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A Quick Guide through THE ENTERPRISE LAW 2005

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A QUICK GUIDE THROUGH

THE ENTERPRISE LAW 2005

This Quick Guide through the Enterprise Law 2005 was prepared by the Central Institute for Economic Management, Vision & Associates, and the German Technical Cooperation.

PREFACE

The Enterprise Law (hereafter referred to as the Enterprise Law 2005) was passed by the National Assembly on 29th November 2005 and has been in force since 1st July 2006. With respect to the organization and governance of an enterprise the Enterprise Law 2005 replaces not only the Enterprise Law 1999, but also the Law on State-Owned Enterprises 2003 and the Law on Foreign Investment in Vietnam. The issuance and implementation of the Enterprise Law 2005 is considered a significant step towards improving the legal framework for enterprises and abolishing the discrimination and different treatment with regard to economic components and ownership.

Aware that bringing the Enterprise Law 2005 to the attention of all concerned organizations and individuals will contribute to the full and efficient implementation of the Enterprise Law 2005, the Central Institute for Economic Management (CIEM) and the MPI-GTZ SME Development Program (GTZ) have developed the "Quick Guide Through the Enterprise Law 2005" (hereafter referred to as the Guide). The Guide is intended to assist investors, enterprises, relevant state bodies, civil servants and all those affected by the Law by presenting the essential aspects of the Law in a straightforward way. Issues are clearly presented and departures from the Enterprise Law 1999 are brought to the reader's attention.

The Guide was developed by a team of experts from Vision & Associates and the Central Institute for Economic Management. The team are grateful to, amongst others, Dr. Dinh Van An (President of CIEM), Mr. Thomas Finkel and Mr. Le Duy Binh (GTZ) for their guidance, technical support and advice. The English version of this Quick Guide is reviewed by Jago Penrose.

The Guide is for guidance and reference purposes only. It should not be relied on as a substitute for formal regulations and professional advice. Although CIEM and GTZ believe the information given in the Guide to be reasonable and correct, they accept no responsibility for the accuracy of the information given herein.

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List of abbreviations

Board of Directors	Board of Management
Supervision Board	Board of Supervision
BRC	Business registration certificate
MPI	Ministry of Planning and Investment
SOE	State-owned enterprise
WTO	World Trade Organization

INTRODUCTION

1. BACKGROUND

In November 2005, the National Assembly passed the Enterprise Law 2005 and the Law on Investment 2005. Both are expected to greatly influence the business environment in Vietnam. The primary purpose of the Enterprise Law 2005 is to establish a legal framework that is applicable to all types of enterprise in Vietnam and which does not discriminate among state-owned enterprises (SOEs), private enterprises, and foreign invested enterprises, thus meeting the requirements of the domestic business environment and Vietnam's international commitments.

In order to assist state bodies, enterprises, business associations, and other concerned parties, at central and local levels, to understand the impact of the Enterprise Law 2005 and the Law on Investment 2005 the Central Institute for Economic Management (CIEM) and Vision and Associates, with the support GTZ, have conducted training sessions on the content of the two laws and have produced the Quick Guide Through the Enterprise Law 2005.

2. PURPOSES

A Quick Guide Through the Enterprise Law is intended to disseminate the Enterprise Law 2005 to government officials, civil servants working in relevant state bodies (such as business registration, investment registration, taxation, customs, police), investors, enterprises, business associations, and other relevant stakeholders, thus improving the implementation effectiveness of the Enterprise Law 2005.

3. STRUCTURE OF THE DOCUMENT

The Quick Guide Through the Enterprise Law 2005 is comprised of the following five (5) chapters:

Chapter 1: General introduction to the Enterprise Law 2005

This chapter provides a general introduction and background to the Enterprise Law 2005, the structure of the Law and the relationship between the Law and other Laws. The chapter also highlights differences between the Enterprise Law 1999 and the Enterprise Law 2005 with regard to the scope of application of the Law and the fundamental rights and responsibilities of enterprises.

Chapter 2: Registration for enterprise establishment

The chapter covers issues related to the establishment of enterprises, including different types of businesses, Business Registrars, capital contributions, share purchase, participation in the management of enterprises, the business registration procedure, and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

Chapter 3: Limited liability companies

The chapter examines issues concerning limited liability companies and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

Chapter 4: Shareholding companies

This chapter deals with shareholding companies and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

Chapter 5: Enterprise reorganization, dissolution and bankruptcy

This chapter covers the reorganization, dissolution and bankruptcy of enterprises and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

THE ENTERPRISE LAW 2005

This chapter provides a general introduction to the Law, the structure of the Law, the relationship between the Law and other Laws, the subjects of the Law, the scope of the Law and the fundamental rights and responsibilities of enterprises as stipulated in the Enterprise Law 2005 and where they differ from the Enterprise Law 1999.

A. GENERAL INTRODUCTION

1. The need for the Enterprise Law 2005

Since 1990 and the issuance of the Company Law 1990 laws affecting enterprises in Vietnam have been supplemented, amended and improved. The Enterprise Law 1999, the Law on State Owned Enterprises 2003, the Law on Foreign Investment in Vietnam, together with their implementation guiding documents, have shaped the legal system for enterprises in Vietnam.

The Enterprise Law 1999 marked the Party and the State's acknowledgment of the role of enterprises and businessmen in the development, and modernization of the country. The Enterprise Law 1999 specified Article 57 of the Constitution of the Socialist Republic of Vietnam, giving people the right of self-control and decision in the establishment, organization and management of enterprises and business activities.

However, the legal system in general and the Enterprise Law 1999 in particular did not meet the requirements of continued economic development and international economic integration.

First, regulations regarding the establishment, organization, and operation of enterprises of different economic components differed substantially, creating an uneven playing field and resulting in different types of enterprise receiving different treatment. A unified law applying equally to all enterprises regardless of their economic component was required to address this issue.

The Enterprise Law 1999 encouraged the establishment of many new

enterprises. However, a large number of Vietnamese enterprises continue to lack the necessary capabilities to compete and develop once Vietnam accedes to the World Trade Organization (WTO). The Enterprise Law 2005 addresses this issue by building on the Enterprise Law 1999 and including regulations on enterprise management.

The issuance of the Enterprise Law 2005 to apply uniformly to enterprises of all economic components has positively contributed to the consistent implementation of multi-sectoral economic development policy specified in the Constitution, in the Resolutions of the Party and the State; strongly exploiting all domestic and foreign resources from all economic components for economic development; promoting the spirit of dynamism, determination, and self-control of enterprises and businessmen; enhancing the competitiveness of enterprises - an important momentum for development and creating a unified legal framework which is more transparent and equal for all types of enterprises, creating favorable conditions for the process of international economic integration.

The Enterprise Law 2005 was drafted according to the following guiding principles:

(i) Sufficient and consistent institutionalization of the renovation guidelines and policies of the Party and the State, especially those regarding the development of a market economy involving the participation of different economic components;

(ii) Continued reform of State functions, of which encouragement, guidance, and assistance are considered central. Investors and enterprises are regarded as subjects to be served and equal partners with the state administrative bodies; respecting the rights of enterprises to organizing their internal management, exercise autonomy in the arrangement and determination of internal relationships consistent with Vietnamese laws and international commitments;

(iii) "Administrative procedure simplification", "determination to abolish highly administrative, bureaucratic and subsidiary regulations and procedures which held back the development of the production force, causing inconveniences and troublesome for enterprises and people"; "strongly reducing and gradually eradicating the discrimination in the policies and laws on domestic and foreign investment";

(iv) The contents of the Enterprise Law should be consistent with Vietnam's bilateral and multilateral agreements, particularly basic principles such as the "National Treatment Principle"[1] and "Most Favored Nation Status" [2];

(v) "Promptly converting SOEs into companies such as limited liability companies or shareholding companies, ensuring SOEs have the rights of a legal entity"; "clearly identifying the roadmap to transform SOEs";

(vi) Promoting equitization and fundamentally renovating SOEs' functions, tasks, and management methods; creating conditions and momentum for SOEs to mobilize more capital from outside sources; receiving and innovating modern technologies and management skills and so improving and enhancing the

1 "National Treatment Principle": National treatment principle in bilateral or multilateral agreements means that foreign individuals and organizations have the same rights and responsibilities as domestic individuals and organizations except for restrictions arising from national interests and national security. For example, according to the Vietnam-US Trade Agreement, US suppliers can provide legal consulting services in the form of branches, 100 percent US-owned companies and joint-venture companies similar to Vietnamese companies (prior to the agreement US companies were not allowed to establish 100 percent foreign-owned companies providing legal services in Vietnam).

2 "Most Favoured Nation Status": Most Favoured Nation Status in bilateral or multilateral agreements means that if one nation grants favoured treatment to individuals or organizations of a third nation then it must grant the same treatment to the individuals or organizations to the nation subject to the agreement. For example, the Vietnam-US Trade Agreement specifies that "[e]ach party shall accord immediately and unconditionally to products originating in or exported to the territory of the other Party treatment no less favourable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to customs duties, charges, payment methods, regulations on export and import and other legal regulations…". Therefore, it can be understood that when Vietnam applies a favourable import duty for products of any other nation, the similar products with origin or exported from the United States will be applied the same import duty.

effectiveness and competitiveness of each SOE as well as the whole state economic sector;

(vii) Inheriting and developing the progress made in related legal documents, especially the Enterprise Law 1999;

(viii) Continuing the expansion and development of the freedom to do business. Enterprises from all economic components have the right to do business in sectors not prohibited by law; respecting the legal rights of an enterprise to do business; broadly applying the business registration mechanism (instead of licensing), abolishing the unreasonable and troublesome mechanisms of "ask-give", "approving" and "accepting".

2. Structure of the Enterprise Law 2005

The Enterprise Law 2005 has ten chapters and 172 articles. The Enterprise Law 1999 has ten chapters and 124 articles. Although the number of chapters remains the same the Enterprise Law 2005 is clearer and more specific than the Enterprise Law 1999. The main differences between the two laws are as follows:

Chapter I - General provisions, including 12 articles (from Article 1 to Article 12)

The Enterprise Law 2005 specifies in more detail than the Enterprise Law 1999 (which has only eight articles), the subjects and scope of application, business activities and conditions and the rights and obligations of enterprises. The most notable point is that the Enterprise Law 2005 incorporates all types of enterprise regardless of source of investment and the individuals and/or organizations registering for enterprise establishment, including foreign organizations and individuals. The Enterprise Law 2005 also clearly stipulates that Ministries, ministerial-level bodies, People's Councils and People's Committees of all levels are not allowed to specify prohibited business activities, conditional business

activities and the conditions of undertaking such business activities.

Some new regulations have also been added to the Enterprise Law 2005, including: the rights and obligations of enterprises producing or supplying public goods and services (Article 10); prohibited activities (Article 11) and the duty of keeping enterprise documents (Article 12).

Chapter II - Enterprise establishment and business registration, comprising of 25 articles (from Article 13 to Article 37)

Compared with the Enterprise Law 1999 (16 articles), the Enterprise Law 2005 stipulates more specifically on enterprise establishment and business registration.

Although similar to the Enterprise Law 1999, the Enterprise Law 2005 includes some new regulations, including: regulations on the files, procedures, conditions and contents of business registration and investment with respect to foreign investors who invest in Vietnam for the first time, in addition to similar regulations applied to the establishment registration of domestic enterprises (Article 20) and regulations on choosing the enterprise name (Article 31, 32, 33 and 34).

Chapter III - Limited liability company (from Article 38 to Article 76)

Part I: Limited liability company with more than one member, comprising of 25 articles (from Article 38 to Article 62)

Compared with the Enterprise Law 1999 (19 articles), the Enterprise Law 2005 has paid more attention to the management of limited liability companies, reflected in more detailed regulations.

The Enterprise Law 2005 also includes the following new regulations:

- Authorized representatives (Article 48);
- Procedures for the adoption of decisions of the Member Assembly in the form of consulting opinions in writing (Article 54);

- Obligations of members of the Member Assembly and the Director or General Director (Article 56);
- Qualifications and conditions of the Director or General Director (Article 57);
- Remuneration, salary and bonus of members of the Member Assembly, Director or General Director (Article 58).

Part II: Sole member limited liability company, comprising of 14 articles (from Article 63 to Article 76)

While the Enterprise Law 1999 (five articles) only allowed organizations to establish this form of enterprise the Enterprise Law 2005 allows a sole member limited liability company to be established and owned by an organization or individual. This new regulation allows individuals to register the establishment and own the enterprise and be liable for the debts and other obligations of the company within the charter capital of the company.

The Enterprise Law 2005 includes many additional regulations, including:

- The Member Assembly (Article 68);
- Chairman of the company (Article 69);
- Director or General Director (Article 70);
- Supervisors (Article 71);
- Duties of members of the Member Assembly, Chairman of the company, Director or General Director, and supervisors (Article 72);
- Remuneration salary and bonus of the company managers and supervisors (Article 73).
- Organizational structure of management of the sole member limited liability company whose owner is an individual (Article 74);

- Contracts or transactions between the company with related persons (Article 75).

Chapter IV - Shareholding company, comprising of 53 articles (from Article 77 to Article 129)

Compared with the Enterprise Law 1999 (44 articles), the Enterprise Law 2005 provides more specific regulations on issues relating to the management of a shareholding company, especially the following:

- Authority and procedure to consult the opinions of shareholders in writing to adopt the decisions of the Shareholder General Assembly (Article 105);
- Terms and the number of members of the Board of Directors (Article 109);
- Qualifications and conditions to become members of the Board of Directors (Article 110);
- Remuneration, salary and other benefits of members of the Board of Directors, Director or General Director (Article 117).
- Disclosure of related benefits (Article 118);
- Qualifications and conditions to become members of the Supervision Board (Article 122);
- Remuneration and other benefits of members of the Supervision Board (Article 125).

Chapter V - Partnership, comprising of 11 articles (from Article 130 to Article 140)

Compared with the Enterprise Law 1999 (four articles), the Enterprise Law 2005 has the following more specific regulations regarding partnership:

- Making a capital contribution and the issuance of the capital contribution certificate (Article 131);

- Property of the partnership (Article 132);
- Restrictions on the rights of general partners (Article 133);
- Partners' Council (Article 135);
- Convocation of the meeting of the Partners' Council (Article 136);
- Business management of the partnership (Article 137);
- Termination of the partner status (Article 138);
- Admission of new partners (Article 139).

Chapter VI - Sole proprietorship, comprising of five articles (from Article 141 to Article 145)

Chapter VII - Corporate group, comprising of four articles (from Article 146 to Article 149)

The Enterprise Law 2005 includes completely new regulations on corporate groups which include the forms of holding company and subsidiary and economic conglomerates, and which cover the rights and obligations and financial statements of corporate groups.

Chapter VIII - Enterprise reorganization, dissolution and bankruptcy, comprising of 11 articles (from Article 150 to Article 160);

Compared with the Enterprise Law 1999 (nine articles), the Enterprise Law 2005 stipulates more specifically and clearly on the reorganization, dissolution and bankruptcy of enterprises.

At the same time, based on the actual implementation of the Enterprise Law 1999, the Enterprise Law 2005 provides some new content, such as: temporary suspension of business (Article 156) and activities prohibited in relation to the dissolution of enterprises (Article 159).

Chapter IX - State management of enterprises, comprising of five articles (from Article 161 to Article 165)

The unified state management body over enterprises is the Government. The ministries and ministerial level agencies are responsible for exercising state management over enterprises within their assigned duties. The new point in the Enterprise Law 2005 compared with the Enterprise Law 1999 is that the Government will appoint an agency responsible to the Government to coordinate other ministries and agencies to exercise state management over enterprises.

Chapter X - Enforcement provisions, comprising of seven articles (from Article 166 to Article 172).

3. The relationship between the Enterprise Law 2005 and related laws

As a "unified law" applied to all forms of enterprises, the Enterprise Law 2005 is applied to the establishment, management and operation of enterprises belonging to all economic components.

However, in cases where there are other laws governing the establishment, management and operation of enterprises due to their distinctive nature, such laws shall prevail. In practice, the establishment, management and operation of enterprises is governed by "specific laws" such as laws on securities, banks, insurance, accounting, auditing and lawyers.

The Enterprise Law 2005 has also been developed in consideration of international treaties. In case the international treaties to which Vietnam is a signatory stipulate differently from the regulations of the Enterprise Law 2005, such international treaties shall prevail. Such international treaties may be bilateral or multilateral agreements to which Vietnam is a signatory. For example, the ASEAN cooperation agreements, the Vietnam-US trade agreement, and the up-coming WTO entry agreements.

B. SUBJECTS OF APPLICATION AND SCOPE OF GOVERNING

1. Subjects of application

According to the Enterprise Law 2005 (Article 4.1) an enterprise is an economic organization that has its own name, assets, stable head office and is duly registered for the purpose of conducting business. The subjects of application of the Enterprise Law 2005 (Article 2) include:

- Enterprises belonging to all economic components, including: sole proprietorship, partnership (general and limited partnership), sole member limited liability company, limited liability company with more than one member and shareholding company.
- Enterprises in certain sectors will be subject to the Enterprise Law 2005 and "specific laws" during their establishment, management and organization. For example, securities companies shall be established and operate in accordance with the Law on Securities and insurance companies shall be established and operate in accordance with the Law on Insurance Business. The Enterprise Law 2005 also applies to individual business households, through Government documents guiding the implementation of the Enterprise Law 2005.
- Organizations and individuals involved in the establishment, management and operation of enterprises, comprising of state bodies which include Business Registrars, shareholders, limited partners, and related persons[3].

[3] Related person as defined in the Enterprise Law 2005 (Article 4, Item 17) refers to organizations and individuals who have one or more of the following direct or indirect relationships with an enterprise:
a. Holding company, its managers and other persons who are competent to appoint managers of its subsidiary;
b. Subsidiary in relation to holding company;
c. Individual or group of individuals who are capable of dominating the decision-making process and operation of an enterprise through management bodies in that enterprise;
d. Company managers;
e. Wife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of a manager or a member holding dominant capital share or shareholder holding a majority of shares;
f. Individual who is an authorized representative of those specified in items a, b, c, d, and e above;
g. Enterprises that are controlled by persons specified in items a, b, c, d, e, f, and h who with a sufficient number of shares enable them to control the decision-making process of the management bodies of the enterprise;
h. Any group of persons who act together in an attempt to take over the capital contribution, shares, or interests of the company or to control the decision making process of the company.

Regarding subjects of application the Enterprise Law 2005 differs from the Enterprise Law 1999 as follows:

- In the Enterprise Law 2005 subjects of application are stipulated in a single article (Article 2), which is separate from the scope of the Law (Article 1);
- The Enterprise Law 1999 applied mainly to privately owned enterprises and not to foreign-invested enterprises or state owned companies. The Enterprise Law 2005 covers all forms of enterprise so as to create a common and unified "playing field" for all forms of enterprise, regardless of economic components and ownership.

2. Scope of Application

The Enterprise Law 2005 (Article 1) governs the establishment, management and operation of limited liability companies, shareholding companies, partnerships and sole proprietorships belonging to all economic components, and corporate groups.

Therefore, the Enterprise Law 2005 governs all matters related to the establishment, management and operation, including the division, separation, consolidation, merger, conversion, and dissolution of enterprises, and is legally applied across all Vietnamese territory.

C. FUNDAMENTAL RIGHTS AND OBLIGATIONS OF ENTERPRISES

1. Rights and obligations of enterprises

The regulations on the rights and obligations of enterprises in the Enterprise Law 2005 have not changed fundamentally from the Enterprise Law 1999 (Article 8 of the Enterprise Law 2005 on the rights of enterprises contains 12 items and Article 7 of the Enterprise Law 1999 on the rights of enterprises contains nine items). The Enterprise Law 2005 also includes specific regulations on the rights and obligations of enterprises producing and providing public goods and

services. According to the Enterprise Law 2005 (Article 8), an enterprise is entitled to the following rights:

(i) Conducting business; choosing, on its own initiative, business activities, localities, the form of business and investment; expanding the size and scope of business activities; being encouraged, facilitated and given incentives, by the State, in producing and providing public goods or services;

(ii) Choosing the method by which the enterprise mobilizes, allocates, and utilizes capital;

(iii) Taking the initiative to search markets, find customers and sign contracts;

(iv) Importing and exporting;

(v) Hiring and using labor in accordance with the enterprise's business requirements;

(vi) Applying, on its own initiative, modern science and technology in order to enhance business performance and competitiveness;

(vii) Possessing, using and disposing of enterprise assets;

(viii) Denying requests to supply resources that are not provided for in law; and

(ix) Other rights as provided by the laws.

The Enterprise Law 2005 also entitles enterprises to new rights such as the autonomy to determine their own business affairs and management structure; complaining in pursuant of the relevant laws; and engaging in legal proceedings directly or via authorized persons as stipulated in law.

The Enterprise Law 2005 (Article 9) also stipulates the obligations of enterprises, including:

(i) Conduct business activities recorded in the Business Registration Certificate (BRC) and ensure the fulfillment of business conditions as required by law when undertaking conditional business activities;

(ii) Produce and submit financial reports in a faithful, accurate and timely manner, in pursuant to the laws on accounting;

(iii) Register tax codes; pay taxes and perform other financial obligations in pursuant to the law;

(iv) Ensure the lawful rights and interests of employees in pursuant to the laws on labor; ensure that employees receive social insurance, health insurance and other insurance in pursuant to the laws on insurance;

(v) Ensure and assume liability for the quality of goods and services in accordance with the registered or declared standard;

(vi) Fulfill statistical requirements in compliance with the laws on statistics; periodically submit information in relation to the enterprise and the financial status of the enterprise to the competent state authorities using standardized forms; correct and adjust any information submitted that is later found to be incorrect and insufficient;

(vii) Abide by the laws on national defense, security, public order and safety, protection of natural resources, environment, historical and cultural places, and famous landscapes; and

(viii) Other obligations as stipulated by law.

Generally, the Enterprise Law 2005 does not provide new obligations for enterprises but only stipulates more specifically the obligations specified in the Enterprise Law 1999.

As well as the rights and obligations of normal enterprises producing and providing public goods or services are entitled to additional rights and obligations as stipulated in the Enterprise Law 2005:

(i) Accounting and being compensated in accordance with the realized bidding prices or collecting service fees as stipulated by the competent state authorities;

(ii) Being granted sufficient time to produce and provide goods and services in order to recover invested capital and gain reasonable profits;

(iii) Produce and provide goods and services of appropriate quality and adequate quantity as well as a time schedule in accordance with prices or fees set by competent state agencies;

(iv) Ensure equal conditions and conveniences to all types of customers;

(v) Be responsible to customers and the law for the quality, quantity, condition, price and fees of provided goods or services;

(vi) Other rights and obligations as stipulated by law.

These regulations reflect changes in the State's policy toward the contribution of such enterprises to the general development of society. While only SOEs were previously permitted to produce and provide public goods and services, the State presently encourages and creates favorable conditions for all enterprises to participate in these activities.

2. Action considered as misbehavior in business registration

This is new to the Enterprise Law 2005. Previously, prohibited activities were scattered in sub-law documents. Drawing on lessons learned from the implementation of the Enterprise Law 1999, the Enterprise Law 2005 (Article 11) stipulates various prohibited business registration activities, including:

(i) Granting the BRC to persons who are not eligible or refusing to grant the BRC to persons who are eligible as stipulated by law; causing delay, trouble, obstacle and disturbance for persons who apply for business registration and business operation of enterprises;

(ii) Carrying out business with unregistered enterprises or continuing to carry out business after the BRC has been revoked;

(iii) Submitting business registration files containing dishonest and inaccurate information; registering changes in the business file with dishonest, inaccurate and ill-timed information;

(iv) Falsifying the amount of registered capital; not contributing capital in compliance with the time limit and amount as registered; intentionally over-valuing contributed assets;

(v) Defrauding or conducting business activities that violate or are prohibited by law;

(vi) Conducting conditional business activities without satisfying all conditions stipulated by law;

(vii) Preventing owners, members, and shareholders of enterprises from exercising their rights as stipulated by the law and the company charter;

(viii) Other activities as prohibited by law.

Therefore, apart from stipulating the prohibited activities of enterprises, the Enterprise Law 2005 specifies the prohibited activities applied to state management bodies (Business Registrars and others).

ENTERPRISE REGISTRATION

The chapter covers issues related to the establishment of enterprises, including different types of businesses, Business Registrars, capital contributions, share purchase, participation in the management of enterprises, the business registration procedure, and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

A. BUSINESS ACTIVITIES AND CONDITIONS

1. Business lines and sectors

Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 7) categorizes three types of business activities: (i) prohibited business activities, (ii) conditional business activities, and (iii) free business activities.

According to the Enterprise Law 2005, business activities which adversely affect national defense, security, social order and safety, historical tradition, culture, ethics, the good morals and customs of Vietnam, the health of people, natural resources, and the environment shall be considered prohibited business activities. The Government issues a detailed *list of prohibited business activities*. Conditional business activities are business activities that enterprises are only allowed to undertake upon the satisfaction of certain business conditions.

In principle, enterprises are free to register and carry out *all business activities not prohibited by law.*

2. Business conditions

According to the Enterprise Law 2005, *business conditions* are the requirements that enterprises must satisfy or carry out when conducting a specific business activity. They include the possession of: a *business license, certificate of business conditions, professional certificate, certificate of professional liability insurance and legal capital requirements*. For example, the Enterprise Law 2005 requires that the Director, General Director, general

partner and other individuals of a limited liability company, shareholding company, partnership or proprietorship conducting business activities require a professional certificate as stipulated in law.

Business conditions can be categorized into two types: (i) conditions to be satisfied prior to business registration and (ii) conditions to be satisfied after business registration. Conditions to be satisfied prior to business registration include the possession of professional certificates and minimum capital requirements. All other conditions must be satisfied by enterprises before conducting business activities.

Unlike the Enterprise Law 1999, the Enterprise Law 2005 clearly stipulates that ministries, ministerial agencies, People's Councils and People's Committees of all levels are not allowed to specify prohibited business activities, conditional business activities, and business conditions. Only the National Assembly and the Government have the right to specify conditional business activities and business conditions. This regulation aims to restrict the ability of ministries and local agencies to interfere with the free business activities of enterprises within their jurisdiction.

The Enterprise Law 2005 stipulates that the Government, within its competence and power, or as requested by the National Assembly, must periodically review and reassess all or part of the business conditions; abrogating or proposing to abrogate the conditions which are no longer appropriate; amending or proposing to amend unreasonable conditions and issuing or proposing to issue new business conditions as required by state management.

B. BUSINESS REGISTRATION OFFICE

As stipulated in Decree No. 88/2006/ND-CP dated 29 August 2006 of the Government in relations to business registration, the Business Registration Office system is developed at both the level of provinces and cities under central Government and at the level of district or provincial towns.

At the provincial level, the Business Registrar will be the business registration bureau of the Department of Planning and Investment. However, due to the size of the cities and in order to meet the requirements of business registration, Hanoi and Ho Chi Minh City People's Committees may establish one or two provincial level Business Registrars, which will be successively numbered.

At the district level, business registration bureaus will be established in urban and suburban districts, towns, and provincial cities in which an average of at least 500 business households and cooperatives have been newly registered in the previous two years. In the event that the district business registration bureau is not established, the Finance and Planning Bureau will assume the general business registration function.

Provincial and district Business Registrars keep their own accounts and stamps.

In economic zones, the provincial People's Committee and the economic zone management board (established by the Government) will decide whether to establish a business registration bureau.

C. ORGANIZATIONS/INDIVIDUALS ELIGIBLE TO ESTABLISH, CONTRIBUTE CAPITAL, BUY SHARES, AND MANAGE ENTERPRISES

Organizations and individuals allowed to establish, contribute capital, purchase shares and manage enterprises are divided into three categories: (i) organizations and individuals who not allowed to establish, contribute capital, purchase shares and manage enterprises; (ii) organizations and individuals allowed to establish, contribute capital, purchase share but not participate in enterprise management; and (iii) organizations and individuals allowed to freely establish, contribute capital, purchase shares and manage enterprises.

Apart from the organizations and individuals in categories (i) and (ii) above, all organizations and individuals are allowed to establish, contribute capital, purchase shares and/or manage enterprises.

1. Organizations and individuals prohibited from establishing and managing enterprises

(i) State bodies and units of the Vietnamese people's armed forces using state assets to establish enterprises for the purpose of making their own profits;

(ii) Civil servants, as stipulated by the laws on civil servants;

(iii) Officers, non-commissioned officers, professional army members, military workers of bodies and units of the Vietnamese people's army; officers, professional non-commissioned officers working in the bodies and units of the Vietnamese people's police;

(iv) Professional managers and leaders in 100 percent SOEs, except persons assigned to act as authorized representatives to manage the State's contributed capital in other enterprises;

(v) Minors and persons with restricted capacity or without the capacity for civil acts;

(vi) Incarcerated persons or persons prohibited to conduct business by the Court;

(vii) Other organizations and individuals as stipulated by the law on bankruptcy.

Enterprises established by such organizations and individuals will have their BRC revoked and their name will be removed from the business registration book. Such organizations and individuals participating in the management of enterprises will be fined in accordance with the laws on administrative violations in business registration.

Civil servants, according to the Ordinance on Civil Servants, include:

1. Persons who are elected to a term position in state bodies, political organizations, political-social organizations at the central level, provinces or central cities (provincial-level) and at suburban or urban districts, towns, provincial cities (district level);
2. Persons who are recruited, appointed or assigned permanent jobs in state bodies, political organizations, political-social organizations at the central level, provincial level and district level;
3. Persons who are recruited, appointed to a civil servant scale or assigned a permanent job in state bodies at the central level, provincial level, and district level;
4. Persons who are recruited, appointed to a civil servant scale or assigned a permanent job in state special units, political organizations or political-social organizations;
5. Judge of People's Court, procurator of People's Procuracy;
6. Persons who are recruited, appointed, or assigned a permanent job in the People's Army but not professional military officers and soldiers, military workers working in People's Police bodies and units but not professional police officers, non-commissioned police officers;
7. Persons elected to term positions in the standing People's Councils, People's Committees; Secretary, Vice Secretary of the Party Committee, head or political-social organizations at communes, precincts, towns (communal level);
8. Persons that are recruited or assigned a professional position in the communal People's Committee.

2. Organizations and individuals not allowed to contribute capital or purchase shares

Organizations and individuals not allowed to contribute capital or purchase shares in enterprises include the following:

(i) State bodies and units of the people's armed force who use state assets to establish enterprises for the purpose of making their own profits;

(ii) Persons who are not entitled to contribute capital into enterprises as stipulated by laws concerning civil servants.

The Ordinance on Civil Servants stipulates that:

(i) Civil servants are not allowed to establish, participate in the establishment or manage and a run sole proprietorship, limited liability company, shareholding company, partnership, cooperative, private hospital, private school or private research organization.

(ii) Civil servants are not allowed to act as consultants for enterprises, economic and service organizations, and other domestic and foreign organizations or individuals concerned with state secrets, work secrets, professional activities within their competence, and other consulting services that may damage national interests.

(iii) The head and deputy head of state organizations and the wife and husband of such persons are not allowed to contribute capital to enterprises operating in the same field as the persons directly perform state management.

The Enterprise Law 2005 allows more organizations and individuals to establish and manage enterprises than the Enterprise Law 1999, including:

(i) The Enterprise Law 1999 only allowed domestic organizations and individuals to establish and manage enterprises. Foreign organizations and individuals were subject to the Law on Foreign Investment 1996. The Enterprise Law 2005 applies to all organizations and individuals and does not discriminate between domestic or foreign parties, except for forbidden organizations and individuals. Foreign organizations and individuals will also be subject to the foreign laws or international treaties to which Vietnam is a signatory.

(ii) The Enterprise Law 2005 forbids persons who are serving a prison sentence to participate in the establishment and management of enterprises. The Enterprise Law 1999 extended the prohibition to persons under criminal investigation.

D. BUSINESS REGISTRATION PROCEDURES

1. Business registration procedures

The Enterprise Law 2005 (Article 15) stipulates the following procedures for business registration:

(i) The person establishing an enterprise submits a complete business registration file to the competent Business Registrar.

(ii) The Business Registrar reviews the submitted file and issues the certificate of business registration within ten working days[4] from the date the file is received. If the application is refused the applicants must be informed in writing and the reasons for refusal

[4] The duration of ten working days is approximately the same as the maximum 15 days of the Enterprise Law 1999.

or necessary requirements, supplements or amendments must be clearly stated.

(iii) The Business Registrar is responsible for the validity of the file when issuing the certificate of business registration and is prohibited from asking applicants for any document other than those stipulated in the Enterprise Law 2005.

(iv) Foreign investors who are investing in Vietnam for the first time must follow the procedures applicable to investment project registration or investment project appraisal.

Differences in business incorporation between domestic and foreign investors who invest in Vietnam for the first time:

- With respect to domestic investors: the business registration for enterprise establishment can be carried out independently and of the investment registration for specific projects that the enterprise will undertake, and will be granted a certificate of business registration. When investing in a specific project, the domestic investor will carry out the registration for investment or investment investigation in order to be granted the Certificate for Investment for that project or the investment appraisal procedure.

- With respect to foreign investors investing in Vietnam for the first time: the registration for enterprise establishment must be associated with a specified investment project and carried out in accordance with the investment registration or investment appraisal procedure. The enterprise will receive the certificate for investment registration, which can be considered equivalent to the certificate of business registration[5].

5 Article 20 of the Enterprise Law 2005.

2. Business registration file

The Enterprise Law 2005 (Article 16, 17, 18, and 19) stipulates more specifically on the business registration file for each type of enterprises (proprietorship, partnership, limited liability company, shareholding company) than the Enterprise Law 1999 (Article 13).

Depending on the type of enterprises, the business registration file will include some or all the following documents:

(i) Business registration application;

(ii) Draft of the company charter (not applied to business registration file of proprietorship);

(iii) List of members or founding shareholders (not applied to business registration file of proprietorship);

(iv) Papers related to the members or founding shareholders: a copy of the identification card, passport, or other legal certification of individuals involved and a copy of the establishment decision, certificate of business registration or other legal papers of the organizations;

(v) Certification of legal capital issued by the competent agencies and authorities if the enterprise conducts business activities that require legal capital as stipulated by law;

(vi) Professional certificate of the Director or General Director and other individuals if the enterprise conducts business activities which require professional certificate as stipulated by law.

3. Investment registration file of foreign investors investing in Vietnam for the first time

Upon registering for investment with the competent state bodies foreign investors who invest in Vietnam for the first time will need to submit an investment registration file together with a business registration file depending on the type of enterprises (as stipulated in Part B above). The investment registration file required will depend on whether the foreign investor's project is subject to an investment registration or investment appraisal.

Projects requiring investment registration

Foreign invested projects with invested capital under three hundred billion Vietnam dong and not included in the list of conditional investment sectors as stipulated in the Law on Investment 2005 must perform investment registration procedures. The investment registration file includes:

(i) Document certifying legal status of the investor;

(ii) Documents identifying the objectives, scale, and location of the projects; the investment capital and project implementation schedule; land use requirements, and environment protection commitments; proposals for investment incentives (if any);

(iii) Report on the financial ability of the investor;

(iv) Joint venture contract or business co-operation contract (if any).

Following the completion of the investment appraisal procedure for the project, a certificate of investment registration will be issued to the investor within 15 days of the date the complete registration file is received.

Projects requiring investment appraisal

a. Projects with invested capital of three hundred billion Vietnam dong or

more and not in the list of conditional investment sectors

The investment registration file will comprise of the following documents:

(i) Application for the certificate of investment registration;

(ii) Document certifying the legal status of the investor;

(iii) Report on the financial ability of the investor;

(iv) Explanatory statement covering the objectives, scale and locations of the investment, land use requirements, project implementation schedules and technological or environmental solutions;

(v) Joint venture contract or business co-operation contract (if any).

b. Projects in the list of conditional investment sectors

The investment registration file will comprise of the following documents:

(i) Explanatory statement of the conditions to be satisfied by the investment project;

(ii) Document certifying the legal status of the investor;

(iii) Documents identifying the objectives, scale, and location of the projects; the investment capital and project implementation schedule; land use requirements, and environment protection commitments; proposals for investment incentives (if any);

(iv) Report on financial ability;

(v) Joint venture contract or business co-operation contract (if any).

A certificate of Investment Registration will be issued to the investors within thirty (30) days or no later than forty five (45) days from the date the complete and valid registration file is received by the investment registration agency.

4. Conditions that must be met to receive a certificate of business registration

As stipulated by the Enterprise Law 2005 (Article 24), an enterprise will be granted the certificate of business registration upon satisfying the following conditions:

(i) Registered business activities are not prohibited;

(ii) The enterprise is named in accordance with the regulations of the Enterprise Law 2005;

(iii) There is a head-office as regulated;

(iv) The business registration file is valid in accordance with the law;

(v) The business registration fee is fully paid in accordance with the law.

E. ISSUES TO BE CONSIDERED WHEN REGISTERING FOR A BUSINESS

1. Naming an enterprise

Regulations concerning the naming of an enterprise are more comprehensive in the Enterprise Law 2005 (Article 31, 32, 33, and 34) than the Enterprise Law 1999. When choosing a name enterprises should consider the following issues:

(i) The name of an enterprise must be written in the Vietnamese language, may comprise of numerals and symbols, be pronounceable, and must include the of type of the enterprise and a distinctive name.

(ii) Prohibitions when choosing an enterprise name:

- Using a name that is identical to or can be confused with the name of another registered enterprise;

- Using names of state agencies, people's armed forces, political organizations, socio-political organizations, socio-political-professional organizations, social organizations or social-professional organizations to constitute fully or partially the enterprise name, otherwise agreed by such organizations;

- Using words and symbols that violate historical and cultural traditions, good morals and the customs of the nation.

(iii) Enterprise names in foreign languages and the abbreviated names of enterprises must be in accordance with the following principles:

- The enterprise name in a foreign language is the name translated from Vietnamese, such that the distinctive enterprise name can remain unchanged or translated into that foreign language.

- The enterprise name in a foreign language must be presented in a smaller-sized font than the Vietnamese name when displayed at the head office, branches, representatives or on enterprise transactional papers, documents or publications.

- The abbreviated name of the enterprise can be shortened either from the name in foreign language or the name in Vietnamese.

The name of a registered enterprise is considered identical to the name of an existing enterprise if it is the same when read and written in the Vietnamese

language. The name of an enterprise can be confused with the name of an existing and registered enterprise if:

(i) The names read the same in Vietnamese;

(ii) The only difference between the two names in Vietnamese is the sign "&";

(iii) Its abbreviation is identical;

(iv) The names are identical in a foreign language;

(v) The only difference between the two names is a letter or number except if it is a subsidiary of the existing and registered enterprise;

(vi) The only difference between the two names in Vietnamese is the word "new";

(vii) The only difference between the two names in Vietnamese are the words: "northern", "southern", "central", "western" or "eastern" or other similar words, except if it is a subsidiary of the existing and registered enterprise.

During the implementation of the Enterprise Law 1999 there were several complications relating to enterprise names. Many names were found to be identical or confusing when compared to enterprises in other provinces or cities.

This was because enterprise names were only checked within the scope of a province or city. There was no unified and central system to check enterprise names on a national scale. Moreover, Business Registrars (for domestic enterprises) and agencies issuing investment licenses (for foreign-invested enterprises) did not have a system to share information, further adding to the problem.

2. Head-office of enterprises

According to the Enterprise Law 2005 (Article 35), the head-office of an enterprise is the contactable location of the enterprise in Vietnamese territory. The enterprise address must include the building number, street name or commune, precinct, town, suburban town, urban town, provincial city, province, central city, telephone number, facsimile number, and email address (if any).

The regulations of the Enterprise Law 2005 are more specific, detailed and clearer than the Enterprise Law 1999. The main difference is that the Enterprise Law 2005 stipulates that enterprises are responsible for notifying the Business Registrar of the opening time of the head-office within 15 days of the date of issue of the certificate of business registration. This regulation is intended to reduce the number of enterprises established for non-business purposes.

3. Ownership transfer

The principles for the transfer of ownership of assets in the Enterprise Law 2005 (Article 29) have not changed significantly from the Enterprise Law 1999. Members of a limited liability company, partnership, and shareholders of a shareholding company must transfer ownership of contributed assets to the company in compliance with the following provisions:

(i) Members or shareholders with assets for which ownership registration is required (such as cars, ships, boats, houses and trademarks) or the land-use right must follow the procedures for ownership transfer proscribed by the competent state agencies.;

(ii) The transfer of ownership of assets for which ownership registration is not required (such as machinery, equipment, material and loans) must be verified in a written minute. The minutes must clearly state the name and head-office of the enterprise; the full name, resident address, identification card number, passport or other personal

certification, number of the establishment decision or registration of the capital contributors; asset details, including: type, quantity of each type, total value of contributed assets, ratio of contributed assets to charter capital, dates of asset transfer and the signatures of the capital contributor or his/her authorized representative and the legal representative of the enterprise. It should be noted that contributed assets must be legal assets (for example, contributed assets must not be opium, drugs, or debauched works);

(iii) Shares or contributed capital that are not paid in Vietnamese currency, freely convertible foreign currency or gold will be construed as fully paid when ownership of contributed assets is lawfully transferred to the company.

(iv) The transfer of ownership of contributed assets is not subject to a registration fee (in order to encourage business and production activities).

As they are liable for the enterprise's activities with all assets proprietors are not obliged to transfer ownership of assets used in the enterprise's business operation.

4. Valuation of assets used to make capital contributions

As stipulated in the Enterprise Law 2005 (Article 30), assets other than Vietnamese currency, freely convertible foreign currencies and gold used to make capital contributions must be valued according to the following principles:

(i) There must be consensus between all members or founding shareholders on the valuation of assets used to make a capital contribution for the purpose of setting up an enterprise. Normally, before establishing the enterprise, the members and founding shareholders must have agreed on the types as well as the value

of the contributed assets. If the relevant parties cannot agree upon the value of an asset contributed by a member or founding shareholder, then that member or founding shareholder shall contribute another asset which is more easily valued or withdraw from the arrangement to establish the enterprise.

(ii) If such assets are given a higher value than the actual value at the time of capital contribution members or founding shareholders will be jointly liable for debts and other financial obligations of the enterprise equivalent to the difference between the agreed and actual value of the assets. This regulation specifies the obligations of members and founding shareholders and protects members and shareholders participating in the enterprise later.

(iii) The valuation of assets used to make a capital contribution during the enterprise's operation must be agreed upon by the enterprise and the capital contributor or an independent party. If such assets are valued by an independent party the enterprise and capital contributor must both agree to the proposed value. If the contributed assets are given a higher value, the capital contributor or independent organization and legal representative of the enterprise will be jointly liable for debts and other financial obligations of the enterprise equivalent to the difference between the agreed and actual value of the assets.

5. Make business registration data and information available to the public

Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 28) stipulates that newly established enterprises or enterprises that make changes to the business registration file must make the following information public knowledge

within 30 days of establishment or the date of change to the business registration file:

(i) Name of the enterprise;

(ii) Address of the head-office, branches and representative offices;

(iii) Registered business activities;

(iv) The charter capital of a limited liability company or partnership; the number of shares, value of paid shares and number of authorized shares of a shareholding company; the registered investment capital of a sole proprietorship; the legal capital of enterprises that carry out business activities and the required legal capital as stipulated by law;

(v) The full name, residential address, nationality, identification card number, passport or other relevant personal certification, number of the establishment decision or business registration of the owners, members or founding shareholders;

(vi) Full name, residential address, nationality, identification card number, passport or other personal certification of the legal representative of the enterprise;

(vii) Location of business registration.

The announcement must be made on the enterprise information website of the Business Registrar or in three consecutive issues of a newspaper (central or local) or electronic newspaper.

6. Representative offices, branches, and business locations

According to the Enterprise Law 2005 (Article 37), representative offices, branches and business locations of enterprises are defined as follows:

(i) A representative office is an affiliated unit of the enterprise and is authorized to act on behalf of the enterprise. The organization and operation of the representative office will comply with the relevant laws.

(ii) A branch is an affiliated unit of the enterprise and is established to exercise all or certain functions of the enterprise, including acting as an authorized representative. The business activities of branches must be consistent with those of the enterprise.

(iii) Business location is the area where enterprises carry out their business activities. The business location is not necessarily in the same area as the head office.

Branches, representative offices and the business location of the enterprises must exhibit both the name of the enterprise and indicate whether it is a branch, representative office or business location.

Enterprises are entitled to open branches and representative offices in Vietnam or foreign countries. An enterprise can open more than one representative office and/or branch in an administrative locality. The Government will stipulate the procedures and formalities for opening branches and/or representative offices.

7. Contracts signed prior to business registration

The Enterprise Law 2005 (Article 14) specifies in more detail than the Enterprise Law 1999 the responsibilities and obligations of an enterprise with regard to contracts related to enterprise establishment and operation signed prior to business registration (such as legal consulting service contracts for enterprise establishment and head-office and office leasing contracts).

In the event that an enterprise is successfully established, the enterprise will assume the rights and obligations of contracts signed prior to business registration between the member(s), founding shareholder(s) or their authorized representative(s) for the purpose of enterprise establishment and operation. If the enterprise is not established signees will be solely or jointly liable for such contracts.

Chapter 3

LIMITED LIABILITY COMPANY

The chapter covers examines issues concerning limited liability companies and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

A. GENERAL INTRODUCTION

A limited liability company is a capital-based company with[6] a restricted number of owners. It has been a popular ownership structure in recent years.

The Enterprise Law 1999 recognized two types of limited liability company: (i) a limited liability company with two or more members, and (ii) a one-member limited liability owned by one organization. The Enterprise Law 1999 did not recognize companies owned by one individual as a limited liability company as it was hard to distinguish between personal liability (of the owner) and company liability. However, as many Vietnamese people prefer to do business alone but do not want to establish sole proprietorship the regulation proved restrictive. Moreover, a large number of limited liability companies with more than one member were actually owned by one individual. Other members only participated to meet the requirements of the law. In the even of the incapacity of the capital contributing member the company was at risk.

The Enterprise Law 2005 has addressed this issue and now recognizes limited liability companies owned by one individual. According to the Enterprise Law 2005, limited liability companies include: (i) limited liability companies with more than one member; and (ii) limited liability companies

6 A capital-based company is a company for which the main factor deciding its establishment is the capability and capital contribution of its members. The establishment of the company will depend on the contributed capital of its members, who may or may not know each other. Members will only be liable for the company's obligations within their contributed capital. Changes to company membership do not require the consent of other members. In contrast, in a person-based company, the personal record of the members will be the fundamental factor when establishing the company and members will be liable for the company's obligations with all their assets. Changes to company membership require the unanimous consent of all company members (even in the event of a member's death, the inheritor will only become a company member with the consent of all other members). According to the Enterprise Law 2005, capital-based companies often take the form of limited liability companies and joint-stock companies, while person-based companies are mostly in partnerships. However, partnership companies in Vietnam are not quite person-based companies since the law allows capital contributing members to join with company partners in the company.

owned by one organization or by an individual.

The Enterprise Law 2005 has widened its scope to include limited liability companies owned by foreign organizations and individuals. Prior to 1st July 2006 foreign-owned companies could only be joint-venture companies or 100 percent foreign-owned companies in accordance with the 1996 Foreign Investment Law.

The Enterprise Law 2005 introduces corporate governance regulations applicable to all enterprises types, including limited liability companies. These regulations are in line with international corporate governance best practice and focus on the following:

(i) Clearly identifying the rights and obligations of company members;

(ii) Ensuring equal treatment among company members;

(iii) Clearly identifying the responsibilities of company managers;

(iv) Clearly identifying the role and responsibilities of the supervision board;

(v) Ensuring publicity and transparency in management activities.

B. LIABILITY LIMITED COMPANIES WITH MORE THAN ONE MEMBER

1. Definition

Similar to the Enterprise Law 1999, the Enterprise Law 2005 (Article 38) defines limited liability companies with more than one member in the following way: (i) having at least two members with the total number of members not to exceed fifty, (ii) company members can be organizations and/or individuals, and (iii) the members are liable for the debts and other liabilities of the company within the amount of capital committed to the company (shareholders of shareholding companies are only liable to the total amount of capital contributed to the company).

A limited liability company with more than one member will receive legal status from the date of issue of the certificate of business registration and is not entitled to issue shares.

2. Capital contribution

According to the Enterprise Law 2005 (Article 39), a founding member is an organization or individual that makes a capital contribution and develops, approves and signs the original company charter. Founding members are entitled to sign contracts for the purpose of the establishment and operation of the company prior to business registration and submit the business registration file to the Business Registrar where they will receive the certificate of business registration. However, once the enterprise has been established, there are no regulations to distinguish between the rights and obligations of founding members and capital contributing members. This is the difference between regulations concerning members of limited liability companies and shareholders of shareholding companies. For example, founding shareholders of shareholding companies can only freely transfer their shares after three years from the date the certificate of business registration is issued. This restriction does not apply to the transfer of shares of ordinary shareholders.

The Enterprise Law 2005 (Article 39) stipulates that members must contribute capital as committed and in a full and timely manner.

If members contribute capital in foreign currencies or gold the charter capital in the Certificate of business registration will be recorded as the value of the foreign currencies or gold converted into Vietnam dong. If the contribution is made with other assets valuation will be required. To ensure consistency competent state agencies will guide the valuation process.

If a member changes the type of assets committed, he/she must seek the consent of all other members. Within seven working days of the acceptance of

the change, the company has to inform the Business Registrar of the change in writing. The company's legal representative must also inform the Business Registrar of the status of the capital contribution in writing to the within fifteen days of the date the capital commitment is made and will be personally liable for damages to the company and other persons due to late, incorrect, untruthful or incomplete information.

The written notice of the progress of the capital contribution must include all required information, otherwise it will be very difficult to determine the personal liability of the legal representative of the company.

As the members of a limited liability company with more than one member are liable for the debts and other liabilities of the company within the amount of capital committed to the company, a member who has not contributed sufficiently and on time his/ her committed amount of capital is liable for the amount of unpaid capital and must compensate the enterprise for consequent damages.

The Enterprise Law 2005 contains regulations concerning unpaid capital. If, there are members who haven't contributed the capital they have committed, the shortfall will be covered in one of the following ways: (i) one or more members agree to contribute the unpaid capital, (ii) other persons are mobilized to contribute capital to the company or (iii) all other members contribute the unpaid capital equivalent to their proportion of the company's charter capital. Once the unpaid capital has been contributed, the member who did not contribute capital as committed will no longer be regarded as a member of the enterprise and the enterprise must register for a change in the business registration (this member, however, shall still be liable to compensate for any arisen damages due to the insufficient and untimely contribution of capital as committed). Once the capital has been fully contributed, members will receive a certificate of capital contribution issued by the company.

3. Rights and obligations of members

3.1. Rights of members

Members' rights are based on the regulations of the Enterprise Law 2006 and the company charter. Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 41) stipulates that members of liability limited companies with more than one member have the following basic rights:

(i) To participate in member meetings and discuss, make suggestions and vote on matters within their power;

(ii) A vote in proportion to their contributed capital share;

(iii) A right to distributed profits in proportion to their contributed capital share after the company has fulfilled the taxation and other financial obligations as stipulated by law;

(iv) A right to distributed residual company assets in proportion to their contributed share capital if the company is dissolved or goes bankrupt;

(v) Be given the opportunity to make further capital contributions when the enterprise increases its charter capital; transfer partially or wholly their capital share in pursuant to this law;

(vi) A right to petition against a Director or General Director who fails to fulfill his/her obligations so as to cause losses and damages to members or enterprises, in pursuant to the laws ;

(vii) The right to dispose of their capital share by transferring, donating or other ways in pursuant to the laws and the company charter.

Members are entitled to check, review, quote and copy the book of member registration, transaction records, accounting books, annual financial statements and reports, meeting minutes and other documents issued by the enterprise. In

this respect ***the Enterprise Law 2005 is an advance on the Enterprise Law 1999. The Enterprise Law 1999*** only entitled members to read the book of member registration, transaction records, accounting books and annual financial statements but not entitled to check such documents. Therefore, if the rights of members were violated, there was no mechanism for them to control and restrict such violations in accordance with the Enterprise Law 1999. This regulation also increases the transparency of enterprise management activities and helps members to monitor the enterprise's operations.

In order to better protect the rights of ***minority interest members***, the Enterprise Law 2005 (Article 41) stipulates that a member or a group of members holding more than 25 percent of charter capital (or a smaller proportion if specified in the company charter), or all minority interest members in the event that a single member holds more than 75 percent of the entire charter capital (and the enterprise charter does not stipulate any smaller ratio) are entitled to call a Member Assembly meeting to decide on matters within their power. If the Chairman of the Member Assembly does not convene a Member's Council meeting as requested by a member or group of members within 15 days from the date of receiving the request, the member or group of members can convene the meeting and take legal proceedings, on their own or the company's behalf, against the Chairman of the Member Assembly for not fulfilling his/her management responsibilities and causing damage to members' lawful interests. If necessary the member or group of members can request the Business Registrar to monitor the organization and the Member Assembly Meeting if necessary.

The Enterprise Law 1999 did not provide recourse to any member or group of members holding more than 35 percent of charter capital (or a smaller ratio if stipulated in the company charter) whose request for a meeting was denied by the Chairman of the Member Assembly. However, the member or group of members could bring the issue to court in accordance with the Ordinance on Economic Case Procedure (before 1st January 2005) or the Code of Civil Procedure (after 1st January 2005).

Members of limited liability companies with more than one member are entitled to appoint a representative to participate in the Member Assembly activities of the company. The appointment or replacement of the representative must be recorded in writing, and the company and the Business Registrar must be notified within seven working days of the date of appointment or replacement. The authorized representative will have to satisfy the following qualifications and conditions:

(i) They must have full capacity for civil acts;

(ii) They must not be prohibited from establishing and managing an enterprise;

(iii) They must possess expertise and experience in business management or one of the company's major business activities;

(iv) In companies in which the state-owned capital share is more than 50 percent of the charter capital the wife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of the managers and persons with the right to appoint managers of that company are not entitled to be an authorized representative in company subsidiaries.

3.2. Obligations of members

Like the Enterprise Law 1999 the Enterprise Law 2005 (Article 42) stipulates that members are obliged to: (i) make committed capital contributions fully and promptly and assume liability for the debts and other obligations of the company within their capital share, (ii) comply with the company charter, and (iii) abide by the decisions of the Member Assembly.

The Enterprise Law 2005 moves beyond the Enterprise Law 1999 by emphasizing members' obligation to be ***diligent, loyal, and transparent,*** and states that members are not permitted to withdraw capital from the

company in any form, except in the following cases:

(i) A member is entitled to request the enterprise to buy back his/her capital share as stipulated in Article 43;

(ii) A member is entitled to transfer his/her capital share as stipulated in Article 44;

(iii) An individual member is dead, restricted, has lost the capacity for civil acts, or has donated or given his/her capital share to another person, or has used his/her capital share to repay debts as stipulated in Article 45;

(iv) A member has returned his/her capital share to due to the reduction of charter capital of the enterprise in accordance with Article 60.

In accordance to the Enterprise Law 2005 (Article 42), members will[7] :

(i) Be personally liable for violations of the law when acting on behalf of the enterprise; not engage in transactions or businesses that do not profit the company and cause loss and damage to a third party; pay off undue debts when there is a financial danger facing the company;

(ii) Perform rights and obligations in a fiduciary, diligent and optimal manner in order to maximize the benefit of company owners and the company itself; pledge loyalty toward the company; are not permitted to make use of information, know-how or business opportunities of the company; are not permitted to abuse the position, powers and property of the company for the benefit of themselves or other organizations or individuals;

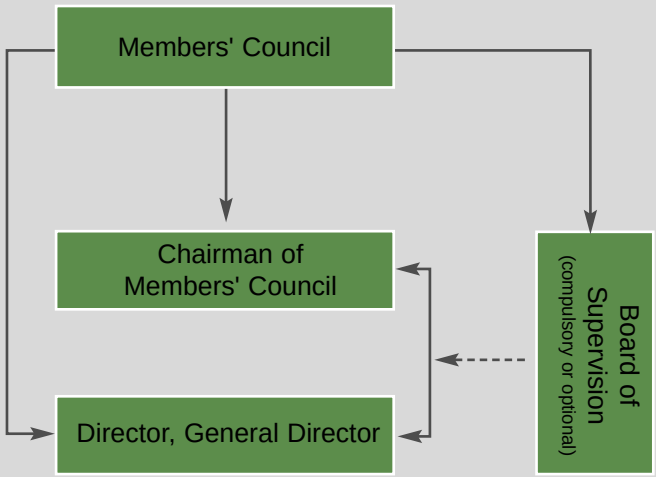
[7] The Enterprise Law does not specify in detail the procedures a company must take if a member violates one of the above regulations and the Members' Council wishes to expel the member from the Members' Council. More generally the Enterprise Law 1999 and the Enterprise Law 2005 do not stipulate the sanctions regarding the expulsion of members from the Members' Council, but only regulates that members are entitled to dispose of their contributed capital by transfer, inheritance or donation (Article 41) or a request to the company to buy back the capital share (Article 43).

(iii) Promptly, fully and accurately notify the company of the enterprises in which they or related persons are the sole owner or major shareholders. Such a notification must be displayed at the head office of the company and its branches.

4. Organizational structure of management

The organizational structure of a limited liability company with more than one member includes: (i) Member Assembly, (ii) Chairman of the Member Assembly, (iii) Director, General Director and (iv) Supervision Board (required if a company has 11 or more members and optional if there are fewer than 11 members). There is no considerable difference in the regulations on the organizational structure of a limited liability company with more than one member between the Enterprise Law 2005 and the Enterprise Law 1999.

Figure 1. Management structure of a limited liability company with more than one member



4.1. The Member Assembly

The Member Assembly is comprised of all the members and is the highest decision-making body in the company. Organizations shall appoint an authorized representative in the Member Assembly. The company charter will specify the regularity of Member Assembly meetings, but there must be at least one every year.

Therefore, the legal status and role of the Member Assembly is similar to the Shareholder General Assembly, the highest decision-making organ in a shareholding company, which comprises of all the shareholders of the company.

a. Rights and obligations of the Member Assembly

Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 47) stipulates the following rights and obligations of the Member Assembly:

(i) Determining the development strategy and annual business plan of the company;

(ii) Determining any increases or reductions in the charter capital as well as methods for mobilizing more capital;

(iii) Electing, exempting or dismissing the Chairman of the Member Assembly; appointing, exempting, dismissing, the Director or General Director, chief accountant and other managers as stipulated in the company charter;

(iv) Deciding on salaries, bonuses and other benefits of the Chairman of the Member Assembly, the Director or General Director, chief accountant and other managers as stipulated in the company charter;

(v) Approving the annual financial reports and proposals for using or distributing profits as well as handling company losses;

(vi) Deciding on the structure of management;

(vii) Deciding on the establishment of branches and opening of representative offices;

(viii) Amending or supplementing the company charter;

(ix) Deciding on company reorganization;

(x) Deciding on the dissolution or bankruptcy of the company;

(xi) Approving the contracts and transactions between the company and its members, authorized representatives of its members, the Director or General Director, legal representatives and related persons; and between the company and the managers of the holding company and between the company and persons competent to appoint the holding company manager and related persons;

(xii) Other rights and obligations as stipulated in the company charter.

The Enterprise Law 2005 (Article 47) stipulates that the Member Assembly has the right to approve investment methods and projects with a value of 50 percent or more of the total value of assets recorded in ***the latest financial report*** of the company or to approve contracts involving the borrowing, lending and selling of assets amounting to 50 percent or more of the total value of assets recorded in the ***latest financial report***. Use of the latest financial report is new to the Enterprise Law 2005 and was not specified in the Enterprise Law 1999.

b. Convening the Member Assembly Meeting

According to the Enterprise Law 2005 (Article 50), the Member Assembly must convene a meeting whenever it is requested by the Chairman of the Member Assembly, or by a member or group of members owning over 25 percent of the charter capital (35 percent in the Enterprise Law 1999).

The Enterprise Law 2005 does not specify whether the financial statements of an ordinary company (except for an over 50 percent foreign-owned company, listed company, and other cases stipulated by the laws) should be subject to an annual audit. This may affect the legal validity and authenticity of unaudited financial statements, and the disputes that may arise with regard to the competence of different management levels.

c. Conditions and formalities of the Member Assembly Meeting

In order to protect the rights of minority members, the Enterprise Law 2005 (Article 51) stipulates that the Member Assembly Meeting can only be convened when participating members own at least 75 percent of the charter capital (65 percent in the Enterprise Law 1999).

If a meeting fails to satisfy the required conditions a second meeting shall be convened within 15 days of the proposed date of the first meeting. The second meeting may convene if participating members own at least 50 percent of the charter capital. In the event that the second meeting also fails to satisfy the required conditions a third meeting shall be convened within ten days of the proposed date of the second meeting. The third meeting may convene regardless of the number of participating members and the proportion of charter capital they own.

d. Conditions to approve the decision of the Member Assembly

As well as new regulations to protect the interests of minority shareholders of a shareholding company, the Enterprise Law 2005 (Article 52) contains an increased number of conditions that must be fulfilled before Member Assembly decisions can be approved. Decisions must obtain at least 65 percent of votes cast, representing at least 65 percent of the contributed capital (51 percent in the Enterprise Law 1999) or the proportion as stipulated

in the company charter, except for decisions that relate to the sale of 50 percent or more of the total value of assets recorded in the latest company financial reports, a change in the company charter or organization or the dissolution of the company. In these cases the required proportion remains unchanged at 75 percent.

In case the decision of the Member Assembly is to be approved by consulting opinion in writing, the approved ratio must be 75 percent of the charter capital or another specific proportion as stipulated in the company charter (65 percent in the Enterprise Law 1999).

4.2. Chairman of the Member Assembly

The Chairman of the Member Assembly is a member of the Member Assembly and elected by the Member Assembly. The Chairman of the Member Assembly may simultaneously hold the position of Director or General Director of the company. The Chairman of the Member Assembly or the Director/General Director will be the legal representative of the company as stipulated in the company charter. If the company charter stipulates that the Chairman of the Member Assembly is the legal representative then this should be clearly stated in all of the company's transactional papers. The regulation is intended to help business partners identify the legal representative of the company as it is not always possible to see the company charter.

The rights and obligations of the Chairman of the Member Assembly in the Enterprise Law 2005 are essentially unchanged from the Enterprise Law 1999. According to the Enterprise Law 2005 (Article 49) the Chairman of the Member Assembly is entitled to the following rights and has the following obligations:

(i) Establishing work programs and plans of the Member Assembly;

(ii) Preparing the agenda, contents and materials for Member Assembly meetings or taking responsibility for consulting members for suggestions;

(iii) Convening and presiding over Member Assembly meetings;

(iv) Supervising or organizing the supervision of the implementation of decisions made by the Member Assembly;

(v) Signing decisions made by the Member Assembly on behalf of the Member Assembly;

(vi) Requesting the convening of meetings of the Member Assembly.

(vii) With regard to the procedures to approve the decisions of the Member Assembly by consulting opinions in writing, if this is not specified in the company charter, the Chairman of the Member Assembly will decide the opinion consultation in writing when approving matters decided by the Member Assembly. The Chairman will be in charge of preparing and sending reports, explanations, drafts of proposed decisions and voting inquiries to all members of the company. The Chairman will be in charge of counting votes, making reports and sending the result as well as the approved decisions to all members within seven days of the deadline for returning the voting inquiry to members to the company;

(viii) Other rights and obligations as stipulated in the company charter.

New to the Enterprise Law 2005 is the stipulation that the term of office of the Chairman will not exceed five years (three years in the Enterprise Law 1999) and the Chairman can serve an unlimited number of terms. The Enterprise Law 2005 also stipulates that in case of absence, the Chairman can authorize a member of the Member Assembly to exercise his/her rights and obligations as stipulated in the company charter. If no member is authorized or the chairman is incapable of working, the remaining members shall elect a member to temporarily exercise the rights and obligations of the chairman by the principle of majority.

4.3. Director or General Director

The Director or General Director of the company is in charge of day-to-day business operations and is responsible to the Member Assembly for the implementation of his/her rights and duties.

According to the Enterprise Law 2005 (Article 55) the Director or General Director must satisfy the following qualifications and conditions:

(i) Possess the capacity for civil acts and not be prohibited from managing an enterprise as stipulated in the Enterprise Law 2005;

(ii) Own ten percent or more of the company charter capital or be a non-member with expertise and experience in business management or a major business activity of the company or possess other qualifications stipulated in the company charter;

(iii) In a company in which the state-owned capital share accounts for more than 50 percent of the charter capital the wife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of the managers or person with the power to appoint managers of the holding company cannot be the Director or General Director of a subsidiary of such a company.

There are essentially no differences between the Enterprise Law 1999 and the Enterprise Law 2005 regarding the rights of the Director or General Director, which are as follows:

(i) Implement the decisions of the Member Assembly;

(ii) Decide on matters which concern the company's day-to-day business operations;

(iii) Implement the business plan and investment strategy of the company;

(iv) Stipulate the management rules of the company;

(v) Appoint and dismiss those in managerial positions in the company, except for the chairman of the Member Assembly, Director or General Director, Chief Accountant and other managers stipulated in the company charter;

(vi) Conclude contracts on behalf of the company except those concluded by the chairman of the Member Assembly;

(vii) Suggest an organizational structure of management for the company;

(viii) Submit the annual financial report to the Member Assembly;

(ix) Suggest a method of distributing company profits or handling company losses;

(x) Recruit employees;

(xi) Other rights and duties as stipulated in the company charter and the labor contract signed between him/her and the company in compliance with the decision of the Member Assembly.

Like the regulations on the obligations of company members, the Enterprise Law 2005 also stipulates that the ***Director or General Director must be diligent, loyal, and transparent*** when managing and running the company. ***This is new to the Enterprise Law 2005***. Accordingly, the Director or General Director has the following obligations:

(i) Perform his/her rights and obligations in a fiduciary, diligent and optimal manner in order to maximize the benefit to the company owners and the company itself;

(ii) Pledge loyalty to the interests of the company and company owners; not to make use of information, know-how and business

opportunities of the company; not to abuse the position, powers and property of the company for the benefit of themselves or other organizations or individuals;

(iii) Promptly, fully and accurately notify the company of the enterprises in which they or related persons are the sole owner or major shareholders. The notification must be displayed at the head office of the company and branches;

(iv) Other obligations as stipulated by the laws and the company charter.

4.4. Supervision Board

The Enterprise Law 2005 stipulates that a limited liability company with 11 or more members must establish a Supervision Board. A company with fewer than 11 members may have a Supervision Board, to meet the management requirements if it sees fit.

Like the Enterprise Law 1999, the Enterprise Law 2005 does not include any specific stipulations on the rights and obligations of the Supervision Board or who is entitled to appoint and establish the Supervision Board (the company can consult similar regulations regarding the Supervision Board of a shareholding company). However, it can be construed that the Member Assembly is the organ competent to appoint the Supervision Board and assist the Member Assembly to supervise the operational activities of the company.

According to the Enterprise Law 2005 (Article 46) the rights and obligations of the Supervision Board, and the Head of the Supervision Board are stipulated in the company charter. Therefore, when developing the company charter, the enterprise will need to clearly specify if the company includes or requires a Supervision Board.

4.5. Common obligations of the members of the Member Assembly, the Company Chairman, Director or General Director

The Enterprise Law 2005 emphasizes the importance of transparency, loyalty and diligence of company managers and requires that members of the Member Assembly, the Company Chairman and the Director or General Director have the following obligations:

(i) Perform rights and obligations in a fiduciary, diligent and optimal manner in order to maximize the benefit of the company owners and the company itself;

(ii) Pledge loyalty toward the interests of the company and company owners; not to make use of information, know-how and business opportunities of the company; not permitted to abuse the position, powers and property of the company for the benefits of themselves or other organizations or individuals;

(iii) Promptly, fully and accurately notify the company of the enterprises in which they or related persons are the sole owner or major shareholder. The notification must be displayed at the head office of the company and branches;

(iv) Other obligations as stipulated by the laws and the company charter.

The Director or General Director may not receive pay increases or bonuses when the company is incapable of paying all its due debts.

4.6. Contracts, transactions of limited liability company with more than one member must be approved

The Enterprise Law 2005 is more specific and than the Enterprise Law 1999 with regard to the supervision of some contracts and transactions of limited liability companies with more than one member. Accordingly, the contracts or transactions

between the company and the following persons must be approved by the Member Assembly of a limited liability company with more than one member:

(i) Its members or their authorized representative, the Director or General Director and the legal representative of the company and related persons;

(ii) Holding company managers or persons with the power to appoint managers of its holding company and related persons.

The procedures to seek approval of the Member Assembly are stipulated in the Enterprise Law 2005. The company's legal representative is required to send draft contracts or a summary of the content of draft contracts to all members of the Member Assembly and disclose them at the head office and company branches. The Member Assembly is required to approve the draft contracts within 15 days of the date of disclosing the contracts (unless otherwise stated in the company charter). Approval requires the agreement of members owning 75 percent or more of the total voting capital. Related members are not entitled to vote for the contracts as their capital is not included in the total voting capital.

Contracts and transactions that are not concluded as stipulated above will be void and treated in pursuant to the laws (according to the Civil Laws, other members will have to submit to a competent people's court to declare the contracts and transactions void). The legal representative, related members and related persons of the members are required to indemnify for any losses or return to the company any benefits gained from the implementation of such contracts and transactions.

C. SOLE MEMBER LIMITED LIABILITY COMPANY

1. Definition

According to the Enterprise Law 2005 (Article 63) a sole member limited liability company is an enterprise which is owned by one organization or

individual (hereinafter referred to as the company owner). The company owner is liable for the debts and other obligations of the company within the company charter capital.

A sole member limited liability company will be conferred legal status from the issuing date of the certificate of business registration and, like a limited liability company with more than one member, a sole member limited liability company is prohibited from issuing shares.

According to the Enterprise Law 2005 (Article 76) a sole member limited liability company is not allowed to reduce the charter capital and can only increase the charter capital with further contributions of the owner or by attracting capital from others (the company will then become a limited liability company with more than one member). The Enterprise Law 1999 stipulated that a sole member limited liability company was entitled to increase or reduce its charter capital. Both the Enterprise Law 1999 and the Enterprise Law 2005 allow a limited liability company with more than one member to increase and reduce charter capital.

Table 1: Comparison between sole member limited liability company owned by an individual and sole proprietorship

Criteria	*Sole member limited liability company owned by an individual*	*Sole proprietorship*
The owner	Individual	Individual
Legal status/Scope of liability	Have legal status and be liable to the extent of total charter capital. Distinction between the property of the company owner and the property of the company.	Have no legal status and liability extends to all owner's property in all enterprise activities. No distinction between the property of the enterprise owner and the property of the enterprise.
Capital increase and reduction	Allowed to increase but not reduce the charter capital.	Allowed both to increase and reduce the charter capital.
Management structure	The owner can assume the position of company Chairman and Director or General Director, or hire a Director or General Director.	The enterprise owner can directly manage the enterprise or hire a director.
Enterprise dissolution	Not entitled to sell or lease the company. Can only transfer own capital share in the company to other organizations and/or individuals.	Entitled to lease or sell the enterprise to other organizations and/or individuals.
Issuing shares	Entitled to issue bonds but not shares.	Not entitled to issue any types of securities,

2. Rights and obligations of the owner

There are no changes to the regulations on the rights and obligations of enterprise owners in the Enterprise Law 2005. However, the Enterprise Law 2005 distinguishes between the rights of organization owners and individual owners. The rights of an individual owner are fewer than the rights of an organization owner.

2.1. Rights of individuals as company owners

According to the Enterprise Law 2005 (Article 64) individual owners are entitled to the following rights:

(i) Deciding the contents of the company charter and any amendments or supplements;

(ii) Deciding on investment and business projects and the organizational management of the company unless otherwise stipulated in the company charter;

(iii) Transferring a part or all of the charter capital to another person;

(iv) Deciding on the use of profits after fulfilling taxation and other financial obligations;

(v) Deciding on the re-organization, liquidation and request for bankruptcy of the company;

(vi) Collecting all pecuniary assets of the company after the completion of the liquidation or bankruptcy process;

(vii) Other rights as stipulated in the company charter.

2.2. Rights of the company institutional shareholders

According to the Enterprise Law 2005 (Article 64) institutional shareholders

are entitled to the following rights:

(i) Deciding the contents of the company charter and any amendments or supplements;

(ii) Deciding on the company's development strategy and annual business plan;

(iii) Deciding on management structure and appointing and dismissing managers of the company;

(iv) Approving investment projects equivalent to 50 percent or more of the total value of company assets as recorded in the latest financial report or a smaller percentage if stipulated in the company charter;

(v) Deciding on the development of marketing and technology;

(vi) Approving lending and borrowing contracts and others as stipulated by the company charter equivalent to 50 percent or more of the total value of company assets as recorded in the latest financial report or a smaller percentage if stipulated in the company charter;

(vii) Deciding on the sale of assets equivalent to 50 percent or more of total value of the total value of company assets as recorded in the latest financial report or a smaller percentage if stipulated in the company charter;

(viii) Deciding on the raising of the charter capital of the company;

(ix) Deciding on the establishment of subsidiaries and capital contributions to other companies;

(x) Supervising the business performance of the company;

(xi) Deciding on the appropriation and allocation of profit after fulfilling tax and financial obligations;

(xii) Deciding on the restructuring, dissolution of the company or requesting a bankruptcy declaration;

(xiii) Ownership of all corporate assets after the company finalizes all statutory obligations following dissolution or bankruptcy; and

(xiv) Other rights as stipulated in the Enterprise Law 2005 and in the company charter.

Items 4, 6 and 7 are new to the Enterprise Law 2005 and not included in the Enterprise Law 1999.

Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 66) stipulates some restrictions to the rights of the company owner. The company owner is not allowed to withdraw profits if the company cannot fulfill its debts and other obligations due and is only entitled to withdraw capital by way of the transfer of part or all the charter capital to another organization or individual. However, unlike the Enterprise Law 1999 the Enterprise Law 2005 stipulates that if a part of the charter capital is transferred to another organization or individual, the company must register to change to a limited liability company with more than one member within 15 days from the date of the transfer.

2.3. Obligations of the company owner

According to the Enterprise Law 2005 (Article 65), the company owner, whether organization or individual, has some common obligations such as: (i) making full and prompt capital contributions as committed. If not the company owner will be liable to all debts and other financial obligations of the company. (ii) Keeping assets of the company and the company owner separate; (iii) complying with the company charter; and (iv) complying with laws governing contracts concerning the purchase, sale, borrowing, lending, leasing, renting or other transactions that take place between the company and the company owner.

The Enterprise Law 2005 also stipulates that company owners who are individuals

must distinguish between the expenditure of himself/herself and his/her family and that of the company owner in the position of Director or General Director.

The Enterprise Law 2005 also requires that the Business Registrar is kept up to date on the capital contribution process of limited liability companies with more than one member. The Enterprise Law 2005 does not require the owner of sole member limited liability companies to notify the Business Registrar.

2.4. Organizational structure of management

a. Sole member limited liability company owned by an organization

Sole member limited liability companies owned by one organization has only one owner. Therefore, all the company's management activities will be solely decided by the company owner in accordance with the Enterprise Law 2005 and related laws. In order to manage the company the company owner appoints one or more authorized representatives for a term of less than five years to exercise the rights and obligations as stipulated in the Enterprise Law 2005 and other related laws. The company owner is entitled to change authorized representatives at any time. The company charter will specify that the Chairman of the Member Assembly, company Chairman or Director or General Director be the legal representative of the company.

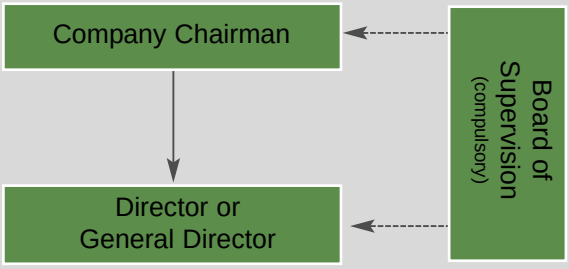
The management structure of sole member limited liability companies owned by an organization will depend on whether one or more persons are authorized to act as the owner's representative to manage the company.

a.1. If there is only one authorized representative

According to the Enterprise Law 2005 (Article 67) the structure of management of the company will comprise of the company Chairman (appointed by the company owner to act as the authorized representative), Director or General Director (appointed or hired by the company owner for a term of less than five years to manage the company's operational activities) and supervisor (one to

three supervisors can be appointed by the company owner for a term of less than three years).

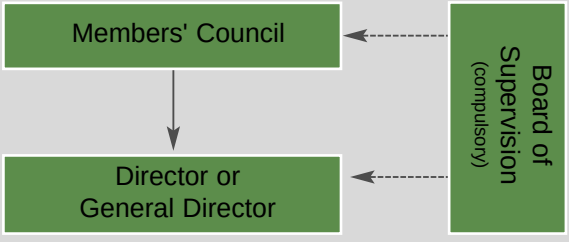
Figure 2. Structure of management of sole member limited liability company whose owner is an organization, with one representative



a.2. If there are at least two authorized representatives

According to the Enterprise Law 2005 (Article 67), the organizational structure of the company will comprise of: (i) the Member Assembly (including all the authorized representatives appointed by the company owner and a Chairman of the Member Assembly appointed by the company owner), (ii) a Director or General Director (appointed or hired by the Member Assembly for a term of less than five years to manage the company's operational activities) and (iii) one to three supervisors appointed by the company owner with a term of less than three years.

Figure 3. Management Structure of a sole member limited liability company owned by an organization, with two or more representatives



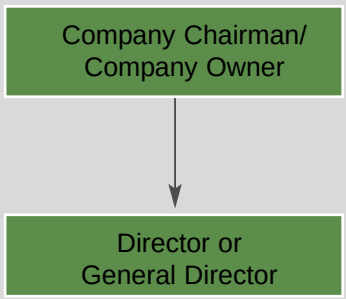
While the Enterprise Law 1999 stipulated that the organizational structure of a sole member limited liability company owned by an organization consists of the Board of Management, Director or General Director or company Chairman the Enterprise Law 2005 stipulates management activities with greater clarity and changes the name of the Board Of Directors to the Member Assembly.

For greater transparency the Enterprise Law 2005 emphasizes the role of the supervisor in the management structure by requiring the appointment of one or more supervisors regardless of the number of people appointed to act as the owner's representative. The Enterprise Law 1999 did not require that a sole member limited liability company appoint a supervisor.

b. Sole member limited liability company whose owner is one individual

According to the Enterprise Law 2005 (Article 74) the company's management structure includes the company Chairman (the company owner) and the Director or General Director (the company owner or a hired person).

Figure 4. The organizational structure of the management of a sole member limited liability company whose owner is one individual



c. The Member Assembly

As mentioned above the Member Assembly only exists in a limited liability company whose owner is an organization that has appointed at least two authorized representatives. The Member Assembly has two functions: (i) regarding the company owner, the Member Assembly represents the owner in exercising the rights and obligations of the company owner; and (ii) regarding outside partners, the Member Assembly represents the company in exercising the rights and obligations of the company.

A meeting of the Member Assembly can convene if at least two thirds (2/3) of all members are present. Each member has one vote unless otherwise stipulated in the company charter. The company owner is therefore entitled to determine the number of votes allocated to each member.

Member Assembly decisions are approved by a majority of participating members. Decisions of the Member Assembly may be adopted in the form of consulting opinion in writing. Amendments or supplements to the company charter, company re-organization and the transfer of part or all of company capital must be approved by three quarters (¾) of participating members. One notable point is that the Enterprise Law 2005 still allows the company owner to interfere in the decisions of the Member Assembly if the company charter stipulates that such decisions are only legally binding once approved by the company owner.

The Enterprise Law 2005 includes no specific regulations on the obligations of the Member Assembly but only the obligations of the members of the Member Assembly. The rights, obligations, specific responsibilities and the working relationship between the Member Assembly and the company owner are as stipulated in the company charter and related laws. The members of the Member Assembly are the representatives appointed by the owner, thus they must satisfy similar qualifications and conditions to those of representatives of the members in limited liability company with more than one member.

Table 2 **Comparison between the Member Assembly of a sole member limited liability company whose owner is an organization and the Member Assembly of a limited liability company with more than one member and the Board Of Directors of a shareholding company**

Criteria	The Member Assembly of a limited liability company with more than one member	The Member Assembly of a sole member limited liability company owned by one organization	The Board of Directors of a shareholding company
Members	Members who contribute capital to the company.	Representatives appointed by the company owner.	Persons appointed by the Shareholder General Assembly (the owners) whose members may not be shareholders.
Conditions	No conditions.	Some specific conditions stipulated by the law and the company charter.	Some specific conditions stipulated by the law and the company charter.
Legal status	The highest decision making organ of the company. Decisions of the Member Assembly become valid after legal approval. Entitled to elect the Chairman of the Member Assembly.	The representative organ of the company owner, acting on behalf of the owner to exercise the rights and obligations of the owner. The decision of the Member Assembly can be rejected by the owner. Not entitled to elect Chairman of the Member Assembly who is appointed by the company owner.	The managing organ, exercising the rights outside of the competence of the Shareholder General Assembly. The decision of the Board of Directors becomes valid after legal approval. May be entitled to elect Chairman of the Board of Directors.
Number of members and length of term	Not to exceed 50 members. No limit to term.	Decided by the company owner. Five year term.	Not less than three five-year terms.
Criteria to determine the proportion of members required to convene Member Assembly meetings and approve decisions.	Based on the proportion of contributed capital.	Based on the number of members. Each member has one vote (may have different value).	Based on the number of members. Each member has one vote (of same value).

d. Chairman of the Member Assembly

According to the Enterprise Law 2005 (Article 68) the rights and obligations of the Chairman of the Member Assembly are similar to those of the Chairman of the Member Assembly of a limited liability company with more than one member. Accordingly, the Chairman of the Member Assembly has the following rights and obligations:

(i) Setting up working programs and plans of the Member Assembly;

(ii) Preparing the agenda, contents and materials for Member Assembly meetings or taking responsibility for consulting members for suggestions;

(iii) Convening and presiding over meetings of the Member Assembly;

(iv) Supervising or organizing the supervision of the implementation of decisions made by the Member Assembly;

(v) Signing decisions made by the Member Assembly on behalf of the Member Assembly;

(vi) Other rights and obligations as stipulated in the company charter.

Even though the Law on Enterprise 2005 does not stipulate the obligations of the Chairman of the Member Assembly in a sole member limited liability company, the Chairman of the Member Assembly has obligations similar to those of a member of the Member Assembly, including:

(i) Abiding by the law, the company charter and the decisions of the company owner in exercising assigned rights and obligations;

(ii) Performing his or her rights and obligations in a fiduciary, diligent and optimal manner to maximize the benefit of the company owners and the company itself;

(iii) Pledging loyalty toward the benefits of the company and the company owner. Not permitted to make use of information, know-how and business opportunities of the company; not permitted to

abuse the position, powers and property of the company for the benefit of themselves or other organizations or individuals;

(iv) Promptly, fully and accurately notifying the company of the enterprise in which they or related persons are the sole owner or major shareholder. Such a notification must be displayed at the head office of the company and its branches;

(v) Other obligations as stipulated in the company charter.

e. Company Chairman

As mentioned above, the Company Chairman exists in two types of company: (i) a sole member limited liability company owned by one organization, with only one authorized representative appointed by the company owner; and (ii) a sole member limited liability company owned by one individual.

e.1. Sole member limited liability company owned by one organization

According to the Enterprise Law 2005, the Chairman of a sole member limited liability company owned by one organization has the following obligations:

(i) Abiding by the laws, the company charter and the decisions of the company owner in exercising his/her rights and obligations;

(ii) Performing his/her rights and obligations in a fiduciary, diligent and optimal manner in order to maximize the benefit of the company owners and the company itself;

(iii) Pledging loyalty to the company and the company owner. Not permitted to make use of information, know-how, and business opportunities of the company; not permitted to abuse the position, powers and property of the company for the benefit of themselves or other organizations or individuals;

(iv) Promptly, fully and accurately notifying the company of the enterprises in which they or related persons are the sole owner or major shareholder. Such a notification must be displayed at the head office of the company and its branches;

(v) Exercising the obligations of the company owner. Decisions of the company Chairman on exercising the obligations of the company owner will be valid from the date approved by the company owner, unless otherwise stipulated in the company charter;

(vi) Other obligations stipulated in the company charter.

These regulations emphasize the fiduciary duty, diligence and transparency of the Company Chairman in serving the benefits of the company.

e.2. Sole member limited liability company owned by one individual

The Enterprise Law 2005 does not mention the rights and obligations of the Company Chairman of a sole member limited liability company owned by one individual but stipulates that such rights and obligations be specified in the company charter.

f. Director or General Director

f.1. Sole member limited liability company owned by one organization

The Member Assembly or the Company Chairman appoints or hires a Director or General Director with a term of not more than five years to manage the day-to-day operations of the company. The Director or General Director must abide by the law and is responsible to the Member Assembly or the Company Chairman for his/her performance.

The Enterprise Law 2005 stipulates that the Director or General Director must satisfy the following qualifications and conditions:

(i) They must have the capacity for civil acts and not be prohibited from managing an enterprise in pursuant to the Enterprise Law 2005;

(ii) They must not be related to members of the Member Assembly or the Chairman of the company, or any person who has the power to appoint authorized representatives or the Chairman of the company; and

(iii) They must have expertise and practical experience in business management or a major business activity of the company; or other qualifications as stipulated in the company charter.

According to the Enterprise Law 2005 (Article 70), the Director or General Director is entitled to the following rights:

(i) Implementing decisions of the Member Assembly or Chairman of the company;

(ii) Deciding on matters concerning the company's day-to-day business operations;

(iii) Implementing the company's business and investment plans;

(iv) Stipulating rules on internal management of the company;

(v) Appointing, exempting and dismissing managers except for those appointed or dismissed by the Member Assembly or Chairman of the company;

(vi) Concluding contracts on behalf of the company except those concluded by the Chairman of the Member Assembly or Chairman of the company;

(vii) Suggesting changes to the organizational structure of the company;

(viii) Submitting annual financial reports to the Member Assembly or Chairman of the company;

(ix) Suggesting methods of distributing profits or handling losses;

(x) Hiring employees;

(xi) Other rights as stipulated in the company charter and the contract signed between the Director or General Director and the Chairman of the Member Assembly or Chairman of the company.

f.2. Sole member limited liability company owned by one individual

The Enterprise Law 2005 does not specify the specific rights, obligations, and responsibilities of the Director or General Director, but allows the company owner to lay out the rights and obligations in the company charter and in the contract signed between the Director or General Director and the company Chairman.

g. Supervisors

Supervisor is a compulsory position in a sole member limited liability company owned by an organization. According to the Enterprise Law 2005 (Article 71) the supervisor has the following duties:

(i) Inspecting the lawfulness, fiduciary and diligence of the Member Assembly, Chairman of the company and Director or General Director in performing their respective rights, duties and obligations;

(ii) Examining the reports on company finances, business performance, management and others before submitting them and an examination report to the company owner and relevant state agencies;

(iii) Recommending any changes and adjustments to the organizational structure of the company;

(iv) Other obligations as stipulated in the company charter or decisions made by the company owner.

(v) Supervisors are entitled to review any company document at the head office, branches or representative offices. Members of the Member Assembly, Chairman of the company, Director or General Director and other managers are required to provide full and prompt information in relation to business and management performance when requested by supervisors.

In order to guarantee the independence of supervisors in exercising their powers and duties, the Enterprise Law 2005 (Article 71) stipulates that supervisors must not be related to members of the Member Assembly or the company Chairman, Director or General Director or any person with the power to appoint supervisors.

h. Obligations common to members of the Member Assembly, company Chairman, Director or General Director, and supervisors

A new regulation in the Enterprise Law 2005 states that members of the Member Assembly, the company Chairman, Director or General Director and supervisor have the following obligations:

(i) Abiding by the laws, the company charter and the decisions of the company owner when exercising their rights and obligations;

(ii) Performing rights and obligations in a fiduciary, diligent and optimal manner in order to maximize the benefit of the company owners and the company itself;

(iii) Pledging loyalty toward the company and the company owner. Not making use of company information, know-how and business opportunities or abusing the company's position, power or property for the benefit of themselves or other organizations or individuals;

(iv) Promptly, fully and accurately notifying the company of the enterprises in which they or related persons are the sole owner or major shareholder. Such a notification must be displayed at the head office of the company and its branches;

(v) Other obligations as stipulated in the Enterprise Law 2005 and the company charter.

Like the obligations of the Director or General Director of a limited liability company with more than one member or a shareholding company, the Director or General Director of a sole member limited liability company will not receive a pay increase or bonus if the company is incapable of paying due debts.

i. Contracts, transactions of a sole member limited liability company owned by one organization must be approved

The Enterprise Law 1999 did not include regulations on the supervision of contracts and transactions between a sole member limited liability company owned by one organization and related partners. The Enterprise Law 2005 addresses this issue and provides new regulations to strictly supervise such contracts and transactions and restrict transactions that do not meet the requirements of the law. The Enterprise Law 2005 stipulates that contracts and transactions between a sole member limited liability company owned by one organization and the following organizations and individuals must be approved by the Member Assembly or Chairman of the company, the Director or General Director, and the supervisor with a majority vote. Each person has one vote:

(i) The company owner and related persons of the company owner;

(ii) Authorized representative, Director or General Director, supervisors, and their related persons;

(iii) Managers, persons in charge of appointing such positions and their related persons.

The legal representative of the company must send the draft contract or summary of the transaction to the Member Assembly or the Chairman of the company, the Director or General Director, and supervisors and disclose them at the head-office and company branches. Such contracts and transactions can only be approved if they satisfy the following conditions:

(i) Contracting parties are independent legal entities with distinct rights, obligations and assets;

(ii) The price of the contracts or transactions is the market price at the time of the conclusion of the contracts or performing transactions;

(iii) The company owner complies with laws concerning contracts and other laws concerning the purchase, sale, borrowing, lending, renting, leasing and other transactions between the company and the company owner.

Contracts or transactions will be void and treated pursuant to the laws if not concluded in accordance with the above regulations. If this is the case, the legal representatives of the company and contracted parties are required to indemnify for any losses or return to the company any benefits gained from the implementation of such contracts or transactions. Contracts or transactions that are concluded between the company and the company owner or his related persons must be recorded and retained as company documents.

SHAREHOLDING COMPANY

This chapter deals with shareholding companies and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

A. DEFINITION

According to the Enterprise Law 2005 (Article 77) a shareholding company is an enterprise where: (i) Charter capital is divided into equal portions (known as shares). (ii) Shareholders can be organizations or individuals. The minimum number of shareholders is three and there is no restriction on the maximum number of shareholders. (iii) Shareholders are liable for debts and other liabilities of the company within the amount of capital that they have contributed. Shareholders are free to transfer their shares except in cases otherwise stipulated in law.

A shareholding company will be given legal status from the date of issue of the certificate of business registration. Unlike a limited liability company a shareholding company is entitled to issue securities to mobilize capital.

B. SHARES

According to the Enterprise Law 2005 (Article 78) a shareholding company has the following types of shares: (i) shares which are issued upon establishment, or ordinary shares; (ii) other optional preference shares consisting of voting preference shares, dividend preference shares, redeemable preference shares, and other types of preference shares as stipulated in the company charter.

Each type of share provide its holders with the same rights, obligations, and interests. The Enterprise Law 2005 stipulates that ordinary shares cannot be converted into preference shares, but preference shares can be converted into ordinary shares by decision of the Shareholder General Assembly.

C. SHAREHOLDERS

1. Types of shareholders

According to the Enterprise Law 2005 (Article 78) each type of share will have a corresponding type of shareholder:

(i) Ordinary shareholders are owners of ordinary shares;

(ii) Voting preference shareholders are owners of voting preference shares;

(iii) Dividend preference shareholders are owners of dividend preference shares;

(iv) Redeemable preference shareholders are owners of redeemable preference shares; and

(v) Other preference shareholders are owners of other preference shares as stipulated in the company charter.

Shareholders participating in the development, approval and signing of the original company charter are founding shareholders. The minimum number of founding shareholders is three. Their names are recorded in the company charter and the certificate of business registration. However, the Enterprise Law 2005 also allows persons who did not participate in the development, approval, and signing of the original charter to receive shares from founding shareholders and become founding shareholders (Article 84 - the Enterprise Law 2005).

Except for voting preference shares, regulations on other preference shares allow investors to sacrifice their voting rights in order to receive other rights and interests, thus creating favorable conditions to attract investment capital.

2. Rights and obligations of different types of shareholders

2.1. Founding shareholders

According to the Enterprise Law 2005 (Article 84), from the date the certificate of business registration is issued founding shareholders:

(i) Must subscribe to at least 20 percent of the total number of the authorized ordinary shares and make full payment for the subscribed shares within 90 days of the date of issue of the certificate of business registration. If a founding shareholder fails to make full payment for the subscribed shares his or her shares can be: (i) paid for by the remaining founding shareholders in proportion to their capital shares in the company; (ii) paid for by one or more founding shareholders; (iii) paid for by other persons who are not founding shareholders, but who then become founding shareholders of the company. If subscribed shares of the founding shareholders are not fully paid up, all founding shareholders will be jointly liable for the debts and other liabilities of the company within the amount of unpaid-up subscribed shares;

(ii) Be entitled to freely transfer ordinary shares to other founding shareholders. However, in the first three years founding shareholders are only entitled to transfer shares to non-founding shareholders if approved by the Shareholder General Assembly.

Founding shareholders have the rights and obligations of voting preference shareholders if they hold voting preference shares.

2.2. Ordinary shareholders

Like the Enterprise Law 1999, the rights of ordinary shareholders are also specified in the Enterprise Law 2005 (Article 79). The rights of ordinary shareholders can be classified into two groups:

(i) Rights exercised by shareholders in a direct and independent manner. For example, the right to receive dividends, privileged rights when purchasing newly issued shares, the right to freely transfer shares, checking, reviewing and extracting information from the list of shareholders, and receiving part of the residual property of the company in proportion to their shares when the company is dissolved; and

(ii) Rights exercised through the Shareholder General Assembly on the basis of one share - one vote (i.e. the greater the shareholding, the greater the influence on decisions of the shareholder assembly). Rights of this sort are most visible when deciding on the issues falling under the authority of the Shareholder General Assembly.

Table 3: Compared with the Enterprise Law 1999, the Enterprise Law 2005 includes specific stipulations and mechanisms to protect the rights of minority shareholders.

The Enterprise Law 1999	*The Enterprise Law 2005*
Ordinary shareholders are only entitled to check, receive a copy or extract information from the list of shareholders with the right to participate in the Shareholder General Assembly.	What is new: ordinary shareholders are entitled to check, review and extract information from the list of shareholders with voting rights and ask for the correction of inaccurate information, and to check, review, extract or copy the company charter, the book of meeting minutes as well as resolutions of the Shareholder General Assembly.
The Board Of Directors must convene the Shareholder General Assembly within 30 days from receiving a request from the minority shareholders.	The Board Of Directors must convene an extraordinary meeting as requested by minority shareholders. If not stipulated in the company charter, the Board Of Directors must convene the Shareholder General Assembly within 30 days of receiving a request from the minority shareholders. ***What is new:*** If the Board Of Directors does not convene the Shareholder General Assembly, the Chairman of the Board Of Directors is liable and must compensate the company for any damages that arise.
The Supervision Board must convene the Shareholder General Assembly on behalf of the Board Of Directors if the latter does not do the same.	If, within 30 days of receiving a request from minority shareholders, the Board Of Directors does not convene the Shareholder General Assembly, the Supervision Board will convene the Shareholder General Assembly on behalf of the Board Of Directors. ***New point:*** If the Board Of Directors does not convene the Shareholder General Assembly, the Chairman of the Supervision Board will be liable and must compensate the company for any damages that arise.
If the Supervision Board does not convene the meeting, minority shareholders must convene the Shareholder General Assembly on behalf of the Board Of Directors and the Supervision Board	If the Supervision Board does not convene the Shareholder General Assembly, minority shareholders who requested a Shareholder General Assembly can convene the Shareholder General Assembly on behalf of the Board Of Directors, the Supervision Board. ***What is new:*** Minority shareholders who convene the Shareholder General Assembly can request the Business Registrar to supervise the meeting if necessary.

In general, ordinary shareholders are obliged to: (i) abide by the company charter and internal regulations, (ii) abide by the decisions of the Shareholder General Assembly and (iii) make full payments for subscribed shares and assume liability for the debts and other obligations of the company within the paid-up capital. Ordinary shareholders are not entitled to withdraw paid-up capital in the form of ordinary shares unless those shares are bought back by the company or transferred to another person.

Ordinary shareholders are personally liable if they act on behalf of the company in: (i) violating laws; (ii) conducting business for the purpose of personal gain or the gain of others; and (iii) paying off undue debts when there is a financial danger facing the company.

2.3. Voting preference shareholders

Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 81) stipulates that only organizations authorized by the Government and founding shareholders are entitled to hold voting preference shares. The preference voting rights of founding shareholders are only valid for three years from the date of issue of the certificate of business registration. After three years the voting preference shares of founding shareholders will automatically be converted into ordinary shares. Shareholders holding voting preference shares have more votes per each share compared with ordinary shareholders. The exact number of votes of a voting preference share will be specified in the company charter.

According to the Enterprise Law 2005 (Article 81), voting preference shareholders are: (i) entitled to vote on all issues subject to a decision of the Shareholders' Meeting with the number of votes for each type of share provided in the company charter; (ii) not permitted to transfer voting preference shares to other persons; and (iii) are entitled to other rights of ordinary shareholders.

2.4. Dividend preference shareholders

According to the Enterprise Law 2005 (Article 82), dividend preference shareholders are entitled to receive a higher dividend than that of ordinary shares or an annual fixed dividend. The annual dividend comprises of a fixed and bonus dividend. The fixed dividend will be paid regardless of the profits made by the company. In other words, even though the company is facing losses, dividend preference shareholders will still receive a fixed dividend ratio (while ordinary shareholders will only receive dividends once the company fulfils all its taxation and other financial obligations in accordance with the law, pays off losses from previous years as stipulated in the laws and the company charter, and once dividend payments have been made the company must still be capable of paying off due debts and other liabilities).

In the event of the company being dissolved or bankrupt, dividend preference shareholders have the same rights as ordinary shareholders and are entitled to receive remaining company assets in proportion to their shares after the company has paid off all debts and redeemable preference shares. Dividend preference shareholders are not entitled to vote, participate in the Shareholder General Assembly, and nominate candidates to be members of the Board of Directors and the Supervision Board.

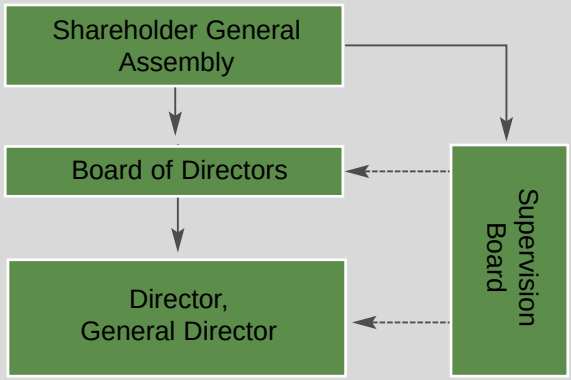
2.5. Redeemable preference shareholders

According to the Enterprise Law (Article 83), shareholders holding redeemable preference shares of shareholders can be indemnified with their contributed capital upon request or as per conditions specified in the share certificate. Redeemable preference shareholders have the same rights as ordinary shareholders. Similar to dividend preference shareholders, redeemable preference shareholders are not entitled to vote, attend the Shareholder General Assembly or nominate candidates as members of the Board of Directors and the Supervision Board.

D. STRUCTURE OF MANAGEMENT

According to the Enterprise Law 2005 (Article 95), the management structure of a shareholding company comprises of: (i) Shareholder General Assembly, (ii) the Board of Directors, (iii) Director or General Director, and the Supervision Board (required for a shareholding company with 11 or more individual shareholders or a shareholding company with organizational shareholders owning more than 50 percent of the total shares of the company).

Figure 5. Structure of management of shareholding company



1. The Shareholder General Assembly

The Shareholder General Assembly is made up of all shareholders with voting rights (excluding dividend preference shareholders and redeemable preference share holders) and acts as the highest decision-making body of a shareholding company. The meeting of shareholders is required to be held annually or extraordinarily at least once per year. The venue of the Shareholder General Assembly must be within the territory of Vietnam. The annual meeting of shareholders must be convened within four months of the end of the fiscal year. In case it is impossible to hold a Shareholder's Meeting as scheduled, the Board

of directors can request the Business Registrar to extent the time limit to no be later than six months from the end of the fiscal year.

1.1. Rights and obligations of the Shareholder General Assembly

The Enterprise Law 2005 stipulates that the Shareholder General Assembly has the following rights:

(i) Approve the development strategy of the company;

(ii) Decide the total number of authorized shares of each type;

(iii) Decide the annual dividend per share, unless otherwise stipulated in the company charter;

(iv) Elect, exempt and dismiss members of the Board of Directors and the Supervision Board; decide on the investment or sale of assets equivalent to 50 percent or more of the total value of assets recorded in the latest financial report unless another proportion is stipulated in the company charter;

(v) Decide on revisions or supplements to the company charter, except where there is an adjustment of charter capital as a result of the sale of further authorized shares as specified in the company charter;

(vi) Approve the annual financial report;

(vii) Decide on the buy-back of more than 10 percent of issued shares of each type;

(viii) Investigate and decide how to deal with breaches committed by the Board of Directors and Supervision Board, which cause damage to the company and its shareholders;

(ix) Decide on the reorganization and dissolution of the company;

(x) Other rights and duties as stipulated in the Enterprise Law and the company charter.

1.2. Convening of the Shareholder General Assembly

Like the Enterprise Law 1999, the Enterprise Law 2005 (Article 97) stipulates that the Shareholder General Assembly is convened by the Board of Directors, the Supervision Board, or a shareholder/group of shareholders owning more than ten percent of the total ordinary shares for at least six (6) consecutive months or a smaller proportion as specified in the company charter if the Board of Directors and Supervision Board do not convene the Shareholder General Assembly.

However, according to the Enterprise Law 2005 the Board of Directors and Supervision Board have stricter obligations toward the management of the company's operation. These are reflected in the association of the personal responsibilities of the heads of the Board of Directors, Board of Directors with violations when convening the Shareholder General Assembly. If the Board of Directors or the Supervision Board does not convene the Shareholder General Assembly in accordance with the company charter, the Chairman of the Board of Directors or the Head of Supervision Board will be legally liable and must compensate the company for any damages incurred. In addition, the new Enterprise Law stipulates that minority shareholders can request the Business Registrar to supervise the convening of meetings if necessary. The new regulations of the Enterprise Law 2005 aim to protect the rights of minority shareholders, reducing the power of major shareholders and specifying the personal responsibilities of the Chairman of the Board of Directors and the Head of the Supervision Board in the management of the company.

In order to ensure the normal convening of the Shareholder General Assembly, the Enterprise Law 2005 has anticipated incidents that may disturb meetings of shareholders and which have occurred in the past, such as shareholders

intentionally disturbing the meeting or an insufficient number of seats. The Enterprise Law 2005 stipulates that the person convening the Shareholder General Assembly is entitled to:

(i) Apply screening checks or other security measures to the participants;

(ii) Request competent agencies to maintain order in the meeting; expel those who do not comply with the chairperson's instructions, or who intentionally disturb and obstruct the smooth progress of the meeting or who fail to comply with security requirements.

The Enterprise Law 2005 also stipulates that the chairperson is entitled to delay the opening time or change the venue of the meeting in the following cases (the delay cannot exceed three (3) days from the proposed opening date of the meeting):

(i) There is not enough space for the participants at the current venue;

(ii) One or more participants disturb or obstruct the meeting so that it is impossible to proceed fairly and legally.

To avoid any abuse of power by chairperson when delaying the meeting, the Enterprise Law 2005 allows the Shareholder General Assembly to elect a person among the participants in place of the chairperson to chair the meeting. The validity of voting remains unaffected in the event that the chairperson delays or suspends the meeting of shareholders contrary to the above regulations.

1.3 Conditions to proceed and approve the decisions of the Shareholder General Assembly

The rights and interests of minority shareholders are better protected in the Enterprise Law 2005 than the Enterprise Law 1999 with respect to convening and approving the decisions of the Shareholder General Assembly.

The Enterprise Law 2005 (Article 102) stipulates that the meeting of shareholders is entitled to open if all participating shareholders own at least 65 percent of total voting shares or a specific percentage stipulated in the company charter. This percentage was 51 percent in the Enterprise Law 1999.

If the first meeting does not satisfy the above conditions and fails to open the second meeting must be convened within 30 days of the proposed date of the first meeting. The second meeting is entitled to open if participating shareholders own at least 51 percent of total voting shares or a specific percentage as stipulated in the company charter. The Enterprise Law 1999 stipulates that the number of shareholders participating in the second meeting own at least 30 percent of the total voting shares.

If the second meeting fails to open because it does not satisfy the above conditions, the third meeting will be convened within 20 days of the proposed date of the second meeting. The third meeting must open regardless of the number of participating shareholders or their voting shares. Therefore, other than the Business Registrar who may supervise the meeting if necessary, the company is not required to invite anyone other than participating company shareholders to the meeting.

The change in the voting percentage by a decision of the shareholder general assembly as stipulated under the Enterprise Law 2005 aims at better protecting the interest of minority shareholders. This will allow minority shareholders to participate more in important decision making regarding the business activities of the company within the competence of the Shareholder General Assembly. Shareholder General Assembly decisions will be adopted upon:

(i) Approval by participating shareholders representing at least 65 percent of total votes on almost all issues within the jurisdiction of the Shareholder General Assembly (the Enterprise Law 1999 only required the approval ratio of 51 percent).

(ii) Approval by participating shareholders representing at least 75 percent of total votes if such decisions relate to: types of shares and the total number of authorized shares of each type; amendments and supplements to the company charter; reorganization and dissolution of the company; investment or sale of 50 percent or more of the total value of assets recorded in the latest financial report of the company (only 65 percent in the Enterprise Law 1999).

In order to ensure the right of shareholders to be informed about the management activities of the company, the Enterprise Law 2005 (Article 106) stipulates that meeting minutes must be sent to all shareholders within 15 days of the closing date of the meeting. Shareholders, members of the Board of Directors, the Director or General Director and the Supervision Board are entitled to request a Court of Law or Arbitrator consider or cancel a decision of the Shareholder General Assembly in the following cases (Article 107):

(iii) The procedures of the meeting of shareholders failed to comply with the law and the company charter.

(iv) The procedures of for adopting decisions of the shareholders' meeting and its contents are contrary to the law or the company charter.

However, if the decision is approved at the meeting of shareholders by participating shareholders and authorized representatives representing 100 percent of total voting shares, the Enterprise Law 2005 (Article 104) states that such decisions will be lawful and valid even if the procedures for convening the meeting and its agenda do not strictly follow the law and the company charter.

1.4. Accumulative voting

When electing members of the Board of Directors or the Supervision Board at

the Shareholder General Assembly, the Enterprise Law 2005 allows shareholders to vote in the form of accumulative voting. This stipulation was not included in the Enterprise Law 1999. Accordingly, each shareholder (with the total number of votes equivalent to the total number of shares multiplied by the number of members of the Board of Directors or Supervision Board to be elected) can give all his votes to one or several candidates.

The regulation on accumulative voting allows shareholders or a group of minority shareholders (owning a certain proportion of shares) to have at least one representative in the Board of Directors or the Supervision Board of the company. This will help the shareholders or the group of minority shareholders to indirectly participate in management activities, updating information on the activities of the Board of Directors and the Supervision Board of the company.

2. The Board of Directors

Similar to the Enterprise Law 1999, the Enterprise Law 2005 stipulates that the Board of Directors is the management body of the company, entitled to act on behalf of the company in exercising all the rights and obligations of the company except those falling under the authority of the Shareholders' Meeting.

The Board of Directors consists of at least three (03) members and no more than eleven (11) members, unless otherwise provided in the company charter. The Board of Directors must have members residing permanently in Vietnam. The specific number should be stipulated in the company charter. Members of the Board of Directors are not necessarily shareholders of the company. Therefore, members of the Board of Directors can be Vietnamese nationals or foreigners not residing in Vietnam or persons not holding the company shares. The Enterprise Law 2005 does not provide the number of members of the Board of Directors who are not shareholders, nor requires that the number be stipulated in the company charter. Therefore, the company charter or the Shareholder General Assembly are entitled to decide the number of members of the Board of Directors who are not shareholders of the company.

2.1. Rights and obligations of the Board of Directors

According to the Enterprise Law 2005 (Article 108), the Board of Directors has the following rights and obligations:

(i) Determine the company development strategy, medium-term development plan and annual business plan;

(ii) Propose the types of shares and the total number of authorized shares of each type;

(iii) Decide on new offers of authorized shares of each type and the mobilization of capital in other forms;

(iv) Set the offering price of shares and bonds;

(v) Determine the share buy-backs of no more than 10 percent of the total issued shares of each type for every twelve (12) months;

(vi) Decide on investment solutions and investment projects within its competence as stipulated in the Enterprise Law 2005 or the company charter;

(vii) Decide on the market development, marketing, and technology solutions;

(viii) Approve all contracts concerning sales, purchase, borrowing, lending or any other type of contract worth 50 percent or more of the total value of assets recorded in the latest financial report of the company or a smaller proportion as stipulated in the company charter;

(ix) Sign or terminate contracts with the Director or General Director

and other key managers of the company as stipulated in the company charter;

(x) Decide the salary and other benefits of such managers; appoint authorized representatives to exercise the ownership rights of shares or capital contributions in other companies and decide allowances and other benefits to be applied to such persons;

(xi) Supervise and guide the Director or General Director and other managers running the day-to-day business of the company;

(xii) Approve the organizational structure and internal management rules; make decisions on the establishment of branches, representative offices and subsidiaries; decide the contribution of capital to or buying of shares issued by other companies;

(xiii) Approve the agenda and materials of the Shareholders' Meeting, convene meetings of shareholders or take responsibility for consulting opinion in writing when adopting decisions of the Shareholder General Assembly;

(xiv) Submit annual financial statements of the company to the Shareholders' Meeting;

(xv) Propose the level of dividends and decide the time and procedure for payment of such dividends or methods for the settlement of losses;

(xvi) Make proposals with respect to the reorganization, dissolution, or request for bankruptcy of the company;

(xvii) Other rights and obligations as stipulated in the company charter.

Apart from the above rights, the Enterprise Law 2005 also allows members of the Board of Directors to request the Director or General Director, vice Director or General Director and managers of various company units to provide information and documents concerning the financial and operational situation of the company and of various units of the company. The managers must provide requested information fully, promptly and accurately.

2.2. Qualifications and conditions of members of the Board of Directors

Unlike the Enterprise Law 1999 the Enterprise Law 2005 does not insist that a member of the Board of Directors is a shareholder of the company and reside permanently in Vietnam (the specific number of members not residing in Vietnam will be stipulated by the company charter). According to the Enterprise Law 2005 members of the Board of Directors must meet the following qualifications:

(i) They must have the capacity for civil acts and not be prohibited from establishing an enterprise as stipulated in the Enterprise Law 2005;

(ii) They must be individual shareholders who own at least five percent of ordinary shares in the company or have expertise and experience in business management or a major business activity of the company or other qualifications as stipulated by the company charter. The Enterprise Law 2005 also stipulates that in subsidiaries in which the state-owned capital is 50 percent or more of the charter capital, members of the Board of Directors cannot be related persons of managers and persons who have the power to appoint managers of the holding company.

2.3. Convening meetings of the Board of Directors

Meetings of the Board of Directors can be ordinary or extraordinary. The meeting can take place at the head office of the company or elsewhere. Ordinary

meetings of the Board of Directors must be convened by the Chairman when necessary but they must take place at least once per quarter. The Enterprise Law 2005 (Article 112) requires the Chairman of the Board of Directors to convene a meeting of the Board of Directors if: (i) requested by the Supervision Board; (ii) requested by the Director or General Director or at least five other managers; (iii) requested by at least two members of the Board of Directors; (iv) other circumstances as stipulated in the company charter.

While the Enterprise Law 1999 only required a meeting of the Board of Directors when requested by the Supervision Board or others as stipulated in the company charter, the Enterprise Law 2005 has strengthened the right of other company managers to request the Board of Directors to convene meetings.

According to the Enterprise Law 2005, the Chairman of the Board of Directors must convene a meeting of the Board of Directors within fifteen (15) days of receiving a request for a meeting. If the Chairman fails to do so, he will be personally liable for any losses to the company and the requesting persons can act on behalf of the Board of Directors to convene the meeting. This stipulation is intended to force company managers to be more responsible in the management and operation of the company.

2.4. Conditions necessary to convene a meeting and approve the decisions of the Board of Directors

A meeting of the Board of Directors can convene if three quarters (¾) of members are in attendance. Members who do not directly participate in the meeting are entitled to a postal vote. A sealed envelope containing the vote must be sent to the Chairman of the Board of Directors at least one hour before the meeting. The envelope may only be opened in view of all participants in the meeting.

A decision of the Board of Directors is adopted with a majority of the participating members. If there is no majority the Chairman has the casting vote.

Members are obligated to participate in all meetings of the Board of Directors. Members can authorize another person to participate in their absence if a majority of members approved.

The Enterprise Law 2005 stipulates that meetings of the Board of Directors can be held with the participation of members of the Supervision Board and the Director or General Director (these persons are not entitled to vote). This means that decisions of the Board of Directors will be publicized to other managerial levels and will be under the supervision of the Supervision Board and shareholders.

3. Chairman of the Board of Directors

According to the Enterprise Law 2005 (Article 111) the Chairman of the Board of Directors will be elected either by the Shareholder General Assembly or the Board of Directors, in accordance with the company charter. If they are elected by the Board of Directors, the Chairman will be chosen from the members of the Board of Directors. The Chairman may simultaneously hold the post of the Director or General Director, unless otherwise stipulated in the company charter. In fact, the election of the Chairman should be conducted by the Board of Directors (to ensure flexibility in management activities) because the formalities and procedures of the Shareholder General Assembly are more complicated.

According to the Enterprise Law 2005 the Chairman of the Board of Directors only has general rights when running operations of the Board of Directors and chairing shareholders meetings but not when participating directly in the management of the company's operations. The Chairman of the Board of Directors has the following rights and obligations:

(i) Prepare working plans and programs of the Board of Directors;

(ii) Prepare or organize the agenda, content and materials for the meetings of the Board of Directors;

(iii) Convene and chair meetings of the Board of Directors;

(iv) Organize the adoption of the Board of Directors' decisions;

(v) Supervise the implementation of decisions adopted by the Board of Directors;

(vi) Chair the meetings of shareholders;

(vii) Other rights and obligations as stipulated in the company charter.

4. Director or General Director

According to the Enterprise Law 2005 (Article 116), the Board of Directors will appoint one among them or hire another person to act as the Director or General Director of the company. The Director or General Director will act as the legal representative of the company unless the company charter specifies that the Chairman of the Board of Directors assumes the role.

The Enterprise Law 2005 (Article 116) specifies that the Director or General Director of a shareholding company is not allowed to be simultaneously Director or General Director of other enterprises.

The Enterprise Law 2005 (Article 116) prescribes the following rights and obligations for a Director or General Director:

(i) Decide on all matters arising from the day-to-day business operations of the company that do not require a decision of the Board of Directors;

(ii) Arrange for the implementation of decisions adopted by the Board of Directors;

(iii) Arrange for the implementation of company business and investment plans;

(iv) Make proposals as to the organizational structure and the internal management rules of the company;

(v) Appoint, dismiss or remove managers of the company, except those within the power of the Board of Directors;

(vi) Determine the salary and allowances (if any) of employees of the company, including managers whose appointment is within the power of the Director or General Director;

(vii) Hire employees;

(viii) Make proposal as to the payment of dividends or settlement of losses of the company;

(ix) Other rights and obligations as stipulated by the laws, the company charter and decisions of the Board of Directors.

The Enterprise Law 2005 requires the Director or General Director of shareholding companies to satisfy qualifications and conditions similar to those of the Director or General Director of limited liability company with more than one member.

5. Supervision Board

The Supervision Board will be elected by the Shareholder General Assembly with three to five members unless otherwise provided in the company charter. The term of the Supervision Board will be no more than five (5) years and the members of the Supervision Board can serve an unlimited number of consecutive terms. The Supervision Board will act on behalf of the Shareholder

General Assembly to supervise the Board of Directors, members of the Board of Directors and the Director or General Director in the management and running of the company.

5.1. Rights and obligations of the Supervision Board

The Enterprise Law 2005 (Article 121) stipulates the following rights and obligations of the Supervision Board:

(i) The Supervision Board will supervise the Board of Directors and the Director or General Director in managing and running the company;

(ii) Review the reasonableness, lawfulness, trustworthiness and diligence of the management and running of business, accounting books, and financial statements; appraise reports on business performance, annual and half-year financial statements of the company, and reports evaluating the performance of the Board of Directors;

(iii) Submit a report appraising the company's annual business performance report, financial statements and performance report of the Board of Directors to the annual Shareholder General Assembly.

(iv) Check and review accounting books and other documents of the company or matters relating to the management and running of the company if necessary, or in pursuant to a decision of the Shareholder General Assembly, or at the request of a shareholder or a group of minority shareholders;

(v) Respond to requests for investigation by a shareholder or a group of minority shareholders within seven days of receipt of the request. The Supervision Board must report to the Board of Directors and the requesting shareholder or group of shareholders in relation to

investigated issues within 15 days of the conclusion of the investigation. Investigations must be undertaken in a manner that does not hinder normal operation of the Board of Directors or interrupt the normal business operations of the company;

(vi) Recommend the Board of Directors or the Shareholder General Assembly to take measures to adjust and improve the company management structure and business operation;

(vii) Upon discovering any violations of the duties of members of the Board of Directors or the Director or General Director the Supervision Board must immediately notify Board of Directors in writing and request the person who committed the violation to cease and indemnify losses;

(viii) Other rights and obligations as stipulated in the company charter and decisions of the Shareholder General Assembly;

(ix) The Supervision Board is entitled to make use of independent consulting service when carrying out assigned obligations.

The Supervision Board may consult the opinions of the Board of Directors before submitting reports, conclusions or recommendations to the Shareholder General Assembly.

Members of the Supervision Board are entitled to access to all files, documents of the company, which are retained at the head office, branches or other locations of the company and enter any location where the company managers and employees are working. The Board of Directors, members of the Board of Directors, Director or General Director, and other managers must provide full and prompt information and documents related to the management and business performance of the company upon request by the Supervision Board.

In addition to the aforesaid rights and duties, the Enterprise Law 2005 stipulates the following obligations of the Supervision Board:

(i) Be liable to the Shareholder General Assembly for its assigned responsibilities;

(ii) Comply with the law, rules and professional ethics when performing its assigned rights and obligations;

(iii) Be loyal, fiduciary, and diligent;

(iv) Not to reveal the company's confidential information;

(v) Not to make use of information, know-how and business opportunities of the company or abuse the position, power and assets of the company for the benefit of themselves or other individuals or organizations;

(vi) Compensate the company for any losses resulting from a violation of its obligations and return any profits gained thereof.

5.2. Qualifications and conditions for members of the Supervision Board

The Enterprise Law 2005 stipulates that members of the Supervision Board cannot be managers of the company and need not be shareholders or employees of the company. Members of the Supervision Board are required to satisfy following qualifications and conditions:

(i) Members must be 21 years older, have the capacity for civil acts and not be prohibited from establishing and managing enterprises as stipulated in the Enterprise Law 2005;

(ii) Members must not be the wife, husband, father, foster father, mother, foster father, child, adopted child or sibling of members of the Board of Directors, the Director or General Director or other managers of the company.

6. Common obligations of managers

According to the Enterprise Law 2005, members of the Board of Directors, the Director or General Director and other managers have the following common obligations:

(i) Performing their assigned rights and responsibilities in accordance with the Enterprise Law 2005, relevant laws, the company charter and the decisions of the Shareholder General Assembly;

(ii) Performing their assigned rights and obligations in a fiduciary, diligent and optimal manner in order to maximize the benefit of the company and the shareholders of the company;

(iii) Pledging loyalty to the company and the company shareholders. Managers are not permitted to make use of information, know-how, company business opportunities or abuse the position, powers and property of the company for the benefit of themselves or other organizations or individuals;

(iv) Promptly, fully and accurately notify the company of the enterprises in which they or related persons are the sole owner, have contributed capital or are a major shareholder. The notification must be displayed at the head office of the company and its branches.

(v) The Board of Directors and the Director or General Director are not entitled to pay increases or bonuses when the company is incapable of paying due debts.

The Enterprise Law 2005 also requires members of the Board of Directors, members of the Supervision Board, Director or General Director, and other managers of the company to disclose their interests related to the company, including:

(i) Name, head office address, business activities, number and issue date of business registration certificate, location of business registration in which company has capital contribution or shares; proportion and duration of capital contribution or shares;

(ii) Name, head office, business activities, number and issue date of business registration, location of business registration in which company or related persons individually or jointly own capital or shares equivalent to 35 percent of the charter capital.

New to the Enterprise Law 2005, this regulation increases the level of publicity and transparency of company manager interests to protect the rights and interests of shareholders. The Enterprise Law 2005 requires the above disclosure or any change or supplement to be made within seven working days of the date of arising benefits, supplements or changes thereof.

The above disclosures must be reported to the annual meeting of shareholders and permanently displayed at the company head office. Shareholders or their authorized representatives, members of the Board of Directors, the Supervision Board and the Director or General Director have the right to check the contents of the disclosure at any time if necessary. Members of the Board of Directors, the Director or General Director who, on their own behalf or on behalf of others, conduct any activity within the scope of company's business operations must explain the nature and contents of such activity to the Board of Directors and the Supervision Board. They may only undertake such an activity if it is approved by a majority of the members of the Board of Directors. If such an activity is carried out without disclosure or approval of the Board of Directors, any benefits gained from such activity will belong to the company.

7. Contracts and transactions of a shareholding company must be approved

Unlike the Enterprise Law 1999 and the Law on State-Owned Enterprises 2003 the Enterprise Law 2005 regulates that contracts and transactions between the company and shareholders or their authorized representatives who own more than 35 percent of the total ordinary shares of the company, members of the Board of Directors, the Director or General Director of the company and related persons and other cases must be approved by the Board of Directors (for transactions with a value of less than 50 percent of the total asset value of the enterprise as recorded in the latest financial statements or a smaller proportion as stipulated in the company charter) or by the Shareholder General Assembly for the remaining transactions.

Contracts or transactions that are concluded without the approval of the Board of Directors or the Shareholder General Assembly will be void and treated in accordance with the relevant laws. In such circumstances, the legal representative of the company, shareholders, members of the Board of Directors or the Director or General Director must compensate the company for any incurred losses and return all benefits resulting from such contracts or transactions.

Chapter 5

ENTERPRISE REORGANIZATION, DISSOLUTION AND BANKRUPTCY

This chapter covers the reorganization, dissolution and bankruptcy of enterprises and differences between the Enterprise Law 2005 and the Enterprise Law 1999.

A. REORGANIZATION

1. Division, separation and consolidation of enterprises

The Enterprise Law 2005 inherits from the Enterprise Law 1999 provisions on the procedures for the division, separation, consolidation and merger of enterprises. However, in order to ensure consistency with the laws on competition, the Enterprise Law 2005 introduces a number of new requirements which companies under consolidation and merger need to comply with before undertaking consolidation and merger procedures.

1.1. Division of enterprises

Pursuant to the Enterprise Law 2005, limited liability and shareholding companies can be divided into a number of companies of the same type. The division procedures applicable for limited liability and shareholding companies are provided for as follows:

(i) The decision to divide a limited liability or shareholding company is subject to the approval of the Member Assembly, the company owner, or the Shareholders' Meeting in conformity with the Enterprise Law 2005 and the company charter.

- The decision for company division must contain the following contents: name and head office address of the dividing enterprise; name of the divided enterprises; principles and procedures for the division of assets of dividing enterprise; the plan for labor usage; the duration

and procedures for the conversion of capital contribution, shares and bonds of the dividing enterprise into divided enterprises; principles and procedures as to the settlement of liabilities of dividing enterprise; duration of the division.

- The decision on the division of the enterprise must be sent to all creditors and employees of the dividing enterprise within 15 days of the date on which it is adopted.

(ii) The members, the owner, or shareholders of the divided companies will approve the charter thereof, elect or appoint the Chairman of the Member Assembly, the Chairman of the company, the Board of Directors and the Director or General Director and proceed with business registration as provided by the Enterprise Law 2005. In this circumstance, the business registration file will be enclosed with the decision on division of enterprise.

(iii) The dividing enterprise ceases to exist as soon as the business registration of the divided enterprises is completed. It is stipulated in the Enterprise Law 2005 that all divided enterprises will be jointly liable for outstanding debts, labor contracts, and other liabilities of the dividing enterprise or negotiate with creditors, customers or employees to specify one divided enterprise that will be liable for said liabilities.

1.2. Separation of enterprises

According to the Enterprise Law 2005, the separation of a limited liability or shareholding company is the transfer of a portion of the assets of an existing company (separating company) into one or more newly-established enterprises of the same type (separated companies). Alternatively, a proportion of the rights and liabilities of the separating company will be conveyed to the separated companies with the separated company continuing to exist.

The separation of a limited liability and shareholding company shall be carried out in compliance with the following provisions:

(i) A decision on the separation of the company will be adopted by the Member Assembly, the company owner, or the Shareholders' Meeting in conformity with the Enterprise Law 2005 and the company charter.

- Such a decision must contain the following contents: name and head office address of the separating company; the name of the separated company; plan on labor usage; assets, rights and obligations which will be transferred from the separating company to the separated company; the duration of the separation process.

- Creditors and employees of the separating company must be notified of the separation within 15 days of the date on which it is decided;

(ii) The members, the owner or the shareholders of the separated company will adopt the Charter thereof, elect or appoint the Chairman of the Member Assembly, the Chairman of the company, the Board of Directors and the Director or General Director, and proceed with business registration as provided by the Enterprise Law 2005. In this circumstance, the business registration file will be enclosed with the decision on the separation of the company;

(iii) According to the Enterprise Law 2005 the separating and the separated company will be jointly liable for outstanding debts, labor contracts, and other liabilities of the separating company, unless otherwise agreed by the separating company, separated company, and creditors, customers and employees of the separating company.

1.3. Consolidation of enterprises

The Enterprise Law 2005 defines enterprise consolidation as when two or more companies of the same type (consolidating companies) can be consolidated into a new company (consolidated company) by transferring all assets, rights, liabilities, and interests into the consolidated company and the consolidating companies cease to exist. The consolidation of companies must comply with the following provisions:

(i) Consolidating companies will prepare the consolidation contract. The contract must contain the following: the name and head office address of the consolidating companies; name and head office of the consolidated company; procedures and conditions for the consolidation; plans for labor usage; duration, procedures and conditions as to the transfer of assets; conversion of the capital contribution, shares and bonds of the consolidating companies into those of the consolidated company; duration for executing such consolidation; draft charter of the consolidated company;

(ii) The members, owners, or shareholders of the consolidating companies will approve the consolidation contract, the company charter, elect or appoint the Chairman of the Member Assembly, the Chairman of the company, the Board of Directors and the Director or General Director of the consolidated company and proceed with business registration as provided by the Enterprise Law 2005. In this circumstance, the business registration file will be enclosed with the consolidation contract.

(iii) The consolidation contract must be sent to all creditors and all employees must be notified within 15 days of the date it is adopted;

(iv) The consolidating companies will cease to exist as soon as the business registration of the consolidated company is completed.

The consolidated company will inherit all rights and interests as well as be liable for outstanding debts, labor contracts, and other liabilities of consolidating companies unless otherwise agreed by the consolidating companies.

A new provision of the Enterprise Law 2005 is that if the market share of the consolidated company is between 30 and 50 percent in the related market as a result of the consolidation, the legal representative of the consolidating companies must report to the competition controlling agency prior to the consolidation, unless otherwise provided by the law on competition. In addition, the Enterprise Law 2005 also strictly prohibits consolidation that leads to the creation of a company holding a market share of 50 percent or more in the related market, unless otherwise provided by the law on competition.

1.4. Merger of enterprises

The Enterprise Law 2005 defines a merger of enterprises as when one or more companies of the same type (merging company(ies)) can be merged into another existing company (merged company) by transferring all assets, rights, liabilities, and interests into the merged company and the merging company(ies) cease to exist. The merger of companies must comply with the following provisions:

(i) Related companies prepare the merger contract and the draft charter of the merged company. The contract must contain: the name and head office address of the merged company; the name and head office address of the merging company(ies); procedures and conditions for the merger; plans for labor usage; duration, procedures and conditions for the transfer of assets and conversion of the capital contribution, shares and bonds of the merging company(ies) into those of the merged company; and the duration of the merger;

(ii) The members, owners, or shareholders of related companies must

approve the merger contract and the company charter of the merged company and proceed with business registration as provided by Enterprise Law 2005. In this circumstance, the business registration file will be enclosed with the merger contract. The merger contract must be sent to all creditors and all employees must be notified within 15 days of the date it is adopted.

(iii) The merging company(ies) will cease to exist as soon as the business registration of the merged company is completed. The merged company will inherit all rights and interests and be liable for outstanding debts, labor contracts, and other liabilities of the merging company(ies).

As in the consolidation of enterprises, the Enterprise Law 2005 stipulates that if the market share of the merged company is between 30 and 50 percent of the related market as a result of the merger of companies, the legal representative of the merging company(ies) must report to the competition controlling agency prior to the merge, unless otherwise provided by the law on competition. The Enterprise Law 2005 strictly prohibits mergers that lead to the creation of a company holding a market share of more than 50 percent in related markets, unless otherwise provided by the law on competition.

2. Transformation of enterprises

2.1. Transformation of limited liability and shareholding companies

According to the Enterprise Law 2005, a limited liability company can be transformed into a shareholding company or vice versa. The transformation can be carried out in the following forms: (i) transformation of a sole member limited liability company into a shareholding company or vice versa; and (ii) transformation of a limited liability company with more than one member into a shareholding company or vice versa; Similar to the Enterprise Law 1999, the Enterprise Law 2005 regulates that:

(i) The Member Assembly, the company owner, or the Shareholders' Meeting will approve the decision to transform and the charter of the transformed company. The decision to transform must contain the following contents: name and address of the head office of the transforming company; and address of the head office of the transformed company; duration and conditions for the transfer of assets and the conversion of capital contributions, shares, and bonds of the transforming company into those of the transformed company; plans for labor usage; duration of the transformation.

(ii) The decision on transformation must be sent to all creditors and notified to employees within 15 days of the date on which it is adopted.

(iii) The transforming company will cease to exist as soon as the business registration of the transformed company is completed. The transformed company will inherit the rights and interests and be liable for outstanding debts, labor contracts, and other liabilities of the transforming company.

In addition, the Enterprise Law 2005 includes separate provisions on the transformation of sole member limited liability company, as follows:

(i) If the owner of a sole member limited liability company transfers a part of the charter capital to another organization and/or individual, the owner and the transferees are obligated to register the change in the number of members of the company with the Business Registrar within 15 days of the date of transferring capital. As soon as the registration for change of the company is completed, the company will be managed and operated in compliance with provisions applied to limited liability company with more than one member.

(ii) If the owner of a sole member limited liability company transfers all the charter capital to another individual, the transferee is obligated to register change in the company owner with the Business Registrar within 15 days of the date on which the transfer of capital is completed and the company will be managed and operated in compliance with provisions as to the sole member limited liability company whose owner is an individual.

2.2. Conversion of State-Owned Companies

All state-owned companies which are established under the Law on State-Owned Enterprises 2003 must be converted into a Limited Liability Company or Shareholding Company no later than four years from the date on which the Enterprise Law 2005 comes into force. The Law on State-Owned Enterprises 2003 will be applicable to matters that are not stipulated in the Enterprise Law 2005 within the time allowed for conversion.

2.3. Re-registration of foreign invested enterprises operating under the Law on Foreign Investment

Foreign invested enterprises established before the Enterprise Law 2005 comes into force are entitled to re-apply for business registration and re-organize the organizational structure of management in accordance to the Enterprise Law 2005 within two years from the date on which the Enterprise Law 2005 comes into force.

Enterprises that can choose to re-apply for business registration under the Enterprise Law 2005 include:

(i) Joint-ventures and 100 percent foreign invested capital enterprises with two or more owners can re-register to be limited liability companies with more than one member;

(ii) 100 percent foreign owned enterprises invested by foreign institutions or individuals can re-register to be sole member limited liability companies; and

(iii) Foreign invested joint-stock companies can re-register to be joint-stock companies.

Re-registered enterprises will inherit all legitimate rights and benefits, be liable for outstanding debts, labor contracts, and other liabilities of the foreign invested enterprises prior to conversion. The enterprises are entitled to operate in accordance with activities provided in the Investment Certificate and will continue to enjoy investment incentives stipulated in the Investment License with regard to the licensed investment projects except for investment incentives which are contrary to international treaties to which Vietnam is a member. The enterprises are allowed to keep their name, stamp, accounts, tax codes and custom codes.

Together with re-registration and re-organization in accordance with the Enterprise Law 2005, foreign invested enterprises have the right to apply to state authorized agencies to apply for a new Investment Certificate.

B. DISSOLUTION

1. Circumstances for dissolution of enterprises

Like the Enterprise Law 1999, the Enterprise Law 2005 stipulates that enterprises can be dissolved in the following cases:

(i) As stated in the company charter the company's operations come to an end and there is no decision to extend the duration of operations;

(ii) In pursuant to a decision made by the Member Assembly and the company owners for limited liability companies and by the Shareholders' Meeting for shareholding companies;

(iii) The minimum number of members of the company is lower than that required by the Enterprise Law 2005 for six consecutive months;

(iv) Revocation of the certificate of business registration.

2. Conditions for dissolution of enterprises

New to the Enterprise Law 2005 is the stipulation that the enterprise is only allowed to dissolve after paying off all debts and liabilities.

3. Dissolution procedure

The enterprise dissolution procedure is provided by the Enterprise Law 2005 and includes the following steps:

3.1. Adoption of a decision on dissolution.

Under the provisions of the Enterprise Law 2005, a decision to dissolve an enterprise must contain the following:

(i) Enterprise name and the head office address;

(ii) Reasons for dissolution;

(iii) Duration and procedures for settlement of contracts and payment of debts;

(iv) Methods for handling obligations arising from labor contracts;

(v) Full name and signature of the legal representative of the enterprise.

3.2. Sending of the dissolution decision

The decision on the dissolution of the enterprise must be sent to the Business

Registrar, creditors, people with related rights, interests, and obligations and employees and must be displayed at the enterprise head office within seven days of the date on which it is adopted.

Creditors shall be notified of the decision together with the method for settlement of debts, which must contain the following: name and address of the creditors; total value of debts; time limit, place and method for the payment of such debts and procedures and duration for registering complaints.

3.3. Publication of dissolution decision

The dissolution decision will be published in three consecutive issues of a printed or electronic newspaper if so demanded by the laws.

According to the Enterprise Law 1999, the dissolution decision needs to be publicly displayed in the enterprise's head office and published in three consecutive issues of local newspapers or central daily newspapers.

3.4. Liquidation of the enterprises' assets

The Member Assembly, the company owner or the Board of Directors is directly in charge of the liquidation of the enterprise's assets unless otherwise stipulated in the company charter. Debts and contracts must be settled within six (06) months of the date the dissolution decision is adopted.

3.5. Order of debt settlement

Enterprises' debts will be settled in the following order: outstanding salaries, allowances, social insurance as stipulated by law and other benefits of the employees as stipulated in the labor union agreement and labor contracts and finally outstanding taxes and other obligations.

3.6. After paying off all kinds of debts and enterprise dissolution costs

After the above debts have been paid off, the remaining assets will belong to members, shareholders or the company owner. The legal representative of the enterprise must submit a file related to the dissolution to the Business Registrar within seven days of the date the full payment of debts is made.

3.7. Removal of enterprise name

The Business Registrar will remove the name of the enterprise from its business registration system within seven days of receiving the file.

In the event that the BRC is revoked, enterprises are obligated to undertake the dissolution process within six months of the date on which their certificate of business registration is revoked. If, after six months from the date on which the certificate of business registration is revoked, the Business Registrar does not receive the dissolution file from the related enterprise, the enterprise will be considered dissolved and the Business Registrar can delete its name from the business registration system. In this case, the legal representative, members of the limited liability company, the owner of the sole member limited liability company and members of the Board of Directors of the shareholding company will be jointly liable for outstanding debts.

C. BANKRUPTCY

The Enterprise Law 2005 stipulates that the bankruptcy of an enterprise will be subject to the laws on bankruptcy. Accordingly, the bankruptcy of an enterprise will follow the provisions of the Law on Bankruptcy passed by the National Assembly dated 15/06/2004.

1. Criteria for bankruptcy

An enterprise is considered bankrupt if the following criteria are fully met:

(i) Having due debts: Due debts are debts which are not secured or partly secured (only the non-secured amount is taken into account), being confirmed clearly by parties, with adequate evident documents and paper and without dispute;

(ii) Debtors have already requested payment, but the enterprise is incapable of complying: There should be evidence that creditors have made a request for payment of due debts and the enterprise has failed to make the requested payment (such as debt claims from creditors or debt payment deferral of the enterprise).

2. Bankruptcy procedure

The bankruptcy procedure includes:

(i) Submission of an application for and opening bankruptcy procedure;

(ii) Recovery of business activities;

(iii) Liquidation of assets, debts;

(iv) Announcement of enterprise's bankruptcy.

Following a decision to open bankruptcy procedures, the Judge will consider and decide whether to apply one of the two procedures provided in point (ii) and (iii) above or to shift from the application of business activity recovery procedure into the application of assets and debts liquidation procedure, or announcement of enterprise's bankruptcy.

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