

The Government is now submitting to National Assembly the draft law on state enterprise and decided establishment of corporations such as Electricity of Vietnam, VN Cement Corporation, VN Coal Corporation...Concerning documents having been issued or drafted, we wish to give some opinions about managerial mechanism toward this form of enterprise.

1. As for name, should state enterprise be called "company" or "corporation" as in current habit? Should an enterprise, having many owners with 50% capital pooled by the State, be identified as a state enterprise?

Vietnam has Law on Private Company and Company Law. These laws define clearly two forms of enterprise:

- The private company is the one which only one private owner formed with his/her own capital.

- The joint-stock company or the limited liability company is the one which many owners from various economic sectors formed with their stakes.

We should observe this definition. This means we should use the name "state enterprise" only to imply the form of enterprise owned by only the State.

Therefore, an enterprise having many owners, although the State had majority stake and highest authority,

should be called "company" (joint-stock or limited liability). On the contrary, an enterprise owned by only the State should be officially called state enterprise instead of "company" or "corporation" as before.

The State can place enterprises with its majority stake in the system of enterprises in the public sector, but should not assimilate their specific name in the general system.

This clear definition is necessary for appropriate policies on every kind of enterprise and aims to help entities identify the legal person of an enterprise by its name. As a matter of fact, not a few people still mistake when looking at the name "company".

Moreover, if an enterprise having many owners, but the State is the big boss, is considered as state enterprise, this will cause an impression about inequality among its owners. I'm afraid that this kind of enterprise can hardly attract stakes from other economic sectors since they fear the managerial mechanism of state enterprise will dominate the whole enterprise, breaking the fair play as in the form "company". The inferior shareholders also need protection of law toward their interests.

2. Should the kind of state enterprise with "insufficiently legal person" and dependent accountancy be maintained?

According to Article 1 of Decree No 17/HDBT dated Jan 16, 1990, "legal

entity" is an establishment meeting the following conditions: being legally formed in accordance with legal documents, having its own assets and taking responsibility by these assets, having the right to decide its activities independently, and being entitled to take part in legal relations on its own.

So far, maybe there are no country including Vietnam, having issued any legal documents stipulating "insufficiently legal" by conditions different from these above ones. Therefore, exactly, an establishment has or has no legal person but it cannot have "insufficiently legal person". As a result of this, the state enterprises with dependent accountancy should be transformed into state ones with legal person and independent accountancy if they meet enough conditions or they need be disbanded and merged into other state enterprises if they do not have conditions to exist.

Once the Government still maintains state enterprises with "insufficiently legal person", it will violate law or stand over law in comparison with other economic sectors which are not permitted to form the same kind of enterprise.

Moreover, if the State still keeps this kind, its re-arrangement and reorganization of the system of state enterprise is only nominal. Before Decree 388/HDBT, there were 12,000 state enterprises throughout the country, at present what is the real

RENOVATING THE MANAGERIAL MECHANISM OF STATE ENTERPRISE - BASIC ISSUES NEED CONCERNING

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number of disbanded enterprises?

Potentials and the right to exploit potentials of the system of state enterprises are still dispersed. Its planned target to play a leading role in the economy seems hardly successful if the dispersion is not overcome.

3. Is the state enterprise the one which admits limited or unlimited liability for its debts and commitments?

To date, many documents concerning the managerial mechanism have only stated vaguely that the state enterprise takes charge of its performance and commitments on its own. Therefore, it should be clarified who is liable and to what extent.

In fact, a foreign businessman asked a state enterprise's director about limited and unlimited liability of his enterprise, he answered, "Please be assured, behind me is the State of Socialist Republic of Vietnam". As a result of this, the enterprise's debts totalling tens of billion đồng has become a burden of the State budget, this means all the people have to suffer from mistakes of their "employee".

It is obvious since any enterprise's owner has responsibility for the enterprise's debts caused by him/her or his/her employees. The issue in the state enterprise is that our people (the owner) - their representative is the Government - will determine how the director is liable for his/her serious mistakes.

In the market mechanism - especially in credit relations - it is essential to know well an enterprise's credit status - limited or unlimited liability. So Law on State Enterprise should not neglect this issue. Besides, in my opinion, apart from some enterprises of important branches identified as unlimited liability ones, most state enterprises should have limited liability to the extent of the capital assigned by the State. At the same time the State should stipulate a limit of expense and credit which every director of a state enterprise is allowed to decide.

The state enterprise's feature of limited or unlimited liability should be publicized when it is established and be clearly stated in business relations. This aims to help its partner know the risk in its credit relations as the same of joint-stock company, limited company. We hope this is defined in Law on State Enterprise, contributing to bettering the current system of state enterprise.

4. As for the managerial committee of "corporation" or state enterprise

In the trend of separating function of business management of state enterprise from State management

agencies, a managerial committee is considerably necessary for playing a role as a "ruler" instead of an authorized department or ministry. However, the institution of managerial committee still has many issues to review in documents stipulating this organ.

The managerial committee is defined as an organ having highest right to decide the state enterprise's performance. Nevertheless, the following stipulations will lower this right, or in other words, it is only "empty right".

- The managerial committee together with the director of state enterprise signs to receive kinds of assigned capital.

- The director of state enterprise is a representative of legal person in every business relations.

- Most rights and obligations of the managerial committee are the ones to "propose" in accordance with opinions of the authorized department and minister or of the director.

It can be seen that the state management agencies, which the managerial committee have to consult and petition, have representatives in the managerial committee. Also, the directors, who the managerial committee have to depend on their proposals, are its members.

Therefore, the managerial committee still has the feature of "intermediate", "front", "community" which the directors depend upon. Meanwhile the real right to decide still belongs to the authorized department, ministry and the director.

Should there be directors in the managerial committee and the supervisory board? I think members of three organs - the managerial committee, the supervisory board, the board of directors - are employees of the State (of the people) to perform various functions. Directors are hired to work under the rule of the managerial committee and under the supervision of the supervisory board. They have to report, answer the questions of the committee and the board. Therefore they cannot vote in the committee or the board to approve their own reports and answers.

For the time being, some opinions suggest there should be representatives of associations or of workers in the committee. It is a pending thing in many people's mind when they think leaders of state enterprise have to comprise chiefs of Party, Youth Union, Trade Union or the enterprise council elected by workers. Otherwise, they argue there is self-provided capital in state enterprise, so there should be representatives of this capital source in the committee.

In fact, the owner of state enterprise is the people who will suffer from every loss if any, on the contrary when producing profits, they have right to enjoy them. The so-called "self-provided capital" really originates from profits accumulated and generated from the capital assigned by the State along with the previous legal entity's advantages. As a result of this, the "self-provided capital" is not the private one of any organization or workers, consequently, their representatives have no need to become members of the committee.

5. Finally, the key issue in the managerial mechanism of state enterprise is still the personnel policy. The enterprise's ups and downs will depend upon the way of employing staff and workers such as appointing, dismissing, rewarding and disciplining - especially for members of the managerial committee, the supervisory board and directors.

Why don't we affirm that every staff and workers - from the chairperson of the committee to the directors, supervisors and workers - are employees of the owner - the State - to represent it to do business in accordance with the targets planned by the owner?

At present, the owners of many giants in the world find it unnecessary to participate in the executive committees. The great capitalists do not have enough time to attend the meeting of the executive committees in companies they had stakes. They hire experts and mandate them to take part in the executive committees to rule the company according to their direction. If the representatives do not correctly perform their function, obligation and right, they will be replaced. They are prepared for hiring other experts to appoint in the committees.

Then can the owner - the State - do the same thing? The managerial mechanism of joint-stock company in many developed countries has shown that the right of ownership is rather separated from the one to manage the company's assets but the company still operate effectively. The key issue is how the owner can recruit and supervise the person who enjoys the right to use the company's assets. Even the concept of "employee" should be adjusted in the modern time.

We think these are key issues to settle completely. This will cause a breakthrough in a series of detailed issues in the managerial mechanism of state enterprise at present such as mechanisms of accountancy, salary, recruitment - appointment and supervision ♣