


## **New Law on Investment of State Capital in Enterprises**

**The State only invests its capital to form and maintain enterprises engaged in activities in some industries and fields in which other economic sectors do not investor enterprises in which the State needs to hold 100% charter capital or shareholdings or capital contributions.**

 This is clearly stated in the Law on Management and Use of State Capital Invested in Production and Business at Enterprises (the Law) with effect from this month.

The 10-chapter and 66-article Law also regulates the management and use of state capital in production and business activities at enterprises and supervision of the investment, management and use of the capital.

Investment, management and use of state capital at enterprises aim for directing, regulating and stabilizing the macro-economy in each period and boosting the national socio-economic development along the socialist orientation, according to the Law.

The Law also specifies powers and responsibilities of the representative of state ownership and direct representatives of the owner at enterprises in the investment and management of state capital at enterprises.

### **Forms of investment of state capital in enterprises**

Under the Law, state capital must be invested in enterprises in four forms:

- (i) Investment of state capital to establish enterprises with 100% charter capital owned by the State;
- (ii) Addition of charter capital for operating enterprises with 100% charter capital owned by the State;
- (iii) Addition of state capital to maintain the State's shareholding or capital contribution rates at joint-stock companies or limited liability companies with two or more members; and
- (iv) Investment of state capital to purchase parts of enterprises or whole enterprises.

The first form will be applied to enterprises that provide essential public products and services; operate in industries to directly serve national defense or security, operate in natural monopoly fields; or **apply** high technologies, make intensive investment and create momentum for fast development of other sectors and fields and the whole economy. The Prime Minister will decide on investment of state capital to establish enterprises whose assets for production and business activities are created from the implementation of important national projects decided by the National Assembly, and parent companies of state economic groups and enterprises conducting state capital investment and trading. The agencies representing the owner will decide to invest state capital to establish other enterprises. The addition of charter capital according to the second form will be permitted for effectively operating enterprises which are short of charter capital for carrying out their approved major production and business lines or enterprises operating to directly serve national defense and security whose charter capital is insufficient for performing tasks assigned by the State.

The addition of state capital according to the third form will be applied to the following cases: It is impossible to attract Vietnamese and foreign investors to invest in enterprises providing essential public products or services; and it is necessary to maintain the State's shareholding or capital contribution rates for the performance of national defense or security tasks.

The scope of investment of state capital to purchase parts of enterprises or whole enterprises according to the fourth form will cover enterprises subject to restructuring, directly serving national defense and security, or providing essential public products or services.

### **Representatives of state ownership**

The Law assigns the Government to exercise the rights and discharge the responsibilities of the representative of state ownership in the investment and management of state capital at enterprises.

The Prime Minister and agencies representing the owner of enterprises will exercise a number of rights and discharge a number of responsibilities of the representative of state ownership over enterprises established under their decisions or assigned to them for management. They will also exercise the rights and discharge the responsibilities of the representative of state ownership over state capital amounts invested in joint-stock companies and limited liability companies with two or more members.

Direct representatives of the owner will exercise the rights and discharge the responsibilities of the representative of state ownership at enterprises in accordance with law.

Rights and responsibilities of representatives of state ownership are defined in Chapter V of the Law.

Under the principles laid down in the Law, agencies representing the owner and state management agencies are prohibited from directly interfering into production and business activities of enterprises and administration activities of enterprise managers. The management of state capital invested at enterprises must be conducted through direct representatives of the owner or representatives of state capital amounts and ensure that enterprises carry out production and business activities according to the market mechanism and on an equal, cooperative and competitive basis.

Source: <http://vietnamlawmagazine.vn/>