

State Enterprises;

At the proposal of the Minister of Planning and Investment,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Regulation scope

This Decree provides for:

1. Criteria and list of public-utility products and services.

2. The establishment, reorganization, management and operation of special State enterprises in direct service of defense or security.

3. The reorganization, management and operation of State-owned companies performing public-utility tasks.

4. The participation of enterprises of various economic sectors and cooperatives in the production and supply of public-utility products and services.

Article 2.- Application subjects

This Decree applies to State enterprises, enterprises of other economic sectors and cooperatives, which can make business registration according to law provisions and are involved in the production and supply of public-utility products and/or services.

Article 3.- Criteria for identification of public-utility products and services

DECREE No. 31/2005/ND-CP OF MARCH 11, 2005 ON THE PRODUCTION AND SUPPLY OF PUBLIC-UTILITY PRODUCTS AND SERVICES

THE GOVERNMENT

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

Pursuant to the November 26, 2003 Law on

Products or services are identified as the public-utility ones when they fully meet the following conditions:

1. They are essential to the socio-economic life of the country or the population community of a territorial region or to the national defense and security.

2. The production and supply of such products or services under the market mechanism can hardly *make up for expenses*.

3. They are produced or supplied on competent State agencies' orders or under assigned plans or bidding at prices or charges set by the State.

Article 4.- Lists of public-utility products and services

1. The lists of public-utility products and services are provided in the Appendix issued together with this Decree.

2. In each period, the Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with the relevant agencies in, submitting to the Prime Minister for decision amendments or supplements to the lists of public-utility products and services.

Article 5.- Modes of supply of public-utility products and services and selection principles

1. The production and supply of public-utility products and services specified in List A of the Appendix to this Decree shall be undertaken by the special State companies directly serving defense or security (hereinafter called defense or security companies) by mode of order placement or plan assignment.

2. The production and supply of public-utility products and services specified in List B of the Appendix to this Decree shall be undertaken by:

a/ State-owned companies which perform public-utility tasks, by mode of order placement or plan assignment;

b/ State enterprises other than those defined at Point a, Clause 2 of this Article, enterprises of other economic sectors and cooperatives, by mode of order placement.

3. The production and supply of public-utility products and services specified in List C of the Appendix to this Decree shall be undertaken by State enterprises, enterprises of other economic sectors or cooperatives, by mode of bidding or order placement.

4. With regard to public-utility products and services to which either of the two above-mentioned modes may apply, the selection of the mode of their production and supply shall comply with the following order of priority:

- a/ Bidding;
- b/ Placing orders;
- c/ Assigning plans.

Article 6.- Rights and obligations of enterprises involved in the production and supply of public-utility products and services

1. For enterprises of any economic sector and cooperatives:

a/ To sign contracts and conduct economic cost-accounting according to the provisions of law; to be answerable to their customers and law for public-utility products and services they supply;

b/ To sufficiently supply public-utility products

and services, ensuring the set quality, the right objects and timeliness;

c/ To get paid by the State at the price or charge rates already approved by competent State agencies;

d/ To be supported and given favorable conditions for the production and supply of public-utility products and services under the State's regulations.

2. For State-owned companies:

Apart from the rights and obligations of enterprises involved in the production and supply of public-utility products and services defined in Clause 1 of this Article, State-owned companies shall have the rights and obligations provided for in Clauses 1, 2, 3, 4 and 5, Article 19 of the State Enterprise Law and in the Regulation on financial management of State-owned companies and management of the State's capital invested in other enterprises.

Chapter II

DEFENSE OR SECURITY COMPANIES

Article 7.- Defense or security companies

1. Defense or security companies are State-owned companies which are designed and invested for establishment to directly perform stable and regular tasks in the domains and areas in direct service of defense or security and to guarantee the national secrets on the State's orders or under its assigned plans.

2. Criteria for being recognized as defense or security companies

A defense or security company must fully meet

the following criteria:

a/ Being established under decision of the competent State agency according to law provisions on State-owned companies;

b/ Being placed with orders or assigned plans by the State in a stable and regular manner to produce and/or supply one or a number of public-utility products and/or services in performance of defense or security tasks defined in List A of the Appendix to this Decree.

Article 8.- Establishment of defense or security companies

The establishment of defense or security companies shall comply with the Government's regulations on the establishment, reorganization and dissolution of State-owned companies and relevant guiding documents.

Depending on the nature of the assigned tasks, the Defense Minister, the Minister of Public Security or the director of the Government's Cipher Department shall decide on the members of an Evaluation Council for schemes on the establishment of defense or security companies.

Article 9.- Reorganization of defense or security companies

1. Based on the criteria defined in Clause 2, Article 7 of this Decree, the Defense Minister, the Public Security Minister or the director of the Government's Cipher Department shall consider and decide to recognize each of the companies under their respective management as a defense or security company, then annually consider and re-recognize such companies, report to the Prime Minister thereon and notify such to the Planning and Investment Ministry and the Finance Ministry.

2. With regard to the companies not recognized as defense or security companies, they shall be reorganized according to the criteria and list of classified State-owned companies and independent cost-accounting companies of State corporations, issued by the Prime Minister, and the Scheme on reorganization of State enterprises already approved by the Prime Minister.

3. The merger, consolidation, division, separation and dissolution of defense and security companies shall comply with the Government's regulations.

Article 10.- Organization of management of defense or security companies

The organizational and managerial structure of a defense or security company consists of the general director or director and an assisting apparatus.

The defense or security companies' general directors or directors, deputy general directors or deputy directors, chief accountants and other important managerial positions as well as positions directly related to the performance of defense and security tasks or national secrets are all on the payrolls of the Defense Ministry, the Public Security Ministry or the Government's Cipher Department.

The Defense Minister, the Public Security Minister and the Director of the Government's Cipher Department shall guide the implementation of this Article's provisions.

Article 11.- Placement of orders or assignment of plans to defense or security companies

The Defense Minister, the Public Security Minister or the director of the Government's Cipher Department shall place orders or assign plans on

the production and/or supply of public-utility products and/or services to defense or security companies.

Article 12.- Rights and obligations of defense or security companies

Apart from the rights and obligations of enterprises involved in production and supply of public-utility products and services provided for in Clauses 1 and 2, Article 6 of this Decree, defense or security companies shall also have the following rights and obligations:

1. To be invested by the State with sufficient capital to create assets in service of the objective of operation in direct service of defense or security.

2. To abide by the competent State agencies' decisions on the transfer of portions of their capital or assets for operation in direct service of defense or security to other companies for the latter to perform the defense or security tasks in case of necessity.

3. To have the right to transfer, lease or mortgage assets for operation in direct service of defense or security under their management when so permitted by their establishment-deciding agencies. The mortgage of the companies' land use right value and assets attached to land use right for operation in direct service of defense or security shall comply with the provisions of the land legislation.

4. To use the assigned sources for organization of production and supply of public-utility products and services beyond the assigned plans and for additional business activities when:

a/ They are so permitted in writing by the persons deciding on their establishment;

b/ Additional activities do not affect the performance of the assigned tasks in direct service of defense or security;

c/ They have registered additional business lines under law provisions;

d/ They separately account their business activities and perform tax-payment obligations in accordance with the provisions of law.

Article 13.- Financial supports for defense or security companies

In the course of operation, apart from enjoying investment promotion and support provided for by law, defense or security companies shall:

1. Be exempt from land rents, land use levy and land-use tax for the necessary land area to be used during the time of direct service of defense or security.

2. Be granted funding for maintenance and repair of production chains in direct service of the performance of defense or security tasks and supported in salary payment for skilled workers identified within the complement of such production chains, in case of production cessation and companies' incapability of covering the relevant expenses.

3. Be considered for support to the reward fund and welfare fund at the level being equal to two months' paid salaries, provided that such defense or security companies operate in important strategic areas for combined economic and defense objectives and have insufficient sources to make appropriations for setting up these funds.

4. Be considered for support of funding for kindergartens and educational establishments in the areas without schools and classes as required

by the educational system, and funding for health care in the areas required to maintain hospitals and medical stations due to special conditions, provided that such defense or security companies operate in deep-lying, remote, border areas or islands or strategic areas meeting with exceptional difficulties.

Besides, special defense or security companies as well as defense or security companies operating in strategic areas for combined economic and defense objectives shall also enjoy other preferences and supports under the Prime Minister's decisions.

Article 14.- Organization of inspection, supervision of implementation

1. Defense or security companies shall, at the request of the Defense Minister, the Public Security Minister or the director of the Government's Cipher Department, make periodical or extraordinary reports on the situation and results of performance of defense or security tasks, and of other production and business activities.

2. The Defense Ministry, the Public Security Ministry or the Government's Cipher Department shall provide for the regime of reporting by defense or security companies; be responsible for organizing inspection, monitoring and supervision of defense and security companies under their respective management in the latter's proper and full performance of defense and security tasks as well as other business activities in accordance with the provisions of law.

Article 15.- Rights and obligations of the State owners toward defense or security companies

1. The Defense Ministry, the Public Security Ministry and the Government's Cipher Department

shall be the State owners' representatives at defense or security companies established under their respective decisions and be authorized by the Prime Minister to exercise some rights and perform some obligations of the State owners toward the defense or security companies established under the Prime Minister's decisions.

2. The Defense Minister, the Public Security Minister or the director of the Government's Cipher Department shall decide to appoint, dismiss, commend, reward or discipline the general directors and directors of defense or security companies; to appoint, dismiss, commend, reward or discipline the deputy general directors, deputy directors and chief accountants of defense or security companies, at the requests of the companies' general directors or directors.

The general directors and directors of defense or security companies shall decide to appoint, dismiss, commend, reward or discipline other managerial titles in the companies.

Chapter III

STATE-OWNED COMPANIES PERFORMING PUBLIC-UTILITY TASKS

Article 16.- State-owned companies performing public-utility tasks

1. State-owned companies performing public-utility tasks are those companies which are owned by the State and designed, invested for establishment to perform the principal, regular and stable task of producing and supplying public-utility products and services according to the State's orders or assigned plans.

2. State-owned companies shall be recognized

as those performing public-utility tasks when they fully meet the following criteria:

a/ Being established under decisions of competent State agencies in accordance with the provisions of law on State-owned companies;

b/ Being placed with orders or assigned plans by the State in a stable and regular manner for the production and/or supply of one or a number of public-utility products and services as defined in List B of the Appendix to this Decree.

Article 17.- Assignment of plans, payment and final settlement for State-owned companies performing public-utility tasks

1. State-owned companies performing public-utility tasks shall formulate separate plan criteria on production and supply of public-utility products and services based on their annual plans.

The coordination and assignment of plans shall comply with current regulations.

2. The payment and final settlement for public-utility products and services with the use of budget sources according to the State's orders or assigned plans shall be as follows:

a/ The provincial/municipal People's Committees (hereinafter called the provincial-level People's Committees for short) shall make payment and final settlement for public-utility products and services, produced and supplied on the orders or under assigned plans to their attached State-owned companies performing public-utility tasks;

b/ The Finance Ministry shall assume the prime responsibility for, and coordinate with the branch-managing ministries in, making payment and final settlement for public-utility products and services, produced and supplied on the orders or under

assigned plans to its attached State-owned companies performing public-utility tasks.

Article 18.- Arrangement of State-owned companies performing public-utility tasks

1. Based on the criteria defined in Clause 2, Article 16 of this Decree, the ministers and presidents of the provincial-level People's Committees shall consider and decide on recognition of each of the State-owned companies under their respective management as State-owned companies performing public-utility tasks and then annually consider and re-recognize such companies, report to the Prime Minister thereon and notify the Ministry of Planning and Investment and the Finance Ministry thereof.

2. With regard to the State-owned companies which fail to meet the criteria mentioned in Clause 2, Article 16 of this Decree, they shall be re-organized according to the criteria and list of classified State-owned companies and independent cost-accounting companies of State corporations, issued by the Prime Minister, and the Scheme on reorganization of State enterprises already approved by the Prime Minister.

Article 19.- Rights and obligations of State companies performing public-utility tasks

Apart from the rights and obligations of enterprises involved in the production and supply of public-utility products and services defined in Clauses 1 and 2, Article 6 of this Decree, State-owned companies performing public-utility tasks shall also have the following rights and obligations:

1. To be invested by the State with sufficient capital to create assets for the production and

supply of public-utility products and services.

2. To abide by competent State agencies' decisions on the transfer of portions of their capital or assets for the production and supply of public-utility products and services to other companies for the latter to perform this task in case of necessity.

3. To transfer, lease or mortgage assets in service of the production and supply of public-utility products and services under the companies' management when so permitted by their establishment-deciding agencies. The mortgage of the companies' land use right value and assets attached to land use rights in service of the production and supply of public-utility products and services shall comply with the provisions of land legislation.

4. To use the assigned sources for organization of the production and supply of public-utility products and services beyond the assigned plans and conduct additional business activities when:

a/ They are so permitted in writing by the persons deciding on their establishment;

b/ The additional activities do not affect the performance of the assigned public-utility tasks;

c/ They have registered additional business lines in accordance with the provisions of law;

d/ They separately account business activities and perform tax-payment obligations according to law provisions.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 20.- Implementation effect

1. This Decree takes effect 15 days after its publication in the Official Gazette and supersedes the Government's Decree No. 56/CP of October 2, 1996 on public-utility State enterprises.

2. The Finance Ministry and the Defense Ministry shall have to guide the implementation of this Decree.

3. The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies and the presidents of the provincial/municipal People's Committees shall have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI

APPENDIX

LISTS OF PUBLIC-UTILITY PRODUCTS AND SERVICES

(Issued together with the Government's Decree No. 31/2005/ND-CP of March 11, 2005)

LIST A

Public-utility products and services, defense and security tasks undertaken by defense or security companies by mode of order placement or plan

assignment

1. Production of explosives in service of defense.

2. Production of chemicals in service of defense.

3. Production of radioactive substances.

4. Production and repair of weapons and military gears as well as technical facilities and equipment for defense or security; and technical cipher equipment and materials.

5. Printing of political or military documents, books or newspapers for exclusive defense or security purposes.

6. Performance of special defense or security tasks under the Prime Minister's decisions.

LIST B

Public-utility products and services produced and/or supplied by State enterprises, enterprises of other economic sectors and cooperatives by mode of order placement or plan assignment

1. Printing of bank notes and valuable certificates and minting of coins.

2. Flight control service.

3. Maritime security services, including pilotage, coastal communication and guarantee of maritime safety.

4. Management, maintenance of national railways, including bridges, railroads, railway stations, railway information and signals.

5. Management, maintenance of airports, including runways, communication and signaling

systems.

6. Publishing of textbooks, books and journals for teaching and learning; publishing of maps, political books and newspapers; publishing of journals, pictorials, books or newspapers in service of ethnic minority people; production of newsreels, documentary or scientific films or films for children.

7. Management, exploitation of large irrigation work systems, including inter-provincial and inter-district irrigation works and sea-encroachment stone jetties.

8. Management, maintenance of dykes, flood-diverting works and works for the control of natural calamities.

9. Plantation and protection of headwater forests, special-use forests, protection forests, ecological forests and sea-encroachment submerged forests.

10. Production, preservation of prototype plant and animal varieties; production of vaccines.

11. Aquatic resource protection services.

12. Urban water drainage.

13. Public lightening.

14. Supply of electricity to deep-lying, remote, border and island areas.

15. Management, maintenance of urban roads and roads in deep-lying and remote areas.

16. Management, maintenance of inland waterways.

17. Geological, hydrometeorological and topographical basic surveys.

18. Survey, exploration and investigation into

land and water resources, minerals and assorted natural resources.

19. Universal and compulsory postal services.

20. A number of other important domains as decided by the Prime Minister

LIST C

Public-utility products and services provided and/or supplied by State enterprises, enterprises of other economic sectors and cooperatives by mode of bidding or order placement

1. Management, exploitation of medium- and small-sized irrigation works.

2. Mass transit by bus in urban centers.

3. Public services: public environmental sanitation; management of parks; plantation and management of green trees and ornamental flowers on pavements, roadsides, medians and roundabouts; management of cemeteries and crematories.

4. Production of motion pictures on the State's orders or with the State's funding.

5. Management, maintenance of road systems.

6. Management, maintenance of important ferry landings and car terminals.

7. Transportation, supply of essential goods and services in service of people in mountainous, deep-lying and remote areas.

8. A number of other important products and services as decided by the Prime Minister.-