

# **RESTRUCTURING OF STATE-OWNED ENTERPRISES AND THE SEPERATION OF STATE OWNERSHIP FUNCTIONS AND MANAGEMENT FUNCTIONS TO STATE-OWNED ENTERPRISE**

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The restructuring of state-owned enterprises (SOEs), together with the restructuring of investment and financial market, are the 3 most important areas of economic restructuring and renovating the growth model in the next 5 years, as stated in the Third Central Resolution, term XI.

The effectiveness of SOE restructuring depends not only on the renewal of SOEs themselves, but also on the capacity, effectiveness, efficiency, professionalism, consistency and harmonization of state agencies in implementing the role and functions of state ownership representative in SOEs. Thus, restructuring to perform effectively the role and functions of state ownership representative serves to remove a critical bottleneck in SOE restructuring.

Specifically, the restructuring of agencies representing state ownership and the separation of representative functions of state ownership and state management functions to SOEs remain an urgent issue demanding considerable efforts to resolve. This paper presents an approach to the restructuring of SOEs and agencies representing state ownership, and proposes some fundamental solutions to separate the representative functions of state ownership and state management functions to SOEs, focusing on state economics groups (EGs) and genenal corporations (GCs).

## **1- An approach to restructure SOEs**

The restructuring of SOEs from various industries and lines, with different sizes, types, ownership structures, etc. requires a comprehensive approach as follows:

(i)- To identify correctly, clearly, consistently the long-term orientation of restructuring (ownership structures, strategic activities, roles in state economic sector, organizational modes and legal forms) for each SOE. This is the shorter way to achieve a longer goal, reducing opportunity costs for arranging and renovating the whole SOE sector and each individual SOE. Yet our path of arranging and renovating SOEs to date has been circuitous. For the past 10 years, there have been 4 revisions to the criteria of SOE arrangement and renovation, as shown in the 4 Decisions by the Prime Minister, namely Decision No. 58/2001/QĐ-TTg (2001); Decision No. 155/2004/QĐ-TTg (2004); Decision No. 38/2007/QĐ-TTg (2007); and Decision No. 14/2011/QĐ-TTg (2011). SOEs are stuck in numerous rounds of classification, arrangement and transformation, which worsen the costs of shifting legal forms and create instability in doing business. This also fosters short-term mindset and rent-seeking behavior along with tenure mindset.

(ii)- To construct, supplement and perfect the legal framework to ensure the implementation of SOE restructuring.

(iii)- To narrow down the list of business sectors and fields requiring SOEs and thus reduce the number of SOEs that do not have to be maintained; to focus SOE operations on industries and lines which are vital to national economic interests, national defense and security, public services, infrastructure, advanced science and technology.

(iv)- Efforts to restructure the SOE sector should be focused on the restructuring of EGs and GCs, which in turn must target each specific group of companies. The restructuring of EGs and GCs relies on the the following measures: to restructure their industries and lines; to restructure investment and finance; to innovate their business model; to improve the quality of exercising parent companies' leading, orienting, and supervising role to their groups; to better the relationship between parent companies and member enterprises; to improve corporate governance and bring forth transparency in business operations and in the management,

supervision, implementation of the functions of capital owners to subsidiaries and associated companies; to ensure effective and efficient implementation of state ownership functions at EGs and GCs; to issue clearly the responsibilities and sanction mechanisms for individuals in the management and leadership positions at EGs, GCs and agencies representing state ownership.

(v)- Restructuring not only applies to existing SOEs, EGs, GCs, but also focuses on monitoring the establishment of new SOEs, EGs, GCs in the future; to renew thinking in formulation of projects on the transformation, establishment, restructuring of SOEs, EGs, GCs; to control the quality of projects on transformation and establishment of EGs, GCs, SOEs; to strengthen project supervision after transformation and establishment; to enhance the role of independent reviews; to use independent agencies, organizations, and experts in the formulation, review of the project on restructuring the entire SOE sector, EGs, GCs as well as specific projects for each EGs, GCs, SOEs.

(vi)- To apply market-based measures of restructuring; to diversify ownership structures and equitize SOEs and the parent companies of EGs, GCs; to implement measures to create, stimulate , nurture and develop market factors in the selection and rejection of SOEs, leaders, managers and employees; to strengthen accountability and provide incentives to improve firstly the productivity, quality and performance of leaders and managers. Experience and lessons drawn from the arrangement and renovation of SOEs to date prove that administrative measures to restructure SOEs are only effective in the early, quantity-reduction stage (number of SOEs), but not so for changes in quality (productivity , quality and efficiency) of most individual SOEs and the majority of corporate groups (EGs, GCs). SOE renovation only goes into depth when implementing market-based measures of socializing (marketizing) structure of ownership, management and supervision, as in the case of equitized SOEs.

(vii)- To apply the principle of transparency and openness - a modern principle of corporate governance to restructure SOEs, EGs, GCs in order to improve corporate governance based on market practices; to prevent wrongdoings, interest groups, and promote the implementation of a monitoring mechanism to gradually replace the traditional method of inspection, checking, direct intervention, administration, which is ineffective and carries potential moral hazard (interest groups, individuals).

(viii)- To place SOEs, especially EGs, GCs, in a competitive environment; to use competitive and monopoly-control mechanisms to create pressure to promote further restructuring of SOEs in operation; to promote market-based mechanisms in business merger and acquisitions. The state only creates the legal framework and controls, monitors mergers and acquisitions in accordance with the laws.

(ix)- To restructure agencies representing state ownership and organizations performing the functions of state owners to ensure effective and efficient management of state owners and promote administrative reform; to innovate management and supervision mechanism of the state to SOEs and the state capital invested in enterprises; to separate between the representative functions of state ownership and state management functions to SOEs. This is one of the necessary and important conditions to ensure a professional and specialized implementation of SOE restructuring and the functions of state owners, consistent with market economy institutions and best practices in the process of international economic integration.

## **2- Separation of representative functions of state ownership and state management functions to SOEs**

Despite some improvements or adjustments, an ubiquitous problem that has lasted for many years is the existence of too many state management bodies which also represent state ownership and state capital at SOEs. These agencies include: the government (state management and implementation of the rights and obligations of state owners); managing ministries of technical and economic sectors (state

management of economic and technical sectors as well as representatives of state ownership and state capital); a number of ministries such as the Ministry of Finance, Home Ministry, Ministry of Labour, Invalids and Social Affairs, Ministry of Planning and Investment (with or without SOEs) also hold both functions (implementing state management functions in relevant areas as well as functions of state owners); the People's Committees of centrally-run provinces and cities (state management in relevant provinces or territories, and representatives of state owners and state capital in enterprises which they invest).

The functions of state owners to SOEs has been carried out in various models such as "line ministries, line administrative agencies" (prior to the Law on State-owned Enterprise 1995) ; the “dual” model in which the functions of state owners was assigned to both managing ministries and the Ministry of Finance (in the period 1995-2000 after the establishment of the General Department for Management of State Capital and Property at Enterprises under the Ministry of Finance); the “limited dispersion” model which applied to SOEs established by ministries and provincial People's Committees (in the period 2000-2003 after the dissolution of the General Department for Management of State Capital and Property at Enterprises); and the “disperse” model of ownership representative to EGs and GCs (from 2004 until now in accordance with the Law on State-owned Enterprises 2003 and the Enterprise Law 2005). Despite several adjustments and changes, the fundamental issue underlying these models is the lack of separation between the representative functions of state ownership and state management functions to SOEs.

The lack of separation of these two functions at state agencies leads to the following consequences:

- First, it is unclear which agencies represent state ownership, and which one is in charge among all state ownership representatives.

- Second, there is an encroachment from state management to the management of SOE owners and vice versa.

- Third, the confusion between state management role and management role of SOE owners happens not only within one agency, but also across agencies.

- Fourth, the apparatus and managers are not professional and dedicated to the consistent purpose of the organization: they have neither established a professional administration and effective public management, nor have done the professional work of business investors, business owners or owners of the capital invested in the enterprise.

- Fifth, it is unclear whether many of the documents issued and applied to SOEs are under the agencies' state management power or state ownership representative power.

- Sixth, the state management apparatus at ministries and provincial-level People's Committees is often biased towards management of SOEs.

- Seventh, state management is "distorted" in favor of SOEs, and there always exists an inconsistent and unequal treatment among different ownership forms.

- Eighth, due to overlapping role and the lack of specialization and professionalism, it is difficult to specify responsibilities and arbitrate among these representative bodies during the implementation process and when problems or consequences occur.

Recognizing the limitations and constraints of these issues, a number of Party resolutions have introduced such guidelines as "abolition of line ministries, and line administrative-level" (7<sup>th</sup> Party Congress) in order to renovate the functions and organization model of state management and implement the functions of state owners; "separating the state role as an apparatus of public authorities to manage the entire social economy from the role of state capital and property owners" (Resolution of the Sixth Meeting of the Tenth Central Committee); even "narrow down and eventually

eliminate the functions of owner representative of ministries and provincial and city-level People's Committees to SOEs" (Documents of the Tenth National Party Congress); "study on the formation of investment management organizations and effective use of state capital and properties; redress the direct involvement of administrative apparatus in business activities through administrative orders" (Documents of the 11<sup>th</sup> Vietnam Communist Party Congress). The separation of the representative functions of state ownership and state management functions at state agencies is a key content of SOE restructuring in accordance with the Fourth Central Resolution Central term XI. However, the actual implementation of guidelines and resolutions has not been satisfactory.

Besides, the separation of representative functions of state ownership and state management functions will help implement one WTO accession commitment, which demands similar treatment from the government to SOE as that from other business owners to their businesses – in other words, the state must give equal treatment to SOEs and non-state enterprises.

The need to do so is urgent and cannot be postponed further: without such separation to clarify the leading agency representing state ownership which is specialized, professional, responsible and well organized, the current inefficiency and lack of accountability in the management of SOEs, EGs, GCs will lead to problems such as loss of state capital and property; wasteful public investment through the channels of SOEs, EGs, GCs, causing persistently high inflation (or if investment is cut to curb inflation, production will stagnate) and inability to transform the current growth model.

Several specific steps to separate the representative functions of state ownership and state management functions have been carried out. Specifically, in 2009, the Prime Minister issued Decision No. 1715/QĐ-TTg approving the scheme on "Renewal of the state management of enterprises towards non-discrimination against any forms of ownership and adjustment of the administration and operation of state

enterprises in order to raise their effectiveness upon realization of WTO accession commitments", which assigned the Ministry of Planning and Investment to preside over the formulation of the project "Splitting representative functions of state ownership from state management functions of state agencies and identify the bases to form specialized organizations to perform the functions of state owners at EGs, GCs, large-scale and important SOEs." The later 2011 work plan of the Government assigned the Ministry of Planning and Investment to formulate the project "Splitting the representative functions of state ownership from the state management functions of state agencies."

### **3- Solutions to separate the representative functions of state ownership and state management functions**

Solutions to orient the splitting between representative functions of state ownership and state management functions are as follows:

#### **3.1 Renewal of mindset on implementing representative functions of state ownership in separation from state management functions of state agencies**

The separation of representative functions of state ownership and state management functions should start from changes in thinking and awareness of objectives, requirements, functions, tasks, methods, management tools of state owners and state management, and the benefits of this separation.

*a- To specify the objectives and requirements of state management and those of state owners:*

Given the aim of SOE restructuring is to renew the growth model and attract resources from the private sector, the objectives and requirements of state management to SOEs must be similar to those of state management to other businesses, regardless of ownership forms. State management is to create a fair business environment conducive to the development of businesses in general; to attract all types of resources for socio- economic development; and to avoid distorting

business environment. In contrast, the management objective of the owner's representatives is to bring maximum economic efficiency to state owners (such as conservation and development of capital, growth in revenues, profits, high margins, high rates of return, etc.).

Thus, the management objectives and requirements of state owners must be clearly identified in line with the roles of investors, shareholders, members of enterprises operating under the Enterprise Law. Direct intervention of state owners into SOEs, administrative orders to SOEs or any force upon SOEs to regulate the economy, prices, supply - demand, distribution, or to target both economic efficiency and social goals, without separate evaluation of these two activities and sufficient compensation at market prices for SOEs when carrying out state assignments, should be minimized and eventually terminated. State owners focus on management and supervision of profit motives.

*b-Clear separation of the management functions, tasks of state owners and those of state management to SOEs:*

State management of SOEs are functions of public authorities, which include public administration and public services provision to all enterprises irrespective of ownership forms. These contain the formation of favorable operating environment for businesses including SOEs; orientation, regulation of businesses by macroeconomic tools and socio-economic development strategies; provision of information to orient the development of businesses; inspect and monitor activities of law-abiding businesses, etc.

State owners' management of SOEs under their authorities means to exercise the rights and obligations of owners at enterprises. In particular, owners exercise such rights as: to decide the establishment; to approve the charter; to determine objectives, strategies, development orientation, reorganization, dissolution, transfer of ownership, investment and capital contribution; to determine management structure; to appoint

and dismiss senior management personnel of the enterprise; to inspect, supervise and evaluate the performance of SOEs, etc. Owners perform the obligations to SOEs such as: to ensure business autonomy (not directly intervene in business operations); to warrant sufficient charter capital investment; to be accountable for all liabilities and other business obligations of their enterprises; to comply with corporate charters, etc.

*c – To specify management methods and tools of state owners and those of state management to SOEs :*

The state manages enterprises through methods and tools of public authorities such as legislation (to issue laws and organize their implementation); policies (to issue policies and organize their implementation); strategies, master plans, and plans (to issue strategies, master plans , plans and organize their implementation); and through the apparatus of state management agencies (i.e, conduct of civil servants and public employees) .

State owners manage SOEs through the use of owner's authorities within the limits permitted by law (what the law does not prohibit or restrict). Owners use the tools under his powers to manage SOEs such as the owner's management apparatus; issuance and direction to implement the rules and regulations under the owners' legitimate scope of authority; promulgation and implementation of policies, strategies, master plans and business plans, etc.

*d – Benefits of separating representative functions of state ownership and state management functions:*

- To promote administrative reform at state agencies; to clarify the functions, tasks, powers, responsibilities of the apparatus and staff according to each management functions.

- To alleviate the problem of too many leads, dispersion, overlap, uncoordination or shirk of responsibilities and tasks among agencies and among units of the same agency.

- To alleviate the problem of distorting business environment due to abuse of public authorities' power to issue policies or provide unfair treatment in favor of SOEs.

- To create conditions to accelerate the implementation of specialization and professionalization of the organization, apparatus and personnel in state agencies; to implement effectively, efficiently, specializationally, professionally the representative functions of state ownership; to better protect the business interests of the state.

### ***3.2- Separation of the organization and apparatus performing the representative functions of state ownership***

#### *a- Rules of split:*

Splitting organizations and personnel performing management tasks of state owners from those performing state management tasks to SOEs and enterprises of other ownership forms. Specifically:

- Organizations and personnel performing the functions of state management to SOEs must be associated with those performing the functions of state management to enterprises in general (regardless of ownership forms), belong to the public authority system, and exercise state management by sectors, fields and territories.

- Organizations and personnel performing the representative functions of state ownership are business experts, with mandates to do business, and belong to neither the public authority system nor public administration agencies.

The apparatus and personnel performing the rights of state owners to 100% state-owned enterprises and the state capital in other enterprises primarily exercise functions, duties and rights of state owners to 100% state-owned enterprises and the state capital in other businesses, which include the issuance of management and supervision regulations on personnel management, finance and other important business decisions.

*b- On organization:*

There are many options to be considered for the separation of organizations and apparatus performing the representative functions of state ownership and those performing state management functions. For example, recent proposal to separate state owner functions suggests the selection of one of three following options:

- Option A: No formation of specialized agencies performing functions of state owners; instead, managing ministries are solely assigned the representative functions of state ownership to SOEs (including one-member limited liability companies which are parents companies of EGs or GCs) whose main business activities belong to the managing fields of the ministries (excluding SOEs to which the People's Committees of Hanoi and Ho Chi Minh City perform representative functions of state ownership). Each ministry will have specialized departments to be in charge.

The People's Committees of Hanoi and Ho Chi Minh City perform the representative functions of state ownership to one-member limited liability companies which are the parent companies of GCs, one-member limited liability companies and the state capital in businesses providing public goods and services in the areas (excluding SOEs providing inter-regional public utility). The People's Committees of these two cities shall establish specialized Management Boards to be in charge of supervising SOEs.

The People's Committees of other provinces: To perform all functions of state ownership to SOEs providing public goods and services in the areas (excluding SOEs providing inter-regional public utility). Provincial People's Committees shall establish their own units or assign provincial Departments to be in charge.

State Capital Investment Corporation (SCIC): To implement rights, obligations and responsibilities of state owner for remaining SOEs.

Government, Prime Minister supervise the implementation of state ownership representative function at leading agencies above.

- *Option B*: To establish a specialized agency in the form of a committee (i.e., SOE Management and Supervisory Committee). The committee will be a leading agency to implement rights, obligations, responsibilities of state owner to important EGs and GCs.

Ministries and provincial People's Committees: To continue to implement rights, obligations and responsibilities of state owners to SOEs providing public utility and services.

State Capital Investment Corporation (SCIC): To implement rights, obligations and responsibilities of state owner for remaining SOEs.

- *Option C*: To establish a specialized agency at ministerial level. Other Ministries, provincial People's Committees, SCIC: similar to option B.

Consider the three options above, Option A produces no major organizational change at ministerial level; there is, to some extent, a separation of agencies representing state ownership function and agencies representing state management function at Ministries, provincial People's Committees. However, the main drawback of this option is that it does not fully separate state ownership function from state management function and does not solve the limitations and shortcomings of the dual model at ministries and provincial People's Committees. There are still too many leading agencies representing state ownership at managing ministries, People's Committees, making it difficult to maintain focus and consistency in management of state ownership.

On the other hand, option B can fully separate state ownership function from management function of state agencies (including managing ministries, provincial People's Committees). Therefore, it can enhance specialization, professionalism and efficiency of management of state owner; promote administrative reform; redress the problem of too many leading agencies but lack of transparency in implementing state ownership function – a drawback that has lasted for decades of a model in which state

agencies perform both management function and state ownership function. Thus, option B can be chosen as a targeted option to restructure agencies representing state ownership in the coming time.

The basic contents of this plan are:

- *The name of specialized agencies:* Management and Supervision Committee of State Ownership in Enterprises (hereafter ‘the Committee’).

- *Subjects of supervision and management of the Committee* include the state-owned EGs, GCs, large and important SOEs including SCIC but excluding state-owned enterprises providing specialized public goods and services in local areas.

- *The function of the Committee* is to take charge of assisting the Government in coordinating the implementation of rights, obligations and responsibilities of state owners to EGs, GCs and important SOEs.

- *Main task of the Committee:*

- To implement responsibilities of investor-owner; to supervise, evaluate state investment in SOEs and SOEs’ investment.
- To guide state ownership rights in accordance with the laws; to propose measures to implement state ownership rights effectively.
- To guide and supervise state property management, supervision and the implementation of state ownership at local areas in accordance with the laws.
- To guide and promote the reformation and restructuring of SOEs; to build modern SOEs; to propose structural adjustment strategy for the state sector.
- To establish, develop a unified database and information system at national level about SOEs, state assets and state ownership.

- To propose policies and regulations on state asset management; to ensure the implementation of rights, responsibilities, obligations of investors-state owners.
  - To create regulations on the protection of rights and interests of investors-state owners
  - To develop indicators system, monitoring and supervising methods on the preservation and development of state asset; the protection of rights and interests of investors-state owners.
  - To supervise and evaluate the preservation and development of state asset at enterprises in accordance with the laws; the protection of rights and interests of investors-state owners.
  - To build a selective, remuneratory and sanction system for management and executive staff.
  - To appoint, dismiss, evaluate, reward, sanction senior managers of SOEs in accordance with the laws and based on SOE performance, the managers' performance and fulfillment of duties.
  - To perform other duties as requested by the Government.
- The Committee does not implement state management, remains independent with other ministries, but can comment, ask for comments about related issues.
- Other ministries specialize in state management, have members participated in the Committee, are allowed to discuss, comment, ask for comments (the right to make decision belongs to the Committee).
- The position, compensation of civil servants and public employees of the Committee: members are specialized civil servants and public employees. Compensation depends on efforts, efficiency, responsibilities for monitoring, supervision and evaluation of SOEs and the implementation of state ownership. Thus,

there should be specific guidelines and regulations on civil servants and public employees; and create a salary, bonus fund for civil servants and public employees of the Committee.

### ***3.3- To strengthen the monitoring of the representative function of state ownership***

To ensure effective separation and efficient implementation of the representative function of state ownership, the monitoring and evaluation of the implementation of owners' rights at agencies, organizations, and individuals representing state ownership. Specifically:

- The Government, with its function of organizing the implementation of the rights and obligations of state owners, shall monitor, inspect and evaluate the implementation of the rights and obligations of state owners at agencies, organizations and individuals under the government.

- The general principles of monitoring and evaluation is that the higher-level agency representing state ownership monitor and evaluate subordinate agencies in the same structure.

- The objective of monitoring and evaluating the implementation of the representative function of state ownership is to ensure the rights and obligations of state owners in implementing the goals, tasks, State interests assigned to the entire SOE sector and other businesses with state capital.

### ***3.4- To enhance the powers and responsibilities of the National Assembly in monitoring the implementation of state-ownership rights***

Under the Constitution, the state-asset investments in SOEs are owned by the people. According to the Law on Organization of the National Assembly, the National Assembly is the highest representative body of the people, representing public ownership. The National Assembly is the highest state authority, exercising the right of supreme control over all state operations. In particular, 'unified implementation of

rights and obligations of state ownership' of government is under the supreme control of the National Assembly.

Therefore, it is necessary to enhance the powers and responsibilities of the National Assembly in monitoring the implementation of state-ownership rights for SOEs and state capital in business.

Some of the powers and responsibilities of the National Assembly which should be strengthened to monitor the implementation of state-ownership rights include:

- Supreme controlling over state-ownership rights for SOEs and state capital in business.
- Evaluating the situation, the performance of SOEs and the use of state capital in business.
- Assessing Government performance in implementing the owner's rights and obligations to SOEs and state capital in business.

These rights and obligations should be added to the Law on Organization of the National Assembly to ensure the legal framework for enhancing control over state-ownership implementation; to ensure consistency of the state-ownership representatives, in which the National Assembly is the highest representative of the people.

### ***3.5- To enhance transparency in implementing representative functions of state ownership***

Implementation of SOE restructuring scheme under the Third Central Resolution (term XI) requires all levels of state-ownership representatives to apply the principle of transparency and openness - a principle of modern corporate governance applied in both business management and governance - to restructure SOEs,

especially EGs, GCs, thus, improving corporate governance based on market practices to prevent wrongdoings, interest groups. In particular:

- National Assembly requires all levels of state-ownership representatives to apply principles of transparency and openness in implementing representative functions of state ownership. In particular:

To regulate clearly and transparently on relevant objects (organizations and individuals) performing representative functions of state ownership, including: lists of agencies and titles, powers, duties, responsibilities, evaluation and explanation mechanisms of these objects (including organizations and individuals).

To develop an evaluation mechanism of implementing state-ownership functions for organizations and individuals representing state ownership.

- National Assembly enacts regulations on reporting and disclosure mechanisms for SOEs, including EGs and GCs.

- Government builds and operates the information webpages to provide updated information about SOEs, organization, conversion and equitization of SOEs, state-capital investment activities, to ensure the consistency, synchronization, transparency and authenticity of the information.

- To strengthen monitoring mechanisms associated with the inspection and evaluation methods; to replace traditional inspection, testing, direct intervention and administration, aiming at fewer side effects and the underlying moral hazard (group and individual interest).

### ***3.6- To develop an SOE database and information system to create a foundation to implement the monitoring function of state-ownership representatives***

The current system suffers from issues such as being fragmented, disjointed, incomprehensive, insystematic and not convincing enough to monitor, control and

evaluate SOEs and agencies representing the state-ownership rights and interests. Therefore, it is necessary:

- To develop a complete, reliable, updated, precise and transparent database and information systems of SOEs, especially EGs, GCs and other state enterprises; to assure that this database and information system will be reliable in managing and monitoring ownership functions of SOEs at the macro level (Ministries, the Government and the National Assembly). Information about SOEs includes list, the number of SOEs, main types of business, state capital, investment capital, results and performance of business; ...

- To develop state owners' criteria and methods to monitor, control and evaluate SOEs, especially EGs, GCs and other enterprises with state capital. In particular, to precisely and specifically clarify: mechanisms for supervision, control and evaluation (at the levels of ownership representatives and authorized representatives in 100% state-owned enterprises and state-capital representatives at enterprises with state capital); contents of supervision, list of supervisors with their powers and responsibilities.

### ***3.7- To enhance governance capacity of the authorized state-ownership representatives and state-capital representatives***

- To access and reevaluate the managing resources of SOEs, EGs, GCs, especially state-capital representatives, authorized representatives at all business levels and types, including the authorized state-ownership representatives in the state agencies; to innovate the recruitment, refinement and staffing mechanisms of the authorized state-ownership representatives and state-capital representatives; to restructure managing resources, authorized representatives and the representatives of capital.

- To add provisions on information reporting mechanisms, accountability, evaluation mechanism of the representative system of capital, authorized

representatives at all levels and types of business; state-ownership representatives in the state agencies.

- To develop evaluation mechanisms for implementing the ownership representative functions to state agencies, organizations and individuals representing state-ownership to SOEs and enterprises with state capital.

- To enhance the accountability of authorized representative of state ownership to SOEs based on binding contracts on rights and liabilities between the authorized representatives and state-ownership representatives. In particular, to clearly define the rights and obligations directly implemented by ownership representatives. These rights and obligations need to be revised by owners before voting or making decisions in the companies. In addition, to clearly define mechanisms to overcome consequences when authorized representatives improperly perform contracts, harming the interests of public shareholders, as well as when authorized representatives at enterprises do not perform the functions of state administration.

### ***3.8- To renew recruitment and wage mechanisms of state-ownership representatives***

- To renew mechanisms for recruiting, appointing, staffing, training state-ownership representatives. To provide incentives and pressure to select professional and specialized personnel with suitable characteristics to perform state-ownership representative functions.

- To develop payment mechanisms for state-ownership representatives distinguished from those for civil servants. To create motivation and accountability consistent with the functions of state-ownership representatives. To generate payment and bonus sources depending on efficiency of performing state-ownership representative functions.

### ***3.9- To supplement, complete the legal framework on implementation of state-ownership rights for SOEs***

After replacing the Law on State-owned Enterprise by the Enterprise Law in 1/7/2010, there have been serious concerns about the gaps in the laws on state-ownership rights for SOEs, or about the inconsistencies and validity in implementing a series of documents related to state-ownership rights and representatives in EGs, parent companies and subsidiaries. These legal documents are: Decree 132/2006/ND-CP (on the exercise of the state-ownership rights and obligations of public companies) and Decree 101/2009/ND-CP (on EGs)<sup>1</sup>, Decree 111/2007/ND-CP (on parent companies and subsidiaries) and Decree 25/2010/ND-CP (on state-ownership management, supervision of one-member limited liability company) and Decree 141/2007/ND-CP (on wage regime for parent companies which are state-owned and subsidiaries in EGs), and some other legal documents.

Therefore, it is necessary to conduct a comprehensive review and analysis of the legal framework to adjust the state-ownership rights and the exercise of state ownership of SOEs and state capital in business.

To revise and clarify the legal documents expiring after 1/7/2010, which are related to: state-ownership rights; assignment and specification of levels of state-ownership representatives; rights and obligations of agencies representing state ownership and state capital in SOEs and other enterprises with state capital.

On that basis, to amend, supplement or construct related legal documents, creating a legal framework for the implementation of state-ownership rights and the assignment of proper management of SOEs in accordance with the Enterprise Law. In particular, to focus on constructing legal documents on relationship between the state ownership and SOEs, especially the EGs, GCs. In addition, there are gaps in legal framework adjusting this relationship. This is caused by unclear ownership relations between the parent company - subsidiary company – grandchildren company.

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<sup>1</sup> Continuing to apply Decree 101/2009/ND-CP of EGs is based on the provisions of Article 6 of Decree No. 25/2010/ND-CP, in which there is a difference between the provisions of the Decree 25/2010/ND-CP and the laws on the EGs management, monitoring and evaluation of state-ownership for parent company - 100% state-owned enterprises of EGs; regarding the rights and obligations of direct state-ownership representatives in EG parent companies, the provisions of the Law on the EGs should be applied.

Consequently, it is lack of basis for the protection of state ownership in the complex of parent - subsidiary – sub-subsidiary companies in the forms of EGs, GCs - the key SOEs of the state economic sector currently and in the future.

***3.10- To create a legal framework to implement the separation of state-ownership functions***

a- To continue to amend, supplement or construct lists of legal documents stipulated in the Decision 1715/QĐ-TTg dated 26/10/2009, which provides the document formats issued by state-ownership representatives in order to distinguish with those issued by the state administration bodies. To promulgate guidelines on sequences and procedures of making decisions for state ownership to enterprises; to ensure that the impact of state ownership on the decision of SOEs and EGs being similar with that of other owners under the provisions of the Enterprise Law and the Charter Business; do not use state administrative decisions to convey state-ownership decisions.

b- To supplement and perfect the legal framework for implementation of state ownership rights, to assign and decentralize SOE management.

To issue the *Law on managing and monitoring the implementation of state ownership rights in enterprises* (or named as *Law on implementing state ownership rights in enterprises*) instead of the name *Law on controlling, using state capital to invest in production and business* as in the Program of building laws and ordinances of the National Assembly term XIII.

It should be emphasized that the guiding ideology of this law is to create a legal framework for the implementation of state-ownership rights in SOEs and state-owned enterprises supervising the implementation of state-ownership rights. Reason for emphasizing and appreciating the ownership rights is: the state capital is just the source, but state-ownership rights are the core of state-ownership benefits. State-ownership rights are broader, more comprehensive than state-owned capital (should

change the use of ‘capital ownership’ by ‘ownership’). The ‘management and use of state capital’ have a narrower content, especially, not expressing the meaning and the importance of the ‘management and supervision of the implementation of state-ownership rights’ and the separation of state-ownership with state management functions in the state agencies.

The purpose of this law is to create a legal basis for managing the implementation of state-ownership rights and monitoring the implementation of state-ownership rights in SOEs, state-owned enterprises, groups of companies in the form of parent-subsidiaries and EGs in accordance with the Enterprise Law and the other legal provisions.

The law includes the following main contents:

- Provisions on implementing state-ownership rights to SOEs and state-owned enterprises (i.e. the implementation of ownership rights in state enterprises registered under the Enterprise Law. These ownership rights are on the basis of the Enterprise Law, in accordance with the Enterprise Law but more specific than the Enterprise Law).

- Provisions on assigning and decentralizing SOE management and on state-ownership representatives in SOEs, state capital enterprises and groups of companies in the form of parent-subsidiary and EGs.

- Provisions on the rights and responsibilities of organizations and individuals assigned as state-ownership representatives in SOEs, state-owned enterprises and groups of companies in the form of parent-subsidiary and EGs.

- Provisions on monitoring the implementation of state-ownership rights in SOEs, state capital enterprises and groups of companies in the form of of parent-subsidiary and EGs, supervising the levels of state-ownership representatives, companies representing the state capital, regulations on monitoring contents of state ownership; supervisors; rights and responsibilities of supervisors; determining the

basis for monitoring and evaluating the SOEs subjects, state-ownership and state capital representatives.

- Provisions on sanctions for the acts of harming the state-ownership interests.

c- To amend the Law on Organization of the National Assembly to strengthen the powers and duties of the National Assembly in implementing state-ownership representative functions, ensuring a systematical monitoring of organizations and individuals assigned to be state-ownership representatives.

***3.11- To regulate the ownership documents issued separately with legal documents***

- To specifically regulate the agencies and organizations having the rights to issue documents as state-ownership representatives. Do not use the forms of decisions of state administration to convey those of state ownership.

- To regulate document types only applied to adjust the relationship between the state-ownership representatives, between these representatives and SOEs. To regulate formats of documents of state-ownership representatives to be distinguished with those of state administration agencies. To promulgate guidelines on sequences and procedures of making decisions for state ownership to SOEs.

- To continue to implement modifications, additions or new construction of legal documents as stated in Decision 1715/QĐ-TTg dated 26/10/2009 (Approval of the Scheme of state management innovation to enterprises regardless of the form of ownership, management and operation adjustments, improvement of the efficiency of SOEs to implement WTO commitments).

## References

1. Documents of the Vietnam Communist Party Congress term XI.
2. Documents of the Vietnam Communist Party Congress term X.
3. Documents of the Vietnam Communist Party Congress term VII.
4. Resolution of the Sixth Conference of Central Executive Committee term X.
5. Documents of the Third Conference of the Central Executive Committee term XI.
6. Law on the Organization of the National Assembly.
7. Law on the Organization of the Government.
8. Enterprise Law.
9. Law on State-owned Enterprises.
10. Decree 36/2012/ND-CP dated 18/4/2012 on functions, tasks, powers and organizational structures of ministries and ministerial-level agencies.
11. Decree No. 132/2005/ND-CP dated 20/10/2005 on the implementation of the rights and obligations of state ownership for public companies.
12. Decision No. 1715/QĐ-TTg dated 26/10/2009 of the Prime Minister on Approval of the Scheme of state management innovation to enterprises regardless of the form of ownership, management and operation adjustments, improvement of the efficiency of SOEs to implement WTO commitments.
13. Central Institute for Economic Management (2008), Survey report on the management and supervision of state assets in EGs and SOEs in China.
14. Tran Tien Cuong (2009), Innovation of content and methods of state management and monitoring for SOEs in accordance with the market-economy institutions and the WTO, ministerial-level project.

15. Tran Tien Cuong (2006), Innovation of state management for different types of business in Vietnam, regardless of the economic sectors, ministerial-level project.