still able to satisfy its debts and other property obligations which become due.

Dividends may be paid in cash, by shares of the company or by other assets stipulated in the charter of the company. Where payment is made in cash, it must be made in Vietnamese dong and may be made by cheque or money order posted to the permanent address of shareholders.

Dividends may be paid by bank transfer where the company has sufficient bank details of a shareholder to directly transfer [dividends] to such shareholder's bank account. If the company has made a bank transfer based on the exact banking details as informed by a shareholder, the company shall not be responsible for any damage arising from such transfer.

3. 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 must be sent by a method guaranteed to reach the registered addresses of all shareholders no later than fifteen (15) days prior to the actual payment of dividends. The notice must specify the name of the company; full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent address, nationality, number of decision on establishment or number of business registration in respect of a shareholder being an organization; 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; full name and signature of the chairman of the Board of Management and the legal representative of the company
4. 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 94 *Recovery of payments for redeemed shares or dividends*

Where a payment for redeemed shares is made other than in accordance with article 92.1 of this Law or where dividends are paid other than in accordance with article 93 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 within the scope of the monies or assets which have been paid to shareholders but have not been surrendered

Article 95 *Organizational and management structure of shareholding companies*

Shareholding companies shall have a General Meeting of Shareholders, a Board of Management and a director or general director; and shareholding companies having more than eleven (11) shareholders being individuals or having organizations owning more than fifty (50) per cent of the total shares of the company must have an Inspection Committee.

The chairman of the Board of Management or director or general director shall be the legal representative of the company as stipulated in the charter of the company. The legal representative of the company must permanently reside in Vietnam; if he is absent from Vietnam for more than thirty (30) days, he must provide a power of attorney to another person in accordance with the provisions in the Charter of the company to exercise the rights and discharge the duties of the legal representative of the company.

Article 96 *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 pass the development direction of the company;
 - (b) To make decisions on the classes of shares and total number of shares of each class which may be offered for sale; to make decisions on the rate of annual dividend for each class of shares, unless the charter of the company otherwise provides;
 - (c) To elect, remove or discharge members of the Board of Management and members of the Inspection Committee;
 - (d) To make investment decisions or decisions on sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the most recent financial statement of the company unless the charter of the company stipulates some other percentage;
 - (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 make decisions on redemption of more than ten (10) per cent of the total number of shares of each class already sold;
 - (h) To consider and deal with breaches by the Board of Management and the Inspection Committee which cause damage to the company and its shareholders;

- (i) To make decisions on re-organization and dissolution of the company;
 - (k) Other rights and duties stipulated in this Law and the charter of the company.
3. Shareholders which are organizations shall have the right to appoint one or more authorized representatives to exercise their shareholders rights in accordance with law; in a case where more than one authorized representative is appointed, then the specific number of shares and the specific number of votes of each representative must be specified. The appointment, termination or change of an authorized representative must be notified in writing to the company at the earliest possible time. The notification must contain the following basic particulars:
- (a) Name, permanent address, nationality, number and date of establishment decision or business registration of the shareholder;
 - (b) Number of shares, classes of shares and date of registration as a shareholder with the company;
 - (c) Full name, permanent address, nationality, number of people's identity card, passport or other lawful personal identification of the legal representative;
 - (d) Number of shares for which a representative has been appointed;
 - (dd) Term of authorized representation;
 - (e) Full name and signature of the authorized representative and of the legal representative of the shareholder.

The company must send the notification about the authorized representative stipulated in this clause to the business registration office within a time-limit of five working days as from the date the company receives the notification.

Article 97 *Authority to convene General Meeting of Shareholders*

- 1. The General Meeting of Shareholders shall take place on an annual²¹ or ad-hoc basis, and there shall be a General Meeting of Shareholders at least once per year. The location of a meeting of the General Meeting of Shareholders must be within the territory of Vietnam.
- 2. The General Meeting of Shareholders must hold an annual meeting within a time-limit of four months from the end of the financial year. At the request of the Board of Management, the business registration office may extend that time-limit, but not beyond six (6) months as from the end of the financial year.

A regular meeting of the General Meeting of Shareholders shall debate and pass the following issues:

- (a) Annual financial statements;
- (b) Report of the Board of Management assessing the actual status of the work of business management in the company;

21 Phillips Fox Note: This is the literal translation.

- (c) Report of the Inspection Committee regarding company management by the Board of Management, the director or general director;
 - (d) Amount of dividend payable on each class of share;
 - (dd) Other matters within its authority.
3. The Board of Management must convene an ad-hoc meeting of the General Meeting of Shareholders in the following cases;
- (a) The Board of Management considers it necessary to do so in the interests of the company;
 - (b) The number of the remaining members of the Board of Management is less than the number of members required by law;
 - (c) Upon request by a shareholder or a group of shareholders as stipulated in clause 2 of article 79 of this Law;
 - (d) Upon demand by the Inspection Committee;
 - (dd) In other cases stipulated by law and the charter of the company.
4. If the charter of the company does not stipulate a time-limit, then the Board of Management must convene a General Meeting of Shareholders within a time-limit of thirty (30) days as from the date on which the number of remaining members of the Board of Management is as stipulated in sub-clause (b) hereof or from the date of receipt of the request stipulated in sub-clauses (c) and (d) of clause 3 of this article.
- If the Board of Management fails to convene a General Meeting of Shareholders as stipulated, the chairman of the Board of Management must be responsible before the law and must compensate for any damage arising to the company.
5. Where the Board of Management fails to convene a meeting of the General Meeting of Shareholders as stipulated in clause 4 of this article, then within the following thirty (30) days the Inspection Committee shall replace the Board of Management in convening the General Meeting of Shareholders in accordance with this Law.
- If the Inspection Committee fails to convene a meeting as stipulated, then the head of the Inspection Committee must be responsible before the law and must pay compensation for any damage arising to the company.
6. Where the Inspection Committee fails to convene a meeting as stipulated in clause 5 of this article, the requesting shareholder or group of shareholders stipulated in clause 2 of article 79 of this Law shall have the right to replace the Board of Management and the Inspection Committee in convening the General Meeting of Shareholders in accordance with this Law.
- In this case, the shareholder or group of shareholders convening the General Meeting of Shareholders may request the business registration office to supervise the convening and conduct of the meeting if they consider it necessary.
7. 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.

8. The expenses for convening and conducting a meeting of the General Meeting of Shareholders as stipulated in clauses 4, 5 and 6 of this article shall be reimbursed by the company.

Article 98 *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 thirty (30) 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, nationality and number of people's identity card, passport or other lawful personal identification in respect of shareholders being individuals, and the name and permanent address, nationality, number of establishment decision or number of business registration in respect of shareholders being organizations; and the number of shares of each class, and the number and date of registration of each shareholder.
3. Shareholders shall have the right to inspect, sight, make an extract of and copy the list of shareholders entitled to attend the General Meeting of Shareholders; to request correction of wrong information or addition of necessary information about themselves in the list of shareholders entitled to attend the General Meeting of Shareholders.

Article 99 *Program and agenda of General Meeting of Shareholders*

1. The convenor of the General Meeting of Shareholders must prepare a list of shareholders entitled to attend the meeting and to vote; prepare the program, agenda and documents for the meeting and draft resolutions on each of the items in the agenda; fix the time and location of the meeting and send a written invitation to all shareholders entitled to attend the meeting.
2. The shareholder or group of shareholders stipulated in clause 2 of article 79 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 working days prior to the date of opening, unless the charter of the company stipulates some other time-limit. The recommendation must specify the name of shareholder(s), the number of shares of each class of shareholder, the number and date of registration of the shareholder(s) with the company, 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.

4. The convenor of the General Meeting of Shareholders must accept and include the recommendations stipulated in clause 2 of this article into the draft program and agenda for the meeting, except in the cases stipulated in clause 3 of this article; the recommendation shall be officially added to the program and agenda for the meeting if the General Meeting of Shareholders so agrees.

Article 100 *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 working days prior to the date of opening, if the charter of the company does not stipulate the time-limit. The written invitation must be sent by a method guaranteed to reach the permanent address of each shareholder.

The written notice must have the name, head office address, number, date and place of issuance of the business registration certificate of the company; name and permanent address of the shareholder or of the authorized representative of the shareholder; time and location of the meeting.

2. The invitation shall be accompanied by a sample form of appointment of an authorized representative to attend the meeting, the agenda, voting slip, and discussion documents as the basis for passing decisions, and draft resolutions on each of the items in the agenda.

If the company has a website, then the invitation to attend the meeting together with all accompanying documents must be announced on the website at the same time it is forwarded to the shareholders.

Article 101 *Right to attend General Meeting of Shareholders*

1. Shareholders being individuals or authorized representatives of shareholders which are organizations, may attend the General Meeting of Shareholders in person or authorize another person in writing to do so. A shareholder being an organization which does not have an authorized representative pursuant to the provisions in clause 3 of article 96 of this Law authorizes another person to attend the General Meeting of Shareholders.
2. The authorization for a representative to attend the General Meeting of Shareholders must be made in writing on the form stipulated by the company and must bear signatures in accordance with the following provision;
 - (a) Authorization to represent a shareholder being an individual must bear the signatures of both that shareholder and the person authorized to attend the meeting;
 - (b) Authorization on behalf of a shareholder being an organization which is the principal must bear the signatures of the authorized representative, of the legal representative of the shareholder and of the person authorized to attend the meeting;
 - (c) In other cases the authorization must bear the signatures of the legal representative of the shareholder and of the person authorized to attend the meeting.

Any person authorized to attend a General Meeting of Shareholders must submit his written authorization prior to entering the meeting room.

3. In the cases stipulated in clause 4 of this article, the voting slip of the person authorized to attend a meeting within the scope of his authorization shall remain effective in one of the following cases;
 - (a) The principal dies, or his capacity for civil acts is lost or is restricted;
 - (b) The principal terminates the authorization.
4. The provision in clause 2 of this article shall not apply if the company receives written notification about one of the circumstances stipulated in clause 3 of this article no later than twenty four (24) hours prior to the time of opening of the General Meeting of Shareholders.
5. 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 102 *Conditions for conducting General Meeting of Shareholders*

1. The General Meeting of Shareholders shall be conducted where the number of attending shareholders represents at least sixty five (65) 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 fifty one (51) 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, and irrespective of the percentage of shares with voting rights of shareholders attending the meeting.
4. Only the General Meeting of Shareholders may make changes to the agenda accompanying the invitation to the meeting as stipulated in article 100 of this Law.

Article 103 *Procedures for conducting and voting at the General Meeting of Shareholders*

Unless otherwise provided by the charter of the company, the procedures for conducting and voting at the General Meeting of Shareholders shall be conducted in accordance with the following provisions:

1. Prior to the opening date of a meeting, procedures shall be carried out for registration for attendance at the General Meeting of Shareholders until there is registration of sufficient number of shareholders with the right to attend the meeting. A person registered to attend the meeting shall be issue voting cards corresponding to the number of items in the agenda for the meeting which require a vote.

2. The chairman, secretary and vote counting committee of the General Meeting of Shareholders shall be regulated as follows:
 - (a) The chairman of the Board of Management shall act as chairman of all meetings which are convened by the Board of Management; in a case where the chairman is absent or is temporarily unable to work, then the remaining members of the Board of Management shall elect one of them to act as the chairman of the meeting; in a case where there is no one who is able to act as chairman, the member of the Board of Management with the highest position shall arrange for the General Meeting of Shareholders to elect the chairman of the meeting from amongst the people attending the meeting and the person with the highest number of votes shall act as chairman of the meeting.
 - (b) In other cases, the person who signed the document convening the General Meeting of Shareholders shall arrange for the General Meeting of Shareholders to elect a chairman of the meeting and the person with the highest number of votes shall act as chairman of the meeting.
 - (c) The chairman shall elect someone to act as secretary to prepare minutes of the General Meeting of Shareholders.
 - (d) The General Meeting of Shareholders shall elect a vote counting committee to be comprised of not more than three people on the proposal of the chairman of the meeting.
3. The agenda and contents of the meeting must be passed by the General Meeting of Shareholders in the opening session. The agenda must specify in detail the time applicable to each issue in the contents of the agenda for the meeting.
4. The chairman and secretary of the General Meeting of Shareholders shall have the right to take the necessary measures to direct the conduct of the meeting in an appropriate and orderly manner, correctly in accordance with the agenda as passed and so that it reflects the wishes of the majority of attendees.
5. The General Meeting of Shareholders shall discuss and vote on each issue in the agenda for the meeting. Voting shall be conducted by collecting voting cards agreeing with the resolution, thereafter collecting voting cards which do not agree, and finally checking the overall numbers of votes which agree, which do not agree, and abstentions. The chairman shall announce the results of the voting counts immediately prior to the closing of the meeting.
6. Any shareholder or person authorized to attend the meeting who arrives after the opening of the meeting shall be registered and shall have the right to participate in voting immediately after registration. The chairman shall not delay the meeting so that late attendees may register; in such a case, the effectiveness of any voting which has already been conducted shall not be affected.
7. The convenor of the General Meeting of Shareholders shall have the following rights;
 - (a) To require all people attending the meeting to be checked or subject to other security measures;
 - (b) To request a competent body to maintain order during the meeting; To expel from the General Meeting of Shareholders anyone who fails to comply with the chairman's

right to control the meeting, who intentionally disrupts or prevents normal progress of the meeting or who fails to comply with a request to undergo a security check.

8. The chairman shall have the right to adjourn the General Meeting of Shareholders for which sufficient attendees have registered as required by the regulations to another time or to change the location of the meeting in the following cases:
 - (a) The location for the meeting does not sufficient suitable seating for all the attendees;
 - (b) There is an attendee who obstructs the meeting or disrupts order, and there is a danger that the meeting might not be conducted fairly and legally.

The maximum time for any adjournment of a meeting shall be three days as from the date of the proposed opening of the meeting.

9. In a case where the chairman adjourns or postpones a General Meeting of Shareholders contrary to the provisions in clause 8 of this article, the General Meeting of Shareholders shall elect another person from the attendees to replace the chairman in conducting the meeting until its completion, and the effectiveness of voting conducted at such meeting shall not be effected.

Article 104 *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 collecting written opinions.
2. If not regulated by the charter of the company, then a resolution of the General Meeting of Shareholders on the following matters must be passed by way of voting at the General Meeting of Shareholders:
 - (a) Amendment of or addition to the charter of the company;
 - (b) Approval of the development direction of the company;
 - (c) Decision on classes of shares and the total number of shares of each class which may be offered for sale;
 - (d) Appointment, discharge or removal members of the Board of Management and Inspection Committee;
 - (dd) Decisions on investments or the sale of assets valued at equal to or more than fifty (50) per cent of the total value of assets recorded in the most recent financial statement of the company, if the charter of the company does not stipulate another percentage;
 - (e) Approval of the annual financial statements;
 - (g) Reorganization or dissolution of the company.
3. A resolution of the General Meeting of Shareholders shall be passed in a meeting when all the following conditions are satisfied:
 - (a) It is approved by a number of shareholders representing at least sixty five (65) 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 total number of shares of each class which may be offered; on amendments of and additions to the charter of the company; on re-organization or dissolution of the company; in respect of investments or sale of assets equal to or more than fifty (50) per cent of the total value of assets recorded in the most recent financial statement of the company, unless otherwise provided by the charter of the company, the approval by a number of shareholders representing at least seventy five (75) 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.
 - (c) Voting to elect members of the Board of Management and of the Inspection Committee must be implemented by the method of cumulative voting, whereby each shareholder shall have as his total number of votes the total number of shares he owns multiplied by the number of members to be elected to the Board of Management or Inspection Committee, and each shareholder shall have the right to accumulate all his votes for one or more candidates.
4. Resolutions passed by the General Meeting of Shareholders with the number of shareholders directly or by authorized persons participating which represents one hundred (100) per cent of the total number voting shares shall be legal and shall be immediately effective even if the order and procedures for convening the meeting and the contents of the meeting agenda and the procedures for conducting the meeting were not implemented correctly in accordance with the regulations.
 5. Where a resolution is passed by collecting written opinions, a resolution of the General Meeting of Shareholders shall be passed when it is approved by a number of shareholders representing at least seventy five (75) per cent of the total voting shares. The specific percentage shall be stipulated in the charter of the company.
 6. Resolutions of the General Meeting of Shareholders must be notified to shareholders entitled to attend the General Meeting of Shareholders within fifteen (15) days from the date of approval thereof.

Article 105 *Authority and procedures for collecting written opinions in order to pass resolutions of the General Meeting of Shareholders*

Unless otherwise provided by the charter of the company, the authority and procedures for collecting written opinions in order to pass a resolution of the General Meeting of Shareholders shall be implemented in accordance with the following provisions:

1. The Board of Management shall have the right to collect written opinions in order to pass a resolution of the General Meeting of Shareholders at any time if considered necessary in the interests of the company.
2. The Board of Management must prepare written opinion forms, a draft of the resolution of the General Meeting of Shareholders and other documents explaining the draft resolution. The written opinion form together with the draft resolution and documents explaining it must be sent by a means which is guaranteed to reach the permanent address of each shareholder.
3. The written opinion form must contain the following basic particulars:
 - (a) Name, head office address, number, date of issuance of the business registration certificate; place of business registration of the company;

- (b) Purpose of collecting written opinions;
 - (c) Full name, permanent address, nationality, and the number of people's identity card, of the passport or other lawful personal identification in respect of a shareholder being an individual; name, permanent address, nationality, number of establishment decision or number of business registration of a shareholder or authorized representative in respect of a shareholder being an organisation; number of shares of each class and number of votes of the shareholder;
 - (d) Issue on which it is necessary to obtain opinions in order to pass a resolution;
 - (dd) Voting options comprising agreement, non agreement, or no opinion;
 - (e) Time-limit within which the completed written opinion form must be returned to the company;
 - (g) Full name and signature of the chairman of the Board of Management and of the legal representative of the company.
4. Any completed written opinion form must bear the signature of a shareholder being an individual, and of the authorized representative or of the legal representative of a shareholder being an organization.

Written opinion form which are returned to the company must be in a sealed envelope and no one shall be permitted to open the envelope prior to counting of the votes. Any completed written form which is returned to the company after the expiry of the time-limit stipulated in the written opinion form or any form which has been opened shall be invalid.

5. The Board of Management shall conduct counting of the votes and shall prepare minutes of the counting of the votes in the presence of the Inspection Committee or of a shareholder who does not hold a management position in the company.

The minutes of counting of votes shall contain the following basic particulars:

- (a) Name, head office address, number, date of issuance of the business registration certificate; place of business registration of the company;
- (b) Purpose of collection of written opinions and issues on which it is necessary to obtain written opinions in order to pass a resolution.
- (c) Number of shareholders with total numbers of votes who have participated in the vote, classifying the votes into valid and invalid, and including an appendix being a list of the shareholders who participated in the vote;
- (d) Total number of votes for, against and abstentions on each matter voted upon;
- (dd) Resolutions which have been passed;
- (e) Full name and signature of the chairman of the Board of Management, of the legal representative of the company and of the person who supervised the counting of votes.

The members of the Board of Management and the person who supervised the counting of votes shall be jointly liable for the truthfulness and accuracy of the

minutes of counting of votes, and shall be jointly liable for any damage arising from a resolution which is passed due to an untruthful or inaccurate counting of votes.

6. The minutes of results of counting of votes must be sent to shareholders within a time limit of fifteen (15) days as from the date the counting of votes ended.
7. Written opinion forms which were returned, the minutes of counting of votes, the full text of the resolution which was passed and related documents sent with all of the written opinion forms must be archived at the head office of the company.
8. A resolution which is passed by the form of collecting written opinions of shareholders shall have the same validity as a resolution passed by the General Meeting of Shareholders.

Article 106 *Minutes of General Meeting of Shareholders*

1. The General Meeting of Shareholders shall be recorded in the minute book of the company. Minutes must be prepared in Vietnamese and may also be in a foreign language, and must contain the following main particulars:
 - (a) Name, head office address, number, date of issuance of the business registration certificate, place of business registration of the company;
 - (b) Time and location of the General Meeting of Shareholders;
 - (c) Agenda, and contents of the meeting;
 - (d) Chairman and secretary;
 - (dd) Summary of developments of the meeting and of opinions stated in the General Meeting of Shareholders on each matter set out in the contents of the meeting agenda;
 - (g) Number of shareholders and total number of votes of attending shareholders, appendix listing registered shareholders and representatives of shareholders attending the meeting with the total number of their shares and the corresponding total number of votes;
 - (h) Total number of votes for each issue voted on, specifying the number of votes, for, against, and abstentions; and the corresponding percentage on the total number of votes of shareholders attending the meeting;
 - (i) Resolution which were passed;
 - (k) Full names and signatures of the chairman and secretary.

Minutes which are prepared in Vietnamese and minutes which are prepared in a foreign language shall be of equal legal validity.

2. The minutes of the General Meeting of Shareholders must be completed and approved prior to the closing of the meeting.
3. The chairman and secretary of the meeting shall be jointly liable for the truthfulness and accuracy of the contents of the minutes.

The minutes of the General Meeting of Shareholders must be sent to all shareholders within a time-limit of fifteen (15) days as from the date of the closing of the meeting.

The minutes of the General Meeting of Shareholders, the appendix listing the shareholders registered to attend the meeting, the full text of resolutions passed and other relevant documents sent together with the notice of invitation to attend the meeting must be archived at the head office of the company.

Article 107 *Demand for cancellation of resolutions of General Meeting of Shareholders*

Within ninety (90) days from the date the minutes of the General Meeting of Shareholders are received or the minutes of the results of counting of votes being written opinions from the General Meeting of Shareholders are received, shareholders, members of the Board of Management, the director (or general director) and the Inspection Committee shall have the right to request a court or an arbitrator to consider and cancel a resolution of the General Meeting of Shareholders in the following cases:

1. The order and procedures for convening the General Meeting of Shareholders did not comply with this Law and the charter of the company;
2. The order and procedures for issuing a resolution and the content of the resolution breach the law or the charter of the company.

Article 108 *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 and to exercise the rights and discharge the obligations of the company which do not 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 medium term development strategies, and plans, and on annual business plans of the company;
 - (b) To recommend the classes of shares and total number of shares of each class which may be offered;
 - (c) To make decisions on offering new shares within the number of shares of each class which may be offered for sale; to make decisions on raising additional fund in other forms;
 - (d) To make decisions on the price of shares and bonds of the company offered for sale;
 - (dd) To make decisions on redemption of shares in accordance with the provisions in clause 1 of article 91 of this Law;
 - (e) To make decisions on investment plans and investment projects within the authority and limits stipulated in this Law and the charter of the company;
 - (g) 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 most recent financial statement of the company, or a smaller percentage as stipulated in the

charter of the company, except for contracts and transactions stipulated in clauses 1 and 3 of article 120 of this Law;

- (h) To appoint, dismiss or remove, and to sign contracts or to terminate contracts with the director or the general director and other key managers of the company as stipulated in the charter of the company; to make decisions on salaries and other benefits of such managers; to appoint an authorized representative to exercise ownership rights of shares or of capital contributed to other companies, and to make decisions on the level of remuneration and other benefits of such persons;
 - (i) To supervise and direct the director or general director and other management personnel in their work of conducting the daily business of the company.
 - (k) 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 of other enterprises;
 - (l) To approve the agenda and contents of documents for the General Meeting of Shareholders; to convene the General Meeting of Shareholders or to obtain written opinions in order for the General Meeting of Shareholders to pass resolutions;
 - (m) To submit annual final financial reports to the General Meeting of Shareholders;
 - (n) 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;
 - (o) To recommend re-organization or dissolution of the company, or to request bankruptcy of the company;
 - (p) 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 opinions, or otherwise as stipulated in the charter of the company. Each member of the Board of Management shall have one vote.
4. When implementing its functions and performing its duties, the Board of Management shall strictly comply with the provisions of law, the charter of the company and resolutions of the General Meeting of Shareholders. If the Board of Management passes a resolution which is contrary to law or contrary to provisions of the charter of the company causing damage to the company, then the members who agreed to pass such resolution shall be personally jointly liable for that resolution and they must compensate the company for the damage; any member who opposed the passing of such resolution shall be exempt from liability. In such a case, a shareholder owning shares in a company for a minimum consecutive period of at least one year shall have the right to request the Board of Management to suspend implementation of a resolution as mentioned above.

Article 109 *Term of Office and Numbers of Members of the Board of Management*

1. The Board of Management shall have at least three members, and not more than eleven (11) members, unless otherwise provided by the charter of the company. The number of members of the Board of Management who must reside permanently in Vietnam shall be as stipulated in the charter of the company. The term of the Board of Management shall be five years. The term of office of members of the Board of Management shall not exceed

five years; members of the Board of Management may be re-elected for an unlimited number of terms.

2. The Board of Management of a term which has recently expired shall continue to operate until a new Board of Management is elected and takes over the management work.
3. In a case where an additional member is appointed or a member is appointed to replace a member who was removed or dismissed during a term of office, then the term of office of such new member shall be the residual period of the term of office of the Board of Management.
4. A member of the Board of Management need not necessarily also be a shareholder of the company.

Article 110 *Standards and Conditions for Acting as a Member of the Board of Management*

1. Members of the Board of Management must satisfy the following standards and conditions:
 - (a) Have full capacity for civil acts, and not belong to the category of persons prohibited from managing an enterprise pursuant to this Law;
 - (b) Be an individual shareholder who owns at least five per cent of the total number of ordinary shares or be another person with professional expertise and experience in business management or in the line of business which is the main business of the company or satisfy other standards and conditions as stipulated in the charter of the company.
2. In the case of a subsidiary company which is a company in which the State owns a total number of shares worth more than fifty (50) per cent of the charter capital, a member of the Board of Management may not be a person related to a person managing or a person with the authority to appoint managers of the parent company.

Article 111 *Chairman of the Board of Management*

1. The General Meeting of Shareholders or the Board of Management shall elect the chairman of the Board of Management in accordance with the provisions of the charter of the company. In the case where the Board of Management elects the chairman of the Board of Management, then the chairman shall be elected from the members of the Board of Management. The chairman of the Board of Management may act concurrently as the director or 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, or organize the preparation of agenda, content 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;
 - (d) To monitor the implementation of resolutions of the Board of Management;
 - (dd) To chair 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, he shall authorize in writing another member to exercise the rights and perform the duties of the chairman of the Board of Management in accordance with the principles stipulated in the charter of the company. Where no-one is authorized, or where the chairman of the Board of Management is unable to work, then the remaining members shall select one of them to hold temporarily the position of the chairman of the Board of Management in accordance with the principle of a majority of over 50 per cent.

Article 112 *Meetings of the Board of Management*

- 1. If the Board of Management elects the chairman, then the initial meeting of the term of the Board of Management in order to elect the chairman and to pass other resolutions within its authority must be conducted within a time-limit of seven (7) working days from the date of completion of the election of the Board of Management for that term. This meeting shall be convened by the member who gains the highest number of votes. If two or more members gain the same highest number of votes, the elected members shall elect by a majority vote a person amongst them to convene the meeting.
- 2. Meetings of the Board of Management may be held on a regular basis or extraordinary meetings may be held. The Board of Management may meet at the head office of the company or at some other location.
- 3. The chairman may convene a regular meeting of the Board of Management at any time considered necessary, but there must be at least one meeting every quarter.
- 4. The chairman of the Board of Management must convene a meeting of the Board of Management when one of the following circumstances occurs:
 - (a) On the request of the Inspection Committee;
 - (b) On the request of the director or general director or on the request of at least five (5) other management personnel;
 - (c) On the request of at least two members of the Board of Management;
 - (d) In other circumstances stipulated in the charter of the company.

The request must be made in writing and must specify the objective and issues which need to be discussed, and resolutions within the authority of the Board of Management.

- 5. The chairman must convene a meeting of the Board of Management within a time-limit of fifteen (15) days from the date of receipt of a request stipulated in clause 4 of this article. If the chairman fails to convene a meeting of the Board of Management pursuant to a request, the chairman shall be liable for damage caused to the company; the person making the request shall have the right to replace the Board of Management in convening a meeting of the Board of Management.
- 6. The chairman of the Board of Management or the convenor of the meeting of the Board of Management must send a notice of invitation to attend the meeting at the latest five working days prior to the date of meeting unless otherwise provided by the charter of the company. The notice of invitation must specify the specific time and location of the

meeting, the agenda and issues to be discussed and resolutions. The notice must enclose documents to be used at the meeting and voting forms for the members.

The notice of invitation shall be sent by post, fax, electronic mail or other means, but they must ensure arrival at the address of each member of the Board of Management as registered with the company.

7. The chairman of the Board of Management or the convenor must also send the notice of invitation to attend the meeting together with the attached documents to all the members of the Inspection Committee, the director or general director in the same manner as to the members of the Board of Management.

The members of the Inspection Committee and the director or general director who are not concurrently members of the Board of Management shall have the right to attend meetings of the Board of Management, and to discuss issues but not to vote.

8. A meeting of the Board of Management shall be conducted where there are three quarters (3/4) or more of the total members attending. Members not directly attending a meeting shall have the right to vote by sending a written vote. The written vote must be enclosed in a sealed envelope and delivered to the chairman of the Board of Management at least one hour prior to the opening of the meeting. Written votes shall only be opened in the presence of all the people attending the meeting.

A resolution of the Board of Management shall only 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.

9. Members must fully participate in all meetings of the Board of Management. A member may authorize another person to attend a meeting if the majority of members of the Board of Management agree.

Article 113 *Minutes of the meeting of the Board of Management*

1. All meetings of the Board of Management should be recorded in the minute book. Minutes should be prepared in Vietnamese and may be also be in a foreign language and should include the following main contents:
 - (a) Name, address of the head office, number and date of issuance of the business registration certificate, place of business registration;
 - (b) Purpose, agenda and content of meetings;
 - (c) Time and location of meeting;
 - (d) Full names of each member attending the meeting or the person authorised to attend meeting; name of members not attending the meeting and reasons for not attending;
 - (dd) Issues discussed and voted in the meeting;
 - (e) Summary of opinions of each member attending the meeting during the process of the meeting;
 - (g) Result of voting indicating members who agree, who do not agree and members who abstain from voting.

- (h) Approved resolutions.
- (i) Full names and signatures of all members or representatives authorised to attend the meetings.

The chairman and secretary must be jointly responsible for the accuracy and trustfulness of the minutes of meetings of the Board of Management.

2. Minutes of meetings of the Board of Management and documents used in the meetings must be archived in the head office of the company.
3. Minutes prepared in Vietnamese and foreign languages shall have equal legal validity.

Article 114 *Rights of members of the Board of Management to be provided with information*

1. Members of the Board of Management may demand the director or general director, deputy director or deputy general director, and managers of units in the company to provide information and documents on the financial situation and business operations 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 115 *Dismissal, removal and addition of members of the Board of Management*

1. A member of the Board of Management shall be removed and dismissed in the following cases:
 - (a) Not satisfying the criteria and conditions stipulated in article 110 of this Law;
 - (b) Not participating activities of the Board of Management for (6) consecutive months, except for force majeure cases;
 - (c) Written resignation notices;
 - (d) Other cases stipulated in the charter of the company
2. In addition to cases stipulated in clause 1 of this article, members of the Board of Management may be dismissed at any time pursuant to a resolution of the General Meeting of Shareholders.
3. Where the number of members of the Board of Management is reduced by more than one third (1/3) of the number stipulated in the charter of the company, the Board of Management must convene a General Meeting of Shareholders within sixty (60) days from the date the number of members is reduced by more than one third (1/3), 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 116 *Director or general director of the company*

1. The Board of Management shall appoint one of its members or employ another person as the director or general director. Where the charter of the company does not provide that the chairman of the Board of Management is the legal representative, the director or general director shall be the legal representative of the company.
2. The director or general director shall manage the day-to-day business operations of the company; shall be supervised by the Board of Management and shall be responsible to the Board of Management and before the law for the exercise of his or her delegated powers and the performance of his or her delegated duties.

The term of the director or general director shall not exceed five years; with unlimited number of re-appointments.

Criteria and conditions for a director or general director shall follow provisions stipulated in article 57 of this Law.

The director or general director shall not be director or general director of another enterprise at the same time.

3. The director or general director shall have the following powers and duties:
 - (a) To make decisions on all issues relating to the day-to-day business operation of the company not requiring resolutions of the Board of Management;
 - (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 under the scope of authority of 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 or general director;
 - (g) To recruit employees;
 - (h) To make recommendations on methods of paying dividend and of dealing with loss in business;
 - (i) Other powers and duties in accordance with provisions of the law, the charter of the company and resolutions of the Board of Management.
4. The director or general director must manage the day-to-day business operations of the company strictly in accordance with provisions of the law, the charter of the company, employment contracts signed with the company and the resolutions of the Board of Management. Where the management is inconsistent with this provision and causing damage to the company, the director or general director shall be responsible before the law and shall compensate the company for the damage.

Article 117 *Remuneration, salary and other benefits of members of the Board of Management, the director or the general director*

1. The company is entitled to pay remuneration, salary to members of the Board of Management, director or general director and other managers based on the business results and efficiency.
2. Unless otherwise provided by the charter of the company, the remuneration, salary and other benefits of members of the Board of Management, the director or general director shall be paid according to the following regulations:
 - (a) Members of the Board of Management shall be entitled to remuneration for work and bonus. Remuneration for work shall be calculated on the basis of the working days which are necessary to fulfil the obligations of the members of the Board of Management and the daily rate of remuneration. The Board of Management shall estimate the remuneration for each member on the principle of agreement. The total amount of remuneration for the Board of Management shall be decided by the General Meeting of Shareholders at the annual meeting;
 - (b) Members of the Board of Management shall be entitled to reimbursement of meals, accommodation, travel and other reasonable expenses they have spent in order to fulfil delegated obligations;
 - (c) The director or general director shall be entitled to salary and bonus. The salary of the director or general director shall be decided by the Board of Management.
3. The remuneration of members of the Board of Management and the salary of the director or general director and other managers shall be included in the business expenses of the company in accordance with the law on corporate income tax and shall be presented in a separate item in the annual financial statements of the company and shall be reported to the General Meeting of Shareholders at the annual meeting.

Article 118 *Public disclosure of relevant interests*

1. Members of the Board of Management, members of Inspection Committee, the general or general director and other managers of the company must declare their relevant interests with the company, including:
 - (a) Name, address of the head office, field of business, number and date of the issuance of the business registration certificate, place of business registration of the enterprise in which they own contributed capital or shares; ratio and time of such ownership of contributed capital or shares;
 - (b) Name, address of the head office, field of business, number and date of the issuance of business registration certificate, place of business registration of enterprise in which their related persons jointly own or separately own shares or distributed capital of more than thirty five (35) per cent of charter capital.
2. The declaration stipulated in clause 1 of this article must be conducted within seven working days from the date of arising of the relevant interest; any amendment and addition shall be declared to the company within seven working days, from the date of amendment and addition.
3. The declaration stipulated in clauses 1 and 2 of this article must be reported to the General Meeting of Shareholders at the annual meeting and shall be posted and kept in the head

office of the enterprise. Shareholders, authorised representatives of shareholders, members of the Board of Management, Inspection Committee, director or general director shall have rights to review the content declared at any time considered necessary.

4. Members of the Board of Management, director or general director performing all forms of work on behalf of themselves or on behalf of others within the scope of operation of the company must report the nature and content of that work to the Board of Management, Inspection Committee and shall only be permitted to perform [this work] if the majority of the remaining members of the Board of Management agree; if they perform the work without reporting or without the approval from the Board of Management, all the income originated from that activity shall belong to the company.

Article 119 *Obligations of managers of the company*

1. Members of the Board of Management, the director or general director and other managers shall have the following obligations:
 - (a) To exercise their delegated powers and perform their delegated duties strictly in accordance with this Law, relevant legislation, the charter of the company, resolutions of the General Meeting of Shareholders;
 - (b) To exercise their delegated powers and perform their delegated duties honestly, diligently to their best ability in the best lawful interests of the company and of the shareholders of the company;
 - (c) To be loyal to the interests of the company and shareholders of the company; to not use information, secrets, business opportunities of the company, not to abuse their position and powers and assets of the company for their own personal benefits or for the benefit of other organizations or individuals;
 - (d) To timely, fully and accurately notify the company of enterprises which they or their related persons own or have contributed capital or controlling shares; this notice shall be displayed at the head office and branches of the company.
2. In addition to obligations stipulated in clause 1 of this article, the Board of Management and director or general director may not increase salary and pay bonus where the company has not paid in full all the debts due and payable.
3. Other obligations in accordance with this Law and the charter of the company.

Article 120 *Contracts, transactions which must be approved by the General Meeting of Shareholders or Board of Management*

1. Contracts and transactions between the company and the following parties must be approved by the General Meeting of Shareholders or the Board of Management:
 - (a) Shareholders, authorised representative of shareholders holding more than thirty five (35) per cent of the ordinary shares of the company and their related persons;
 - (b) Members of the Board of Management; director or general director;
 - (c) Enterprises stipulated in clause 1.a and clause 1.b of article 118 of this Law and related persons of members of the Board of Management, director or general director.

2. Any contract and transaction valued at less than fifty (50) per cent of the total value of asset of recorded in the most recent financial statement of the company or a smaller percentage stipulated in the charter of the company shall be approved by the Board of Management. In this case the legal representative shall send to members of the Board of Management and display at the head office and branches of the company the draft of the contract or give notice of the main content of the transaction. The Board of Management shall make a decision on the approval of the contract or transaction within fifty (15) days from the date of the display; the members with the related interest shall not have the right to vote.
3. Other contracts and transactions except for circumstances stipulated in clause 2 of this article shall be approved by the General Meeting of Shareholders. The Board of Management shall submit the draft contract or explain the main content of the transactions at the General Meeting of Shareholders or collect written opinions from shareholders. In this case, the related shareholders shall not have voting right; contracts and transactions shall be approved where shareholders representing sixty five (65) percent of the total remaining votes agree.
4. Any contracts, transactions which have been signed or performed without the approval stipulated in clause 2 and clause 3 of this article shall be invalid and dealt with in accordance with law. The legal representative of the company, shareholders, members of the Board of Management or director or general director concerned must be liable to compensate for the damage caused and must return to the company any benefits gained from the performance of such contract and transaction.

Article 121 *Inspection Committee*

1. A Inspection Committee shall have from three (3) to five (5) members unless otherwise provided by the charter of the company; the term of the Inspection Committee shall not more than five (5) years; members of the Inspection Committee may be re-appointed with an unlimited number of terms.
2. The members of the Inspection Committee shall elect one of them to be the head of the Inspection Committee. The rights and duties of the head of the Inspection Committee shall be stipulated in the charter of the company. More than half of the members of the Inspection Committee must permanently reside in Vietnam and at least one member from them must be an accountant or auditor.
3. Upon the expiration of the term of the Inspection Committee, if the new Inspection Committee has not been elected, the Inspection Committee whose the term has expired shall continue its rights and obligations until the new Inspection Committee is elected and takes over the duties.

Article 122 *Criteria and conditions for members of Inspection Committee*

1. Members of the Inspection Committee must meet the following criteria and conditions:
 - (a) Being at least of twenty one (21) years of age, with a full capacity of civil acts and not falling within the scope of subjects not permitted to establish and manage companies in accordance with this Law;
 - (b) Not being wife or husband, father, adoptive father, mother, adoptive mother, children, adopted children, siblings of any member of the Board of Management, the director or general director of other managers.

2. Members of the Inspection Committee shall not hold managerial positions of the company. Members of the Inspection Committee need not be a shareholder or the employee of the company.

Article 123 *Rights and duties of Inspection Committee*

1. An Inspection Committee shall supervise the Board of Management, director or general director in the management and administration of the company; shall be responsible to the General Meeting of Shareholders for the performance of its assigned duties.
2. To inspect the reasonableness, legality, truthfulness and prudence in management and administration of business activities, in organization of statistic and accounting work and preparation of financial statements;
3. To evaluate reports on business, semi-annual or annual financial statements and reports on evaluation of the management of the Board of Management.

To submit reports on evaluation of the business reports, semi-annual or annual financial statements of the company and reports on evaluation of the management of the Board of Management to the General Meeting of Shareholders at the annual meetings.

4. To review books of accounts and other documents of the company, the management and administration of the activities of the company at any time deemed necessary or pursuant to a resolution of the General Meeting of Shareholders or as requested by a shareholder or group of shareholders as stipulated in clause 2 of article 79 of this Law;
5. Upon a request by a shareholder or a group of shareholders as stipulated in clause 2 of article 79 of this Law, the Inspection Committee shall carry out an inspection within a period of seven working days for the date of receipt of the request. The Inspection Committee must submit a report on results of the inspection of the issues required to be inspected to the Board of Management and the requesting shareholder or the group of shareholders within a period of fifteen (15) days from the date of completion of the inspection.

The inspections stipulated in this clause may not disrupt the normal activities of the Board of Management and shall not interrupt the administration of the business operations of the company.

6. To recommend to the Board of Management or the General Meeting of Shareholders the changes and improvements of the organizational structure, management and administration of the business operations of the company;
7. Upon discovery of a member of the Board of Management, director or general director who is in breach of the obligations of a manager of the company stipulated in article 119 of this Law, to give immediate written notice to the Board of Management and request the person in breach to cease the breach and take measures to remedy any consequences.
8. To exercise other rights and perform other duties as stipulated by this Law, the charter of the company and resolutions of the General Meeting of Shareholders.
9. The Inspection Committee may use an independent consultant to perform the assigned duties.

The Inspection Committee may consult the Board of Management prior to submission of reports, conclusions and recommendations to the General Meeting of Shareholders;

Article 124 *Rights of the Inspection Committee to be provided with information*

1. The invitation notices to a meeting, written opinion form to obtain opinion from members of the Board of Management and enclosed documents must be sent to members of the Inspection Committee at the same time and in the same manner as for members of the Board of Management.
2. Reports of the director or general director for submission to the Board of Management or other documents issued by the company shall be sent to members of the Inspection Committee at the same time and in the same manner as for members of the Board of Management.
3. Members of the Inspection Committee shall have the right to access files and documents of the company retained in the head office, branches and other locations; have the right to access locations where managers and employees of the company work.
4. The Board of Management, members of the Board of Management, the director or general director and other managers must provide in full, accurately and on time all information and documents relating to the management, administration and business operation of the company upon demand by the Inspection Committee.

Article 125 *Remuneration and other benefits of members of the Inspection Committee*

Unless stipulated in the charter of the company, remuneration and other benefits of members of the Inspection Committee shall be implemented in accordance with the following provisions:

1. Members of the Inspection Committee shall be paid remuneration according to their work and be entitled to other benefits as decided by the General Meeting of Shareholders. The General Meeting of Shareholders shall decide on the total remuneration and annual operating budget of the Inspection Committee based on the estimated number of working days, quantity and nature of work and average daily rate of remuneration of members;
2. Members of the Inspection Committee shall be reimbursed for expenses for meals, accommodation, travel and for use of independent consultancy services at reasonable rates. The total amount of such remuneration and expenses shall not exceed the total annual operating budget of the Inspection Committee approved by the General Meeting of Shareholders, except where otherwise decided by the General Meeting of Shareholders;
3. Remuneration and operating costs of the Inspection Committee shall be included in business expenses in accordance with provisions of the law on corporate income tax and other relevant legislation, and must be presented in a separate item in the annual financial statements of the company.

Article 126 *Obligations of members of the Inspection Committee*

1. To comply with the law, the charter of the company, resolutions of the General Meeting of Shareholders and professional ethics in the exercise of delegated rights and duties.
2. To exercise delegated rights and perform delegated duties honestly, diligently and to the best of their ability in the maximum lawful interest of the company and shareholders of the company.
3. To be loyal to the interests of the company and of shareholders of the company; not to use information, secrets, business opportunities of the company, or to abuse his or her

position and powers and assets of the company for their personal benefit or for the benefit of other organizations or individuals.

4. Other obligations stipulated by this Law and the charter of the company.
5. In the case of breaching the obligations stipulated in clauses 1, 2, 3 and 4 of this article causing damage to the company or to other people, members of the Inspection Committee must bear personal or joint responsibility for compensating for such damage. All income and other benefits which a member of the Inspection Committee gains directly or indirectly from a breach of the obligations stipulated in clause 3 of this article shall belong to the company.
6. Where it is discovered that a member of the Inspection Committee breaches an obligation during the exercise of delegated rights and duties, the Board of Management must notify the Inspection Committee in writing; requesting the person in breach to cease the breach and take measures to remedy any consequences.

Article 127 *Dismissal and removal of the Inspection Committee*

1. A member of the Inspection Committee shall be dismissed or removed in the following cases:
 - (a) No longer meeting the criteria and conditions to be a member of the Inspection Committee as stipulated in article 122 of this Law;
 - (b) Not exercising his or her rights and duties in six consecutive months, except in force majeure;
 - (c) Written resignation notice;
 - (d) Other cases as stipulated in the charter of the company.
2. In addition to the cases stipulated in clause 1 of this article, a member of the Inspection Committee may be dismissed at any time in accordance with a resolution of the General Meeting of Shareholders.
3. Where the Inspection Committee seriously breaches its obligations, threatening to cause damage to the company, the Board of Management shall convene the General Meeting of Shareholders to consider dismissal of the incumbent Inspection Committee and election of a new Inspection Committee to replace it.

Article 128 *Submission of annual reports*

1. At the end of a fiscal year, the Board of Management must prepare the following reports and documents:
 - (a) Report on the business situation of the company;
 - (b) Financial statements;
 - (c) Reports on the evaluation of the management and administration of the company.

2. In respect of shareholding companies which are required by law to be audited, the annual financial statements of such shareholding companies must have been audited before submission to the General Meeting of Shareholders for consideration and approval.
3. The reports and documents stipulated in clause 1 of this article must be sent to the Inspection Committee for evaluation no later than thirty (30) days before the opening day of the annual meeting of the General Meeting of Shareholders unless otherwise stipulated in the charter of the company.
4. Reports and documents prepared by the Board of Management; evaluation reports of the Inspection Committee and audited reports must be available at the head office and branches of the company no later than seven working days before the opening day of the annual meeting of the General Meeting of Shareholders unless otherwise stipulated in the charter of the company.

A shareholder owning shares of the company for at least one consecutive year shall have the right to directly review the reports stipulated in this article in a reasonable period of time by himself or herself or together with a lawyer or an accountant or auditor having a practising certificate.

Article 129 *Public disclosure of information on shareholding companies*

1. Shareholding companies must submit annual financial reports as approved by the General Meeting of Shareholders to competent State bodies in accordance with the law on accounting and relevant legislation.
2. A summary of annual financial reports must be sent to all shareholders.
3. All organizations and individuals may review or copy annual financial reports of shareholding companies at the competent business registration bodies.

CHAPTER V

Partnerships

Article 130 *Partnerships*

1. A partnership is an enterprise in which:
 - (a) There must be at least two members being co-owners of the company jointly conducting business under one common name (hereinafter referred to as unlimited liability partners); in addition to unlimited liability partners there may be limited liability partners²²;
 - (b) Unlimited liability partners must be individuals who shall be liable for the obligations of the company to the extent of all of their assets;
 - (c) Limited liability partners shall only be liable for the debts of the company to the extent of the amount of capital they have contributed to the company.

22 Phillips Fox Note: The literal translation is "capital contributing partners".

2. A partnership shall enjoy legal entity status as from the date of issuance of the business registration certificate.
3. Partnerships may not issue any type of securities.

Article 131 *Capital contribution and issuance of capital contribution certificates*

1. Unlimited liability partners and limited liability partners must contribute capital in full and on time as undertaken.
2. Where an unlimited liability partner fails to contribute capital in full and on time as undertaken causing damage to the company, such member must be liable to compensate the company for the damage.
3. Where a limited liability partner fails to contribute capital in full and on time as undertaken, the unpaid amount shall be considered as a debt owed by that partner to the company; in this case, the relevant limited liability partner may be excluded from the partnership in accordance with a resolution of the Partners' Council.
4. Upon payment in full of capital contribution as undertaken, the partner shall be issued 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 partnership;
 - (d) Name and permanent address, nationality and number of the people's identify card, passport or other lawful personal identification of the partner; type of partner;
 - (dd) Value of capital contribution and types of assets contributed as capital by such partner;
 - (e) Number and date of issuance of the capital contribution certificate;
 - (g) Rights and obligations of the holder of the capital contribution certificate;
 - (h) Full names and signatures of the owner of the capital contribution certificate and of unlimited liability partners of the company.
5. Where a capital contribution certificate is lost, torn, burnt or otherwise destroyed, the partner shall be issued by the company with a new capital contribution certificate.

Article 132 *Assets of a partnership*

1. Assets contributed as capital by partners the ownership of which has been transferred to the company.
2. Assets created in the name of the company.
3. Assets derived from business activities conducted by unlimited liability partners in the name of the company and from business activities in the registered lines of business of the company conducted by unlimited liability partners in their personal name.

4. Other assets as stipulated by law.

Article 133 *Restrictions with respect to rights of unlimited liability partners*

1. An unlimited liability partner shall not be allowed to act as the owner of a private enterprise or as an unlimited liability partner of another partnership, unless he or she obtains the consent from other unlimited liability partners.
2. An unlimited liability partner shall not be allowed to conduct in his or her own name or in the name of another person the same line of business as the partnership for his or her personal benefit or to serve the benefit of another organization or individual.
3. An unlimited liability partner shall not be allowed to transfer all or part of its share of capital in the company to another person without the consent of other unlimited liability partners.

Article 134 *Rights and obligations of unlimited liability partners*

1. An unlimited liability partner shall have the following rights:
 - (a) To attend meetings, to discuss and vote on matters of the company; each unlimited liability partner shall have one vote or another number of votes as stipulated in the charter of the company;
 - (b) To conduct business activities in the name of the company in the registered lines of business; to negotiate and sign contracts, agreement or covenants on terms that such unlimited liability partner considers most favourable for the company;
 - (c) To use the seal and assets of the company for the business activities in the registered lines of business; if such partner advances his or her own money in order to conduct the business activities of the company, he or she shall be entitled to require the company to refund the principal and interest at the market rate of interest on the amount of principal advanced;
 - (d) To claim compensation from the company for damage arising from the business activities within his or her authority if such damage is not caused by a personal mistake of such partner;
 - (dd) To request the company and other unlimited liability partners to provide information on the business of the company; to inspect assets, books of account and other documents of the company where he or she considers necessary;
 - (e) To be distributed with profits in proportion to his or her share of capital or as agreed in the charter of the company;
 - (g) Upon dissolution or bankruptcy of the company, to be distributed with part of the remainder of the value of assets of the company in proportion to his or her share of capital in the company unless the charter of the company provides for another ratio;
 - (h) Where an unlimited liability partner dies or has been declared dead by a court, his or her heir may enjoy the share of the value of the assets in the company after deduction of debts for which such partner is responsible. The heir may become an unlimited liability partner if the partners' council so approves;
 - (i) Other rights stipulated in this Law and the charter of the company.

2. An unlimited liability partner shall have the following obligations:
 - (a) To manage and conduct business activities honestly, diligently to the best of his or her ability in the best lawful interests of the company and all members;
 - (b) To manage and conduct business activities of the company strictly in accordance with law, the charter of the company and resolutions of the Partners' Council; he or she shall be responsible for compensation for damage caused by his or her breach of the provision of this clause;
 - (c) To not use the assets of the company for his or her personal benefit or for the benefit of another organization or individual;
 - (d) To return to the company any amount of money or assets received and compensate for any damage caused to the company in the case where he or she receives such money or assets from the business activities in the registered lines of business of the company in the name of the company or in his or her name or in the name of another person, but fails to pay [such money or assets] to the company;
 - (dd) To be jointly liable to discharge in full outstanding debts of the company in the case where the assets of the company are insufficient for the discharge of its debts;
 - (e) To bear losses in proportion to its share of capital in the company or as agreed in the charter of the company in the case where the company suffer losses during its business;
 - (g) To submit regular truthful and accurate reports on his or her business operations and results to the company on a monthly basis; to provide information on his or her business and business results to any partner who so requests;
 - (h) Other obligations stipulated in this Law and the charter of the company.

Article 135 *Partners' Councils*

1. All partners shall constitute the Partners' Council. The Partners' Council shall elect an unlimited liability partner to be the chairman of the Partners' Council who may concurrently act as the director or general director of the company unless otherwise stipulated by the charter of the company.
2. An unlimited liability partner shall have the right to request that a meeting of the Partners' Council be convened to discuss and resolve the business affairs of the company. The requesting partner must prepare agenda, content and documents for the meeting.
3. The Partners' Council shall have the right to resolve all of business affairs of the company. Unless regulated by the charter of the company, the resolutions on the following issues shall require the approval of at least three-quarters of the total number of unlimited liability partners:
 - (a) Development policies of the company;
 - (b) Amendments of or additions to the charter of the company;
 - (c) Admission of a new unlimited liability partner;

- (d) Approvals for an unlimited liability partner to withdraw from the company or resolution on exclusion of a partner;
 - (dd) Decisions on investment projects;
 - (e) Decisions on borrowing and raising capital in other forms or providing loans valued at fifty (50) per cent or more of the charter capital of the company, unless a higher percentage is stipulated in the charter of the company;
 - (g) Decisions on sales or purchases of assets valued equal to or more than the charter capital of the company, unless a higher percentage is stipulated in the charter of the company;
 - (h) Decisions to approve annual financial statements, total profits distributable and amount of profits to be distributed to each partner;
 - (i) Decisions on dissolution of the company.
4. Resolutions on other matters not covered by clause 3 of this article shall be adopted by the approval of at least two-thirds of the total number of unlimited liability partners; the specific percentage shall be stipulated in the charter of the company.
 5. The right to vote of limited liability partners shall be subject to the provisions of this Law and the charter of the company.

Article 136 *Convening meetings of the Partners' Council*

1. The Chairman of the Partners' Council may convene meeting of the Partners' Council where necessary or at the request of an unlimited liability partner. If the chairman of the Partners' Council does not convene meeting at the request of an unlimited liability partner, such partner shall convene meeting.
2. Notification of meeting shall be in form of written invitations, telephone, facsimile, telex or other electronic means. Notification of meeting must clearly state purpose, requirement and content of the meeting; agenda and location of the meeting and the name of the partner who convenes the meeting.

Discussion documents to resolve the matters stipulated in clause 3 of article 135 of this Law must be forwarded to all the partners in advance; such prior period shall be stipulated in the charter of the company.

3. The chairman of the Partners' Council or the requesting partner shall chair the meeting. The meeting shall be recorded in the Minute Book of the company. Contents of the minutes of the meeting must include the following main contents:
 - (a) Name, head office, number and date of issuance of the business registration certificate, place of business registration;
 - (b) Purpose, agenda and content of the meeting;
 - (c) Time and location of the meeting;
 - (d) Full name of chairman and participant members of the meeting;
 - (dd) Opinions of the participant members;

- (e) The passed resolutions, number of members voting in favour and main contents of such resolutions;
- (g) Full names and signatures of the participant members.

Article 137 *Management of business of partnership*

1. Unlimited liability partners shall be entitled to be legal representatives before the law and organize management of the daily business of the company. All restrictions on unlimited liability partners in conducting the daily business of the company shall only be effective against a third party if such party knows of such restrictions.
2. In management of business activities of the company, unlimited liability partners shall allocate amongst them the tasks of management and control of the company.

Where a number of or all the unlimited liability partners together carry out a number of business activities, decisions shall be passed by a majority.

Activities carried out by an unlimited liability partner beyond the scope of registered lines of business of the company shall not fall within the company's liability, unless such activities are approved by the other partners.

3. The company may open an account or a number of accounts at banks. Partners' Council shall appoint the partner authorised to deposit or withdraw money from such accounts.
4. Chairman of the Partners' Council, general director or director shall have the following tasks:
 - (a) To manage and operate the daily business activities of the company in the capacity of an unlimited liability partner;
 - (b) To convene and organise meeting of the Partners' Council; to sign decisions or resolutions of the Partners' Council;
 - (c) To allocate tasks, co-ordinate business activities among the unlimited liability partners; to sign decisions on internal rules and regulations and other internal organization matters of the company;
 - (d) To organise, arrange and store books of account, invoices, vouchers and other documents of the company fully and truthfully in accordance with law;
 - (dd) To represent the company in relationship with state bodies, to represent the company as defendant or plaintiff in lawsuits, commercial disputes or other disputes;
 - (e) To carry out other tasks as stipulated in the charter of the company.

Article 138 *Termination of unlimited liability partner status*

1. Unlimited liability partner status shall be terminated in the following cases:
 - (a) Voluntarily withdraws capital from the company;
 - (b) Dies or has been declared dead by a court;

- (c) Has been declared by a court as missing or having restricted capacity for civil acts or as having lost the capacity for civil acts;
 - (d) Has been excluded from the company;
 - (dd) Other cases stipulated in the charter of the company.
2. An unlimited liability partner shall be entitled to withdraw capital from the company if the Partners' Council so agrees. In this case, the partner who wants to withdraw capital from the company must give written notice of the capital withdrawal request no later than six months prior to the withdrawing date. He or she may only withdraw capital at the end of the financial year after the financial report of such year had been approved.
 3. An unlimited liability partner shall be excluded from the company in the following cases:
 - (a) Unable to contribute capital or fails to contribute capital as undertaken after the company makes its request for the second time;
 - (b) Violates provisions of article 133 of this Law;
 - (c) Does not carry out the business activities truthfully and diligently or carries out other inappropriate acts causing serious damage to the interests of the company and other partners;
 - (d) Does not perform the obligations of an unlimited liability partner properly.
 4. In case of termination of partner status of a partner who has restricted capacity for civil acts or has lost the capacity for civil acts, the contributed capital of such partner shall be refunded fairly and equitably.
 5. During the two years from the date of termination of the unlimited liability partner status as stipulated in clauses 1(a) and 1(d) of this article, such individual remains jointly liable to the extent of all his or her assets for the company's debts which arise prior to the termination date of the partner status.
 6. After termination of the partner status, if the name of the terminating partner has been used for a part or the whole of the company's name, such individual or his or her heir or legal representative shall have right to request the company to cease such use of name.

Article 139 *Admission of new partner*

1. The company may admit new unlimited liability partners or limited liability partners; admission of new partners shall be approved by the Partners' Council.
2. An unlimited liability partner or limited liability partner must contribute capital in full as undertaken to the company within fifteen (15) days from the approval date, unless the Partners' Council decides on a different time-limit.
3. The new unlimited liability partner must be jointly liable for the debts and other property obligations of the company to the extent of all his assets, unless such partner and other partners have agreed otherwise.

Article 140 *Rights and obligations of limited liability partners*

1. A limited liability partner shall have the following rights:
 - (a) To attend meetings, to discuss and vote at Partners' Council on amendments of and additions to the charter of the company; amendments of and additions to the rights and obligations of limited liability partners, on re-organization and dissolution of the company and other content of the charter of the company directly relating to his or her rights and obligations;
 - (b) To be distributed with annual profits in proportion to his or her share of capital in the charter capital of the company;
 - (c) To be provided with the company's annual report; to request the chairman of the Partners' Council and the unlimited liability partners to provide complete and accurate information on the business of the company; to check books of account and minute books, contracts, transactions, files and other documents of the company;
 - (d) To transfer his contributed capital in the company to another;
 - (dd) To conduct business activities in the registered lines of business of the company in his or her own name or in the name of another;
 - (e) To dispose of his or her contributed capital by bequeathing, giving, donating, mortgaging, pledging and other forms in accordance with law and the charter of the company; in case he or she dies or has been declared dead by a court, his or her heir shall replace him or her as a limited liability partner of the company;
 - (g) To be distributed with part of the remainder of the value of assets of the company in proportion to his or her share of capital in the company upon dissolution or bankruptcy of the company;
 - (h) Other rights stipulated in this Law and the charter of the company.
2. A limited liability partner shall have the following obligations:
 - (a) To be liable for the debts and other property obligations of the company to the extent of his or her contributed capital as undertaken;
 - (b) Not to manage the company, not to conduct business activities in the name of the company;
 - (c) To comply with the charter, internal rules of the company and decisions of the Partners' Council;
 - (d) Other obligations stipulated in this Law and the charter of the company.

CHAPTER VI

Private Enterprises

Article 141 *Private enterprises*

1. 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.
2. Private enterprises may not issue any type of securities.
3. Each individual may only establish one private enterprise.

Article 142 *Investment capital of enterprise owners*

1. The investment capital of the owner of a private enterprise shall be registered 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 in accordance with law.
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 registration with the business registration body.

Article 143 *Management of enterprises*

1. The owner of a private enterprise shall have total discretion in making all business decisions of the enterprise; in deciding on the use of profits after payment of taxes and performance of other financial obligations as stipulated by law.
2. 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 register same with the business registration body and shall remain responsible for all business activities of the enterprise.
3. The owner of a private enterprise shall be the plaintiff, defendant, or person having related rights and obligations in arbitration or court proceedings in disputes relating to the enterprise.
4. The owner of a private enterprise shall be the legal representative of the enterprise.

Article 144 *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 145 *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.

CHAPTER VII

Corporate Groups

Article 146 *Corporate groups*

1. A corporate group means a collection of companies having close relations with each other on a long term basis in terms of economic interests, technology, market and other business services.
2. Corporate groups comprise the following forms:
 - (a) Parent company and subsidiary companies;
 - (b) Economic group;
 - (c) Other forms.

Article 147 *Rights and responsibilities of a parent company to subsidiary companies*

1. Depending on the legal form of a subsidiary company, the parent company shall exercise its rights and perform its obligations as a member, owner or shareholder in the relation with the subsidiary company in accordance with the relevant provisions of this Law and relevant legislation.
2. Contracts, transactions and other relations between the parent company and a subsidiary company shall be made and performed independently and equally in accordance with the terms applicable to independent legal subjects, except for the cases specified in clause 1 of this article.

3. Where the parent company interferes beyond the authority of the owner, member or shareholder and compels a subsidiary company to conduct business operations inconsistently with normal business practices or conduct non-profitable activities without reasonable compensation in a relevant fiscal year which causes damage to the subsidiary company, the parent company shall be responsible for such damage.
4. The managers of the parent company which is responsible for the interference compelling the subsidiary company to conduct the business operations specified in clause 3 of this article shall be jointly liable with the parent company for such damage.
5. Where the parent company fails to compensate the subsidiary company in accordance with clause 3 of this article, the creditors or members or shareholders holding at least one per cent of the charter capital of the subsidiary company may on their own behalf or on behalf of the subsidiary company require the parent company to pay compensation to the subsidiary company.
6. Where the business operations referred to in clause 3 of this article and conducted by the subsidiary company derives any benefit to another subsidiary company of the same parent company, such beneficial subsidiary company and the parent company shall be jointly responsible for returning such benefit to the subsidiary company suffering damage.

Article 148 *Financial statements of parent companies and subsidiary companies*

1. At the end of a fiscal year, in addition to the statements and documents specified by law, a parent company must prepare the following statements:
 - (a) Integrated financial statement of the corporate group in accordance with the law on accounting;
 - (b) General report on annual business results of the corporate group;
 - (c) General report on management and administration of the corporate group.
2. The person who is responsible for preparing the statement and reports specified in clause 1 of this article shall not be allowed to prepare and submit such statement and reports if he or she has not received all of financial statements from the subsidiary companies.
3. Upon the request of the legal representative of the parent company, the legal representative of the subsidiary company must provide stipulated reports, documents and information necessary for preparation of the integrated financial statement and general reports of the corporate group.
4. Where the managers of the parent company are not aware of or suspicious about any wrong, incorrect or forged information included the statements prepared and submitted by the subsidiary companies, they may use such statements to prepare the integrated financial statement and general reports of the corporate group.
5. Where the managers of the parent company have taken all necessary measures within their authority, but have not received the necessary reports, documents and information as stipulated from a subsidiary company, they shall prepare and submit the integrated financial statement and general reports of the corporate group. Such statement and reports may or may not include information from such subsidiary company, but must contain necessary explanatory statements to avoid any misunderstanding or incorrect understanding.

6. Reports and final annual financial statements of the parent company, of subsidiary companies and integrated statements and general reports of the corporate group shall be retained at the head office of the parent company. Copies of statements and documents specified in this clause must be available at branches of the parent company in the territory of Vietnam.
7. With respect to subsidiary companies, in addition to statements and reports stipulated by law, they must prepare and submit a general report on purchases, sales and other transactions with their parent company.

Article 149 *Economic groups*

An economic group means a corporate group of a large size. The Government shall provide guidelines on criteria, organizational management and operation of economic groups.

CHAPTER VIII

Re-organization, Dissolution and Bankruptcy of Enterprises

Article 150 *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 company owner 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 name and address of the head office of the company being divided; names 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 share capital, 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, company owners 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 or 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. The company being divided shall cease to exist upon registration of the business of the new companies. The new companies must be jointly liable for unpaid debts, labour contracts and other property obligations of the company being divided or shall agree with creditors, customers and employees in order for one of such companies to perform such obligations.

Article 151 *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 company owner 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 address of the head office of the company being separated; the names 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, company owners 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 or 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) must be jointly liable for unpaid debts, labour contracts and other property obligations of the company being separated, unless otherwise agreed among the company being separated, newly-established companies, creditors, customers and employees.

Article 152 *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 address of the head 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 share capital, shares and bonds of the companies being consolidated into shares of share capital, 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 or 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. In the case of consolidation whereby the consolidated company holds a market share of between thirty (30) per cent and fifty (50) per cent of the relevant market, the legal representative of the company must notify the competition managing body before carrying out the consolidation, unless otherwise stipulated by the law on competition.

Cases of consolidation of companies whereby the consolidated company holds a market share of fifty (50) per cent or more of the relevant market shall be prohibited, unless otherwise stipulated by the law on competition.

4. 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 153 *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 address of the head office of the merged company; the name(s) and addresses of the head office(s) of the merging company(ies); the procedures and conditions for the merger; the plan for employment of employees; the procedures, time-limit and conditions for conversion of assets; for conversion of shares of share capital, 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 merging companies shall cease to exist; 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.

3. In the case of merger whereby the merged company holds a market share of between thirty (30) per cent and fifty (50) per cent of the relevant market, the legal representative of the company notifies the competition managing body before carrying out the merger, unless otherwise stipulated by the law on competition.

Cases of merger of companies whereby the merged company holds a market share of fifty (50) per cent or more of the relevant market shall be prohibited, unless otherwise stipulated by the law on competition.

Article 154 *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 address of the head office of the company being converted; the name and address of the head office of the converted company; the time-limit and conditions for conversion of assets, shares of share capital, 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 155 *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 assignee must register the change of the company owner and the organizational management or operation in accordance with the provisions on one member limited liability companies being individuals.

Article 156 *Temporary suspension of business*

1. An enterprise may temporarily suspend its business but must notify the business registration body and tax office in writing of the point of time and period of temporary

suspension or resumption of its business no later than fifteen (15) days before the date of temporary suspension or of resumption of its business.

2. The business registration body or an authorized State body shall have the right to require an enterprise to temporarily suspend its business in a conditional line of business when it discovers that the enterprise fails to satisfy all of the conditions stipulated by law.
3. During temporary suspension, the enterprise must pay in full any outstanding amount of tax, continue to pay debts and finalize the performance of contracts signed with customers and employees, unless otherwise agreed by the enterprise, creditors, customers and employees.

Article 157 *Cases of and conditions for dissolution of enterprises*

1. An enterprise shall be dissolved in the following cases:
 - (a) The duration of operation stated in the charter of the company expires and there is no decision to extend;
 - (b) As decided by the enterprise owner in the case of a private enterprise; by all unlimited liability partners in the case of a partnership; by the Members' Council or the company owner in the case of a limited liability company; by the General Meeting of Shareholders in the case of a shareholding company;
 - (c) The company does not have the minimum number of members stipulated in this Law for a period of six consecutive months;
 - (d) The business registration certificate is revoked.
2. An enterprise shall only be allowed to be dissolved when it ensures to discharge all debts and other property obligations.

Article 158 *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. The resolution on dissolution of an enterprise must have the following main particulars:
 - (a) Name and address of the head 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;
 - (e)²³ Full name and signature of the legal representative of the enterprise.
2. The owner of a private enterprise, the Members' Council or company owner or the Board of Management shall directly organize the liquidation of assets of the enterprise, except

23 Phillips Fox Note: This is the lettering used in the Vietnamese text for this sub-clause.

where the establishment of a separate liquidation organization is stipulated by the charter of the company.

3. Within seven working days after being passed, the resolution on dissolution must be sent to the business registration body, all creditors, persons having related rights, obligations or interests, and employees in the enterprise and must be publicly posted at the head office and branches of the enterprise.

Where the law requires publication of the resolution on dissolution on newspaper, the resolution on dissolution must be published on at least one written or electronic newspaper in three consecutive issues.

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.

4. Debts of the enterprise shall be discharged in the following order:
 - (a) Unpaid wages, retrenchment allowances, and social insurance in accordance with law and other benefits of employees pursuant to signed collective labour agreement and labour contracts.
 - (b) Tax liabilities and other debts.

After discharge of all debts and costs of the dissolution proceeding of the enterprise, the remainder shall belong to the owner of the private enterprise, members, shareholders or company owner.

5. Within a time-limit of seven working days after all debts of the enterprise are fully paid, the legal representative of the enterprise must submit documents relating to the dissolution of the enterprise to the business registration body. Within seven working days from the date of receipt of all valid documents, the business registration body shall remove the name of the enterprise from the business register.
6. 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.

Where the business registration body does not receive the documents relation to the resolution of an enterprise within the period of six months as stipulated in this clause, such enterprise shall be deemed to have been dissolved and the business registration body shall remove the name of the enterprise from the business register. In this case, the legal representative, members in the case of a limited liability company, the company owner in the case of a one member limited liability company, members of the Board of Management in the case of a shareholding company, unlimited liability partners in the case of a partnership shall be jointly responsible for debts and other property obligations which are outstanding.

Article 159 *Prohibited activities as from the date of resolution on dissolution*

As from the date of the resolution on dissolution of an enterprise, the enterprise and managers of the enterprise shall be strictly prohibited from conducting the following activities:

1. Concealing, or dispersing²⁴ any asset;
2. Waiving or reducing the right to claim any debt;
3. Converting any unsecured debts into debts secured by assets of the enterprise;
4. Signing any new contract other than contracts for the purpose of dissolution of the enterprise;
5. Pledging, mortgaging, donating, giving or leasing out any assets;
6. Terminating the performance of any contract which has taken effect;
7. Raising capital in any other forms.

Article 160 *Bankruptcy of enterprises*

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

CHAPTER VIII

State Administration of Enterprises

Article 161 *Contents of State administration of enterprises*

1. To issue, disseminate and provide guidelines for implementation of legal instruments on enterprises and relevant legislation.
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 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 business operations of enterprises; and to deal with breaches of the law committed by enterprises or related individuals and organizations in accordance with law.

24 Phillips Fox Note: That is, so that such assets may not be included in the dissolution process.

Article 162 *Responsibilities for State administration of enterprises*

1. The Government shall exercise uniform State administration of enterprises; shall appoint one body which shall be accountable to the Government for presiding over and co-ordinating with other ministries and branches in exercising State administration of enterprises.
2. Ministries and ministerial equivalent bodies shall be responsible to the Government for exercising their delegated duties with respect to State administration of enterprises; shall, within their delegated duties and powers, be responsible for:
 - (a) Reviewing business conditions under [their] authority in State administration on a periodical basis or at the request of associations of enterprises; proposing the abolishment of business conditions which are no longer necessary; amending unreasonable business conditions; submitting new business conditions to the Government for promulgation in order to ensure [meeting] the requirements of their delegated duties to exercise State administration;
 - (b) Providing guidelines for implementation of the law on business conditions; examining, inspecting and dealing with breaches of the observance of business conditions under [their] authority of State administration;
 - (c) Disseminating and popularizing legal instruments;
 - (d) Organising administration of business operation in conditional lines of business; examining, controlling and dealing with environmental pollution, protecting the environment; ensuring food safety and hygiene and occupational safety and hygiene;
 - (dd) Formulating the system of Vietnamese Standards; examining, inspecting and dealing with offences of the observance of quality standards of goods and services in accordance with the system of Vietnam quality Standards;
 - (e) Exercising other rights and responsibilities in accordance with law.
3. People's committees of provinces and cities under central authority shall exercise State administration of enterprises within their respective localities; shall, within their delegated duties and powers, be responsible for:
 - (a) Directing professional bodies under their authority and people's committees of districts, towns and provincial cities to provide information on enterprises; resolving difficulties in and obstructions to investment and supporting the development of enterprises within their authority; organizing examination and inspection of enterprises and dealing with breaches in accordance with law;
 - (b) Organizing business registration and exercising administration of enterprises and business households pursuant to the contents of their business registration; dealing administratively with breaches of this Law and relevant law;
 - (c) Directing professional bodies under their authority and people's committees of districts, towns and provincial cities to implement the provisions of the law on taxation and business conditions in accordance with law and relevant guidelines provided by ministries and ministerial equivalent bodies; directly dealing with or proposing that competent bodies deal with breaches of the regulations on State administration in this field;

- (d) Organising business registration bodies, deciding on permanent staff of the business registration body of a province or city under central authority; directing and guiding people's committees of districts, towns and provincial cities and people's committees of communes, wards and townships in dealing with administrative offences in business registration.

Article 163 *Organizational structure, duties and powers of business registration bodies*

1. A business registration body shall have the following duties and powers:
 - (a) To carry out business registration and to issue business registration certificates in accordance with law.
 - (b) 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.
 - (c) To require enterprises to report on their business conditions where it deems necessary for implementation of the provisions of this Law; to monitor the implementation of the reporting regime by enterprises.
 - (d) To examine directly, or request the competent State body to examine, enterprises with respect to the matters in the business registration documents.
 - (dd) 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.
 - (e) To be responsible before the law for breaches committed in the course of business registration.
 - (g) To exercise other powers and perform other responsibilities in accordance with this Law and relevant legislation.
2. The organizational structure of business registration bodies shall be provided by the Government.

Article 164 *Inspection of business operations of enterprises*

The examination and inspection of business operations of enterprises shall be carried out in accordance with law.

Article 165 *Dealing with breaches*

1. Persons committing breaches of the provisions of this Law shall, depending on the nature and seriousness of the breach, be subject to disciplinary action, administrative penalty or criminal prosecution in accordance with law; must compensate for damage caused to the interests of an enterprise, its owner, members, shareholders or creditors, or other persons in accordance with law.
2. The business registration certificate of an enterprise shall be revoked and its name shall be removed from the business register in the following cases:
 - (a) The content stated in business registration documents being fake;

- (b) Establishment of an enterprise by persons who are prohibited from establishing enterprises as stipulated in clause 2 of article 13 of this Law;
- (c) Failure to register a tax code within one year from the date of issuance of the business registration certificate;
- (d) Failure to conduct its operation at the registered head office for a duration of six consecutive months from the date of issuance of the business registration certificate or certificate of the change of [the address] of the head office;
- (dd) Failure to report on business activities of the enterprise to the business registration body for twelve (12) consecutive months;
- (e) Cessation of business activities for one full year²⁵ without notifying the business registration body;
- (g) Failure to send reports as stipulated in clause 1(c) of article 163 of this Law to the business registration body within three months from the date of written demand;
- (h) Conducting prohibited lines of business.

CHAPTER X

Implementing Provisions

Article 166 *Conversion of State owned companies*

1. [Conversion of State owned companies] shall be implemented in accordance with the annual schedule of conversion, but no later than four years from the date on which this Law becomes effective, State owned companies which were established in accordance with the 2003 Law on State Owned Enterprises must be converted into a limited liability company or shareholding company in accordance with this Law.

The Government shall make regulations and provide guidelines on order and procedures for conversion.

2. During the period of conversion, the provisions of the 2003 Law on State Owned Enterprises shall remain applicable to State owned enterprises unless otherwise stipulated by this Law.

Article 167 *Enterprises serving national defence and security*

State owned enterprises directly serving national defence and security or combining their economic duties with [their duties of] national defence and security shall be organized and managed and operate in accordance with this Law and separate regulations of the Government.

25 Phillips Fox Note: The literal translation is "one consecutive year".

Article 168 *Exercise of owner's rights of State owned capital in enterprises*

1. The State shall exercise owner's rights of State owned capital in enterprises on the following principles:
 - (a) Exercising owner's rights in the capacity of a capital investor;
 - (b) Maintaining and developing State owned capital;
 - (c) Separating the function of exercise of owner's rights from the function of State administrative management;
 - (d) Separating the exercise of owner's rights from the right to business autonomy of enterprises; respecting business rights of enterprises;
 - (dd) Exercising uniformly and centrally owner's rights and obligations with respect to capital.
2. Functions, duties and powers of the representative organization of the State owner; the regime of exercise of owner's rights of State owned capital; method and criteria for evaluation of efficiency and the actual status of maintenance and development of State owned capital; the regime of co-ordination, inspection and assessment with respect to the representative organization of the State owner; guidelines, measures to arrange, restructure, reform and enhance the efficiency of operation of enterprises with State owned capital shall be implemented in accordance with law.
3. The Government shall submit general reports on the current status of business of State owned capital, of the maintenance and development of the value of investment capital and assets under State ownership in enterprises on an annual basis.

Article 169 *Establishment of State owned enterprises*

Enterprises which are established by the State as from the date on which this Law becomes effective must be registered, organize management and operate in accordance with this Law and relevant law.

Article 170 *Application to enterprises which were established before the date on which this Law becomes effective*

1. Limited liability companies, shareholding companies, private enterprises and partnerships established in accordance with the *1999 Law on Enterprises* shall not be required to carry out procedures for business re-registration.
2. Enterprises with foreign owned capital established before the date on which this Law becomes effective, except for the cases specified in clause 3 of this article, shall have the right to select one of the following two methods:
 - (a) To carry out re-registration, to organize management and operate in accordance with this Law and relevant law; re-registration shall be carried out within a time-limit of two years from the date on which this Law becomes effective;
 - (b) Not to carry out re-registration; in this case, the enterprise shall only be allowed to conduct business operations within the scope of the lines of business and the term stated in its investment licence and shall continue to enjoy investment incentives in accordance with regulations of the Government.

3. Enterprises with foreign owned capital whose foreign investors have undertaken to transfer all assets they have invested in to the Government of Vietnam without any compensation after expiry of the duration of operation shall only be allowed to be converted upon approval of the authorized State body in accordance with regulations of the Government.
4. Business households which employ ten (10) or more employees on a regular basis must register for establishment of an enterprise to operate in accordance with the provisions of this Law.

Small scale business households shall carry out business registration and operate in accordance with regulations of the Government.

Article 171 *Effectiveness*

1. This Law shall be of full force and effect as of 1 July 2006.
2. This Law shall replace the *1999 Law on Enterprises*; the *2003 Law on State Owned Enterprises*, except for the cases specified in clause 2 of article 166 of this Law; the provisions on management organization and operation of enterprises in the *1996 Law on Foreign Investment in Vietnam* and the *2000 Law on Amendment and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam*.

Article 172 *Guidelines for implementation*

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

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 8th session on 29 November 2005.

Chairman of the National Assembly

NGUYEN VAN AN