OWNERSHIP AND MECHANISM TO ENSURE OWNERSHIP IN STATE ECONOMIC GROUPS: CONSTRAINTS AND RECOMMENDATIONS

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1- Legal status and characteristics of linkages between parent subsidiary and subsidiary in State Economic Group (SEG)

Under the current law of Vietnam, an economic group (EG) is a large-size corporate group[1]. In other word, an EG comprise of legally independent companies with a parent-subsidiarycompany relationship. The EG itself does not have a legal identity and thus does not subject to business registration[2].In term of organizational linkges, the EG has the following features:

- *Firstly*, it is a form of business organiation by corporate group with holding/subsidiary company relations;

- *Secondly,*EGs are formed through cooperation and linkages of investment, capital contribution, merger and acquisition (M&A), reorganization or other forms of linkages;

- *Thirdly,*companies of the group are interconnected to each other on a long-term basis of mutual economic benefits, technology, market and other business services; and

- *Fourthly,*companies of the group constitute business combinations with two or more enterprise level.

The linkages of pilot SEGs from 2005 to 2012 revealed the following characteristics:

- All pilot SEGs were organized following the parent-subsidiary company relations. SEGs were driven and dominated by parent companies.

[1]Article 149, Enterprise Law (1995)
[2]Article 38, Decree 102/2010/NĐ-CP dated 1/10/2010 detailing a number of articles of the Enterprise Law (1995)

- Regarding legal form, the parent companies of 13 pilot SEGs could be devided into two groups. The first group consisted of 11 parent companies in the legal form of single-member limited liability company (LLC) with 100% of state-owned charter capital[3]. The second group comprised of 2 parent companies in the legal form of joint-stock company with a dominated share of state capital[4]. Subsidiary companies of SEGs were mainly in the two forms of single-member LLC and joint-stock company; just few subsidiaries were in the form of two-or-more-member LLC.

- The parent companies ofboth groups of SEGs all took the lead, dominant and control role with regard to subsidiaries, having impacts and influences on companies in the same level of linkage with subsidiaries and also on lower level companies. However, due to differences in the share of state capital, the level of state dominance with regard two types of parent companies as well as of subsidiaries of the two groups of SEGs was alo different.

- Due to differences in organizational setup, the two types of SEGs show quite distinctive characteristics as follows:

SEGs of the first type are established on the basis of linking independent SOEs and state-owned corporations together. That is, the State issued decisions on M&A of SOEs and state-owned corporations which were formerly totally independent enterprises or corporations without any capital ownership connection with each other. Some SEGs were formed from enterprises and corporations which virtually did business in the same industries. Typical examples were VNIC and HUD, which could be considered as horizontal SEGs.For such kind of SEGs, the connectivity between companies were not established through join investment, capital contribution, M&A, so it did not create the coherence of the ownership relations – which is the basis of tight and firm linkages. Thus, the connectivity of

[3]Including Vietnam Posts and Telecommunications Group (VNPT), Vietnam National Coal - Mineral Industries Group (Vinacomin), Vietnam National Textile and Garment Group (Vinatex), Vietnam Electricity (EVN), Vietnam Shipbuilding Industry Group (Vinashin), Vietnam Oil and Gas Group (PVN), Vietnam Rubber Group (VRG), Vietnam Military Telecommunications Group (Viettel), Vietnam National Chemical Group (Vinachem), Vietnam Industrial Construction Group (VNIC), Vietnam Housing and Urban Development Group (HUD).

[4]Bao Viet Finance – Insurance Group (Baoviet)

SEGs of the first type is vulnerable and less convincing with regard to affected enterprises and corporations.

The second group of SEGs brought more of the characteristics of the connectivity of EGs referred in Article 149 of the Law on Enterprise and Article 38 of Decree 102/2010/ND-CP detailing a number of articles of the Law on Enterprises. This connectivity is formed and driven by investment and ownership of the parent subsidiary with regard to charter capital of subsidiaries and associated companies. That obviously creates more solid foundation in corporate linkages and better convincing ownership relationships between the parent subsidiary and subsidiaries of SEG.

2-Issues in parent-subsidiary company relations and assurance of state ownership in SEGs

Currently, SEGs are organized following the parent-subsidiary company model. Capital ownership relationships between the parent subsidiary and subsidiaries and the execution of rights and obligations of the owners of the parent subsidiary with regard to subsidiaries play a crucial role in the ownership relationships between the parent subsidiary and subsidiaries within SEGs. Whether these relationships are good or not will impact positively or negatively on the preservation and development of capital in SEGs.

The economic basis of the ownership possession of the parent subsidiary toward subsidiaries in a group of the parent-subsidiaries or in a broader sense of a SEG actually lies in investment of the parent subsidiary in its subsidiaries, defining the level of ownership of the parent subsidiary with regard to charter capital of subsidiaries. The level of capital ownership of the parent subsidiary in its subsidiaries could be up to 100% of charter capital or dominated charter capital. This economic foundation together with rights and obligations of the parent subsidiary and subsidiaries according to the law on business is the basis for the parent subsidiary to exercise its ownership toward subsidiaries within ownership relations between the parent and subsidiaries in SEGs.

The ownership of the parent subsidiary toward its subsidiaries include the right of possession, the right of use, the right of disposal of the parent subsidiary toward its subsidiaries on multiple issues such as capital, asset, organization, personnel, investment, business, benefit, etc.

Prior to 1/7/2010, the ownership of the parent subsidiary toward its subsidiaries was mainly executed under Deere No. 153/2004/ND-CP (on organization and management of state corporations and transformation of state corporations and independent SOEs following the parent-subsidiary company model), Decree No. 111/2007/ND-CP (on organization and management of state corporations and transformation of state corporations, independent state companies and parent companies being state companies following the parent-subsidiary company model to operate under the Law on Enterprises), Decree No.101/2009/ND-CP (on pilot establishment, organization, operation and management of SEGs) and other related legal documents.

After 1/7/2010 when the Law on SOEs expired, the parent subsidiary exercising rights and obligations towards its subsidiaries mainly follows legal documents such as the Law on Enterprises, Decree No. 25/2010/ND-CP (on transformation of state companies into one-member LLCs and management of state-owned one-member LLCs), Circular No. 117/2010/TT-BTC (guiding the financial mechanism for state-owned one-member LLCs); Circular No. 27/2010/TT-BLDTBXH (guiding the management of employment, wage, remuneration and bonus management in state-owned one-member LLCs).

Regarding SEGs in the pilot phase as well as currently, a parent subsidiary exercising its ownership was mainly with regard to two types of subsidiary company, that is, one-member LLC and joint-stock company, besides a very few subsidiaries in the form of two-and-above-member LLCs. In addition, a parent subsidiary exercising its ownership toward associated companies which have an ownership stake under the dominance of the parent subsidiary.

Major problems and shortcomings in ensuring state ownership and ownership relationships between the parent subsidiary of the Group with its

subsidiaries after switching to operate under the Enterprise Law are revealed as follows:

(1) Although the Law on SOEs expired from 1/7/2010but the legal framework regulating rights of state capital owner and ownership relations between the parent and subsidiaries still mixes under both the current Law on Enterprises and the old Law on SOEs. There exists the status of unclear application of some legal documents after the enforcement of the Law on SOEs came to an end. Currently, the parent companies of SEGs and groups of the parent-subsidiary companies continues to adopt some regulations on ownership relationship between the parent subsidiary and its subsidiaries in accordance with Decree No. 101/2009/ND-CP[5], Decree No. 111/2007/ND-CP, Decree No. 141/2007/ND-CP (prescribing wage regimes applicable to state-owned parent subsidiary and subsidiaries in EGs), and a number of other provisions. Due to a lack of documents guiding or explaining specifically on this issue, so there is uncertainty about the effectiveness of the ownership relations between the parent and subsidiaries.

(2) Capital ownership relations between the parent and subsidiaries revealed substantial shortcomings as follows:

a- Capital ownership relations are stipulated in various changing legislations such as Decree No. 199/2004/ND-CP[6], Decree No. 09/2009/ND-CP[7], Circular No. 242/2009/TT-BTC, Circular No. 25/2010/ND-CP, Circular No. 117/2011/TT-BTC, Decree No. 71/2013/ND-CP, etc., and thus failing to create a systematic and consistent basis for capital preservation and development in SEGs.

b- Capital ownership relations expose many issues not suitable with characteristics of SEGs. For example, at Point 2.1, Clause 2, Article 13, Circular

[5]The regulation indicating that SEGs continue to apply Decree No. 101/2009/ND-CP is based on Article 6, Decree 25/2010/ND-CP. Accordingly, In case of inconsistency between Decree 25/2010/ND-CP's provisions and relevant provisions of the law on SEGs regarding the management, supervision and valuation by the State owner of parent companies being wholly state-owned enterprises of SEGs; the rights and obligations of the State owner's direct representatives at parent companies of SEGs, the latter will prevail.

6 Decree 199/2004/ND-CP promulgating the regulation on financial management of state companies and management of state capital invested in other enterprises

7Decree09/2009/ND-CP promulgating the regulation on financial management of state companies and management of state capital invested in other enterprises (replaced Decree 199/2004/ND-CP)

No. 117/2010/TT-BTC[8], the rights and obligations of owners of capital invested in other firms are just simply referred to apply regulations of the Law on Enterprises. This reference to the Law on Enterprises, which is applicable to such complicated ownership relations between the parent and subsidiaries, is not specific enough and not suitable for multi-level state ownership representation which is not available in the Law on Enterprises. Although Decree No. 71/2013/ND-CP9is considered to be better than Decree 199/2004/NĐ-CP, Decree 09/2009/ND-CP and Circular117/2010/TT-BTC, it still fails to create sufficiently clear and appropriate legal basis for complex and multi-layer ownership and management structure of EGs.

c-Currently, the legal documents mainly stipulate rights and obligations of owners of capital invested in other enterprises (primarily invested in joint-stock companies) while neglect sufficient focus on regulations on capital preservation and development of the one-member limited liability parent subsidiary with regard to its investment in the one-member limited liability subsidiary company, although these regulations currently represent major characteristic relations in SEGs with the parent subsidiary being wholly state-owned enterprise.

d- There exist conceptual confusions or unclear distinctions between "capital of the parent company" and "state capital", between "representative of the enterprise's capital invested in other enterprises" and "representative of state capital share invested in other enterprises" presented in Decree 09/2009/ND-CP, Circular 242/2009/TT-BTC. For example, Clause 9, Article 2,Decree 09/2009/ND-CP stipulating that "Representative of a state company's capital contributed at other enterprises" means a person authorized by the owner of a state company to represent its state capital invested in other enterprises. This regulation continues to be applicable after 1/7/2010 with regard to SOEs which have not yet transformed into one-member LLCs. Regarding one-member limited liability parent company of SEGs, this shortcoming has been addressed in Circular 117/2011/TT-BTC.

[8] Circular No. 117/2010/TT-BTC of August 5, 2010, guiding the financial mechanism for one-member limited liability companies owned by the State

[9]Decree No. 71/2013/ND-CP dated July 11, 2013, on state capital investment in enterprises and financial management over enterprises that state holds 100% of charter capital

e- Fail to meet requirements for capital preservation and development of SEGs given the fact that current regulations just mention two company levels, that is, parent– subsidiary company or parent–associated company. There is a lack of regulations to ensure control and supervision of investment flowing from the parent to subsidiary to sub-subsidiary company, etc., or from the parent to associated to other firms in SEGs.

g- There are no clear distinction and regulation on rights, obligations and responsibilities of the parent company; management apparatus of the parent company (council of members, board of directors, etc.,); titles (individual) in the parent company's leadership; and the responsibilities of organizations and individuals which act as state representative agencies.

h- Inadequate regulations on rights and obligations of thecapitalrepresentative of the parent company invested in other companies. In which, there is a lack of mechanism, organization, responsibilities of management, supervision, monitoring and evaluation, warning, etc., of the parent company, of management apparatus and individuals in the management apparatus of the parent company with regard to capital representation function of the parent company.

i- Persons appointed to represent parent companies in term of capital ownership in subsidiaries come from various positions such as members of the Board of Directors, the Members' Councils, Departments, leaders of subsidiaries, etc.,. However, there is not any careful review, analysis or evaluation of possible impacts of this assignment of capital representatives on ensuring state ownership and ownership of the parent companies in subsidiaries.

(3) Major shortcomings in ensuring state ownership in SEGs are as follows:

a-Awareness and regulations in legal documents on ownership relations between the parent and subsidiaries are bias in favor of capital ownership relations. This way of approach seems to be too short-sighted, affecting the protection of interests of the parent company in particular and of the state interests in SEGs in general. Interests of the parent company in the parent-subsidiary company relations are not simply reflected in term of capital ownership but broader in term of

ownership of the parent company. The ownership of the parent company is established on the basis of possession, capital ownership, originated from capital ownership but in broader term. Accordingly, the ownership is not only reflected in the possession of 100% of charter capital or in the dominated possession of charter capital of the subsidiary; more importantly it is reflected in rights of disposal, direction, influence, etc., on subsidiaries (through representatives in subsidiaries); and similarly, through subsidiaries producing impacts on sub-subsidiaries in SEGs, etc.,.

b- The assignment and decentralization of rights and obligations of state representing agency with regard to SEGs have been conducted to include many management bodies such as the Government, PM, functional Ministries, MOF, MPI, MOHA, MOLISA, Board of Directors, Members' Councils of the parent company of SEGs but have shown inadequate clarification of responsibilities between agencies.

The situation of one person in charge of various positions occur popularly among members of the Board of Directors, Members' Councils and General Directors, implying a lack of separation between management and administration, between supervising subject and supervising object in one-member wholly state-owned LLCs, so internal supervision is ineffective. In fact very few Boards of Directors, Members' Councils regularly evaluate the performance of General Director (Director)[10].

The aforementioned situation is the cause and also the outcome of the fact that there exist a lot of state representing agencies but they hardly or late find out problems of SEGs to be addressed.

c- There is a lack of a suitable legal framework on supervision of SEGs, leading to numerous difficulties in fully ensuring state ownership and ownership of the parent company in SEGs which follow the parent-subsidiary company relations.

[10]CIEM (2010), Survey report on SOEs corporate governance and SEGs supervision and recommended policies.

Although there have been some legal documents on the parent-subsidiary company (such as Decree 153/2004/ND-CP, Decree 111/2007/ND-CPand relevant Circulars guiding implementation) orlegal documents on financial management of SOEs (Decree 199/2004/ND-CP, Decree 09/2009/ND-CPand relevant Circulars guiding implementation), up to now, there are only few direct or indirect documents relating to management and supervision of implementation of rights and obligations of state owner in SEGs. Typical examples of these examples include the following: Decree 101/2009/ND-CP, Decree 25/2010/ND-CP,Decision 224/2006/QD-TTg (issuing regulations on supervison and evaluation of operation efficiency of SOEs), Decree 61/2013/ND-CP (Regulation on financial supervision, performance assessment, and disclosure of financial information applicable to state-owned enterprises and state-capitalized enterprises), and particularly,Decree 101/2009/ND-CP.

According toDecree 101/2009/ND-CP, the Government needs to promulgate regulations on management, supervision and assessment of state economic groups; specify norms and prescribe annual assessment and ranking of state economic groups; specify norms and prescribe the assessment of operations of Boards of Directors, directors general, deputy directors general and chief accountants of the parent companies. However, up to now, these regulations have still been unavailable. Line-ministries have not issued detailed guidelines, in particular for monitoring and supervision of their assigned industries and areas. Thus, there have been a lot of shortcomings and obstables in various related issues such as: management and supervision of major business sectors and industries of SEGs; management and supervision of Board of Directors, Members' Councils, and controllers in implementing tasks assigned by the state owner; operation of controllers;responsibilities, motivation and sanction applicale to peope with legal status representing the state or in charge of protecting rights and benefits of the state owner in SEGs.

Decision 224/2006/QD-TTg issued in 2006 and recently Decree 61/2013/ND-CPare two legal documents on supervision and evaluation of performance of SOEs; these documents, however, are applicable to supervise and

evaluate each individual SOE. While, a SEG is a group of large-size companies consisting of the parent company, subsidiary and associated companies. Companies within a SEG are closely interconnected to each other in terms of rights, obligations and other relations. Therefore, Decision 224/2006/QD-TTg andDecree 61/2013/ND-CPare not appropriate to apply for supervision and evaluation of SEGs.

Decree 25/2010/ND-CP (on transformation of state companies into one-member LLCs and management of state-owned one-member LLCs) is currently applicable to the parent company of SEGs in cases the parent company is transformed to one-member LLCs. This Decree just provides for management and supervision of the owner toward the parent company of SEGs, not mentioning management and supervision toward SEGs in the sense of management and supervision toward a group of large-size companies.

d- The current supervision and control mechanism of the state owner toward SEGs after the Law on SOEs expired in 1/7/2010and in cases the parent company is transformed into one-member LLC reveal a lack of specific guidelines and full implementation, and thus, being less effective.

Under the provisions of corporate law, Controllers in the one-member LLC of SEGs are in charge of protecting the interests of the state owners and supervising Members' Councils to perform tasksassigned or authorized by the owner.

Nevertheless, the title of controller in SEGs has not been recruited properly according to the law. Some SEGs do not have this position after transforming to operate under the Law on Enterprises; some appoint the controllers from their enterprises; some others just consider the controller to take the role of internal control only. The position of controllers has also not yet been independent from the management and administration apparatus due to the fact that their salary and wages are closely related to enterprises; thereforce, it is difficult to ensure objective information provided by the Control Board or the Controller to the state owner. Accordingly, results of internal control has not really been paid with due attention; some results have even been not reported to the state representing

agency, direct state owner at enterprise (Board of Directors); some have been already reported to competent agencies but received less consideration[11].

đ- Framework of governance toward SOEs and SEGs remains limited compared to complete requirements of market economy institutions and international practices.

In terms of regulations, legal framework (Law, Decree) is basically oriented to the requirements of equality such as creating and ensuring a level playing field between SOEs, SEGs and other enterprises; creating competitive mechanisms in accessing financial resources for SOEs; maintaining trade-based relations between SOEs, SEG with banks, financial institutions of the state and with other SOEs and SEGs. However, the reality shows various unexpected results, such as:

Firstly, SEGs are in a preferential position in getting access to land, financial and investment resources from the state budget, government bond and preferential loans.

Secondly, there still exists the interference of state bodies in SEGs, limiting the autonomy of SEGs; government officials still concurrently take position as managers of SEGs, thus leading to distorted and biased policies toward SEGs.

Thirdly, the operation of some SEGs does not follow competitive market mechanism (on price, public utilities ...). The competition law stipulates just a simple regulation of monopoly[12]and no regulations to limit enterprise in SEGs to collude with each other or under pressure of the parent companies to form monopoly agreements, being abuse of dominant market position to exclude or restrict competition.

e- Currently, in SEGs, the majority of parent companies and subsidiaries are wholly state-owned one-member LLCs, corporate governance, especially with regard to transparency and disclosure, thus, have been under-improved compared to multi-owned SOEs or equitized SOE listed on the stock market.

[11]CIEM (2010), Survey report on SOEs corporate governance and SEGs supervision and recommended policies.

[12]Competition Law of 2004 defines that an enterprise to be in a monopoly position if there are no enterprises competing in the goods and services in which such enterprises conduct business in the relevant market.

g- Although the law provides for public disclosure of financing of SOEs but these rules are general, not specific enough in term of disclosure contents, public disclosure forms, public disclosure facilities, objects of public disclosure, etc. For example:

Decree 09/2009/ND-CP provides for SOEs to make public financial status in accordance with state regulations; MPF is responsible for guiding, inspecting and supervising the implementation of public disclosure of figures and financial statements of state companies[13].

Circular 242/2009/TT-BTC guiding implementation of Decree 09/2009/ND-CP also provides for a general principle that state companies complied with provisions of Article 30,Decree 09/2009/ND-CP and provisions of the current law on audit and accounting, and financial public disclosure[14].

Up to June 2013 there were just two Decrees provide for financial public disclosure of SOEs. That is, Decree 07/1999/ND-CP promulgating the regulation on exercising democracy in SOEs and Decree No. 87/2007/ND-CP promulgating the regulation on the exercise of democracy in joint-stock companies and LLCs. However, both these documents restrict financial public disclosure (audit results and annual financial statements of enterprise) among objects of enterprises internally. Therefore, the involved parties outside enterprises are unable to access information/data to monitor and evaluate corporate finance of SOEs.

Recently, Decree 61/2013/ND-CP issuing Regulation on financial supervision, performance assessment, and disclosure of financial information applicable to SOEs and state-capitalized enterprises has a chapter providing for public disclosure of financial information of SOEs. However, for this regulation is effective, it is necessary to have an additional circular of MOF guiding implementation. Moreover, it is necessary to have additional guidelines for financial disclosure applicable to SEGs.

To provide the basis for public and transparent disclosure of the performance of SOEs, the Prime Minister issued Decision 1715/QD-TTg dated

[13]Article 30 Decree 09/2009/ND-CP
[14]Article 13 Circular 242/2009/TT-BTC

26/10/2009 approving the scheme of renovating state management with regard to SOEs towards indiscrimination of ownership types, adjustment of management and operation, improvement of efficiency of SOEs in implementation of WTO commitments. The MOF is assigned to carry out two tasks as follows:

Firstly, to develop regulations on reporting and disclosure of SOEs, programs, arrangements, equitization and transformation of SOEs, ensuring consistency, synchronization, publicity and acuracy of information according to WTO commitments.

Secondly, to build and operate a webpage to provide updated information about SOEs, arrangements, equitization and transformation of SOEs, state-capital-used investment activities, ensuring consistency, synchronization, publicity and acuracy of information according to WTO commitments

However, up to now, the two aforementioned assigments remain unfinished. This fact reveals that there is a huge gap between rules and reality. This situation negatively affects external supervision mechanisms toward SEGs, restricting stakeholders, firstly policy making bodies, state management agencies, partners, potential investors and the public to be able to make right and objective assessment of the status of SEGs' perfomance. In addition, information is inadequate, inaccurate and not updated because various agencies build their own databases without adequate cooperation and information sharing between them, failing to ensure sufficient and systematic information and data for proper supervision and evaluation of SEGs.

h-The fact that SOEs and SEGs fail to fully comply with requirements on reporting and transparency of financial and investment information, as above mentioned, is caused by a lack of strict regulations on sanction and strict implementation of sanctions. Specifically:

When in effect, the Law on SOEs, issued in 2003, had regulations with general principles on sanctions toward management apparatus of SOEs. Accordingly, Chairpersons who show irresponsibility and fail to strictly comply with the provisions of powers and duties as stipulated by the Law, thus leading to

violations in capital and asset management, accounting and auditing procedures and other procedures, shall be removed from duty; and pay compensations for damage according to law provisions, depending on the seriousness and consequences of their violations[15]. These regulations, if effectively implemented, would ensure not only adequate reporting with transparent information on actual status and performance of SOEs and SEGs but also ensure effective state management and supervision toward these businesses.

However, these above-mentioned sanctions were not implemented in practice throughout the effective time period of the Law on SOEs till 1/7/2010.Even until now, in the current common Law on Enterprises, there are still no any specific legal guidelines or additional provisions on applying sanctions similar to those in the Law on SOEs to SOEs and SEGs. In the mean time, state bodies tend to pay more attention to bonus rather than sanction applicable to SOEs and SOEs' managers/leaders. For example, Decision 224/2006/QD-TTg issued in 2006 and Decree 61/2013/ND-CP issued in June 2013 focus on promulgation and application of criteria for evaluating and ranking SOEs and associated bonus mechanisms. Meanwhile, the highest form of sanctioning applicable to Board of Directors, Board of Management failed to complete their tasks, according to Decision 224/2006/QD-TTg, is just restricted to not allow to set up and utilize the bonus fund toward managers and directors, lacking applicable stronger penalties as discussed above. Although sanctions stipulated in Decree 61/2013/ND-CP show some sorts of renovation such as reference to the application of stricter forms of discipline, including salary reduction, dismissal of enterprise management officials (President, members of Members' Councils, Supervisors, General Director , Deputy General Director, Chief Accountant), or extended application to both owners as managing ministries and provincial-level People's Committees; these sanctions have to wait for specific instructions of MOF to apply in practice.

3- Recommended improvements on policy and legal framework to ensure state ownership in SEGs

[15]Article 43, Law on SOEs, 2003.

(1)- Established institution and effective, efficient, sufficient and comprehensive excecution of rights of state owner toward SEGs

Currently, management toward SOEs and SEGs tends to pay more emphasis to functional tasks of the owners of capital, that is, preservation and development of state capital . The State should pay due attention to more comprehensive and better implementation (in the sense of being more effective and efficient) of other rights of the owners of the state, including rights to decide other important issues (in addition to state capital) of their enterperises such asmajor businesses; investment areas;supervision and control of diversified industries; diversification of investment outside major businesses; appointment, supervision, evaluation and dismissal of key leaders; approval of charter and control of charter compliance; supervision and evaluation of SOEs and SEGs; profits from SOEs and SEGs, etc.

State owners should focus on holding management and supervision of SEGs on the following issues:

- Management and supervision of organization, establishment, joining, reorganization, dissolution ofSEGs; change of ownership structure of subsidiary companiesto become enterprises without dominated capital of parrent companies; implemenation of charter of parent companies; appointment, reappointment, dismissal, wage, bonus, performance of tasks and results of operations ofMembers' Councilsof parent companies.

- Management, supervision of goals, directions, business strategies of SEGs; investment plan, financial plan of parent companies; investment portfolio, main businesses and industries without relating to main businesses, investment in risky industries, areas and projects; public service missions.

- Financial management and oversight, including preservation and development of capital; status and results of financial operations, rate of return on state capital; investment and business efficiency; wage costs , borrowing, debt and debt repayment ability; charter capital, change of charter capital volume and strucuture; investment projects in excess of levels decentralized to parent companies.

(2)- Professionalized execution of functions as state owner toward SEGs

Concluded statement No.78-KL/TW of thePolitburo pointed out that there are too many state representing agencies in a SEG (including Prime Minister, Minister, Board of Directors). Accordingly, it is neccessary to address this cumbersome through reduction of representing agencies and better coordination between these agencies, which is possibly best to be addressed through establishing a specialized state representing body toward SEGs and big/important corporations. The establishment of a specialized and professional organization will facilitate adequate and concentrated implementation of functions of owners; development of sufficient, consistent, acurate and updated data and information for supervision and evaluation of SEGs; development of criteria and methodology for evaluation. Doing so would create a stronger basis for correctly assessing and monitoring SEGs and at the same time exercise adequate rights of state owners.

(3)- Strengthened supervision and control mechanisms of state owners toward SEGs

To strenghen mechanism of supervision and control of state owners toward SEGs, it is neccessary to focus on improvement and further development of foundations of supervision and control through the following:

First, to build and maintain adequate, realiable and updated information about SEGs and other state-capitalized enterprises;

Second, to develop systems of targets, criteria and methods for monitoring, control and evaluation of state owners towards SEGs owners and other state-capitalized enterprises;

Third, to build human resource with specialized and professional personel to act as representative and authorized representative of owners in SEGs.

To develop a system of clear and transparent regulations on powers, duties, obligations and responsibilities of organizations and individuals to take the role as representative and authorized representative of owners in SEGs.

(4)-Amendment, supplement and new promulgation of legal documents related to implementation of state owner rights in SOEs and SEGs

a- To amend, supplement or develop new provisions on monitoring and evaluation of large-scale company groups applicable to monitoring and evaluation of SEGs and state-owned corporations and government monitoring and evaluation of personal management and administration SEG and state corporations.

Decree 61/2013/ND-CPpromulgating regulations on financial supervision, performance evaluation and financial disclosure toward enterprises wholly or partially owned by the State, which replaced Decision 224/2006/QD-TTg, still failed to meet requirements for supervison and evaluation of SEGs. Thus, it is necessary to issue an additional Circular guiding Decree 61/2013/ND-CPwith binding provisions applicable to Members' Councils (for SEGs with wholly state-owned parent companies), Board of Directors (for SEGs with equitized parent companies, individuals as presidents and members of Members' Councils /Board of Directors, general directors, deputy general directors, supervisors of SEGs in ensuring ownership relations (in term of implementation of rights and obligations of parent companies) toward subsidiary and associated companies.

b- To amend and supplement Decree 101/2009/ND-CP16, Decree 111/2007/ND-CP, Decree 141/2007/ND-CP or new development of legal documents to ensure sufficient legal basis applicable to parent-subsidiary company relationships, relationships between the State and parent companies of SEGs and state corporations following the parent-subsidiary company model.

(5)- Improved institutions in corporate governance

Improved corporate governance of SEGs requires a series of measures such as ensuring transparency, openness and accountability of management apparatus, protecting rights of state owners (for SEGs with wholly state-owned parent companies), rights of state shareholders and other shareholders regardless of the state being a majority or minority shareholder (for multi-owned SEGs); ensuring operational efficiency of Board of Directors, Members' Councils, Supervisors;

[16]SEGs with continued application of Decree 101/2009/NĐ-CP is based on regulations in Article 6, Decree 25/2010/ND-CP. Accordingly, in cases there is a difference between regulations of Decree25/2010/ND-CPand on management, supervision and evaluation of state owners toward wholly state-owned parent companies of SEGs; on rights and obligations of direct state representing agencies in parent companies of SEGs, then legal regulations on SEGs shall prevail.

effective supervision and control of underground and insider transactions in favor of personal or group interests, affecting interests of stakeholders etc.

One of important preconditions to meet the above-mentioned requirements is to amend and supplement the policy framework and corporate governance toward modern practices through the following:

- Development of corporate governance standards modern and consistent with international practices applicable to SOEs and SEGs;

- Development of national corporate governance principles applicable to SOEs and SEG (including wholly state-owned enterprises and multi-owned state enterprises);

- Development and promulgation of clear and specific guidelines on transperency applicable to SEGs;

- Improvement of responsibilities of SEGs in information transperency on corporate finance; operational performance and efficiency; implementation of targets set by state owners toward SEGs; investment outside main businesses;

- Identification of specific objects as organizations or individuals in charge of transperency of SEGs;

- Strengthening sanctions to promote improved corporate governance;

- Currently, SOEs, especially SEGs, are commonly used as a tool for macro-economic regulation and implementation of socio-political tasks, therefore, it is necessary to provide transparent information on the use of SOEs, SEG in implementing these tasks. In which, there needs to clearly define purposes, objects, conditions, contents, ways of impact and mechanisms toward SOEs. In future, there needs to switch to the use of macro-economic policies instead of using SOEs and SEGs for doing such kind of activity.

(6)- Ensured coordination and consistency in control of state ownership in SEGs

In principle, the State implements its ownership in SEGs through powers of parent companies. Therefore, the implementation of rights of state owners in SEGs

is only guaranteed when rights of owners of parent companies in member enterprises of SEGs are secured.

In reality, however, rights of owners of parent companies are not always implemented in consistence with the coordination between ownership representatives of parent companies in member enterprises. Typical of this situation is that there are some member enterprises have capital of parent companies and of other member enterprises; some member enterprises only have capital of other member enterprises. Then, if representatives of various investment funds in a same group do not agree with each other about the group's business strategy (led by the parent company), decision making process with regard to related member enterprises will be affected, thus affecting benefits of the group as well.

Therefore, a parent company should not perform its ownership rights only through individual representative in each subsidiary or associated company, it should take lead (by strategy, ownership representative regulations and through representatives) to create collaboration in making decision between representatives. Especially in casea member enterprise has both capital of the parent company and of other member enterprises, or even in case a member enterprise has only capital of other member companies, then the above-mentioned coordination will help to ensure more effective implementation of ownership rights of parent companies , thereby helping to the implementation of state ownership rights in SEGs, creating the synergy of the whole group.

(7)-Renovatedrecruitment, appointment, use, evaluation, identification of responsibilities and rights of state capitalrepresentativesinSEGs, capital representatives of parent companies in subsidiary and associated companies

The current pressing issues in SEG management is to ensure full, effective and efficient execution of state ownership rights in SEGs. One of priority measures to be done is to renovate mechanisms of recruitment, appointment, use, evaluation, identification of responsibilities and rights of state ownership representatives in parent companies, and owner representatives of the parent companies in subsidiary and associated companies of SEGs. Through the state ownership representatives in

SEGs, there also needs to review and restructure systems of representatives of parent companies in all enterprises with capital of parent companies.

In particular, it is of interest to promptly resolve conflict between missions of protecting interests of owners, which is responsible by representatives (missions are not clear and duly appreciated) and benefits they receive from their working positions through their wages and incomes (which are also not clear about basis for assessment, identification of contribution, motivation and responsibility. In addition, it is necessary to prepare and recruit representatives meeting requirements such as sufficient quantity, professional working style, and responsibilities associated with motivation, and wage paying sources having no contradiction with state interests they protect.

(8)-Strengthened capacity building and implementation of corporate management strategy of parent companies in SEGs

The parent company has played a pivotal role in planning and management of strategic issues including corporate investment strategy, business direction, medium and long term plans, personnel policies and use of profit. In particular, planning and execution of investment strategies are critically important in corporate investment strategy. These important tasks includes determining and making decisions about industries and business activities; region, size, modality of corporate investment in each period. Root causes of failure of SEGs are related to corporate investment decisions, subjective thinking and satisfaction of leadership, incapable risk management. So it is necessary to enhance functionality and capability of parent companies in investment management strategy of parent companies and strategic investment directionstoward enterprises in SEGs.

(9)- Renovated thinking and approach to build and develop SEGs

Avoid ‘mechanical’ linking enterprises together to form SEGs, excessive outward investment for extensive development and expansion of SEGs. In recent times, these issueshave not been supervised and controlled properly, resulting in potential risksin terms of lack of coherence, lack of sustainability, excessive financial capacity, diversion of main businesses, and increased intermediary steps.

Pay attention to control of extensive development of SEGs (and large-scale criteria), including control of mechanical linking (M&A) and control of outward investment to form multi-tiered enterprises. Large-scale criteria should be removed or at least should not be considered as priority with high weight in consideration and recognition of SEGs or in assessment of SEGs. Use dual criteria (important and large-scale industries and areas) in consideration and reorganization of SEGs, and dual criteria (efficiency and large-scale) in assessment of SEGs.

(10)-Diversification of businesses

Business diversification can not be considered as criterion or condition for recognition of SEGs. Diversified businesses of some EGs may be real, an outcome of a selective and competitive development process, but it cannot be considered as premise or condition to be recognized as EGs.

Registering businesses which are not prohibited by law under the Law on Enterprises is the right of enterprises. Carrying out investment and business activities of registered industries has to ensure balance and hamonization between rights of corporate management apparatus (Board of Directors, Members' Councils, General Directors) and rights of owners. The owners (the State, parent company) shall have to supervise and control registered industries, business expansion of EGs, especially businesses of the parent company and businesses of subsidiaries, given the fact that expanded businesses will require investment, mobilized resources and thus being potentially risky.

(11)-Outward investment of enterprises

Do notofferorimpose normative& unifiedstandards on ratio or level of outward investment of enterprises applicable to allSEGs otherwise it will be rigid and non-practical. SEGs vary in terms of financialcondition, technocraticmanpower, managerial personnel, investment needs, businessdevelopmentstrategy, etc. These differences will impact or influence on expansion or narrowing of businesses/business structure. The State owner should base on real situation of each SEG to decide or assign the parent company to

decide appropriate levels of outward investment and control and supervise this outward investment.

(12)-Management of layers of enterprise in SEGs

This is important to manage investment, capital and asset in SEGs. In fact, SEGs in Vietnam are organized in a pyramid structure, with 3-4 layers of enterprises, even more than that, and with a quantity of tens, even hundreds ofsubsidiary, sub-subsidiary andsub-sub-subsidiary companies.Because capital acts as the strong bond between enterprises, so the more layers and number of enterprises, the more complicated relationships on capital and asset ownership within an EG. International experience of South Korea and China shows that the number of layers in an EG should be restricted to 3 layers, including the parent company, subsidiary and sub-subsidiary companies. Accordingly, it should be wise to review and reduce the number of layers of enterprise to maximum 3 layers.

(13)-*Management of number of enterprises in SEGs*

Review and reduce the number of enterprises in EGs corresponding to their financial, managerial, supervision and control capacities. Do not let frequent occurence of risks due to assymatry between managerial capacity of the owners (the State, parent company) and the scope and number of companies (subsidiary, sub-subsidiary and associated companies). Accordingly, it is neccessary to restructure investment porfolio, rearrage and restructure member enterprises corresponding to their financial, managerial, supervision and control capacities.

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