

The equitization is still the focus of attention in the process of rearranging the system of state companies (SCs) and diversifying the ownership of means of production. The development of SCs in the past and present proved that the policy to equitize SCs is right and appropriate to the competition law in the mixed economy.

At the end of 1995, the amount of SCs reduced to 5,900 but the public sector still faced many difficulties and its business performance became poorer and poorer. According to an incomplete survey of SCs in 51 provinces and cities, the total profit made by 3,528 SCs (59% of the amount of SCs) was VND2,800 billion and their profit ratio was 9% a year (9.4% for centrally-

run ones and 8.4% for locally-run ones), that is, lower than the bank lending rate. Their doubtful debt and aggregate losses by the end of 1997 amounted to VND3,046 billion, equaling 9.8% public assets in the public sector (VND1,006 billion by centrally-run SCs and 2,027 billion by locally-run ones).

After official classification, 37% of SCs made some profit (44% of centrally-run SCs and 35% of locally-run ones were profitable), 46.6% of them met with certain difficulties (suffering total loss and doubtful debt of VND1,135 billion) and 16.6% of them were loss making (some VND1,763 billion and 75% of government capital invested in them). Generally, 63% of SCs are making

and 4,966 billion by centrally-run ones) and this figure was 170,000 billion at the beginning of 1998 (receivable debt was VND75,000 billion and payable debt 95,000 billion.) This situation makes the policy to equitize SCs a life-saver. However, foreign experience and realities of Vietnam's economy show that, the model of joint-stock com-

## NEW REGULATIONS ABOUT THE EQUITIZATION OF STATE COMPANIES

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pany isn't a magic wand to the public sector, and the economy as a whole. So the Government has decided to rearrange the system of SCs by classifying them into groups to be equitized, merged, leased out, sold or declared bankrupt. At the first stage, some 50% of SCs would be put in the list and in the long run the system of SCs would be rearranged in this way or other (according to Article 8, Section 3 of the Decree 44/1998/ND-CP issued on June 29, 1998 by the Government) and finally reduced to some 200 SCs only.

### II. LOOKING BACK AT THE SC EQUITIZATION PROGRAM

The equitization of SCs was first mentioned in 1990, and then, in many VCP resolutions and Government's decrees, and a pilot program to equitize SCs was worked out by the VCP Central Committee on Dec. 4, 1991. In the past eight years, a series of decisions have

### I. DEVELOPMENT OF SCs SINCE 1992

Up to 1992, there were 12,729 SCs, including some 3,000 state farms and agriculture promotion agencies. Their fixed assets were worth VND27,817 billion representing 34.5% of social wealth and 26.3% of social income. Up to

run ones and 8.4% for locally-run ones), that is, lower than the bank lending rate. Their doubtful debt and aggregate losses by the end of 1997 amounted to VND3,046 billion, equaling 9.8% public assets in the public sector (VND1,006 billion by centrally-run SCs and 2,027 billion by locally-run ones).

no profit.

The official classification made no mention of the outstanding debt of VND170,000 billion which needs to be restructured. More exactly, the total unsettled debt among SCs in 61 cities and provinces up to April 1997 reached VND16,000 billion (11,442 billion by locally-run SCs

been made in order to accelerate this program: Decrees 143-HBBT (May 10, 1990), 202-CT and 203-CT (June 8, 1992), 28/CP (May, 7, 1996), 25/CP (March 26, 1997) and 44/NĐ-CP (June 29, 1998). Although these documents aren't detailed enough to perfect the legal basis for this program, but together with the Companies Law, they could allow the Government to carry out this program on larger scale as required by the Decree 44/1998/NĐ-CP issued recently.

However, looking back at the realization of this program in the past eight years, we must admit that it has gone too slowly:

+ In the years 1992-95, only 5 out of 21 SCs in the equitization list were equitized.

+ In 1996 and 1997, 13 more SCs were equitized raising the number of equitized SCs to 18.

+ From 1997 to June 1998, 11 more SCs were equitized although the Government had issued Decree 28/CP to speed up this program.

+ In 1998, both central and local governments made a joint effort to accelerate this program with a view to getting everything prepared for integration into ASEAN and APEC. The Decree 44/1998/NĐ-CP made plan to equitize some 150 SCs and up to July 1998, 102 SCs were on their way to equitization, 12 of them were finishing necessary preparations to turn into joint-stock companies. Thus, in comparison with the years 1992-97, the equitization program made good progress in 1998 although the target of equitizing 150 SCs hasn't been achieved.

It's worth noting that this program has become a focus of attention for both local and central governments. The Equitization Board has held many workshops about different issues relating to this pro-

gram (legal infrastructure, revaluation of assets, preferential treatment to laborers, sale of shares, equitization procedures, etc.). But generally, the equitization process is still slow in comparison with the plan set forth by the Government. Up to now, this program hasn't been carried out in five min-

erential policies, use of proceeds from the sale of shares, revaluation of SC assets, rights to buy shares, etc.

#### 1. Main contents of Decree 28/CP and 25/CP

Generally, those two Decrees concentrate on the following issues:

a. Buyers to offer: main target buyers of the

tified by official auditing companies, coefficient of advantage of the SC, public image of the SC, business performance of the SC in 3 years before equitization, and value of the land-use rights (Article 8, Decree 28/CP).

f. Equitization patterns: there are three alternatives (1) retaining the ex-



istries, 11 corporations and 34 cities or provinces. In 30 localities, a plan to rearrange local SCs hasn't even been made although the Government stressed that "The management of the SC that refuses its responsibility or fails to carry out this program must be replaced."

In short, the speed of the equitization program is still slow but it is being carried out on a large scale.

### III. NEW REGULATIONS ABOUT THE EQUITIZATION OF SC

Decree 28/CP issued on May 7, 1996 and its supplementary Decree 25/CP issued on March 26, 1997 introduced many new directions and regulations to the program, but it's the Decree 44/1998/NĐ-CP dated June 29, 1998 that made these regulations and directions more open and attractive in terms of pref-

erential policies, use of proceeds from the sale of shares, revaluation of SC assets, rights to buy shares, etc.

b. The pilot scheme to sell shares to foreign individuals and organizations will be done according to guidelines from the PM (Article 3).

c. Sale of shares should be made publicly and proceeds from the sale should be turned into fixed investment in the SC (Article 5).

d. Sufficient conditions for an SC to be equitized are: being of small and medium sizes, not being included in the group of SCs that should be under public ownership, and, having feasible business strategies (Article 7, Chapter II, Decree 28/CP).

e. Revaluation of assets of SC under equitization will be based on: The SC's accounting data cer-

ifying value of the SC and issuing new shares, (2) selling part of the SC existing value, and (3) equitizing part of the SC.

g. Preferential treatment to SC under equitization (Article 10, Decree 28/CP) includes six clauses:

- A 50% reduction in company income tax for two successive years after equitization.

- Exemption from registration fee when transferring assets from an SC to a joint stock company after equitization.

- Right to secure loans from state-owned commercial banks according to policy applied to state-owned companies.

- Right to export and import goods according to current regulations.

- Right to distribute existing bonus and beneficial funds among laborers in order to encourage them to buy shares.

- Right to enter ex-

penses on equitization on real accounts.

h. Preferential treatment to laborers (Article 11, Decree 28/CP)

- Right to receive from the State an amount of shares according to their seniority and performance: These shares bear dividend and could be passed by inheritance but couldn't be transferred because they are still under the ownership by the State (the laborer is allowed to receive dividend only). The value of shares received mustn't higher than the laborer's 6-month wages. The amount of shares granted to all laborers mustn't exceed 10% of the SC value.

- Right to buy some shares on credit and pay in 5 yearly instalments at an interest rate of 4% a year: The total amount of shares sold on credit to all laborers mustn't exceed 15% of the SC value. As for SC whose retained profit equals 40% of the SC value or more, the total value of shares sold on credit mustn't exceed 20% of the SC value.

- Right to work for the joint stock company after equitization: If the company needs restructuring after equitization, laborers, if incompetent, will not be fired in the first year after the equitization. If fired, they have rights to enjoy all compensations according to the current Labor Code.

i. Authority to equitize an SC: At first, Decree 28/CP (Article 14) allowed provincial governments (or ministries and municipal governments) to equitize SCs worth VND3 billion and under, and the Equitization Board to equitize bigger ones with approval from the PM. According to Decree 25/CP dated March 26, 1997, however, the above-mentioned limit was raised from VND3 billion to 10 million with a view to accelerating and facilitating the equitization program in localities.

## 2. New regulations set forth by Decree 44/1998/NĐ-CP

Main new regulations in this Decree are as follows:

a. Buyers to offer: Offer for sale of shares is made to all Vietnamese nationals, instead of aiming only at laborers of the SC (Article 2).

b. Equitization patterns: besides three alternatives in the previous Decrees, a new one was introduced by this Decree (Article 7): selling all value under the state ownership in the SC. Thus, the equitization is rather like the privatization of SCs that need not to be under the state ownership. This open regulation is appropriate to many SCs of this kind. However, the group of such SCs represents only a small percentage of SCs.

c. As for companies in which the state holds no share, Article 8 of this Decree puts "no limit on the amount of shares hold by one shareholder, however, the total number of shareholders should be at least seven as required by the Companies Law."

d. As for loan capital before equitization, it could be converted into shares after getting approval from the lenders (Article 8).

e. It's worth noting that the Decree had limited the number of preference shares in order to prevent state officials from corruption (Article 8). This regulation also helps to ensure healthy operation for the company after equitization.

f. Use of proceeds: Unlike Decree 28/CP, Decree 44/CP introduced more detailed regulation regarding this issue. Proceeds from the sale of shares would be used for supplying training courses to laborers, making payment to redundancies, increasing fixed investment in the equitized SC, and supplying additional capital to other SCs.

g. Revaluation of assets:

The Article 11 of the Decree ruled that:

+ Real value of SC capital is the real value of the SC minus total outstanding debt.

+ Real value of SC assets is determined by their current state, quality, features and value to the buyer and by market prices. As for fixed and current assets which have been evaluated, the Circular 104/1998/TT-BTC issued by the Ministry of Finance on July 18, 1998 has their values determined by the following formula:

Real value of assets = number of units x market price of each unit x remaining value of assets after depreciation (%)

+ Advantage of the SC: This advantage could be determined by profit ratio in the 3-year period before the equitization and a maximum value of 30% is credited to the real value of the SC. If the advantage value hasn't been worked out yet, the above-mentioned Circular rules that it could be determined by the excess profit ratio in the 3-year period before the time when the revaluation of assets takes place. So the advantage value is worked out by the following formulas:

Average profit ratio in the 3-year period = Total profits gained in 3 years : Total capital allocated by the state in the 3 years

Excess profit ratio = Average profit ratio in the 3-year period - Average profit ratio of companies in the same industry and the same locality

Advantage value = Total capital allocated by the state in the 3 years x Excess profit ratio x 30%

+ When evaluating the real value of the SC, it isn't necessary to hire independent auditor. Expenses on auditing service, if any, could be included in total equitization ex-

pense.

h. Preferential treatment to laborers:

- The state sells shares to laborers at preferential price (reduced by 30%). For each working year, the labor is allowed to buy 10 shares at most (the face value of a share is VND100,000).

- Total reduction in share price offered to laborers mustn't exceed 20% of total value of the state capital put in the SC.

- As for SC whose retained profit equals 40% of the SC value or more, the total value of shares sold at reduced price mustn't exceed 30% of the SC value.

- Poor laborers in the company are allowed to pay for these shares after three years to get right to receive dividend, or pay in 10 yearly interest-free instalments. The value of shares sold to these poor laborers mustn't exceed 20% of total shares sold at preferential price by the state.

The Decree 44/CP allows sale of shares at preferential price to all laborers and sale of shares on credit or on a long-term instalment plan to poor laborers (not to laborers in general). This regulation ensures all laborers the ownership of part of the company.

In short, Decree 44/1998/CP introduced more open and realistic regulations in comparison with previous decrees. It reflects the Government's determination to rearrange the system of SCs with a view to developing the economy. This program is making good progress in all localities. The problem today is how fast the program is carried out and what plans should be made to ensure good business performance for companies after equitization. Although many difficulties still exist, recent developments in the program are encouraging and promising. ■