

THE GOVERNMENT

Decree No. 206/2013/ND-CP of December 9, 2013, on management of debts of enterprises with 100% State-owned charter capital

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Law on Enterprises;

At the proposal of the Minister of Finance,

The Government promulgates the Decree on management of debts of enterprises with 100% State-owned charter capital.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of application

This Decree prescribes the management and handling of outstanding debts of enterprises with 100% state-owned charter capital.

Article 2. Subjects of application

1. This Decree applies to:

a/ Single-member limited liability companies with 100% state-owned charter capital and established under decisions of the Prime Minister or ministries, ministerial-level agencies and government-attached agencies (below referred collectively to as line ministries) or People's Committees of provinces and centrally run cities (below referred to as provincial-level People's Committees), including:

- Single-member limited liability companies being parent companies of economic groups; parent companies of state corporations; parent companies in the parent company-subsidiary company model.

- Independent single-member limited liability companies.

b/ Authorized representatives at enterprises with 100% state-owned charter capital and authorized representatives for state capital at enterprises.

c/ Agencies, organizations and individuals related to the management and handling of debts of enterprises.

2. For enterprises with 100% state-owned charter capital operating in the fields with particular financial characteristics, the handling and

management of their outstanding debts comply with regulations and laws applicable to these fields.

Article 3. Interpretation of terms

In this Decree, the terms and phrases below are construed as follows:

1. Enterprise means a single-member limited liability company with 100% state-owned charter capital defined at Point a, Clause 1, Article 2 of this Decree.

2. Outstanding debts means overdue receivables which an enterprise cannot recover after having applied such handling measures as comparison, confirmation and urging of payment, and overdue payables an enterprise is unable to pay.

3. Bad debts means receivables which are overdue for over 6 months (counted according to the initial payment deadline, excluding the extended payment time) and an enterprise cannot recover after having applied such handling measures as comparison, confirmation and urging of payment; or receivables which are not yet due but whose debtors being economic institutions have fallen bankrupt, are carrying out procedures for dissolution or whose individual debtors are missing, have absconded, are being prosecuted, held in custody or adjudicated by law enforcement agencies, are serving court sentences or have died.

4. Irrecoverable debts means receivables which are overdue or are not yet due but fall into one of the following cases:

a/ Debtors being enterprises or institutions have been completely dissolved or gone bankrupt in accordance with law.

b/ Debtors being enterprises or institutions have terminated operation and are unable to pay debts and have nobody taking over their debt payment obligation.

c/ Individuals debtors have died, are missing or are still alive but have lost working capacity or civil act capacity, or their heirs under law have no payment capability.

d/ Debtors have obtained debt write-off decisions from competent agencies in accordance with law.

dd/ They are remaining amounts of irrecoverable debts after handling the responsibilities of individuals and collectives liable to pay material compensations.

e/ They are overdue for 1 year or more and the debtors still exist or operate but have run business at a loss for 3 or more consecutive years, meet extreme difficulties and have no payment capability, and the enterprise cannot recover such debts after having actively applied various measures.

5. Unpayable debts means due or overdue debts an enterprise is unable to pay to their creditors according to committed contracts.

6. Authorized representatives for state capital at enterprises means individuals authorized in writing by owners to exercise the rights and perform the responsibilities and obligations of owners at enterprises (below referred to as representatives).

Article 4. Principles of management and handling of debts

1. Enterprises shall draft and issue Regulations on debt management (applicable to both receivables and payables), clearly identifying responsibilities of collectives and individuals (Members' Council, chairperson of the Members' Council (company president), director general (director), chief accountant and other related persons) for monitoring, collecting and paying debts; comparing, confirming and classifying debts, urging the collection thereof and proactively handling outstanding debts according to this Decree.

2. For bad debts or unpayable debts, enterprises shall first of all make deductions to set up provisions according to regulations and apply every measure to recover debts and share difficulties with creditors and debtors in the handling of debts through freezing, rescheduling, write-off, purchase and sale. Enterprises shall report on cases beyond their handling capacity and competence to competent agencies for settlement support measures.

3. Receivables and payables in foreign currencies must be converted into Vietnam dong at the time of accounting and making financial statements in accordance with law. Exchange rate differences arising in a period and resulting from the revaluation of the balances of receivables and payables in foreign currencies at the end of a fiscal year must be handled under regulations of the Ministry of Finance.

4. Enterprises currently carrying out transformation procedures may immediately handle their outstanding debts under current state regulations on transformation of enterprises with 100% state capital.

5. Debt-handling measures must be implemented in a coordinated manner on the basis of arranging and increasing the effectiveness of enterprises in

order to generate sources for debt payment aiming to make their financial status sound and stable on the principle that borrowing enterprises shall pay and take self-responsibility for their loans.

6. Once every six months and at the end of the fiscal year, when making and submitting financial statements and supervision reports, enterprises shall make reports to the owners on the management and collection of debts, handling of outstanding debts and the debt payment capability and situation according to this Decree.

Chapter II

MANAGEMENT AND HANDLING OF RECEIVABLES OF ENTERPRISES

Section 1

MANAGEMENT OF RECEIVABLES OF ENTERPRISES

Article 5. Responsibilities of enterprises in the management of receivables

1. To issue and implement Regulations on debt management under Clause 1, Article 4 of this Decree, specifying responsibilities of collectives and individuals for monitoring and collecting receivables.
2. To open books to monitor debts by debtor; to regularly classify debts (undue, due, overdue, bad and irrecoverable debts), urge the collection of debts and periodically compare debts.
3. The Members' Councils, chairpersons of the Members' Councils (company presidents) and directors general (directors) of enterprises shall promptly handle bad and irrecoverable debts. If enterprises fail to handle in time irrecoverable debts according to regulations and have been reminded more than once by the owners, depending on the consequences of the late handling on the financial status and business results of enterprises, the owners shall decide on the forms of disciplining under law the chairpersons of the Members' Councils, Members' Councils, company presidents and directors general or directors; if the failure to handle in time irrecoverable debts causes losses to the owners' capital at the enterprises, they shall pay compensations with personal properties and take responsibility before the owners and law.
4. Enterprises shall make provisions according to regulations of the Ministry of Finance for bad debts upon identification.
5. Enterprises shall clearly identify objective or subjective causes of irrecoverable debts. For subjective causes, enterprises shall demand

responsible individuals and collectives to pay compensations. For objective causes, the Members' Councils, the Boards of Executives and related divisions shall clearly identify the causes and make written records thereof; if determining that these debts are related to production and business activities, enterprises may offset them with provisions for bad debts and account the remaining deficit, if any, into their business expenses.

6. After handling irrecoverable debts under Clause 5 of this Article, enterprises shall still monitor them off balance sheets and in the notes to financial statements for at least 10 years from the date of handling, and take measures to recover these debts. If recovering these debts, enterprises may account the recovered amounts minus related expenses as their incomes.

7. For enterprises that fail to issue a Regulation on debt management under Clause 1, Article 4 of this Decree, their Members' Councils and Boards of Executives shall be regarded as failing to fulfill their tasks (when their enterprises are rated), and they may not make deductions for the bonus fund for enterprise managers and may only receive 80% of monthly salaries.

For enterprises that fail to issue a Regulation on debt management although competent agencies have urged in writing more than once, their Members' Councils and Members' Council chairpersons, company presidents and directors general (directors) shall be removed as in the case of untruthful reporting on the financial status of enterprises.

Article 6. Powers of enterprises in the management of receivables

1. Enterprises may sell overdue, bad and irrecoverable debts in order to recover capital on the principle of making adequate provisions according to regulations. Enterprises may sell debts only to economic entities licensed to purchase and sell debts, but not directly to debtors.

2. Parties may agree on the sale prices of receivable debts on the basis of referring to prices of valuation organizations and market prices (if any) and take responsibility for decisions on sale of these debts. If the sale of debts makes enterprises suffer losses, lose capital or become insolvent and consequently be dissolved or fall bankrupt, the Members' Councils, chairpersons of the Members' Councils (company presidents) and directors general (directors) and persons directly related to the occurrence of bad debts shall pay compensations and be handled in accordance with law and the enterprises' charters.

3. The owners shall base themselves on the scale and lines of business, characteristics and value of debts of enterprises to decentralize the decision-making power to the Members' Councils (company presidents) and determine cases in which the sale prices of debts are lower than their book value to be reported by enterprises to the owners for decision. This level of decentralization must be specified in the enterprises' Regulation on financial management and Regulation on debt management.

4. Enterprises shall make debt sale plans (including production and business plans to be implemented with the proceeds from the debt sale) and compare with the non-sale of debts for decision or submission to the owners for consideration and approval before selling receivables under Clause 3 of this Article (the negative difference between the book value of debts and their sale price is offset with the provisions for bad debts). Enterprises shall further offset losses (if any) with revenues from production and business activities without causing loss to state-invested capital. If failing to do so, the chairpersons of the Members' Councils, the Members' Councils, company presidents and leaders of enterprises shall take joint responsibility therefor before the owners and law.

5. Other rights of enterprises, such as the right to lodge complaints or file lawsuits when unable to recover debts, the right to authorize or hire debt claim as prescribed by law.

Section 2

HANDLING OF OUTSTANDING RECEIVABLES OF ENTERPRISES

Article 7. Handling of irrecoverable debts

1. For operating enterprises, irrecoverable debts defined in Clause 4, Article 3 of this Decree must be handled in the following sequence:

a/ Enterprises clearly identify causes and responsibilities of collectives and individuals and request responsible collectives and individuals to pay compensations under law.

b/ Using the provisions for bad debts to offset.

c/ Accounting them into business expenses or incomes of enterprises on a case-by-case basis.

In case of selling debts in accordance with law, after clearly identifying causes and responsibilities of collectives and individuals and request responsible parties to pay compensation in accordance with law, enterprises may offset the negative difference between the value of debts

and the sale price with the provisions for bad debts and further account the remaining difference, if any, into their business expenses.

2. For enterprises currently undergoing transformation, if they suffer losses after handling once irrecoverable debts under Clause 1 of this Article, they may continue handling them under state regulations applicable to transformed enterprises.

3. For irrecoverable debts which have been handled (excluding sale of debts) but debtors still exist, enterprises shall continue monitoring them off balance sheet and in the notes to financial statement for at least 10 years from the date of handling, and take measures to recover these debts. If recovering these debts, enterprises may account the recovered amounts minus related expenses into their incomes.

Transformed enterprises shall hand over debts not included in their value according to regulations. Agencies receiving these debts shall continue monitoring and collecting irrecoverable debts which have been handled but whose debtors still exist. Pending the handover, enterprises are still responsible for monitoring and collecting these debts.

4. Enterprises may handle and account once irrecoverable debts into their annual production and business results according to Point c, Clause 1 of this Article.

Article 8. Handling of recoverable outstanding debts

1. For outstanding recoverable debts, enterprises shall actively urge and apply every measure to recover them.

2. For receivables that have been overdue for 6 months or more and are still recoverable, enterprises shall set up provisions and account them into their expenses in the year.

Article 9. Handling of state budget-related receivables of enterprises

1. Amounts supported or offset by the state budget according to regulations and approved by competent agencies but not yet allocated by a budget of any level must be fully allocated to enterprises by such budget.

2. Amounts remitted in excess by enterprises into a budget of any level must be refunded by such budget to the enterprises at the latter's request or subtracted from their payable amount of the subsequent period according to the law on tax administration.

3. For debts owed by enterprises due to non-allocation or insufficient allocation of capital for payment for capital construction investments

already made under works or projects invested with state budget capital, government bond capital or capital of budget origin; or for payment for the sale of assets and working offices to non-business units and state management agencies in localities under approved investment plans, ministries, sectors and localities with investment-deciding competence shall arrange budget capital for full and timely payment to enterprises under current laws. It is not allowed to request enterprises to advance capital for implementing projects for which the State has not yet arranged capital, which may cause capital construction debts.

4. Amounts to be paid by local budgets to enterprises whose assets have been mobilized for non-business units or state management agencies in localities must be paid by the localities to these enterprises from their budgets.

5. Enterprises' money amounts temporarily seized by state agencies in the process of examination, inspection or investigation must be returned to enterprises by the agencies that have decided on the seizure within 5 working days after there are conclusions that enterprises are not at fault or do not have to remedy the consequences.

Chapter III

MANAGEMENT AND HANDLING OF PAYABLES OF ENTERPRISES

Section 1

MANAGEMENT OF PAYABLES OF ENTERPRISES

Article 10. Responsibilities of enterprises in the management of payables

1. To issue and implement Regulations on debt management according to Clause 1, Article 4 of this Decree, assigning and clearly identifying responsibilities for monitoring and paying payables; to open books to fully monitor payables, including also payable interests; to classify by time payables (undue, due and overdue); to classify by nature payables (long-term, short-term, concessional, commercial, foreign, government-guaranteed, etc.); to fully monitor their committed or guaranteed amounts.

2. Enterprises shall ensure their ratio of payables to equity not exceeding three times according to the Government's regulations on financial management of enterprises with 100% state-owned charter capital. When wishing to raise capital in excess of the prescribed level for investment in important projects, enterprises shall draw up detailed plans, specifying the plan on debt payment and balance of cash flows for payment, and report

them to the owners for consideration and decision on the principle that capital must only be raised for projects that can ensure debt payment and effectiveness. Enterprises shall take responsibility for the projects' effectiveness and debt payment capability while the owners shall take responsibility before law for their decisions.

3. To draw up plans on debt payment and balance of cash flows to ensure debt payment sources; to pay debts according to committed schedule. To regularly review, assess and analyze their debt payment capability and prevent overdue debts. To account debts without creditors into their incomes.

4. The Members' Councils and chairpersons of the Members' Councils (company presidents) and directors generals (directors) shall manage and administer their enterprises to ensure debt payment capability; early identify difficulties in debt payment so as to take timely solutions for preventing overdue debts. The owners shall decide on disciplinary actions as prescribed by law against the chairpersons of the Members' Councils, the Members' Councils, company presidents and directors generals or directors that fail to take timely solutions and let their enterprises have debts overdue for over 6 months, depending on the consequences of this failure. If failing to take timely solutions resulting in insolvency, they shall bear responsibility before the owners and law.

5. Enterprises may only use the reward and welfare funds and the bonus fund for enterprise managers for the titles of the Members' Councils, director general (director), chief accountants and individuals related to debts after fully paying all debts and other asset liabilities on maturity (according to the initial debt payment deadline, excluding the extended payment time).

Article 11. Responsibilities of enterprises in raising capital

1. Enterprises may raise capital for investment, production and business activities under the Government's regulations on investment of state capital in enterprises and financial management of enterprises with 100% state-owned charter capital.

2. Enterprises shall carefully calculate and consider the raising of capital in terms of economic effectiveness. Enterprises may only use and invest raised capital for approved business purposes, focusing on core business lines, and not for other purposes. They shall strictly manage raised capital in order to bring about economic benefits. Enterprises shall pay both principal and interest according to commitments upon capital raising.

3. Enterprises shall draw up plans on capital raising, ensuring debt payment capability. For cases falling beyond their competence, they shall have these plans approved by competent authorities according to regulations on assignment and decentralization of the exercise of the rights and performance of the responsibilities and obligations of the state-owner, ensuring debt payment capability. Persons who approve capital raising plans shall inspect and supervise the use of raised capital, ensuring proper purposes, proper subjects and effectiveness.

4. Guarantee for subsidiary companies with 100% charter capital owned by parent companies and for companies with capital contributed by parent companies to raise capital or borrow loans from banks and credit institutions complies with the Government's regulations on investment of state capital in enterprises and financial management of state-owned enterprises. Projects to be guaranteed by parent companies must be appraised and assessed to ensure their effectiveness and debt payment capability of guaranteed companies. Parent companies shall closely supervise the use of loans for proper purposes and ensure timely payment of loans guaranteed by parent companies for enterprises.

5. If raised capital is used ineffectively or for improper purposes or the raising of capital violates regulations, causing asset loss and damage to enterprises, the chairpersons of the Members' Councils, the Members' Councils, company presidents, directors general or directors shall pay material compensations corresponding to such loss and damage, be disciplined or examined for penal liability, depending on the seriousness of their violations.

6. The owners shall closely supervise the raising of capital and use of raised capital by enterprises in order to prevent and promptly redress mistakes and avert damage to enterprises.

7. Annually, at the same time with making financial plans for the subsequent year, enterprises shall make plans on capital raising and plans on payment of debts which will become due in the subsequent fiscal year, and send them before July 31 of the reporting year to the owners and finance agencies for monitoring and supervision.

Section 2

HANDLING OF OUTSTANDING PAYABLES OF ENTERPRISES

Article 12. Tax arrears and state budget remittance

1. Tax arrears and state budget remittances of enterprises are handled in

accordance with the laws on taxes, charges and fees.

2. For enterprises transformed under Decree No. 109/2008/ND-CP of October 10, 2008, on sale and assignment of enterprises with 100% state capital and Decree No. 59/2011/ND-CP of July 18, 2011, on transformation of enterprises with 100% state capital into joint-stock companies, tax arrears and state budget remittances are handled in accordance with relevant laws.

3. For loans and advances from the state budget, enterprises shall repay them to the state budget under regulations. If failing to do so for objective reasons, enterprises shall report it to competent agencies for settlement on a case-by-case basis in accordance with law.

Article 13. Debts owed by enterprises to credit institutions

1. For operating enterprises that meet difficulties in paying overdue loans to credit institutions due to business losses, their debts are handled under the Government's relevant regulations and relevant laws currently in force on the handling of debts of credit institutions:

2. For transformed enterprises (under Decree No. 109/2008/ND-CP of October 10, 2008, on sale and assignment of enterprises with 100% state capital and Decree No. 59/2011/ND-CP of July 18, 2011, on transformation of enterprises with 100% state capital into joint-stock companies) that meet difficulties in paying overdue loans to credit institutions due to business losses, their debts are handled under current regulations on handling of outstanding debts. Enterprises shall take the initiative in coordinating with creditor banks and licensed debt purchase and sale organizations in handling overdue loans in lawful forms.

3. The handling of overdue loans borrowed by enterprises at the Vietnam Bank for Social Policies and Vietnam Development Bank complies with regulations of the Prime Minister.

Article 14. Handling of guaranteed payables

Organizations and individuals that have guaranteed enterprises to borrow loans and buy goods on deferred payment shall pay overdue debts for enterprises if the latter are unable to pay debts. Enterprises shall acknowledge and pay such debts to the guarantors in accordance with current law.

Article 15. Handling of social insurance debts

1. For transformed enterprises, before being transformed, they shall

definitely pay their social insurance debts.

2. For enterprises that are sold and whose debts are not taken over, the proceeds from the sale of enterprises are prioritized for payment of their debts to the social insurance agencies.

3. For operating enterprises or enterprises that have been transformed, their social insurance debts must be paid in accordance with law.

Article 16. Handling of debts owed to organizations and individuals

1. Enterprises that have obtained transformation decisions, shall, before being transformed, definitely pay all debts, due and overdue, to their institutional and individual creditors inside and outside the enterprises. If meeting difficulties in paying debts, they shall make written debt payment commitments and obtain the approval from the creditors. If wishing to raise more capital, restructure their debts and obtaining the approval from their creditors, such debts may be converted into shares in the transformed enterprises but must ensure compliance with the law on the minimum number of shareholders and the right to buy initial shares in the equitized enterprises.

2. Operating enterprises or enterprises that have been transformed shall pay their debts in accordance with law.

Article 17. Handling of insolvent enterprises

For enterprises that have conducted production and business activities at a great loss for a long time, have reorganized their production but are still unable to pay due debts, the owners may decide to sell these enterprises or let them go bankrupt under law. If it is necessary to maintain their operations, enterprises shall make plans on debt payment and handling of bad debts and effective business plans and have them approved by competent agencies or their owners. Line ministries and provincial-level People's Committees are competent to decide on the application of necessary measures to restore the enterprises' capability to pay due debts and business activities; and report on cases falling beyond their competence to the Prime Minister for consideration and decision.

Chapter IV

MANAGEMENT AND HANDLING OF DEBTS AT ENTERPRISES WITH STATE CAPITAL

Article 18. Management and handling of receivables and payables at enterprises with state capital

The management and handling of debts of enterprises with state capital in accordance with this Decree are performed through representatives.

At enterprises with state capital, representatives shall comply with directions of the owners in proposing and voting on the enterprises' management and handling of debts according to this Decree.

Article 19. Rights and responsibilities of representatives

1. Representatives authorized to exercise the rights and perform the obligations of the state- owner shall observe law, properly perform the tasks assigned by the state-owner; make reports on a periodical basis or at the request of the owners on the management of debts of enterprises with state capital; promptly report to the owners when enterprises fail to ensure the recovery and payment of debts, operate at a loss and fail to fulfill the objectives and tasks assigned by the owners, or commit other violations defined in this Decree.

2. If failing to promptly report to the owners on the management of debts of enterprises when enterprises fail to ensure the recovery and payment of debts, representatives shall be removed as in the case of making untruthful reports on the financial status of enterprises from the second time on. If failing to promptly report to the owners for settlement direction, leading to the insolvency of enterprises, they shall take responsibility before the owners and law.

Chapter V

**RIGHTS AND RESPONSIBILITIES OF MINISTRIES AND
PROVINCIAL-LEVEL PEOPLE'S COMMITTEES**

Article 20. Rights and responsibilities of line ministries and provincial-level People's Committees

1. To exercise the rights and perform their responsibilities within the scope of their functions and tasks defined by law. To regularly supervise, examine and assess debts of parent companies of state economic groups, parent companies of state corporations, and single-member limited liability companies established by line ministries or provincial-level People's Committees or assigned to them for management. If identifying any companies that meet difficulties in the recovery and payment of debts, line ministries and provincial-level People's Committees shall request and direct these companies to make remediation plans and report them to competent agencies for consideration and decision.

2. To direct and urge the Members' Councils, chairpersons of the

Members' Councils (company presidents) and directors general (directors) of enterprises to issue Regulations on debt management according to Clause 1, Article 4 of this Decree.

3. To direct representatives in voting and deciding on issues related to the management and handling of debts at the General Shareholders' Meetings or meetings of the Boards of Directors of enterprises with state capital.

4. To request representatives to regularly supervise and examine and report on a periodical basis or upon request on the management and handling of debts at enterprises with contributed state capital; to give timely directions when these enterprises fail to ensure recovery and payment of debts.

5. Annually before March 31, to make reports summarizing, analyzing and assessing debts of the previous year of state economic groups, state corporations and single-member limited liability companies and companies with contributed state capital established by line ministries and provincial-level People's Committees or assigned to them for management, to the Ministry of Finance for summarization and reporting to the Government.

Article 21. Rights and responsibilities of the Ministry of Finance

1. To assume the prime responsibility for studying and formulating for reporting to the Government mechanisms of management of debts of enterprises; to guide criteria for supervision and assessment of the debt payment capability of enterprises, and the setting up and use of provisions for bad debts.

2. To coordinate with line ministries and provincial-level People's Committees in supervising, inspecting and assessing debts of state economic groups, state corporations and single-member limited liability companies established by line ministries and provincial-level People's Committees or assigned to them for management.

3. To annually review and report on the situation of debts of enterprises to the Government.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 22. Effect

This Decree takes effect on February 1, 2014, and replaces the Government's Decree No. 69/2002/ND-CP of July 12, 2002, on management and handling of outstanding debts of state enterprises.

Article 23. Implementation responsibilities and organization of implementation

1. The chairpersons of the Members' Councils (company presidents) of parent companies mentioned at Point a, Clause 1, Article 2, shall, in pursuance to this Decree and relevant laws, issue Regulations on debt management at their enterprises within 90 days from the date this Decree takes effect.
2. Pursuant to this Decree and relevant laws, parents companies shall issue Regulations on debt management applicable to their subsidiary companies with 100% charter capital held by parent companies.
3. Ministers, chairpersons of provincial-level People's Committees, chairpersons of the Members' Councils, company presidents, directors general or directors of enterprises with 100% state-owned charter capital and authorized representatives for state capital invested in enterprises shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG