

**CIRCULAR**  
**PROVIDING GUIDELINES FOR**  
**FOREIGN INVESTMENT ACTIVITIES**  
**IN VIETNAM**

Pursuant to the *Law on Foreign Investment in Vietnam* dated 12 November 1996 and the *Law on Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam* dated 9 June 2000 (hereinafter collectively referred to as the *Law on Foreign Investment*);

Pursuant to Decree 24-2000-ND-CP of the Government dated 31 July 2000 providing detailed Regulations on the Implementation of the *Law on Foreign Investment in Vietnam* (hereinafter referred to as *Decree 24-2000-ND-CP*);

Pursuant to Decree 75-CP of the Government dated 1 November 1995 on the functions, duties and powers of the Ministry of Planning and Investment;

The Ministry of Planning and Investment promulgates this Circular providing guidelines for the implementation of foreign direct investment activities in Vietnam as follows:

**CHAPTER I**

**Promoting Investment, Selecting and Formulating Projects**

**Article 1** *Formulating and publishing lists of projects and measures for encouraging investment*

1. Based on the *Law on Foreign Investment in Vietnam*, Decree 24-2000-ND-CP and other relevant provisions, people's committees of provinces and cities under central authority (hereinafter referred to as *provincial people's committees*) shall promulgate regulations on State management of foreign investment activities and measures for the encouragement of foreign investment within their localities; ministries and branches shall provide guidelines for foreign investment in the sectors which fall within their respective powers and management authority. Prior to promulgation of any of the above legal instruments, ministries, branches and provincial people's committees shall first consult with the Ministry of Planning and Investment.
2. Based on the approved socio-economic development planning and orientation for each period, ministries, branches and provincial people's committees shall formulate a *List of projects calling for foreign investment* for their respective industries and localities.
3. The Ministry of Planning and Investment shall formulate and submit to the Prime Minister of the Government for publication a *List of national projects calling for foreign investment*. The ministries, branches and provincial people's committees shall publish *Lists of projects calling for foreign investment* for their respective industries and localities, after reaching agreement with the Ministry of Planning and Investment.

4. *Lists of projects calling for foreign investment* must attach *Project Profiles*, including preliminary information on the proposed project objectives, location, main specifications and the proposed Vietnamese partners as stipulated in Forms 1 and 2 of Appendix 1 to this Circular.
5. The publication of *Lists of projects calling for foreign investment* is aimed at facilitating foreign investors in their selection of an investment project and at providing the basis for organizing the mobilization and promotion of investment.
6. In principle, when *Lists of projects calling for foreign investment* are published from time to time, the projects included on those lists shall be deemed to comply with the planning for such period. In respect of projects not included on the above Lists which are proposed and selected by the parties to an investment, the investment licence-issuing body shall collate opinions from the relevant bodies about the plans and policies for implementation in order to facilitate the parties to the investment to negotiate and to formulate an application file for the investment licence.
7. Ministries, branches and provincial people's committees shall regularly review and update their *Lists of projects calling for foreign investment* so that they are adjusted in a timely manner for consistency with planning and the needs for mobilizing investment from time to time.

#### **Article 2** *Promoting investment*

1. Ministries, branches and provincial people's committees shall disseminate and introduce the *Lists of projects calling for foreign investment* and mobilize investment for each sector and project in the form of direct contact with foreign investors; and organize conferences or other investment promotion activities domestically and overseas.
2. The above activities may be undertaken in conjunction with the Ministry of Planning and Investment; the Vietnam Chamber of Commerce and Industry; Vietnamese diplomatic representative offices and other economic and commercial offices overseas; or with other domestic or foreign investment promotion and consultancy organizations.
3. Ministries, branches and provincial people's committees shall appoint a focal body to be responsible for supplying information on planning and on the *Lists of projects calling for foreign investment*; and shall introduce investment locations, investment parties and other essential information in support of the formulation and implementation of projects when requested by investors.
4. An investment project may be introduced to various partners, aimed at selecting the most appropriate partner with sufficient legal status, financial capacity and experience in implementing projects. Survey of the above information about foreign partners may be conducted by direct contact, or through Vietnamese diplomatic, economic and commercial representative offices overseas, and through domestic and foreign banks, auditing companies and investment consultants.

#### **Article 3** *Organizing negotiations*

1. The Vietnamese party and the foreign party shall organize direct negotiations for investment projects in the form of a joint venture or a business co-operation contract. In principle, the Vietnamese party shall conduct negotiations with the foreign party pursuant to a prepared negotiation plan which proposes in advance the requirements to be met, especially the matters relating to forms and ratios of capital contribution, borrowing of investment capital, distribution of profits, and fulfilment of financial obligations to the State, and so forth. With respect to investment projects under a Government program or important projects of ministries, branches and localities, the negotiation plan must be submitted to the authorized body for approval.

If there are problems during the negotiation process, the Vietnamese party may consult the opinions of the Ministry of Planning and Investment, provincial people's committees, or the relevant ministries and branches.

2. In respect of projects with one hundred (100) per cent foreign owned capital, the foreign investor shall reach agreement with the provincial people's committee on the location, land rent rates, and a plan for compensation and site clearance, and so forth, in accordance with current provisions.
3. In respect of large-scale projects or important projects decided by the Government, in order to ensure the requirement that related branches work in co-ordination with each other, the authorized State body or the Vietnamese party to which the Prime Minister of the Government has assigned the responsibility for negotiations shall collect opinions or invite representatives from the relevant bodies participating in the negotiations with the foreign party.

#### **Article 4** *Formulating project files*

An investor may on its own initiative, or hire an investment consultancy service organization permitted to operate in Vietnam to, formulate an application file for the issuance of an investment licence pursuant to the *Law on Foreign Investment in Vietnam*, Decree 24-2000-ND-CP and other related legal instruments. In all cases, the investor shall be responsible for the accuracy and truthfulness of its application file for the issuance of an investment licence.

#### **Article 5** *Activities of foreign investment consultancy services*

1. Investment consultancy service organizations permitted to operate in Vietnam belonging to all economic sectors shall register their investment consultancy practice in accordance with the current provisions of the law. Ministries, branches and provincial people's committees shall notify the Ministry of Planning and Investment of the list of Vietnamese enterprises which have registered their foreign investment consultancy practice services and shall co-operate in managing and guiding the activities of such enterprises in order to ensure they operate in accordance with the directions and objectives of attracting foreign investment.
2. The investment consultancy service organizations referred to in clause 1 of this article shall be entitled to provide consultancy services related to the formulation and implementation of investment projects, consistent with the provisions of the *Law on Foreign Investment*, Decree 24-2000-ND-CP and other related legal instruments. Investment consultancy service organizations may reach agreement with project investors on consultancy fee rates, on the basis of the scale and nature of the project and the matters on which advice is provided; in the case of provision of services for which the State has stipulated a tariff, then fees shall be charged in accordance with such tariff.
3. The Ministry of Planning and Investment, ministries, branches and provincial people's committees shall regularly disseminate the laws, plans, mechanisms and policies on foreign investment and shall co-operate with and assist investment consultancy service organizations to carry out activities to promote investment.
4. Investment consultancy service organizations shall carry out their activities in compliance with the provisions in their business registration or investment licence (in the case of enterprises established under the *Law on Foreign Investment*) and with the provisions of the law on consultancy practice.

Investment consultancy service organizations shall be responsible before the law and to investors for the accuracy and truthfulness of their consultancy services; and if they cause damage to the interests of

the State of Vietnam or to investors, then, depending on its nature and seriousness, they shall be dealt with in accordance with current provisions of the law.

## CHAPTER II

### Procedures for Issuance of Investment Licences and Amended Investment Licences

#### Article 6 *Project application files for issuance of investment licences*

1. The issuance of investment licences for foreign direct investment projects shall be implemented in accordance with one of two procedures:
  - Registration for issuance of investment licences;
  - Evaluation for issuance of investment licences.
2. Project application files for the issuance of investment licences shall be regulated as follows:
  - Application files of projects under the category of registration for issuance of investment licences shall include the documentation stipulated in article 106 of Decree 24-2000-ND-CP. Applications for registration for issuance of investment licences shall be prepared in accordance with Form 1 and the accompanying documentation shall be prepared in accordance with Forms 2b, 3b, 3c and 4b in Appendix II to this Circular.
  - Application files of projects under the category of evaluation for issuance of investment licences shall include the documentation stipulated in article 107 of Decree 24-2000-ND-CP. Applications for issuance of investment licences and the accompanying documentation shall be prepared in accordance with Forms 2, 3 and 4 in Appendix II to this Circular.
3. On a case-by-case basis, and consistent with the nature of the project for which the application for issuance of an investment licence is made, the investment licence-issuing body may request the investor to provide a number of supplementary and related documents, such as:
  - Documents relating to the environmental impact assessment of the project (if the project is on the list of projects for which an environmental impact assessment report is required, as published by the Ministry of Science, Technology and Environment);
  - Documents relating to land use (for projects requiring to use land);
  - Economic contracts and agreements relating to the implementation of the project (for example, lease of a factory to implement the project, procurement of raw materials, and so forth);
  - Preliminary design of the architectural plans for projects the construction works of which constitute a section appearing in the economic technical explanatory statement.
4. Files for issuance of investment licences of projects with special characteristics (investment projects in the form of BOT, BTO, and BT, and projects for petroleum exploration and exploitation, and so forth) shall be formulated in accordance with the provisions in the relevant legal instruments.

**Article 7** *Receipt of project application files*

1. With respect to projects for which the Ministry of Planning and Investment issues investment licences, the file shall be submitted to the Ministry of Planning and Investment;  
  
With respect to projects for which a provincial people's committee issues an investment licence, the file shall be submitted to the Department of Planning and Investment;  
With respect to projects in industrial zones, export processing zones and high-tech zones, the file shall be submitted to the industrial zone management board in accordance with the regime of authorization of the Ministry of Planning and Investment.
2. When receiving a file, an official shall check its legality, especially the following matters:
  - The number of sets of project application files required to be submitted and the list of documents contained in the file as required by the regulations;
  - The legality of the file: each page of the application for an investment licence, of the joint venture contract or business co-operation contract, and of the charter of the enterprise must be signed by the authorized representatives of the parties to the investment;
  - Documents verifying the legal status and the financial position of the investors; the investors shall bear responsibility for the lawfulness of the above verification documents.
3. After submission of a project application file, the investor or its authorized representative shall be issued with a receipt for the project application file.

**Article 8** *General provisions on consideration and evaluation of investment projects*

1. With respect to investment projects under the procedure for registration for issuance of investment licences: the investment licence-issuing body shall consider the legality of the file pursuant to the provisions in articles 105 and 106 of Decree 24-2000-ND-CP and the provisions in article 9 of this Circular.
2. With respect to investment projects under the procedure for evaluation for issuance of investment licences: the investment licence-issuing body shall consider the legality of the file pursuant to the provisions in article 107 of Decree 24-2000-ND-CP and the matters to be evaluated for an investment project pursuant to article 108 of Decree 24-2000-ND-CP and the provisions in articles 9, 10, 11 and 12 of this Circular.

**Article 9** *Evaluation of legal status and financial position of parties*

1. The investment licence-issuing body shall consider and evaluate the legal status of an investor by means of the document establishing the enterprise (with respect to investors being enterprises) or by means of documents certifying legal status (with respect to a foreign investor being an individual).
2. The investment licence-issuing body shall consider and evaluate the financial position of an investor by means of the following documents:
  - With respect to an investor being an enterprise which is currently operating: Consideration of the audited financial reports for the last two years, paying attention to turnover, asset value and annual profit;

- With respect to an investor being an enterprise which has recently been established to implement the project, or with respect to an investor being a foreign individual: Consideration of the capacity of the investor to raise capital; banking certificates as to the accounts of the investor (with respect to a foreign investor being an individual); support from the parent company (if any).

The investment licence-issuing body may request a Vietnamese diplomatic, commercial or economic representative office overseas to provide information on the legal status and financial position of a foreign investor taking part in the investment.

3. With respect to a Vietnamese enterprise from any economic sector participating in foreign investment co-operation, the following conditions must be satisfied:
  - It must have been established in accordance with provisions of the law;
  - It must legally own the assets contributed as capital. Where State owned assets (including the value of the land use right) are used to contribute capital, such contribution must be permitted by the authorized State body;
  - Where a Vietnamese party contributes capital in the form of the value of the land use right, and if site clearance and compensation is required, the Vietnamese party must have a financial plan for compensation and site clearance or must have an appropriate solution.

**Article 10** *Evaluation of conformity of investment project with planning and socio-economic benefits*

- An investment project must belong to a sector and industry which conforms with planning. With respect to investment projects in sectors or industries or localities for which planning is not yet clear, the investment licence-issuing body shall consult the opinions of the line ministries and of the Ministry of Planning and Investment.
- Consideration of the possibility of creating new productivity, new industries, new products and market expansion, and export of products.
- Consideration of the possibility of creating new jobs, especially projects with a training program to replace gradually foreign employees with Vietnamese employees.
- Analysis of the economic benefits of a project and its contribution to the State Budget. Projects which have the ability to make a high contribution to the State Budget and to export products or services to collect foreign currency shall be encouraged.

**Article 11** *Evaluation of applied technical and technological level, effective utilization and protection of natural resources, protection of ecological environment*

- The import of machinery and equipment in order to implement a project must be carried out pursuant to the provisions in articles 72, 73 and 74 of Decree 24-2000-ND-CP.
- Technology transfer and capital contribution in the form of technology by investors must conform with the provisions in articles 80 and 81 of Decree 24-200-ND-CP.
- With respect to projects on the list of projects which must prepare an environmental impact assessment report, the investor must include such report, with the contents as stipulated in the sample form issued by the Ministry of Science, Technology and Environment, in the application file for the issuance of an investment licence.

- Opinions of line ministries, the Ministry of Planning and Investment, and provincial people's committees on the matters within their respective management responsibilities.

**Article 12** *Evaluation of appropriateness of land use, valuation of capital contribution assets of Vietnamese party*

- Where a Vietnamese party contributes capital in the form of the value of the land use right or State owned assets, the evaluation of the project must pay attention to the following matters:
- Consideration of the appropriateness of the land use (the area, the progress of use) pursuant to the undertakings of the investors in the application for the issuance of an investment licence, the business co-operation contract, the joint venture contract, the charter of the enterprise and the economic technical explanatory statement; the Vietnamese party making capital contribution in the form of value of the land use right must complete the procedures for land lease and fulfil obligations to the State of Vietnam in accordance with the current provisions of laws, must make compensation and site clearance in accordance with the regulations of the Ministry of Finance and the provincial people's committee, and is required to reach agreement in advance with the foreign party on the expenses for compensation and site clearance.
- Consideration of the plan for compensation and site clearance must comply with the provisions in article 46 of the *Law on Foreign Investment* and in article 89 of Decree 24-2000-ND-CP. In addition, consideration may be given to the following circumstances:
  - In the case where a provincial people's committee is not able to arrange financing sources in advance, an agreement may be reached with the foreign investor on advance funding of the required expenses. Such expenses shall then be included in the invested capital of the project.
  - In the case where a provincial people's committee is able to arrange financing sources for the expenses for compensation and site clearance, such expenses shall be either refunded by the investor or added to the land rent.

Where a Vietnamese party makes capital contribution in the form of State owned assets, such assets must be valued by the authorized body managing the enterprise of the Vietnamese party, on the basis of market value at the time of the capital contribution and must be agreed by the parties. If the contributed assets belong to or are sourced from the State Budget, the Vietnamese party must fulfil financial obligations to the State of Vietnam in accordance with current provisions of the law.

**Article 13** *Procedure for consideration and evaluation of projects*

1. The procedure for consideration of projects in the category of registration for issuance of investment licences:
  - Within fifteen (15) working days from the date of receipt of a proper file pursuant to clause 3 of article 106 of Decree 24-2000-ND-CP and article 8 of this Circular, if it considers that the project contents satisfy the requirements, the investment licence-issuing body shall issue an investment licence.
  - If it requires amendments of or additions to a project application file, the investment licence-issuing body shall notify the investor of such amendments or additions within seven (7) working days from the date of receipt of the file.
2. The procedures for consideration of projects in the category of evaluation for issuance of investment licences:

The procedures for evaluation of investment projects for which investment licences are issued by the Ministry of Planning and Investment shall be as stipulated in article 109 of Decree 24-2000-ND-CP. The procedures for evaluation of investment projects for which investment licences are issued by provincial people's committee shall be as stipulated in article 110 of Decree 24-2000-ND-CP.

3. The time-limit for an investor to forward amendments of or additions to a project application file shall be thirty (30) working days from the date of receipt of the request from the investment licence-issuing body. If necessary, the investor may send a request to extend this time-limit to the investment licence-issuing body for its approval. If the above time-limit expires without a response, the investment licence-issuing body shall forward a letter to the investor advising it that its application for the issuance of an investment licence is deemed to be no longer valid for consideration.

#### **Article 14** *Investment licences*

1. Investment licences shall be created in the uniform form which the Ministry of Planning and Investment issues for each form of investment as stipulated in Forms 1, 2 and 3 in Appendix III to this Circular.
2. When compiling and issuing investment licences, the investment licence-issuing body should pay attention to the following points:

(a) **Form of investment licence:**

- An investment licence issued by each investment licence-issuing body shall be allocated a number in consecutive order starting from number 1 as from the date when such investment licence-issuing body commences issuing licences pursuant to the decision on assignment of such duty by the Government or pursuant to the decision on delegation of authority by the Ministry of Planning and Investment.
- The lettering which follows the number of the investment licence shall be established as follows:

/GP for investment licences issued by the Ministry of Planning and Investment (for example: No.01/GP);

/GP-(*abbreviation for name of province*) for investment licences issued by provincial people's committees (for example: No.01/GP-HN);

/GP-KCN-(*abbreviation for name of province*) for investment licences issued by provincial industrial zone management boards (for example: No.01/GP-KCN-HN).

Abbreviations for the names of provinces are listed in Appendix III to this Circular.

(b) **Contents of investment licence:**

- Name and address of the investor: Must be stated exactly as proposed in the application file for issuance of the investment licence.
- Head office of the enterprise to be established: Address of the production head office and the production branch office must be stated (the main or branch trading office shall not be stated).
- Business purpose and scope of business: Specific list of the main products and services of the project to be stated. With respect to projects producing products the output of which is required to be restricted, in addition, the designed capacity for each type of product must be



stated. With respect to projects subject to regulations which require that a minimum proportion of their products must be exported, or where a project enjoys preferential treatment in return for an undertaking to export a proportion of its products, such proportion must be clearly stated in the investment licence.

- Registered invested capital and legal capital: Must be stated as undertaken in the application file for issuance of an investment licence. With respect to legal capital or capital which the parties contribute to implement a business co-operation contract, the responsibilities and the method of capital contribution of each party must be recorded.
- With respect to a number of special fields, such as petroleum, education and training, scientific research, health, culture, projects in the form of BOT, BTO and BT, and projects on the list of projects which are required to prepare an environmental impact assessment report prior to construction of project works, and so forth, then the special regulations applicable to such projects must also be clearly stated in the investment licence.

#### **Article 15** *Amendment of investment licences*

During the course of its operation, an enterprise with foreign owned capital or business co-operation parties may request amendment of the clauses stipulated in their investment licences.

The investment licence-issuing body shall approve the request of an enterprise with foreign owned capital or of business co-operation parties in the form of an amended investment licence, or may issue a written letter of approval where specific provisions are amended.

Provincial people's committees shall issue written approvals and shall notify the investment licence-issuing body which need not amend an investment licence in the following cases:

- Opening a trading branch or office; a warehouse; a local shop for introducing products (which is not a production unit);
- Change of head office location or investment location within the area of the province or city under central authority in which the enterprise has its main head office.

#### **Article 16** *Authority to amend investment licences*

Authority to amend investment licences shall be as stipulated in article 111 of Decree 24-2000-ND-CP.

Provincial people's committees and provincial industrial zone management boards shall make decisions on amendment of investment licences upon the written approval of the Ministry of Planning and Investment in the following cases:

- Due to the amendment of the investment licence, the investment capital shall exceed the limits of projects within their delegated authority;
- Change of or addition to objectives included in the list of sectors in which investment is conditional ; reduction in the capital contribution ratio of the Vietnamese joint venture party; or reduction in the export ratio below the stipulated level applicable to products which are required to have an export ratio;
- Conversion of the form of investment from a joint venture enterprise or a business co-operation contract to an enterprise with one hundred (100) per cent foreign owned capital.

With respect to projects within delegated powers which will become Group A projects as regulated by article 114 of Decree 24-2000-ND-CP after the amendment of the investment licence, the investment licence-issuing

body shall transfer the project file to the Ministry of Planning and Investment for its consideration of the amendment and for management.

*Article 17 Application file to amend investment licence*

1. An application file to amend an investment licence shall include:
  - Application requesting amendment of the investment licence signed by the general director or first deputy general director;
  - Resolution of the board of management of a joint venture enterprise or agreement of the business co-operation parties or request from the foreign investor (for an enterprise with one hundred (100) per cent foreign owned capital) on the issue for which an amendment of or addition to the investment licence is requested;
  - Report on the implementation status of the project from the date when the investment licence was issued to the time of the request for amendment.
2. In addition to the above documentation, depending on the matters for which it is requested that the investment licence be amended or added to, enterprises with foreign owned capital or the business co-operation parties shall be required to provide the following additional documents:
  - 2.1 In the case of conversion of the form of investment or assignment of capital, the additional documents stipulated in clause 2 of article 33 of Decree 24-2000-ND-CP;
  - 2.2 In the case of a change in operational objectives, the following additional documents:
    - Explanatory statement of the change in operational objectives, stating clearly the solutions for realizing the new objectives, such as market, capital, technology, and so forth;
    - Opinion of the line ministry as to projects producing products the output of which is required to be restricted and the designed capacity for each type of product is provided for in the licences.
  - 2.3 In the case of opening a branch as a production establishment, the following additional documents:
    - Explanatory statement of the opening of the branch as a production establishment (the activities and operational scope of the branch, the invested capital, the sale of products, and so forth);
    - Opinion of the provincial people's committee as to the location and the rate of land rent (if any) for the proposed location for the branch as a production establishment;
    - Opinion of the line ministry as to projects producing products the output of which is required to be restricted and the designed capacity for each type of product is provided for in the licences.
  - 2.4 In the case of a division, demerger, merger or consolidation of an enterprise, the additional documents stipulated in article 31 of Decree 24-2000-ND-CP, enclosing the decision on division or demerger or the contract on consolidation or merger of the enterprise as stipulated in articles 41, 42, 43 and 44 of this Circular.
  - 2.5 In the case of a restructuring of the invested capital, there must be the following additional documents explaining the reasons for it:
    - Supplementary economic technical explanatory statement;

- Financial conditions to ensure the adjustment of the invested capital;
  - List of additional equipment and machinery (if any).
3. Number of sets of application files: An enterprise with foreign owned capital or business co-operation parties must submit three (3) sets of the application file, of which at least one set must be an original.

An application file to amend an investment licence must be printed and bound so that it can be stored pursuant to the regulations on archiving.

If necessary, the investment licence-issuing body may require that one or more sets be lodged in addition to the number of sets of application files stipulated above.

**Article 18** *Time-limit for amendment of investment licences*

The investment licence-issuing body shall implement the amendment of an investment licence within the time-limit stipulated in article 111 of Decree 24-2000-ND-CP. The above time-limit shall not include the period for an enterprise with foreign owned capital or business co-operation parties to provide explanations and additions to the application file.

**Article 19** *Amended investment licences*

Amended investment licences shall be created in the uniform sample provided in Form 4 in Appendix III to this Circular, and formulated pursuant to the following provisions:

1. The number of the amended licence shall comprise two parts:
  - The number of the amended licence shall retain the number of the original licence;
  - The characters which follow the number of the investment licence shall be established as follows:
    - /GPDC and the ordinal number of amendment of the investment licence, for an amended investment licence issued by the Ministry of Planning and Investment (for example: No.01/GPDC1);
    - /GPDC and the ordinal number of amendment of the investment licence - (*abbreviation for name of province or city*) for an amended investment licence issued by a provincial people's committee (for example: No.01/GPDC1-HN);
    - /GPDC and the ordinal number of amendment of the investment licence - KCN - (*abbreviation for name of province or city*) for an amended investment licence issued by a provincial industrial zone management board (for example: No.01/GPDC1-KCN-HN).
2. In respect of investment licences which were previously issued by the Ministry of Planning and Investment and which have now been handed over to provincial people's committees and industrial zone management boards, the number of the amended investment licence shall retain the number of the original investment licence and the characters which follow the investment licence number shall be established in accordance with the following provisions:
  - /GPDC and the ordinal number of amendment of the investment licence - BKH - (*abbreviation for name of province or city*) for an amended investment licence issued by a provincial people's committee (for example: No.01/GPDC1-BKH-HN);
  - /GPDC and the ordinal number of amendment of the investment licence - BKH-KCN - (*abbreviation for name of province or city*) for an amended investment licence issued by a provincial industrial zone management board (for example: No.01/GPDC1-BKH-KCN-HN).

## CHAPTER III

### Organization and Management of Enterprises

#### Article 20 *Co-ordination board for business co-operation contract*

Business co-operation parties may establish a co-ordination board to perform the business co-operation contract pursuant to the provisions in article 8 of Decree 24-2000-ND-CP and shall register it with the provincial Department of Planning and Investment or the industrial zone management board. A co-ordination board shall not have legal entity status or a seal.

#### Article 21 *Operating office of foreign business co-operation party*

A foreign business co-operation party may establish an operating office to perform the business co-operation contract pursuant to the provisions in article 9 of Decree 24-2000-ND-CP.

1. A request may be made to establish an operating office of a foreign business co-operation party pursuant to one of the following two procedures:
  - When submitting the application for the issuance of an investment licence, if deemed necessary, a foreign business co-operation party may request for the establishment of an operating office to the investment licence-issuing body, and if it is approved, then the establishment of the operating office shall be provided for in the investment licence;
  - During the process of implementing the business co-operation contract, when deemed necessary, a foreign business co-operation party may request for the establishment of an operating office to the investment licence-issuing body, and if it is approved, then an amended investment licence shall contain provisions for the establishment of the operating office.
2. With respect to a business co-operation contract project, the establishment of a co-ordination board by the business co-operation parties and a request for the establishment of an operating office by the foreign business co-operation party in order to conduct operations in accordance with the rights and obligations stipulated in the business co-operation contract may be made at the same time.
3. After the investment licence-issuing body approves the establishment of an operating office, a foreign business co-operation party shall carry out registration procedures in accordance with current regulations.

A foreign business co-operation party shall register its operating office personnel with the provincial Department of Planning and Investment or with the industrial zone management board and shall carry out the relevant administrative procedures stipulated in article 30 of this Circular.

#### Article 22 *Board of management of joint venture enterprises*

1. Within thirty (30) days from the date of issuance of an investment licence, the joint venture parties shall notify each other in writing of a list of people participating in the board of management and shall appoint people to hold the positions of chairman and deputy chairman of the board of management pursuant to the provisions in articles 11 and 12 of the *Law on Foreign Investment* and in article 17 of Decree 24-2000-ND-CP, in accordance with the agreements provided in the joint venture contract and in the charter of the joint venture enterprise.
2. The appointment or replacement of members on the board of management on behalf of the Vietnamese party to the joint venture shall be regulated as follows:

- With respect to Vietnamese parties being State owned enterprises and enterprises belonging to political organizations or socio-political organizations, the appointment of people to participate on the board of management must be approved by the higher body directly managing the enterprise;
- With respect to some important projects, the appointment of people to participate in the board of management of the joint venture enterprise may be decided by the Prime Minister of the Government or by the head of the authorized body;
- With respect to Vietnamese parties established under the *Law on Co-operatives* or the *Law on Enterprises*, the appointment of people to participate in the board of management must be approved by the board of management, or by the board of members, or by the owner of the enterprise.

**Article 23** *Responsibilities of members of board of management of joint venture enterprises*

The board of management of a joint venture enterprise shall be the body in charge of the joint venture enterprise, comprised of representatives of the joint venture parties. The representatives of each party on the board of management shall be fully authorized representatives and shall bear responsibility before the board of management and the party being represented.

Each member on the board of management shall be individually responsible before the board of management for the work assigned to him.

**Article 24** *Responsibilities of joint venture parties*

Joint venture parties shall participate in the management of the joint venture enterprise through their members on the board of management of the joint venture enterprise and shall not directly interfere in the management and operation of the enterprise.

**Article 25** *Meetings of board of management of joint venture enterprises*

1. The board of management of a joint venture enterprise shall conduct the appointment and removal of personnel and shall organise its meetings pursuant to the provisions in article 13 of the *Law on Foreign Investment* and in articles 18 and 25 of Decree 24-2000-ND-CP.
2. Minutes of meetings of the board of management must be passed immediately prior to the close of each meeting. The minutes must have the following main contents:
  - Date and venue of the meeting;
  - Total number of members in attendance and attendants of the meeting as the proxy of the members of the board of management;
  - Agenda of the meeting;
  - Summary of the opinions expressed at the meeting;
  - Matters which were voted on, the results of the voting on each matter and the decisions which were passed.

Minutes of meetings of the board of management must include the full name and signature of the chairperson and the secretary of the meeting.

3. Based on minutes of meetings, the board of management may issue its resolutions or decisions on each specific item. Resolutions or decisions of the board of management must include the full names, positions and signatures of all members who attended the meeting.
4. Members of the board of management may appoint a proxy to attend meetings of the board of management and to vote on behalf of that member within the scope of the proxy. A power of attorney must bear the registered signature of the authorizing person, and the contents of the power of attorney may not exceed the rights of the authorizing person.

**Article 26** *Mechanism for passing decisions of board of management of joint venture enterprises*

- The board of management shall conduct the management of the enterprise by passing resolutions of the board of management pursuant to the provisions in article 14 of the *Law on Foreign Investment* and in article 18 of Decree 24-2000-ND-CP.

Where matters require an unanimous decision (in addition to the matters requiring an unanimous decision as stipulated in the *Law on Foreign Investment*) but the members of the board of management are unable to reach unanimity, thereby adversely affecting the operation of the enterprise, the board of management may request the investment licence-issuing body to act as an intermediary or conciliator. If conciliation does not succeed, then the alternatives stipulated in article 122 of Decree 24-2000-ND-CP shall be taken.

- Within the last six (6) months of the term of office, the board of management shall hold a meeting to summarize the activities of the board during its term of office; the joint venture parties shall nominate people to participate in the new board of management; and shall conduct the hand-over of work from the former board to the new board of management.
- Upon expiry of the duration of operation or upon dissolution of the enterprise prior to such expiry, the board of management shall be responsible to establish a liquidation committee and to provide directions on its operations pursuant to the provisions in articles 39 and 40 of Decree 24-2000-ND-CP and in article 47 of this Circular.

**Article 27** *Executive personnel of joint venture enterprises*

1. The board of management shall appoint the general director, deputy general directors and chief accountant (or financial director) pursuant to the provisions in article 25 of Decree 24-2000-ND-CP.
2. If the joint venture contract or the charter of the joint venture enterprise provides for the rights of each party to nominate the person to hold the positions of general director or first deputy general director, the parties shall have the right to replace their nominees in necessary cases provided that this does not impact on the operations of the enterprise.

Nonominations shall be notified in writing to the other party at least thirty (30) days prior to replacement. The board of management shall have the right to request the parties to nominate a replacement person when the requirements have not been satisfied.

**Article 28** *Powers and responsibilities of general director and first deputy general director*

The powers and responsibilities of the general director and of the first deputy general director of the joint venture enterprise shall be as stipulated in article 20 of Decree 24-2000-ND-CP.

In the case where the chairman of the board of management concurrently holds the position of general director of the enterprise, the two different positions must be distinguished when operating the enterprise; a particular document shall be signed and sealed by the appropriate position depending on its nature and contents.

In the case where the general director or the first deputy general director of the enterprise are not members of the board of management, they may attend meetings of the board of management but may not vote on matters of the board of management.

The general director and the first deputy general director shall be responsible to implement the decisions of the board of management. In the case where a decision of the board of management is not appropriate to the real situation, depending on each specific case and if necessary, the general director or the first deputy general director may propose that the chairman of the board of management convene an extraordinary meeting of the board of management for consideration and resolution.

The general director and the first deputy general director shall have the right to refuse to implement decisions of individual members or resolutions of the board of management which are contrary to the law.

The general director and the first deputy general director shall sign labour contracts with the representative of the board of management in accordance with current provisions of the labour laws.

**Article 29** *Establishment of board of management of enterprises with one hundred (100) per cent foreign owned capital*

An enterprise with one hundred (100) per cent foreign owned capital may establish a board of management of the enterprise in accordance with the charter of the enterprise.

## CHAPTER IV

### **Work To Be Implemented After Issuance of Investment Licence**

**Article 30** *Administrative procedures*

After being appointed, the general director of an enterprise with foreign owned capital and the representatives of business co-operation parties shall carry out the following administrative procedures:

1. Publish an announcement on establishment of the enterprise in a central or local newspaper pursuant to the provisions in article 27 of Decree 24-2000-ND-CP;
2. Register the head office of the enterprise and register personnel with the provincial Department of Planning and Investment or with the industrial zone management board in the place where the enterprise establishes its main office;
3. Engrave and register the seal with the provincial police in the place where the enterprise establishes its main office;
4. Open accounts of the enterprise at a bank;
5. If it needs to apply a foreign accounting system, carry out the procedures to register it with the Ministry of Finance;

6. Carry out the procedures to apply for work permits for foreigners;
7. Carry out procedures for registration of entry, exit and residence and so forth of foreigners; register practices(pursuant to the provisions in article 28 of Decree 24-2000-ND-CP); register the use of means of communication; register goods quality and trademarks, and so forth;
8. Carry out other administrative procedures as required by regulations.

**Article 31** *Work to be implemented after issuance of investment licence*

After the issuance of an investment licence and after the enterprise has been established, the general director of an enterprise with foreign owned capital and the representatives of business co-operation parties shall carry out the following work:

1. Carry out the procedures for the issuance of a certificate of the land use right at the provincial people's committee;
 

In respect of enterprises in industrial zones, export processing zones and high-tech zones, sign contracts for sub-leased land and for the use of public utilities within the industrial zones, export processing zones or high-tech zones with the enterprise constructing and developing the infrastructure in such zones;
2. Register the import plan with the local Department of Trade;
3. Carry out the procedures for the approval of technical designs for construction works;
4. Carry out tendering for or selection of consultants and designers; organize tenders for procurement of goods, and so forth, in accordance with current provisions of the laws on tendering;
5. Sign contracts for recruitment of employees;
6. Carry out other work as required by regulations.

**Article 32** *Establishment of branches or representative offices overseas*

The establishment of a branch or representative office overseas by an enterprise with foreign owned capital as regulated in article 29 of Decree 24-2000-ND-CP shall be implemented as follows:

1. In necessary cases, an enterprise with foreign owned capital may establish a branch or representative office overseas on the following conditions:
  - The enterprise has already commenced production or business activities, and is not in breach of the law;
  - The objective of the establishment of a branch or representative office overseas is to conduct transactions, marketing and sale of the products of the enterprise, and especially to promote export activities.
2. If it wishes to establish a branch or representative office overseas, an enterprise with foreign owned capital shall submit an application file to the Ministry of Planning and Investment, comprising:
  - Application to establish a branch or representative office overseas;



- Explanatory statement of the objective and appropriateness of the establishment of the branch or representative office overseas; the methods of operation, of transferring capital, and of managing profits earned by the branch or representative office overseas.
3. The Ministry of Planning and Investment shall consider and decide on granting permission for an enterprise with foreign owned capital to establish a branch or representative office overseas; and in necessary cases shall consult the opinion of the relevant authorized State bodies prior to issuing a decision.
  4. Within sixty (60) days from the date of permission to establish a branch or representative office overseas, the enterprise must report to the representative office of the Socialist Republic of Vietnam in the host country in relation to the opening of the branch or representative office.
  5. All transactions remitting monies abroad or into Vietnam relating to the activities of the branch or representative office must be conducted through the account of the enterprise and must comply with the regulations on foreign exchange control;

Profits and income (if any) of the branch or representative office overseas must be remitted to Vietnam no later than six (6) months from the end of the financial year of the host country. If the above time-limit is exceeded, the reasons for delay must be clearly explained to the State Bank of Vietnam.

**Article 33** *Hire of management organization*

The hire of a management organization shall be implemented in accordance with the provisions in article 30 of Decree 24-2000-ND-CP and in accordance with joint regulations of the Ministry of Planning and Investment and the Ministry of Finance on the hire of management organizations.

Any disputes between a management organization and an enterprise and any disputes between a management organization and a Vietnamese economic organization shall be resolved in accordance with the provisions in article 24 of the *Law on Foreign Investment* and article 122 of Decree 24-2000-ND-CP.

**Article 34** *Finalization report on construction works and report on implemented invested capital*

1. Within six (6) months from the date of completion of construction and commencement of operation of the project works, an enterprise with foreign owned capital or business co-operation parties shall complete a finalization report on construction works and register it with the investment licence-issuing body. With respect to projects where construction items are invested in stages, if independently commissioned and if considered necessary, then upon completion, finalization of accounts may also be carried out. In such case the enterprise with foreign owned capital or the business co-operation parties must also complete a finalization report of construction of the whole of the project works upon full completion of such works.

The costs to be finalized shall be the total of the legitimate costs incurred during the course of the project in order to put it into operation. The total of the costs listed in the finalization report on construction works shall form part of the report on implemented invested capital.

2. Within six (6) months from the date of official operation, an enterprise with foreign owned capital or business co-operation parties shall complete a report on implemented invested capital.

**Article 35** *File for finalization report on construction works and for report on implemented invested capital*

1. A file for the finalization report on construction works or the report on implemented invested capital shall include the finalization report on construction works, the report on implemented invested capital,

the certificate of inspection of imported equipment and machinery, and the audit report on costs of construction works.

The finalization report on construction works and the report on implemented invested capital shall be prepared in accordance with the sample Forms 1 and 2 in Appendix IV to this Circular.

The finalization report on construction works and the report on implemented invested capital must be signed by the general director of the enterprise or by the authorized representatives of the business co-operation parties; in the case of a joint venture enterprise, they must be unanimously approved by the board of management.

2. The main contents of the finalization report on construction works shall include:
  - (a) Costs of construction works, including:
    - Costs of underground works (demolition, foundations, underground works);
    - Costs of structural works and completing works;
    - Costs of facilities within construction works;
    - Costs of landscape construction (fencing, playgrounds, flower and ornamental gardens, and so forth);
    - Costs of environmental protection, fire-fighting and prevention, construction insurance, and so forth.
  - (b) Costs of machinery and equipment, including:
    - Costs of procurement;
    - Costs of transportation;
    - Costs of insurance;
    - Costs of installation and adjustment.
  - (c) Other costs, including costs of investment preparation; compensation and site clearance, value of the land use right constituting the capital contribution of the Vietnamese party, loan interest during process of construction, training costs, auditing and inspection costs, and all other appropriate expenses arising during the course of implementation of the investment project.

Any fines which are incurred due to the fault of the enterprise or the business co-operation parties shall not be included in the costs.

3. The report on implemented invested capital shall include:
  - (a) The total of the costs listed in the finalization report on construction works;
  - (b) Working capital which has been utilized (if any);
  - (c) In the report on implemented invested capital, items of expenditure must be divided into each year from the investment preparation stage to the completion of the construction work and commissioning; and further divided into the sources of capital, capital contribution or loans.

4. With respect to investment projects for which the investment licence stipulates that construction and business operations are divided into a number of stages, a finalization report on construction works and a report on implemented invested capital shall be prepared for each stipulated stage.

**Article 36** *Audit of costs of construction works*

The costs of project construction works listed in the finalization report on construction works must be audited.

After conducting the audit, the auditing organization shall issue the investor with a report on the audit results.

**Article 37** *Inspection of imported equipment and machinery*

1. Equipment and machinery which is imported for the purpose of implementation of a project must be inspected in accordance with the provisions in article 73 of Decree 24-2000-ND-CP.
2. The inspection fees shall be included in the investment costs of a project.
3. After conducting the inspection, the inspection organization shall issue a certificate of inspection. The certificate of inspection shall include the following items:
  - Name of the inspection organization;
  - Place and time of conducting the inspection;
  - Name, code, specifications, year of manufacture; country of manufacture and manufacturer; quantity, technical condition, output capacity, quality, unit price and value of equipment and machinery;
  - Conclusions on the value and quality of equipment and machinery;
  - Confirmation of the legal responsibility of the inspection organization: seal and signature.

**Article 38** *Re-inspection of imported equipment and machinery*

1. Where necessary, the investment licence-issuing body may request another inspection organization to conduct a re-inspection of the equipment and machinery imported for the purpose of implementation of the project.
2. The enterprise shall have the right to request an explanation and comparison with the results of the re-inspection, but must accept the decision of the investment licence-issuing body. All complaints and disputes relating to an inspection or re-inspection shall be dealt with in accordance with provisions of the law.

**Article 39** *Confirmation of registration of finalization report on construction works, report on implemented invested capital*

Within thirty (30) days from the date of receipt of a complete and proper file on finalization report of construction works and file on report on implemented invested capital, the investment licence-issuing body shall issue a certificate of registration of finalization report on construction works and a certificate of registration of report on implemented invested capital to an enterprise with foreign owned capital or to business co-operation parties in accordance with the sample Forms 3 and 4 in Appendix IV to this Circular.

Where deemed necessary, the investment licence-issuing body may evaluate the finalization report on construction works and the report on implemented invested capital and require an enterprise with foreign

owned capital or business co-operation parties to adjust the invested capital to conform correctly with the appropriate costs.

The investment licence-issuing body shall issue the certificate of registration of finalization report on construction works and the certificate of registration of report on implemented invested capital as the basis for the enterprise with foreign owned capital or the business co-operation parties to complete finalization procedures in respect of imported equipment, machinery, raw materials and materials in accordance with the provisions in article 102 of Decree 24-2000-ND-CP.

## CHAPTER V

### Re-Organization of Enterprises

#### Article 40 *Division, demerger, merger or consolidation of enterprises*

1. An enterprise with foreign owned capital may divide into two or a number of enterprises operating under the *Law on Foreign Investment*. After it divides and becomes new enterprises, the divided enterprise shall cease to exist.
2. An enterprise with foreign owned capital may demerge by the method of transferring one part of the assets of the existing enterprise (referred to as the *enterprise to be demerged*) in order to establish one or a number of new enterprises operating under the *Law on Foreign Investment* (referred to as the *demerged enterprise(s)*); or transferring one part of the rights and obligations of the enterprise to be demerged to the demerged enterprise(s), but maintaining the existence of the enterprise to be demerged.
3. Two or a number of enterprises with foreign owned capital (referred to as the *enterprises to be consolidated*) may consolidate and become one new enterprise (referred to as the *consolidated enterprise*) by the method of transferring the whole of the assets, rights, obligations and legitimate interests to the consolidated enterprise and at the same time terminating the existence of the enterprises to be consolidated.
4. One or a number of enterprises with foreign owned capital (referred to as the *enterprises to be merged*) may merge into another enterprise with foreign owned capital (referred to as the *merged enterprise*) by the method of transferring the whole of the assets, rights, obligations and legitimate interests to the merged enterprise and at the same time the enterprises to be merged shall cease to exist.

With respect to projects falling within delegated authorization which, due to the re-organization of an enterprise, become Group A projects as regulated by article 114 of Decree 24-2000-ND-CP, the investment licence-issuing body shall transfer the project file to the Ministry of Planning and Investment for its consideration and decision and for organizing management.

#### Article 41 *Procedures for division of enterprises*

1. The procedures for the division of an enterprise shall be stipulated as follows:
  - The enterprise to be divided shall lodge an application file for the division of the enterprise with the items stipulated in clause 1 of article 31 of Decree 24-2000-ND-CP, enclosing a decision on division of the enterprise;
  - The decision on division of the enterprise must be passed by the board of management of the joint venture enterprise or by the foreign investor (for an enterprise with one hundred (100) per cent foreign owned capital) and shall contain the following main items:

- Name of the enterprise to be divided;
- Names of enterprise(s) which will be established;
- Principles and procedures for dividing the assets of the enterprise;
- Employment plan; and period and procedures for converting the capital contribution of the enterprise to be divided to the newly-established enterprises;
- Principles for resolving the obligations of the divided enterprise; period for implementing the division of the enterprise.

The decision on division of the enterprise shall be sent to all creditors and announced to the employees for their information within fifteen (15) days from the date on which the decision was passed.

2. The investment licence-issuing body shall approve the division of the enterprise, terminate the operation of the enterprise to be divided, and issue licences for the establishment of the new enterprises in accordance with current regulations.
3. The new enterprises shall be jointly responsible for unpaid debts, for labour contracts and for other asset obligations of the enterprise to be divided or shall reach an agreement that one of such enterprises shall be so responsible; shall carry out the procedures for establishment in the same manner as stipulated for enterprises after they have been issued with an investment licence.

**Article 42** *Procedures for demerger of enterprises*

1. The procedures for the demerger of an enterprise shall be stipulated as follows:
  - The enterprise to be demerged shall lodge an application file for the demerger of the enterprise with the items stipulated in clause 1 of article 31 of Decree 24-2000-ND-CP, enclosing a decision on demerger of the enterprise;
  - The decision on demerger of the enterprise must be passed by the board of management of the joint venture enterprise or by the foreign investor (for an enterprise with one hundred (100) per cent foreign owned capital) and shall contain the following main items:
    - Name of the enterprise to be demerged;
    - Names of the demerged enterprise(s) which will be established;
    - Employment plan;
    - Value of the assets and the rights and obligations to be transferred from the enterprise to be demerged to the demerged enterprise(s); the period for implementing the demerger of the enterprise.

The decision on demerger of the enterprise must be sent to all creditors and announced to the employees for their information within fifteen (15) days from the date on which the decision was passed.

2. The investment licence-issuing body shall approve the demerger of the enterprise pursuant to the following order:

Issuance of an amended investment licence to the enterprise to be demerged, containing approval of the demerger, and issuance of an investment licence for the establishment of the new enterprise(s) in accordance with current regulations.

3. In principle, the enterprise to be demerged shall continue to be responsible for unpaid debts, for labour contracts and for other asset obligations of the enterprise which arose prior to the demerger. Alternatively, the enterprise to be demerged and the demerged enterprise(s) may agree that the demerged enterprise(s) shall be responsible for the whole or a part of the above obligations; the demerged enterprise(s) shall carry out the administrative procedures and post-establishment procedures in the same manner as stipulated for enterprises after they have been issued with an investment licence.

#### **Article 43** *Procedures for consolidation of enterprises*

1. The procedures for the consolidation of enterprises shall be stipulated as follows:
  - The enterprises to be consolidated shall lodge an application file for the consolidation of enterprises with the items stipulated in clause 1 of article 31 of Decree 24-2000-ND-CP, enclosing the contract on consolidation of enterprises;
  - The contract on consolidation of enterprises shall be signed between the enterprises to be consolidated and passed by the board of management of the joint venture enterprise(s) or by the foreign investor(s) (for enterprises with one hundred (100) per cent foreign owned capital) and shall contain the following main items:
    - Name of the enterprises to be consolidated;
    - Name and head office of the consolidated enterprise;
    - Procedures and conditions for consolidation; employment plan; period, procedures and conditions for transferring the assets; for transferring the capital contribution of the enterprises to be consolidated to become the capital contribution of the consolidated enterprise; period for implementing the consolidation; draft charter of the consolidated enterprise.

The contract on consolidation must be sent to all creditors and announced to the employees for their information within fifteen (15) days from the date on which the contract was approved.

2. The investment licence-issuing body shall approve the consolidation of the enterprises, terminate the operations of the enterprise(s) to be consolidated, and issue a licence for the establishment of the new enterprise in accordance with current regulations.
3. In principle, the consolidated enterprise shall be entitled to the rights and legitimate interests of, and shall be responsible for unpaid debts, for labour contracts and for other asset obligations of, the enterprises to be consolidated, unless otherwise agreed between the enterprises. The consolidated enterprise shall carry out the procedures for establishment in the same manner as stipulated for enterprises after they have been issued with an investment licence.

#### **Article 44** *Procedures for merger of enterprises*

1. The procedures for the merger of enterprises shall be stipulated as follows:
  - The enterprises to be merged shall lodge an application file for the merger of enterprises with the items stipulated in clause 1 of article 31 of Decree 24-2000-ND-CP, enclosing a contract on merger of enterprises;

- The contract on merger of enterprises shall be signed between the enterprises to be merged and the merged enterprise and shall be passed by the board of management of the joint venture enterprise(s) or by the foreign investor(s) (for enterprises with one hundred (100) per cent foreign owned capital) and shall contain the following main items:
  - Name of the enterprise to be merged;
  - Name of the merged enterprise(s);
  - Procedures and conditions for the merger;
  - Employment plan; period, procedures and conditions for transferring the assets; for transferring the capital contribution of the enterprises to be merged to become the capital contribution of the merged enterprise; period for implementing the merger.

The contract on merger must be sent to all creditors and announced to the employees for their information within fifteen (15) days from the date on which it was passed.

2. The investment licence-issuing body shall approve the merger, termination of operation of the enterprise(s) to be merged by way of issuance of an amended investment licence for the merged enterprise or issuance of an investment licence for the establishment of a new enterprise in accordance with current regulations.
3. In principle, the merged enterprise shall be entitled to the rights and legitimate interests of, and shall be responsible for unpaid debts, for labour contracts and for other asset obligations of, the enterprises to be merged, unless otherwise agreed between the enterprises.

## CHAPTER VI

### **Temporary Suspension, Extension of Schedule, Termination of Operation, Liquidation and Dissolution of Enterprises**

#### *Article 45 Temporary suspension of operation or extension of schedule of implementation of projects*

Temporary suspension of operation or extension of the schedule of implementation of a project shall be implemented in accordance with the provisions in article 36 of Decree 24-2000-ND-CP. An enterprise with foreign owned capital and business co-operation parties shall report the duration of temporary suspension of operation to the investment licence-issuing body, to the Ministry of Finance and to the tax office. During any temporary suspension of operation, an enterprise with foreign owned capital and business co-operation parties must pay all outstanding taxes and shall remain responsible to creditors and for fulfilling contracts signed with clients and employees, unless otherwise agreed with such clients and employees.

When the operation re-commences, the enterprise with foreign owned capital or the business co-operation parties shall notify the investment licence-issuing body.

The investment licence-issuing body shall notify its approval of a temporary suspension of operation or of an extension of the schedule of implementation of the project by written notice to the enterprise with foreign owned capital or the business co-operation parties. The written approval from the investment licence-issuing body shall clearly stipulate the duration of the temporary suspension of operation or of the extension of the

schedule of implementation of the project, as the basis for considering any exemption from or reduction of financial obligations of the enterprise.

**Article 46** *Termination of operation*

1. An enterprise with foreign owned capital or of business co-operation parties shall terminate its operation in accordance with the provisions in article 37 of Decree 24-2000-ND-CP.
2. Upon termination of operation, an enterprise with foreign owned capital or the business co-operation parties must carry out the following tasks:
  - Terminate production, business and trading operation; where signed economic contracts are required to be continued to be fulfilled, the enterprise with foreign owned capital or the business co-operation parties must report to the investment licence-issuing body for its approval;
  - Close the accounting books;
  - Organize the protection of assets;
  - Arrange leave for employees pending resolution of entitlement and policies in accordance with law;
  - Carry out liquidation of the assets of the enterprise or of the business co-operation contract.
3. Upon termination of operation, an enterprise with foreign owned capital or the business co-operation parties may not do the following:
  - Disperse the assets in any form;
  - Pay undue debts;
  - Waive rights to collect debts;
  - Transfer unsecured debts to secured debts;
  - Enter into new economic contracts.
4. An enterprise with foreign owned capital and the business co-operation parties shall make an announcement of termination of operation in accordance with the provisions in article 38 of Decree 24-2000-ND-CP, with the following contents:
  - Name and address of the enterprise with foreign owned capital or of the business co-operation parties the operation of which has been terminated;
  - Field of business operation;
  - Date of the decision to terminate the operation;
  - Request to any creditors and concerned third parties to check any debts.

**Article 47** *Establishment of liquidation committee*

1. A liquidation committee shall be established in accordance with the provisions in article 39 of Decree 24-2000-ND-CP.



2. The board of management of a joint venture enterprise or the foreign investor (in the case of an enterprise with one hundred (100) per cent foreign owned capital) or the business co-operation parties shall not be required to establish a liquidation committee in the following cases:
  - The parties have not yet commenced implementation of the project, or have only carried out some of the administrative procedures but do not yet owe any wages or any social insurance costs to employees, and do not owe any taxes to the State or debts to third parties;
  - The parties have not yet contributed legal capital pursuant to the provisions in the investment licence, or have already contributed capital but it has not yet been accepted and verified by the board of management or by the business co-operation parties, and also no joint obligations have yet arisen to the State or to third parties.

In the above cases, after they have themselves resolved the existing issues, the parties shall send a report to the investment licence-issuing body in which they undertake that there are no remaining disputes between the parties and that they have fully discharged all of their obligations and responsibilities to the State and to any third parties.

Fifteen (15) days after it receives a report enclosing confirmation from the tax office in the locality where the enterprise has its main office, the investment licence-issuing body shall issue a decision on dissolution of the enterprise with foreign owned capital, or on termination of validity of the business co-operation contract. The parties shall be responsible to resubmit the original copy of the investment licence and the operational file to the investment licence-issuing body and to submit the seal to the office which issued it.

**Article 48** *Liquidation committee established by investment licence-issuing body*

1. The membership of a liquidation committee established by a decision of the investment licence-issuing body (in accordance with the provisions in clause 2 of article 39 of Decree 24-2000-ND-CP) shall include:
  - A representative of the provincial people's committee in the locality where the enterprise has its head office;
  - A representative of the investment licence-issuing body;
  - A representative of the tax office in the locality where the enterprise has its head office;
  - A representative of the Department of Labour, War Invalids and Social Affairs in the locality where the enterprise has its head office.

In certain necessary cases, the investment licence-issuing body may invite additional representatives from other relevant bodies and organizations.

2. The operation of a liquidation committee established by a decision of the investment licence-issuing body shall be regulated as follows:
  - The liquidation committee shall have full powers, independent of the board of management of the enterprise, to carry out the liquidation in accordance with the law of Vietnam and with the provisions of the decision on its establishment.
  - The liquidation committee shall be responsible for its own operation before the investment licence-issuing body and before the law of Vietnam.

- Within thirty (30) days at the latest, the liquidation committee shall organize the first meeting for the notification of the plan, method, and operational budget and submit them to the investment licence-issuing body for approval and shall at the same time notify the board of management of the joint venture enterprise, or to the foreign investor (in the case of an enterprise with one hundred (100) per cent foreign owned capital), or to the business co-operation parties for information and implementation. Where deemed necessary, the head of the liquidation committee shall have the right to convene an extraordinary meeting of the liquidation committee.
- It shall request the board of management of the joint venture enterprise or the foreign investor or the business co-operation parties, the general director and the deputy general directors, and the chief accountant and other relevant individuals to supply files, documentation, vouchers, accounts and budget in support of the liquidation operation.
- All costs of the liquidation shall be borne by the enterprise or by the business co-operation parties and shall be paid in priority to any other obligations.

**Article 49** *Report on results of liquidation*

The liquidation committee shall prepare a report and liquidation file in accordance with the provisions in article 37 of Decree 24-2000-ND-CP, including:

- The liquidation report shall be approved by the board of management of the joint venture enterprise, or by the foreign investor (in the case of an enterprise with one hundred (100) per cent foreign owned capital), or by the business co-operation parties;
- Written verification by the tax and customs office that all fiscal obligations have been fully discharged;
- Other documents (if any).

Where a liquidation committee is established by a decision of the investment licence-issuing body, it shall submit its liquidation plan and the report on the results of liquidation to the investment licence-issuing body for approval. After approval is granted, the liquidation committee shall carry out the liquidation and report on the results to the investment licence-issuing body and notify the board of management of the joint venture enterprise or to the foreign investor or to the business co-operation parties for information.

Within fifteen (15) days from the date of receipt of a full and proper liquidation file, the investment licence-issuing body shall issue a decision on dissolution of the enterprise or on termination of the business co-operation contract.

**Article 50** *Assets to be liquidated*

Assets of an enterprise with foreign owned capital or of business co-operation parties shall include moveable and immoveable property.

Where the Vietnamese party contributes capital in the form of the value of the land use right and the joint venture parties or the business co-operation parties have fully contributed their capital, the value of the land use right for the remaining period shall form part of the assets of the enterprise to be liquidated.

Where the Vietnamese party contributes capital in the form of the value of the land use right but the joint venture parties or the business co-operation parties have not yet fully contributed their capital, the value of the land use right and any other assets of the Vietnamese party shall be determined with respect to the actual capital contribution share of the foreign party based on the capital contribution ratio stated in the investment licence.

**Article 51** *Procedures for resolution in event of bankruptcy*

1. The liquidation committee shall report to the investment licence-issuing body to terminate the liquidation work and to transfer to resolution under the procedures for bankruptcy, as provided for in article 44 of Decree 24-2000-ND-CP.
2. The liquidation committee shall notify the board of management of the joint venture enterprise, the foreign investor (in the case of an enterprise with one hundred (100) per cent foreign owned capital) or the business co-operation parties, and also creditors, of the termination of liquidation in order that they may submit applications to the court requesting resolution by way of a declaration of bankruptcy in accordance with the provisions in articles 7, 8 and 9 of the *Law on Business Bankruptcy*.
3. The bankruptcy of an enterprise shall be dealt with in accordance with the order and procedures provided for in the law on business bankruptcy.

## CHAPTER VII

### Enterprise Reporting and Statistics Systems, Rewards and Dealing with Breaches

**Article 52** *Contents of statistical reports*

1. The periodical statistical report and statistical survey (both referred to as *statistical report*) applicable to an enterprise with foreign owned capital and to business co-operation parties shall be uniformly implemented throughout the whole country with respect to:
  - System of tables and forms, date for submission, and body receiving the report;
  - Methods for calculating the indicators and units of measurement;
  - Reporting periods.
2. The statistical data reported by enterprises with foreign owned capital and business co-operation parties shall be legally acceptable documentation for the purposes of assessment of production and business results and fulfilment by the entity of the obligations provided for in its investment licence. Statistical reports must be prepared in full, calculating the indicators in accordance with the stipulated contents and methods, and must be lodged on time.

**Article 53** *Reporting and statistical systems*

1. Enterprises with foreign owned capital and business co-operation parties shall submit audited annual financial reports to the Ministry of Finance, the Ministry of Planning and Investment, and the Department of Statistics.

Enterprises with foreign owned capital and business co-operation parties shall implement the statistical reporting system in accordance with the regulations by the Ministry of Planning and Investment and the General Department of Statistics.

2. In case of business co-operation contracts, the parties may agree to appoint the co-ordination board or one party to act as their representative to undertake the work of reporting and statistics, and the other parties shall be responsible to provide data to that representative.

**Article 54** *Rewards*

Enterprises with foreign owned capital, business co-operation parties and individuals making outstanding achievements in foreign investment activities may be rewarded in accordance with the provisions in article 123 of Decree 24-2000-ND-CP, based on the following main criteria:

1. In the case of enterprises:
  - Creation of a good working atmosphere;
  - Good results in production and business;
  - Strict compliance with State regulations on financial obligations, on statistical reporting system, and so forth;
  - Successful resolution of issues relating to recruitment, employment and entitlement of employees;
  - Active operation of the trade union and other unions in accordance with provisions of the law;
  - Active participation in social activities and an active relationship with the local community.
2. In the case of individuals:
  - Good accomplishments of work and responsibilities;
  - Active contribution to the activities of the enterprise and to the activities of the labour collective in the enterprise.

**Article 55** *Dealing with breaches*

Enterprises with foreign owned capital, business co-operation parties, and foreign investors or employees breaching the provisions of investment licences or of the laws of Vietnam shall be dealt with in accordance with the provisions of the law.

## CHAPTER VIII

### **Co-ordination System in Management of Foreign Investment Activities**

**Article 56** *Joint responsibility in co-ordinating work*

Within the scope of their respective functions and powers, provincial people's committees (with the focal body being the Department of Planning and Investment), ministries, branches and provincial industrial zone management boards shall be responsible to co-ordinate closely in managing foreign investment activities. The Ministry of Planning and Investment shall act as the focal body for overall co-ordination of this work.

**Article 57** *Information and reporting system*

1. General provisions:
  - The Ministry of Planning and Investment shall act as the focal body for collecting information on the receipt of projects, the issuance and amendment of investment licences, and the implementation situation of foreign invested projects throughout the whole country.

Provincial people's committees and industrial zone management boards shall collect information on the situation of foreign investment within their localities and industrial zones.

2. System of brief reporting:

- Departments of Planning and Investment and industrial zone management boards shall prepare and provide weekly brief reports to the Ministry of Planning and Investment every Friday on the situation of receipt of projects and the issuance and amendment of investment licences with respect to foreign invested projects which are within the licence-issuing and amending authority of provincial people's committees and industrial zone management boards in accordance with Forms 1 and 2 in Appendix VI to this Circular.
- Provincial Departments of Planning and Investment and industrial zone management boards shall provide monthly brief reports on the implementation of foreign invested projects within their localities to the Ministry of Planning and Investment on the twentieth day of each month in accordance with Form 3 in Appendix VI to this Circular.
- The Ministry of Planning and Investment shall provide monthly situation reports on foreign investment throughout the whole country on the twenty third day of each month for the purpose of the monthly meeting of the Government.

3. System of periodical reporting:

- Every quarter, six months and annually, provincial people's committees shall provide overall reports on foreign investment activities within their localities (including projects in industrial zones, export processing zones and high-tech zones) to the Ministry of Planning and Investment. Provincial industrial zone management boards shall be responsible to collect and provide information on the projects within their zones in order to report to the Ministry of Planning and Investment and to the relevant provincial people's committee for the general overall reports on foreign investment activities within the locality.

Quarterly and six monthly reports shall be sent, at the latest, on the fifteenth day of the first month in the following quarter. Annual reports shall be sent, at the latest, on the thirty first day of January of the following year.

- Annually, the Ministry of Planning and Investment shall provide an overall situation report on foreign investment activities to the Prime Minister of the Government and shall notify the relevant ministries, branches and provincial people's committees.

**Article 58** *Information exchange on foreign investment situation*

1. The Ministry of Planning and Investment shall preside over meetings in each region and territory on the foreign direct investment situation within each locality with the provincial people's committees and shall also notify them of any new legal instruments and policies on foreign investment activities and provide them with guidance on implementation.
2. Provincial people's committees shall provide regulations on regimes and shall preside over the organization of periodical meetings with enterprises with foreign owned capital within their localities.

**Article 59** *Co-ordination in resolving any arising issues*

The investment licence-issuing body shall act as the focal body in resolving any issues and difficulties which arise during project implementation by enterprises with foreign owned capital and by business co-operation

parties. Based on each specific circumstance, ministries, branches and localities shall initiate working sessions with the relevant bodies on managing foreign investment activities in order to co-ordinate in resolving any issues which arise and shall notify the investment licence-issuing body of such issues.

In the case of any arising issues beyond their authority, the investment licence-issuing bodies and the relevant bodies shall report them to the next higher level body for its resolution, or shall provide an overall report to the Prime Minister of the Government.

The Ministry of Planning and Investment shall be responsible to collect information on obstacles which arise during implementation of foreign invested projects for the purpose of co-ordination with the relevant bodies in making recommendations on policies and measures for improvement of the investment environment.

#### **Article 60** *Co-ordination mechanism for inspections*

##### **1.** General provisions:

- Periodical, specialized and irregular inspections of enterprises with foreign owned capital shall be conducted through the focal body being the investment licence-issuing body.
- Minutes of inspections must be signed by the representative of the inspection team and also by the representative of the enterprise being inspected.
- Within thirty (30) working days after the completion of an inspection, the body which presided over the inspection shall notify its conclusions to the Ministry of Planning and Investment and to the relevant bodies for the purpose of co-ordination of management.

##### **2.** Periodical inspections:

- Provincial people's committees and industrial zone management boards shall preside over the organization of periodical inspections of enterprises with foreign owned capital and business co-operation within their localities. Composition of the periodical inspection team shall include representatives of the relevant bodies in charge of State management of foreign investment activities.
- Matters subject to periodical inspections: a comprehensive inspection of the implementation of the provisions in the investment licence, an assessment of the effectiveness of operation of the enterprise, and reception of recommendations from the enterprise on arising issues which require resolution.
- The body presiding over the inspection shall notify the enterprise of the plan for the periodical inspection at least seven (7) working days prior to the commencement of the inspection.

##### **3.** Specialized inspections:

- Specialized inspections shall be conducted by specialized management bodies with the aim to assess the implementation situation of the provisions of laws relevant to the sector within their respective management authority. Depending on the characteristics of each industry and sector, ministries and branches may authorize local departments, committees and branches to conduct the inspection.
- The plan and matters to be inspected shall be prepared by the specialized management bodies and be notified to the Ministry of Planning and Investment (with respect to inspections conducted by

ministries and branches) or the provincial people's committee (with respect to inspections conducted by local departments, committees and branches) at least fifteen (15) days prior to the commencement of an inspection.

- The body presiding over the inspection shall notify the enterprise of the plan for the specialized inspection at least seven (7) working days prior to commencement of the inspection.

4. Irregular inspections:

- Irregular inspections may be conducted when an enterprise shows signs of having breached the law or where there are arising problems and shall be conducted strictly in accordance with the procedures stipulated by law.
- With respect to large scale or complicated projects and when deemed necessary, the Ministry of Planning and Investment shall co-ordinate with line ministries and with provincial people's committees to conduct inspections.

## CHAPTER IX

### Implementing Provision

**Article 61** *Implementing provision*

This Circular shall be of full force and effect as of 1 October 2000 and shall replace Circulars No. 03-BKH-QLDA dated 15 March 1997 and No. 04-1998-TT-BKH dated 18 May 1998 of the Ministry of Planning and Investment. Any previous provisions which are inconsistent with this Circular are hereby repealed.

Minister of Planning and Investment

TRAN XUAN GIA