

**THE GOVERNMENT**

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**SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

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*Hanoi, February 14, 2015*

**DECREE**

**ON INVESTMENT IN THE FORM OF PUBLIC-PRIVATE PARTNERSHIP**

*Pursuant to the Law on Government organization dated December 25, 2001;*

*Pursuant to the Law on investment dated November 26, 2014;*

*Pursuant to the Law on Public investment dated June 18, 2014;*

*Pursuant to the Law on Bidding dated November 26, 2013;*

*Pursuant to the Law on Construction dated June 18, 2014;*

*Pursuant to the Law on Public debt management dated June 17, 2009;*

*At the request of the Minister of Planning and Investment,*

*The Government promulgates the Decree on the investment in the form of Public-Private Partnerships.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

This Decree provides the regulation on the sectors and requirements, procedures for execution of the investment projects developed in the form of public-private partnerships; the management and use of the State funding for execution of investment projects; the government's investment incentive and assurance policies, and government agencies' responsibilities for management of the investment projects developed in the form of public-private partnership.

**Article 2. Regulated entities**

This Decree applies to the regulatory agency, investor, project enterprise, lender and agency/organization/individual involved in the execution of the project developed the form of public-private partnership.

### **Article 3. Interpretation of terms**

In this Decree, these terms can be construed as follows:

1. “Investment in the form of public-private partnership” (hereinafter referred to as PPP) means any form of investment on the basis of a contract between a regulatory agency and an investor, a project enterprise to carry out, manage and operate an infrastructure and public service project.
2. “Project contract” means the contracts prescribed in Clause 3, 4, 5, 6, 7, 8 and 9 of this Article and other similar contracts prescribed in Clause 3 Article 32 hereof.
3. “Build – Operate – Transfer contract” (hereinafter referred to as BOT contract) means a type of contract to build an infrastructure project between a regulatory agency and an investor; after completing the construction, the investor shall be entitled to operate it for a specified period of time; eventually, the investor shall transfer it to the regulatory agency.
4. “Build – Transfer – Operate contract” (hereinafter referred to as BTO contract) means a type of contract to build an infrastructure project between a regulatory agency and an investor; after completing the construction, the investor shall transfer it to the regulatory agency, and shall be entitled to operate it for an agreed period of time.
5. “Build – Transfer contract” (hereinafter referred to as BT contract) means a type of contract to build an infrastructure project between a regulatory agency and an investor; after completing the construction, the investor shall transfer it to the regulatory agency, and then the investor will be allotted a land parcel used for carrying out another project under the provisions of Clause 3 Article 14 and Clause 3 Article 43 of this Decree.
6. “Build – Own – Operate contract” (hereinafter referred to as BOO contract) is a type of contract to build an infrastructure project between a regulatory agency and an investor; after completing the construction, the investor shall take ownership of this project and have the right to operate it for a specified period of time.
7. The Build – Transfer – Lease contract (hereinafter referred to as BTL contract) means a type of contract to build an infrastructure project between a regulatory agency and an investor; after completing the construction, the investor shall transfer it to the regulatory agency and shall be entitled to provide services on the basis of operation of such project for a specified period of time; the regulatory agency shall have the authority to lease and make payment for the investor’s services according to the regulation in Clause 2 Article 14 of this Decree.
8. “Build – Lease – Transfer contract” (hereinafter referred to as BLT contract) means a type of contract to build an infrastructure project between a regulatory agency and an investor; after completing the construction, the investor shall have the right to provide services on the basis of operation of such project for a specified period of time; the regulatory agency shall have the authority to lease and make payment for the investor’s services according to the regulation in Clause 2 Article 14 of this Decree; when the lease term expires, such project shall be transferred to the regulatory agency.

9. “Operation & Management contract” (hereinafter referred to as O&M contract) means a type of contract to operate the project between a regulatory agency and an investor for a specified period of time.

10. “Other project” means the projects that the investors shall carry out in order to recover the money invested in infrastructure projects.

11. “Project proposal” is a document that contains the general information on the need, feasibility and effect of the project.

12. “Feasibility study report” means a document that contains the information on the need, feasibility and effect of the project.

13. “Total investment” means the whole of capital invested for the construction project and the initial working capital for the operation and management of the project.

14. “Equity capital” means the investor’s stake in the project as prescribed in Article 10 of this Decree.

15. “Investor” means any organization or individual that makes investment in a project according to the regulations on the investment and relevant laws.

16. “Project enterprise” means the enterprise set up by the investor to carry out the project.

17. “State-owned enterprise” means the enterprise of which 100% charter capital is held by the State.

18. “Lender” means the organization extending credit to the investor and project enterprise to carry out the project.

#### **Article 4. Investment project sectors and classification**

1. The projects on the construction, improvement, operation and management of infrastructural works, the supply of public equipment and utilities include:

a) Transportation infrastructure and supporting services;

b) Lighting system; clean water supply system; water drainage system; sewage collection and disposal system; social housing; resettlement housing; cemetery;

c) Power plants, transmission lines;

d) Infrastructure works for healthcare, education, training, cultural activities, sports and relating services; head offices of regulatory agencies;

dd) Infrastructure works for commerce, science and technology, meteorology and hydrology, economic zones, industrial zones, hi-tech zones, concentrated information technology zones; the application of information technology;

e) Infrastructure works for agriculture and rural development, and the services for enhancing the correlation of agricultural production with farm product processing and sale;

g) Other sectors decided by the Prime Minister.

2. The projects prescribed in Clause 1 of this Article are classified according to the regulations on public investment, including projects of national importance and the Group-A, B and C projects.

3. Ministries, ministerial-level agencies shall preside over, cooperate with the Ministry of Planning and Investment in providing detailed guidance on the investment sectors that fall within Ministries' jurisdiction.

#### **Article 5. Expenses for the investment preparation and the execution of the projects allocated by Ministries, provincial People's Committees and regulatory bodies**

1. The expenses for the investment preparation and the execution of the projects allocated by Ministries, ministerial-level agencies, Governmental agencies and People's Committees of provinces (hereinafter referred to as Ministries, provincial People's Committees and regulatory bodies) includes:

a) The expenses for the project formulation, evaluation and approval for the project proposals, feasibility study reports;

b) The expenses for investor selection processes;

c) The expenses for the management of the project management units affiliated to the regulatory agencies, including those incurred from the supervision of performance and the construction quality;

d) The expenses for the project announcement;

dd) The operating expenses of the central PPP project management unit;

e) The expenses for hiring consultants to assist in the activities within the area of the responsibility of regulatory agencies prescribed in Clause 5 Article 8 of this Decree;

g) The expenses for organization of conferences, seminars and negotiation of project contracts and relating contracts;

h) Other expenses.

2. The expenses prescribed in Point a, b and c Clause 1 of this Article is funded by:

a) The State budget, according to the balancing of annual budget plans for investment and development projects of the Ministries, regulatory bodies and provincial People's Committees;

b) The capital for the investment preparation prescribed in Article 6 of this Decree;

c) The receipts from the sale of the invitations for bid;

d) The money repaid by the selected investor;

dd) Other lawful sources of capital.

3. The expenses prescribed in Point d, dd, e, g and h Clause 1 of this Article shall be allocated from the State budget included in the administrative expenditure plan outlined by Ministries, regulatory bodies and provincial People's Committees.

#### **Article 6. The funding for investment preparation**

1. The Ministry of Planning and Investment shall mobilize and manage the Official Development Assistance (ODA) funds, concessional loans from foreign sponsors and other sources of capital under the decision of the Prime Minister for the investment preparation.

2. The capital prescribed in Clause 1 of this Article shall be allocated to Ministries, regulatory bodies and provincial People's Committees to pay for the investment preparation prescribed in Point a and b Clause Article 5 of this Decree.

3. The investor who is selected to execute the project shall repay the expense for investment preparation and the expense for preserving the funding for investment preparation so as to provide other funding for other projects.

4. The Ministry of Planning and Investment shall preside over, cooperate with the Ministry of Finance in providing guidance on the implementation of this Article.

#### **Article 7. Steering committee and the central PPP unit**

1. The PPP steering committee is set up and operates under the decision of the Prime Minister.

2. Based on specific management requirements and conditions, Ministries, regulatory bodies and provincial People's Committees shall appoint their directly-affiliated specialized agencies to be the central units in charge of the execution of the PPP projects of Ministries, sectors and localities (hereinafter referred to as the central unit). Ministries and regulatory bodies shall request the Prime Minister to give decision on the establishment of the leading units when necessary.

## **Article 8. Regulatory agencies that have the authority to sign and carry out the project contracts**

1. Ministries, regulatory bodies and provincial People's Committees are those who have the authority to sign the project contracts within their functions, tasks, powers, and adhere to their rights and obligations agreed upon in the project contract with investors.
2. Based on functions, tasks, powers and specific management conditions, Ministries, regulatory bodies can delegate to their affiliates; provincial People's Committees can delegate to their directly affiliated specialized agencies or the People's Committees of districts to sign and execute the group B or C project contracts.
3. The delegation of authority prescribed in Clause 2 of this Article must be performed in writing in which the scope of authority delegation, responsibilities of the authorized agencies for the investment preparation, and contract negotiation, conclusion and execution.
4. Regulatory agencies, authorized agencies defined in Clause 2 of this Article shall carry out or request the project management units to carry out their assigned duties but, under any circumstances, shall be responsible for fulfilling their obligations agreed upon in the project contract.
5. When necessary, regulatory agencies have the authority to appoint an independent consultancy organization to assist in the performance of a number of duties prescribed in Clause 4 of this Article.

## **Article 9. Procedures for the project implementation**

1. Except for the group C projects prescribed in Clause 2 of this Article, project shall be carried out under the following procedures:
  - a) Formulate, evaluate, approve and announce the projects according to the regulation in Chapter III of this Decree;
  - b) Prepare, evaluate, and approve the feasibility study reports according to the regulation in Chapter IV of this Decree;
  - c) Select investors; negotiate and sign the investment agreement, project contracts according to the regulation in Chapter V of this Decree;
  - d) Follow the procedures for the issuance of Investment Registration Certificate and set up the project management enterprises according to the regulation in Chapter VI of this Decree;
  - dd) Carry out the projects according to the regulation in Chapter VII of this Decree;
  - e) Complete the financial reporting and transfer of the project according to the regulation in Chapter VIII of this Decree.

2. Group C projects are carried out under the following procedures:

- a) Formulate, evaluate, approve and announce the project according to the regulation in Chapter III of this Decree;
- b) Select investors; negotiate and sign the project contracts according to the regulation in Chapter V of this Decree;
- c) Carry out the projects according to the regulation in Chapter VII of this Decree;
- d) Complete the financial reporting and transfer of the project according to the regulation in Chapter VIII of this Decree.

## **Chapter II**

### **FINANCING FOR THE PROJECT EXECUTION**

#### **Article 10. Equity capital and mobilized capital**

1. Investors shall be responsible for contributing the equity capital and mobilize other capital to execute the project as agreed upon in the project contract.
2. The equity capital of the investor shall account for at least 15% of the total capital. With regard to the project funded by total investment of over VND 1,500 billion, the percent of equity capital is calculated according to the partial progression method as follows:
  - a) For the investment capital that amounts to VND 1,500 billion, the equity capital shall account for at least 15% of such financing portion;
  - b) For the investment capital that exceeds VND 1,500 billion, the equity capital shall account for at least 10% of such financing portion.
3. The State funding for the project prescribed in Article 11 of this Decree shall not be included in the total investment for the identification of the equity capital percentage.
4. Other projects carried out by the investors to recover the investment in a BT project shall meet the requirements for the equity capital (if any) according to the regulation.

#### **Article 11. State funding for the project**

1. The State funding for the project shall be derived from the State budget, Government bonds, municipal bonds, the ODA and the concessional loans from foreign sponsors.
2. The State funding for the project is used for:

- a) Providing financial support for commercial projects, or those intended for fee collection, but from which receipts are not sufficient for the recovery of the invested capital and profits;
- b) Paying the investor providing services according to the BTL contract, BLT contract and other similar contracts;
- c) Supporting the construction of auxiliary facilities, paying the indemnity, and carrying out site clearance and relocation.

3. The State funding prescribed in Point a, b Clause 2 of this Article is only used for executing the project proposed by Ministries, provincial People's Committees and regulatory bodies or the projects financed by the ODA and the concessional loans from foreign sponsors.

#### **Article 12. Determination of the State funding for the project**

- 1. The amount of State funding is estimated on the basis of project financial plan; policies on the use of State funding prescribed in Clause 2 Article 17 of this Decree and the capability of mobilizing and balancing the State funding for the project.
- 2. The competent persons prescribed in Article 27 of this Decree shall determine the amount of State funding for the project when approving the feasibility study report or project proposal (with regard to group C projects).

#### **Article 13. Planning for State funding for the project**

- 1. Ministries, regulatory bodies and provincial People's Committees shall draw up and make an aggregate planning for the State funding for the projects that are announced in the 5-year public investment program for industry sectors, local areas according to the regulation in Article 18 of this Decree.
- 2. Based on the approved 5-year public investment plans, feasibility study reports or project proposals (with regard to group C projects), the Ministries, regulatory bodies and provincial People's Committees shall draw up and make an aggregate planning for the State funding for the local projects defined in 5-year public investment program.
- 3. The Ministry of Planning and Investment shall preside over, cooperate with the Ministry of Finance in carrying out the projects defined in the national public investment program.

#### **Article 14. Disbursement of State funding for the project**

- 1. Disbursement of the State funding for the project:
  - a) State funding for the project prescribed in Point a Clause 2 Article 11 of this Article shall be disbursed when the project workload and value is completed under the terms and conditions of the project contracts;



b) Based on the completed workload or construction value tested and accepted by the project management enterprises, regulatory agencies shall disburse the state funding and make payments to the investors and project management enterprises according to the amount, value, progress and conditions agreed in the project contracts.

2. The disbursement of budget used for paying to the investor in the BTL contract and BLT contract:

a) The funding for payment to the investor for the service according to the BTL contract, BLT contract and other similar contracts prescribed in Point b Clause 2 Article 11 of this Article shall be disbursed from the time the service is provided as agreed upon in the project contracts;

b) The payment prescribed in Point a of this Clause shall be carried out periodically according to the amount and quality of service specified in the project contracts.

3. Using the land fund as a payment to the BT project investors that must be approved by a competent authority according to the law on land.

4. Disbursement of state funding for the auxiliary works, indemnity, site clearance, resettlement:

Funding for the auxiliary works, the indemnity, site clearance and resettlement prescribed in Point c Clause 2 Article 11 of this Decree is used according to the regulation on public investment project.

5. The Ministry of Finance shall provide guidance on the implementation of this Article.

### **Chapter III**

#### **CONSTRUCTION AND ANNOUNCEMENT ABOUT THE PROJECTS**

##### **Section 1: PROJECTS PROPOSED BY MINISTRIES, PROVINCIAL PEOPLE'S COMMITTEES AND REGULATORY BODIES**

###### **Article 15. Requirements for the selection of projects**

1. PPP projects must meet the following requirements:

a) Conform to the program or the plan for the development of sectors, regions and the plan for the local socio-economic development;

b) Conform to the investment sector prescribed in Article 4 of this Decree;

c) Prove that the investor has capacity for attracting and acquiring the commercial capital, technique and experience in project management;

d) Have ability to constantly and stably provide the good quality products that satisfy the consumer's need;

dd) Have the total investment capital of at least VND 20 billion, except for the projects under the O&M contract and the projects prescribed in Point e Clause 1 Article 4 of this Decree.

2. The projects that are not included in the program, plan for the development of sectors, regions, or the plan for the socio-economic development shall be considered and amended by Ministries, regulatory bodies and provincial People's Committees under their delegated authority or submitted to a competent authority for approval.

3. The project that conforms to requirements defined in Clause 1 of this Article and can recover the investment capital gained from operating activities shall be given priority in the selection process.

### **Article 16. Subject matters of the project proposal**

1. Ministries, regulatory bodies and provincial People's Committees shall use project proposals as the basis for the selection of investment projects in the form of Public-Private Partnership.

2. A project proposal shall include the following required information:

a) The need of the investment; the advantages of the Public-Private Partnership in comparison with other forms of investment; the type of project contract;

b) The conformity of the project to the planning, the development plan and the conditions prescribed in Clause 1 Article 15 of this Decree;

c) The proposed objectives, scope, location of the project; the demand for land and other resources;

d) The preliminary analysis of the requirements for techniques, criteria, quality of the construction, products or services;

dd) The proposed progress and completion date of the project; the duration of project development and operation; plans for management, operation or service supply;

e) The master plan for the indemnity, site clearance and resettlement;

g) The proposed requirements for execution of other projects (applied to the BT project);

h) The preliminary financial analysis containing information such as the total investment capital, the capital structure and mobilization plan; the State funding for the project (if any); expenditures; revenues, price and fee of commodities or services; capital recovery and profit generation duration;

i) The proposed anticipation of potential risks incurred from the execution of the project and the risk allocation between the regulatory agency and the investor;

k) The proposal of investment incentive and guarantee methods (if any);

l) The preliminary forecast of socio-economic effect of the project; the impacts of the project on environment, society and national defense and security;

m) Other necessary information.

3. With regard to the construction project, in addition to the regulation in Clause 2 of this Article, the project proposal shall include the preliminary design according to the regulations on construction.

### **Article 17. Appraisal and approval for project proposal**

1. Ministries, regulatory bodies and provincial People's Committees shall carry out the appraisal and approval for group A, B and C projects. Procedures for the formation, appraisal and approval of the project proposal in terms of national importance projects shall adhere to the regulations on public investment.

2. With regard to a project financed by the State funding, based on the estimated amount and proposed capital sources, Ministries, regulatory bodies and provincial People's Committees shall report to competent agencies according to the regulation on public investment so as to decide the budget allocation before approving the project.

3. The application for the use of State funding for a project shall include:

a) A written request for permission to use State funding for the project;

b) A project proposal;

c) The appraisal result from the competent agencies about the source and the balance of the State funding for the project.

4. The time limit for the approval for the use of the State funding for the project prescribed in Clause 2 of this Article shall not exceed 30 days from the receipt of sufficient documents stipulated in Clause 3 of this Article. .

### **Article 18. Project Announcement**

1. Within 07 working days from the day on which the project proposal is approved, Ministries, provincial People's Committees and regulatory bodies shall issue the announcement about a single project or the project portfolio on the National Electronic Procurement System according to the regulations on bidding.

2. The announced project shall include the following main information:

- a) The name of the project and the type of project contracts;
- b) The target, scope, location of the project and the other project (if any);
- c) The summary of the requirements for techniques, criteria, quality of the project facilities, products or services;
- d) Proposed total investment capital; State funding for the project (if any);
- dd) The proposed progress of the project and project execution duration, including the time of the feasibility study report, investor selection, construction, completion and operation ;
- e) The updated information on the progress of the project prescribed in Point dd of this Clause;
- g) The contact address of regulatory agencies.

#### **Article 19. The transformation of investment projects financed by the public investment budget**

- 1. The project that is financed by the public investment budget and satisfies the conditions prescribed in Clause 1 Article 15 of this Decree may be considered transforming the investment into the form of Public-Private Partnership.
- 2. The Ministry of Planning and Investment shall provide guidance on procedures for the transformation of investment according to the regulation in Clause 1 of this Article.

#### **Section 2: PROJECTS PROPOSED BY THE INVESTORS**

##### **Article 20. Conditions for making project proposal**

- 1. Investors may propose the projects other than the ones approved by Ministries, regulatory bodies and provincial People's Committees and make an announcement about such projects according to the regulation in Section 1 of this Chapter.
- 2. Requirements for the projects proposed by the investors:
  - a) The projects shall satisfy the requirements defined in the regulation in Clause 1 Article 15 of this Decree;
  - b) The investor being a state-owned enterprise shall establish a joint venture with another enterprise when proposing.

##### **Article 21: Project proposal made by the investor**

1. The investor shall make a project proposal documentation and submit it to Ministries, regulatory bodies and provincial People's Committees.
2. The contents of project proposal:
  - a) A written proposal for the project execution;
  - b) The project proposal (including the contents prescribed in Clause 2 and 3 Article 16 of this Decree);
  - c) A confirmation document about legal personality, capacity and experience of the investor;
  - d) Previous performance in similar projects (if any);
  - dd) Other necessary documents used for explaining the project proposal (if any).

#### **Article 22. Appraisal and approval for project proposal made by investors**

1. The project proposal of the investor shall be appraised and approved according to the regulation in Article 17 of this Decree within 30 days from the day on which the satisfactory application is received.
2. The Ministry of Planning and Investment shall provide guidance on the implementation of this Article.

#### **Article 23: Announcement about the project proposal made by the investor**

1. If the project proposal is approved, Ministries, regulatory bodies and provincial People's Committees shall make an announcement about the proposal and the information about the investor making such proposal according to the regulation in Article 18 of this Decree.
2. If a project includes contents relating to the intellectual property rights, trade secret, technology or agreements on mobilizing capital used for a project that needs top secret, then investors shall make a deal with Ministries, regulatory bodies and provincial People's Committees on the contents of the announcement.

### **Chapter IV**

#### **FORMATION, APPRAISAL AND APPROVAL FOR FEASIBILITY STUDY REPORTS**

#### **Article 24. Responsibility for the formation of the feasibility study report**

1. Ministries, regulatory bodies, provincial People's Committees shall make a feasibility study report on the project as the basis of the formation of invitation for bid for investor selection and the contract negotiation .

2. With regard to the project that is proposed by the investor and approved according to the regulation in Article 22 of this Decree, Ministries, regulatory bodies and provincial People's Committees shall request the investor to make the feasibility study report.

3. Assigning investors to prepare the feasibility report shall be carried out according to the written agreement between the Ministries/regulatory bodies/provincial People's Committees and the investor. The agreement shall specify the purposes, requirements and expenses for the feasibility study report, expense for independent consultants who are hired to carry out the appraisal, and the approaches to the case in which another investor is selected for executing the project.

### **Article 25. Contents of feasibility study report**

1. The feasibility study report of the project shall include:

- a) A detailed analysis of the need for the investment and the advantages of the project in comparison with other form of investment; the type of the project contract;
- b) An evaluation report on conformity of the project with the planning, the development plan and the conditions prescribed in Clause 1 Article 15 of this Decree;
- c) The target, the scope, the components (if any) and the location of the project; the demand for land and other resources;
- d) A description of the technique, technology to satisfy the requirements for the quality of the works, products or the supply services;
- dd) An assessment on the current conditions of works, machinery, devices, the value of property (applied to the O&M contracts); the conditions for carrying out other project (applied to the BT contracts);
- dd) The project progress and time limit; the duration of the construction and development of the works; the plan for the management, operation or service supply;
- g) A general plan for indemnity, site clearance and resettlement;
- h) The project financial plan (including the contents prescribed in Point h Clause 2 Article 16 of this Decree);
- i) The capital mobilization for the project; evaluation of the need and the liquidity ratio of the market; the survey on the interest of the investors and the lenders in the project;
- k) An analysis of risk, responsibilities of the parties for the risk management during the execution of the project;
- l) A petition for investment incentive and guarantee (if any)

m) The socio-economic effect and the impacts of the project on environment, society and national defense and security;

2. With regard to the project including building components, apart from the contents prescribed in Clause 1 of this Article, the feasibility study report shall include the fundamental design according to the regulations on construction.

3. Group C project may be not required to have feasibility study report. However, fundamental design and project financial plan shall be included in the project proposal as the basis for investor selection and project contract negotiation.

4. Ministries, regulatory bodies shall cooperate with the Ministry of Planning and Investment in providing guidance on the contents of feasibility study report provided that these contents conform to the performance and project management of the regulatory bodies.

### **Article 26. Appraisal of feasibility study report**

1. Authority to appraise for feasibility study report:

a) The national appraisal board is in charge of appraising the projects of national importance;

b) Ministers, Heads of ministerial-level agencies, Presidents of the provincial People's Committees shall request the central units in charge of the execution of the PPP to carry out the appraisal of group A and B project.

2. The documents that must be included in the appraisal of feasibility study report are:

a) The project appraisal report;

b) The feasibility study report;

c) Relevant materials or legal documents.

3. Contents of the appraisal:

a) The need of the project; the correlation between the project and the planning, the program for the development of specific sector, region and local area; the necessity and the advantage of the project in the form of public-private partnership in comparison with other form of investment;

b) The evaluation of the basic factors that can affect the project: the target and the appropriacy in terms of scope, location of the project; requirements for technical design, technology; plans for project management and operation or service supply;

c) The feasibility of the project: the financial plan, the mobilization of resources for the execution of the project; the demand for land, site clearance and resources; the ability to supply goods and services, solutions to meeting the demand, the payment ability of the users; risks of

the construction, development, project management and the measures to be taken to reduce the risks; the interest of the investors and the lenders in the project;

d) The effect of the project: The results and the positive impacts of the project on the socio-economic development; the impacts on the environment, society and national defense and security;

dd) Other necessary information.

4. The time limit for the appraisal of feasibility study report:

a) For the projects of national importance: not later than 90 days;

b) For group A projects: not later than 40 days;

c) For group B projects: not later than 30 days.

5. The appraisal agency may hire consultants to appraise part or all of contents prescribed in Clause 3 of this Article.

#### **Article 27. Authority to approve the feasibility study report**

1. The Prime Minister shall be responsible for the approval for feasibility study report of the projects of national importance.

2. Ministers, Heads of ministerial-level agencies, Presidents of the provincial People's Committees are responsible for the approval for feasibility study report of group A and B projects, excluding the projects in the field of national defense, security and religion that are funded by the ODA and the concessional loans from the foreign sponsors.

#### **Article 28. Adjustment to the feasibility study report**

1. The feasibility study report shall be adjusted in the following cases:

a) The project is affected by natural disasters or other force-majeure events;

b) There are elements that may make the project more effective;

c) There is any change in the planning that directly entails changes to the target, location and scope of the project;

d) The project fails to attract the investor after the survey, initial selection or bidding;

dd) Other cases according to the regulations by the Prime Minister.



2. Procedures for the appraisal, approval and feasibility study report adjustment shall be carried out according to the regulation in Article 26 and 27 of this Decree.

## **Chapter V**

### **INVESTOR SELECTION AND THE CONCLUSION OF INVESTMENT AGREEMENTS AND PROJECT CONTRACTS**

#### **Article 29. Investor selection**

1. The selection of investor is carried out in the form of open bidding or contractor appointment.
2. An investor may receive concession in the investor selection progress if such organization has a feasibility study report or has a project proposal (applied to group C projects) approved by Ministries, regulatory bodies or provincial People's Committees.
3. Conditions, procedures for investor selection and concession granted to the investor in the bidding process shall be according to the regulations on bidding.

#### **Article 30. Conclusion of the investment agreement**

1. Regulatory agencies shall organize the project contract negotiation with the investor (hereinafter referred to as the contracting party) that is selected according to the provisions of Article 29 of this Decree.
2. After the project contract negotiation, the regulatory agency and investor may sign an investment agreement to confirm the following contents:
  - a) The draft of project agreement;
  - b) The rights and obligations of each contracting party to the implementation of the procedures prescribed in Article 40 and 42 of this Decree to be issued with the Investment Registration Certificate and set up the project enterprises;
  - c) Other matters according to the agreement between the parties.

#### **Article 31. Conclusion of the project contract**

1. After receiving the Investment Registration Certificate as prescribed in Clause 3 of Article 40 of this Decree, the regulatory agency and the investor may sign the project contract.
2. With regard to group C project, after completing the project contract negotiation, the regulatory agencies and the investor may sign the project contract.
3. The rights and obligations of the project enterprise are negotiated in one of the following ways:

- a) The project enterprise shall sign a contract with the investor to become a contracting party who is bound to the project contract;
- b) The regulatory agencies, investors and project enterprises shall enter into the written permission allowing the project enterprise to exercise the rights and assume obligations of investors specified in the investment registration certificate and the project contracts. This document is an integral part of the project contract.

### **Article 32. Contents of the project contract**

1. Based on the target, characteristic and type of project contract, the contracting parties agree to all or some of the following basic contents:

- a) The target, scope, location, time limit and progress of the project; time for the construction of works in the project;
- b) Requirements that technique, technology, quality of works, products or supplied services must conform to;
- c) The total investment and financial plans of the project;
- d) The conditions, the rate and the progress of the disbursement of the State funding (if any);
- dd) Requirements for the use of land and related work;
- e) The indemnity, site clearance and the resettlement;
- g) The construction, inspection, monitoring, quality control, acceptance testing and final settlement of the project;
- h) Inspection, operation, maintenance, sales and development of projects; project transfer;
- i) The safety and environment protection;
- k) The conditions and procedures for project acceptance of the lenders and appointed organizations;
- l) Risk allocation between the regulatory agencies and investors; the force-majeure events and handling principles;
- m) The incentives and investment guarantee (if any);
- n) The laws on governing relation of contracting parties in the contracts, relevant contracts and solutions to handling disputes;
- o) The effect and duration of the project contract;

p) The rules and conditions for amendments and termination of the project contract; the transfer of rights and obligations agreed under the project contract;

q) Other matters according to the agreement between the contracting parties.

2. The documents enclosed with the project contract (if any) include appendices, documents and other papers integral to the project contract.

3. Based on the types of project contracts specified in Clauses 3, 4, 5, 6, 7, 8 and 9 of Article 3 of this Decree, Ministries, regulatory bodies and provincial People's Committee shall propose the similar types of contract and request the Prime Minister to consider and decide.

4. Based on the regulation laid down in Point 1 of this Article, Ministries and regulatory bodies shall cooperate with the Ministry of Planning and Investment in providing guidance on the contents of the project contract in accordance with the requirements for execution and management of projects owned by each regulatory agency.

### **Article 33. Lenders' right to take over the project**

1. Lenders are entitled to take over or appoint a competent organization to take over a part or all of the rights and obligations of investors, project enterprises (hereinafter referred to as the take-over right) in case the investor or project enterprise fails to fulfill the obligations specified in the project contract or loan agreement.

2. A written agreement on the project must be made between the lenders and regulatory agencies or the contracting parties. Lenders and regulatory agencies are entitled to decide the time to sign the agreement on the project take-over.

3. After taking over the project, the lender or his/her authorized organization shall assume all of the obligations as an investor, project business as prescribed in the project contract and agreement on the project take-over right.

### **Article 34. Transfer of rights and obligations under the project agreement**

1. Investors may transfer a part or all of the rights and obligations under the project agreement to the lender or another investor.

2. The transfer of a part or all of the rights and obligations under the project agreement shall not affect the target, scope, technical standards, and progress of the project and must meet the conditions for investment and operation according to the regulations defined in the law on investment and other agreed requirements specified in the project contract.

3. A written agreement on the transfer prescribed in Clause 1 of this Article shall be made between the parties in the project contract and the transferee. Lender shall negotiate the concession agreement under the terms of the loan agreement.

### **Article 35. Amendments to the project contract**

Project contract may be amended due to a change of scale, technical standards, the contractual total investment or a force-majeure event, the adjustment to the feasibility study report as prescribed in the regulation in Article 28 of this Decree and other cases specified in the project contract.

### **Article 36. Contract term**

1. The duration of the project contract shall be agreed upon between the parties according to the field, the scope, the characteristic and type of contracts, projects.
2. Project contract may ends its validity if the agreed contract term expire, or else the project contract may be terminated prior to the maturity date due to the violation of one of the parties without that defaulting party's effective remedies, due to force majeure events or other cases specified in the project contract.
3. The parties shall negotiate the conditions for the termination of the project contract and measures to handle any issue that may arise during the contract termination.

### **Article 37. Application of foreign laws**

1. The contracting parties may negotiate the application of foreign laws to govern the following contracts:
  - a) A project contract of which one contracting party is a foreign investor;
  - b) A contract that is guaranteed by the Government for the obligations prescribed in Article 57 of this Decree.
2. The Agreement that applies foreign laws specified in Clause 1 of this Article shall be conformable to Vietnam law on selection and application of foreign laws.

### **Article 38. Performance guarantee**

Regulatory agencies and investor shall negotiate the form, value, duration of performance guarantee according to the regulations on bidding

## **Chapter VI**

### **PROCEDURES FOR INVESTMENT REGISTRATION AND PROJECT ENTERPRISE ESTABLISHMENT**

### **Article 39. Authority to issue, adjust and revoke the investment registration certificate**

1. Ministry of Planning and Investment is in charge of the issuance, adjustment and revocation of the investment registration certificate of:

- a) The projects of national importance;
- b) The projects that are signed by a Ministry, a regulatory body or an authorized agency;
- c) The projects that involve multiple provinces.

2. Provincial People's Committees is in charge of the issuance, adjustment and revocation of the investment registration certificate of the projects other than those specified in Clause 1 of this Article.

3. The procedures for the issuance of investment registration certificate do not apply to group C projects.

#### **Article 40. Application, procedures for issuance, adjustment and revocation of investment registration certificate**

1. Application for the investment registration certificate shall include:

- a) A written request for the investment registration certificate;
- b) The investment agreement and a draft project contract;
- c) A feasibility study report and decision on the project approval;
- d) A written approval to use the State funding (if any);
- dd) A joint-venture contract and a draft of project enterprise's charters (if any);
- e) Decision on investor selection.

2. Each investor shall submit 5 application packages. (01 original) to an agency specified in Article 39 of this Decree.

3. Any agency prescribed in Article 39 of this Decree must grant the investment registration certificate within 25 days of receipt of valid documents included in such application.

4. Ministry of Planning and Investment shall specify the application, procedures for the issuance, amendment and revocation of investment registration certificate.

#### **Article 41. Contents of the investment registration certificate**

1. Investment registration certificate shall include the following principal contents:

- a) Name and address of the investor;
  - b) Name of the project;
  - c) The target, scope, requirements and conditions for the execution of the project (if any);
  - d) Location of the project and land use acreage;
  - dd) The total investment in the project; capital structure;
  - e) The duration and the progress of the project;
  - g) The value, proportion, progress and conditions for disbursement of government investment in the project (if any);
  - h) The investment incentives (if any).
2. With regard to the BT projects, in addition to the content of the project of infrastructure construction prescribed in Clause 1 of this Article, the investment registration certificate shall include the regulation on the conditions for the execution of other projects.
3. Other projects shall follow required procedures for issuance of the investment registration certificate according to the regulations on investment.

#### **Article 42. Establishment of project enterprises**

1. After being issued with the investment registration certificate, investors shall establish a project enterprise to execute the project according to the target, scope as agreed upon in the project contract. Documents and procedures for the establishment of project enterprise shall adhere to the regulations pertaining enterprises.
2. With regard to the projects carried out under the BT contract or the group C project, investors shall establish a project enterprise according to the regulation in Clause 1 of this Article or directly execute the project, but shall be required to carry out independent management and make accounting report on the capital and project-related activities.

### **Chapter VII**

#### **PROJECT IMPLEMENTATION**

#### **Article 43. Conditions for carrying out the project**

1. The project shall be executed according to the conditions defined in the project contract after the investor is issued with the investment registration certificate.
2. A group C project shall be executed after the project contract was signed.

3. Other projects may be executed concurrently or after the infrastructure construction has been completed as prescribed in the project contract.

#### **Article 44. Project contractor selection**

Investors, project enterprises shall promulgate the regulations on the selection of contractor as a consultant, goods supplier, constructor and other contractors on the basis of ensuring the fairness, the transparency and the economic effect that shall then be applied consistently in the project execution process.

#### **Article 45. Construction site preparation**

1. Provincial People's Committees are responsible for carrying out the site clearance and completing the procedures for land allocation and lease to carry out the project according to the laws on land, project contracts and relevant contracts.

2. The competent authority shall cooperate with provincial People's Committees in the implementation of the regulation set forth in Clause 1 of this Article.

#### **Article 46. Formulation of construction design**

1. Based on the feasibility study report and the regulations defined in the contract project, the investor and the project enterprise shall draw up the technical design and send it to a competent authority for the purpose of supervision and inspection. The adjustment to technical design that may affect the scope, technical standards and progress of the project must be approved in writing by a competent authority.

2. The inspection of construction design shall comply with the law on construction.

#### **Article 47. Contract performance supervision**

1. The investor, the project enterprise are responsible for controlling the quality of the project construction and services; monitoring supervising by themselves or hiring an independent consultant to monitor or supervise the construction and the acceptance testing of construction constituents and all of construction works according to the design, the operation plan prescribed in the project contract.

2. Competent authorities are responsible for monitoring the obligation fulfillment of investors, project enterprises according to the project contract.

3. In case of necessity, the competent agency may hire qualified consultants to assist in their fulfillment of the obligations specified in Clause 2 of this Article.

#### **Article 48. Project quality supervision**

1. When supervising the quality of the project transferred to the State upon completion, in addition to the duties specified in Article 47 of this Decree, any regulatory agencies shall be required to:

- a) Inspect the construction supervisor's performance according to the requirements defined in the project contract;
- b) Inspect the compliance with procedures, standards and norms for the management and operation of project as agreed upon in the project contract;
- c) Carry out the inspection of the quality of a part or all of works when there is any suspicion of the quality or any request of a regulatory agency;
- d) Ask the investors to request the contractor to adjust or suspend the project execution whenever the quality of the execution does not meet the statutory requirements.

2. The supervision of the quality of the BT project shall adhere to the regulated procedures that a public investment project must follow.

3. Ministry of Construction shall provide guidance on the implementation of the regulations laid down in this Article.

#### **Article 49. Project management and operation**

1. Investors, project enterprises shall carry out the management, operation of the project or carry out the other projects under the terms of the project contracts.

2. During the operation of the project or the rendering of project-related services, the project enterprises are required to:

- a) Supply products, services and fulfill other duties according to the requests, conditions defined in the project contract;
- b) Ensure that the use of the project shall conform to the terms and conditions of the project contract;
- c) Treat all users of products and services provided by the project enterprises with fairness; avoid misusing the right to operate the project to refuse to provide services for customers;
- d) Periodically repair, maintain the project, and ensure that the project shall be safely operated in accordance with the design or processes specified in the project contract.

#### **Article 50. Price, cost of goods, service charges and revenues**

1. Price, cost of goods, services, other revenues and conditions, procedures for adjustment shall be agreed upon in the project contract according to the principles that benefits of investors,



projects enterprises, customers and the State shall be ensured, and these parties concerned shall receive proper conditions to recover their capital as well as gain profits.

2. The agreement about and adjustment to price, fees of goods, services and other revenues managed by the State shall comply with the laws on prices, fees and the conditions specified in the project contract.

3. When adjusting prices, fees of goods, services and other revenues specified in Clause 1 and Clause 2 of this Article, investors, and project enterprises shall send a prior notice to the regulatory agencies and goods/ services customers for a period of 30 days before the date of adjustment.

#### **Article 51. Assistance in collecting service charges**

Investors, project enterprises are provided with favorable conditions to accurately and fully collect the price and service charges and revenues. They are also supported by the regulatory agencies to collect the service fees, and other revenues.

#### **Article 52. Supervision, evaluation of investment activities and financial disclosure**

1. The supervision and evaluation of projects shall be carried out according to the laws on the monitoring and evaluation of the investment and the agreement defined in the project contract.

2. Investors, project enterprises shall carry out the disclosure of financial reports, audit reports in accordance with the law and the agreements specified in the project contract.

### **Chapter VIII**

#### **FINAL SETTLEMENT AND TRANSFER OF THE PROJECT**

#### **Article 53. Final settlement of the project**

1. Within 06 months from the day on which the project is completed, the investor shall carry out the final settlement of the investment capital used for the project development.

2. The competent agencies shall negotiate with the investors for the selection of an independent auditing organization that has proper capacity and experience to audit the value of investment capital used for the project construction.

3. Ministry of Finance is in charge of providing guidance on the implementation of the regulations on the final settlement of project value according to the regulation laid down in this Article.

#### **Article 54. Transfer of the project**

1. For the project contract that has terms and conditions concerning the transfer of the project, the regulatory agencies and investors shall obtain agreements about the conditions and procedures for project transfer in the project contract.
2. The transfer of the project shall comply with the following conditions and procedures:
  - a) One year before the date of transfer or within the time limit specified in the project contract, investors, project enterprises shall make the public announcement about the transfer of works, procedures and time limits for completing all contractual rights and obligations as well as debt repayment;
  - b) The regulatory agencies shall inspect the quality, value, condition of the project under the terms and conditions of the project contract, make a list of assets to be transferred, determine any loss or damage (if any), and request the project enterprises to repair and maintain the project;
  - c) Investors, project enterprises shall ensure that the transferred asset is not collateralized for the fulfillment of the financial obligations or other obligations of the investors, project enterprises that may arise before the date of transfer, unless otherwise agreed in the project contract;
  - d) Project enterprises are responsible for technology transfer, training and the periodical maintenance and the overhaul in order to ensure the normal technical conditions of the project in accordance with the requirements defined in the project contract;
  - dd) After taking over the project, the regulatory agency shall carry out the management and operation of such project inside their area of competence.

## **Chapter IX**

### **INCENTIVES AND INVESTMENT GUARANTEES**

#### **Article 55. Investment incentives**

1. Investors, the project enterprise shall be given the enterprise income tax incentives according to the laws on enterprise income tax.
2. Goods imported for the execution of projects shall have opportunities to approach incentives according to the laws on export and import tax.
3. Investors, project enterprises shall be entitled to exemption of land levies for the land allocated by the State or exemption from land rent during the execution of the project according to the laws on land.
4. Investors, project enterprises shall be also entitled to other incentives according to the law.

#### **Article 56. Taxes levied on contractors involved in the project**

Foreign and local contractors involved in the project shall fulfill their tax liabilities and shall be entitled to tax incentives according to the law.

#### **Article 57. Guarantee for fulfillment of obligations assumed by investors, project enterprises and other enterprises**

Based on the nature of specific projects and demands for the project execution, the Prime Minister shall appoint a competent agency as a representative of the Government to guarantee the supply of raw materials, consumption of products and services and other contractual obligations of the investors, project enterprise or other enterprises involved in the project and guarantee the obligations of the state enterprises who sell fuel, raw materials, purchase products or services of the investors, project enterprises.

#### **Article 58. Collateralization of property, right to operate the project**

1. Investors, project enterprises may use their property, land use rights and the right to operate the project as collateral to the lenders according to the laws of and the civil laws. The duration of such collateralization shall not exceed the duration of the project contract, unless otherwise agreed in the project contract.
2. Agreement on the aforesaid collateralization shall be made in writing and signed by the lender and the contracting parties.
3. Such collateralization shall not be allowed to affect the target, scope, technical standards, progress of the project and other conditions specified in the project contract.

#### **Article 59. Guarantee of exercise of land use rights**

The land use purpose shall be guaranteed not to change during the execution of the project contract, even when the lender exercises the right to take over the project according to Article 33 of this Decree.

#### **Article 60. Guarantee of balancing of foreign currency**

1. Investors, the project enterprises shall be entitled to purchase foreign currency at credit institutions that are licensed to perform foreign exchange transactions to meet the needs for current transactions, capital transactions and other transactions or transfer of capital, profits, liquidated outward investment according to the laws on foreign exchange management.
2. Projects that fall under the authority to decide the investment plans of the National Assembly, infrastructure construction projects that belong to the investment programs of the Government and other essential projects according to the decision of the Prime Minister shall be considered to ensure that foreign currency needs shall be met to carry out the transactions stipulated in Clause 1 of this Article.

3. Based on the socio-economic development orientation, foreign exchange management policy, the ability of foreign currency balancing in each period and the target, the nature of the project, the Prime Minister shall decide and appoint a competent agency to balance foreign currency for the project specified in Clause 2 of this Article according to the proposal sent by Ministries, regulatory bodies or local authorities.

#### **Article 61. Guarantee of provision of public services**

1. Investors, project enterprise shall have the right to use land, roads and other ancillary facilities to implement the project in accordance with the law.

2. Where there is the scarcity of public services or restrictions on entities eligible to use public works, investors, project enterprise shall be given the priority to provide services or obtain rights to use public works for the purpose of project execution.

3. Competent authorities shall be responsible for supporting investors, project enterprise in following required procedures to be granted priority to use public utilities and facilities.

#### **Article 62. Guarantee of property ownership**

1. Lawful property of investors shall not be nationalized or confiscated by applying administrative measures.

2. Where the State purchase or requisition of property by reasons of national defense, security or national interests, emergencies, natural disaster prevention or mitigation, is needed, the investor is paid compensation under the provisions of investment law, or the law on government purchase or expropriation of assets and the terms agreed in the contract project.

#### **Article 63. Settlement of disputes**

1. The dispute between a regulatory agency and an investor or a project enterprise, or the dispute between a project enterprise and an economic organization participating in the project, shall be initially negotiated or mediated. If a dispute cannot be settled by such negotiation or mediation, the contracting parties may lodge the case to the arbitration or the Vietnamese court for settlement according to Vietnamese laws, except for the cases specified in Clause 2 and 3 of this Article.

2. The dispute between a competent agency and a foreign investor or a project enterprise established by a foreign investor under the regulation in Article 42 of this Decree in the process of the project contract execution and the guarantee contract stipulated in Article 57 of this Decree shall be settled by the arbitration or Vietnamese court or the arbitration council established under the agreement between the parties concerned.

3. The dispute between a project enterprise and a foreign organization/individual or a Vietnamese organization, and the dispute among the investors shall be resolved in accordance with the Law on Investment.

4. Disputes resolved by the arbitration specified in the project contract and the relevant contracts are deemed trade disputes. The decision of a foreign arbitration is recognized and enforced in accordance with the law on recognition and enforcement of decisions of foreign arbitration.

## **Chapter X**

### **RESPONSIBILITIES FOR STATE MANAGEMENT OF INVESTMENT PROJECTS UNDER THE FORM OF A PUBLIC-PRIVATE PARTNERSHIP CONTRACT**

#### **Article 64. Responsibilities of the Ministry of Planning and Investment**

1. Help the Government to consistently manage investment activities in the form of public-private partnerships across the country.
2. Preside over and collaborate the Ministries or regulatory agencies concerned in providing guidance on the implementation of regulations on management and use of funds for the preparation of investment; procedures for transformation of investment projects funded by public investment capital; documentation and procedures that must be submitted or followed to approve the proposed investment project; records and procedures that must be submitted or followed to issue, amend and revoke the investment registration certificate; use of the state funding for the project; transfer of rights and obligations under the project agreement and other matters within their delegated authority specified herein.
3. Verify and submit the result of verification of similar investment projects proposed by the Ministries, provincial People's Committee to the Prime for consideration and decision.
4. Preside over and collaborate with the Ministry of Finance in formulating the general plan to use the State investment in the project; manage the state funding for project preparation.
5. Collaborate with the Ministry of Finance in providing guidance on the disbursement of State investment in the project.
6. Grant, adjust and revoke investment registration certificates under their jurisdiction; appraise State investment in the project within their jurisdiction; give their advice on matters inside their area of competence at the request of the Ministries and provincial People's Committees.
7. Preside over and cooperate with Ministries, provincial People's Committee in inspecting the proposal in which other forms of investment are specified in this Decree.
8. Preside over and collaborate with Ministries, regulatory agencies and provincial People's Committees in monitoring, testing, inspecting, reporting and assessing the implementation of the projects throughout the country.
9. Establish and manage the system of national information, national database on public-private partnership investment.

10. Organize training sessions to enhance the capability of implementing investment projects in the form of public-private partnerships.

11. Perform other duties and exercise other powers as prescribed by law.

#### **Article 65. Responsibilities of the Ministry of Finance**

1. Provide guidance on cost of preparing and implementing investment projects of ministries, provincial People's Committees; mechanisms for implementation of investment projects under contract BT; the financial plan of the project; final settlement of construction projects and other related matters within their jurisdiction specified in this Decree.

2. Preside over and cooperate with the Ministry of Planning and Investment in providing guidance on disbursement of state investment in the project.

3. Cooperate with the Ministry of Planning and Investment in planning to use state investment in the project, and managing state funding for investment preparation.

4. Give their advice on the measures relating to investment guarantee and investment incentives.

5. Give their opinions on issues within their assigned duties or delegated powers at the request of the Ministries, provincial People's Committee.

6. Aggregate and evaluate data and figures concerning the public debt of the projects and the financial obligations of the Government.

7. Perform other assigned duties and exercise other delegated powers as prescribed by law.

#### **Article 66. Responsibilities of the Ministry of Justice**

1. Provide legal advice on the project contract, the Government guarantee and documents related to the project signed by state agencies.

2. Participate in the negotiation of issues relating to applicable law, dispute settlement, government guarantees, other legal issues relating to project contracts and other similar contracts at the request of the Ministries and provincial People's Committee.

3. Perform other assigned duties and exercise other delegated powers as prescribed by law.

#### **Article 67. Responsibilities of the State Bank of Vietnam**

1. Provide their advice on the possibility of ensuring the balancing of foreign currency for the project at the request of Ministries, provincial People's Committees; aggregate demands for foreign currency of projects and manage the State's foreign exchange reserves to ensure the ability to balance an amount of foreign currency for the project.

2. Get involved in verifying issues within their assigned duties or delegated powers at the request of Ministries and provincial People's Committees.

3. Perform other assigned duties and exercise other delegated powers as prescribed by law.

#### **Article 68. Responsibilities of the Ministry of Construction**

1. Providing guidance on the implementation of regulations on project supervision and quality control and the determination of operating costs of the project management units.

2. Get involved in verifying issues within their assigned duties or delegated powers at the request of Ministries and provincial People's Committees.

3. Perform other assigned duties and exercise other delegated powers as prescribed by law.

#### **Article 69. Responsibilities of Ministries and regulatory bodies**

1. Perform the state management of investment in the form of public-private partnerships within their jurisdiction.

2. Formulate, announce projects that fall under their authority.

3. Preside over and cooperate with the Ministry of Planning and Investment in providing guidance on the implementation of the provisions enshrined in this Decree.

4. Provide their advice on relevant matters within their area of competence at the request of the Ministries, provincial People's Committee.

5. Aggregate and report information about the implementation of projects within the jurisdiction of specific regulatory agencies.

6. Request the Prime Minister to consider and decide the implementation of the forms of investment guarantee, which have not been governed in this Decree.

7. Perform other assigned duties and exercise other delegated powers as prescribed by law.

#### **Article 70. Responsibilities of provincial People's Committees**

1. Perform the state management of investment in the form of public-private partnership arrangements in the province under the Government's delegation of authority.

2. Formulate and announce local projects.

3. Verify issue, amend, and revoke the investment registration certificate within their jurisdiction.

4. Provide their advice on matters within their assigned duties and delegated powers at the request of the Ministries, provincial People's Committee.
5. Aggregate, evaluate information about the execution of the projects that fall inside their area of competence.
6. Preside over, cooperate with regulatory agencies in carrying out site clearance for the implementation of the project.
7. Request the Prime Minister to consider, decide the implementation of investment projects in the other forms of investment guarantees that have not been governed in this Decree.
8. Perform other assigned duties and exercise other delegated powers according to the legal regulation.

## **Chapter XI**

### **IMPLEMENTARY PROVISIONS**

#### **Article 71. Effect**

1. This Circular shall take effect from April 10, 2015.
2. The following Decrees or Decisions shall become invalid from the effective date of this Decree:
  - a) The Decree No. 108/2009/NĐ-CP dated November 27, 2009 by the Government on the investment in the form of BOT contract, BTO contract and BT contract;
  - b) The Decree No. 24/2011/NĐ-CP dated April 05, 2011 by the Government providing amendments to a number of articles of the Decree No. 108/2009/NĐ-CP on the investment in the form of BOT, BTO and BT contracts;
  - a) The Decision No. 71/2010/QĐ-TTg dated November 9, 2010 by the Prime Minister providing regulation on the investment in the form of Public-Private Partnership.

#### **Article 72. Transitional provisions**

1. The list of projects to be announced prior to the effective date of this Decree must be revised and re-approved under the provisions of this Decree, unless otherwise approved by Prime Minister.
2. The feasibility study report was approved before the effective date of this Decree is not required to be re-approved under the provisions of this Decree.



3. The project of which investor selection result is approved before the effective day of this Decree shall not be required to go through the investor re-selection process in accordance with regulations laid down in this Decree.
4. The project contracts that are initialed before the effective day of this Decree shall not be re-negotiated.
5. The implementation of project that has been granted the investment certificate or for which the contract has been officially signed before the effective day of this Decree shall proceed according to the regulation defined in the investment certificate and the project contracts.
6. If a project has obtained a written commitment or approval by the Prime Minister or Ministries, provincial People's Committees and regulatory bodies on the use of the State funding for the project, incentive and investment guarantee and other contents related to the implementation of the project before the effective day of this Decree, the execution of the project shall proceed according to these such documents
7. The projects other than those mentioned above shall be governed under the Decision of the Prime Minister according to the proposal from the Ministry of Planning and Investment.

### **Article 73. Implementation**

The Ministers, Heads of ministerial-level agencies, Heads of Governmental agencies, the President of the People's Committees of provinces are responsible for providing guidance on the implementation of this Decree within their assigned duties and delegated powers./.

**PP. THE GOVERNMENT  
THE PRIME MINISTER**

**Nguyen Tan Dung**

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