

No. 15/2015/ND-CP

*Hanoi, 14 February 2015*

**THE DECREE**  
**on Public-Private Partnership Investment Form**

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

Pursuant to the Law on Investment, dated 26 November 2014;

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

Pursuant to the Law on Public Procurement, dated 26 November 2013;

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

Pursuant to the Law on Management of Public Debt, dated 17 June 2009;

At the request of the Minister of Planning and Investment,

The Government issues the Decree on Investment under Public-Private Partnership Form.

**Chapter I**  
**GENERAL PROVISIONS**

**Article 1. Governing scope**

This Decree sets forth the sectors, conditions, procedures for implementation of projects developed under public private partnership investment form; the mechanism for management and utilization of State investment capital for the participation in implementing projects; policies for investment incentives and guarantees; and responsibilities of the State in management of projects developed under public-private partnership investment form.

## **Article 2. Applicable entities**

This Decree applies to authorized state agencies, investors, project enterprises, lenders and agencies, organizations, individuals relating to the implementation of projects developed under the public-private partnership investment form.

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

In this Decree, the following terms are construed as follows:

1. Public-private partnership investment form (hereinafter referred to as PPP) means an investment form to be implemented based on a contract between an authorized state agency and (an) investor(s) and the project enterprise to implement, manage, operate an infrastructure project and to provide public services.

2. Project contract means the contracts set out in Clause 3, 4, 5, 6, 7, 8 and 9 of this Article and other similar contracts as prescribed in Clause 3 of Article 32 of this Decree.

3. Build-Operate-Transfer contract (hereinafter referred to as BOT contract) means a contract signed between an authorized state agency and (an) investor(s) to build an infrastructure facility; after the completion of the constructed facility,<sup>1</sup> the investor(s) shall have the right to commercially operate such facility for a fixed term; at the end of such term, the investor(s) shall transfer the facility to the authorized state agency.

4. Build-Transfer-Operate contract (hereinafter referred to as BTO contract) means a contract signed between an authorized state agency and (an) investor(s) to build an infrastructure facility; after the completion of the constructed facility, the investor(s) shall transfer [such facility]<sup>2</sup> to the authorized state agency and shall have the right to commercially operate such facility for a fixed term.

5. Build-Transfer contract (hereinafter referred to as BT contract) means a contract signed between an authorized state agency and (an) investor(s) to build an infrastructure facility; the investor(s) shall transfer the facility to the authorized state agency and shall be paid by the land fund for implementing the Other Project<sup>3</sup> pursuant to the conditions as provided in Clause 3 of Article 14 and Clause 3 of Article 43 of this Decree.

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<sup>1</sup> Note: Constructed facility can also be read as "works".

<sup>2</sup> Note: The language in brackets here and hereinafter is added by the translator.

<sup>3</sup> Note: As defined in Clause 10 of this Article.

6. Build-Own-Operate contract (hereinafter referred to as BOO contract) means a contract signed between an authorized state agency and (an) investor(s) to build an infrastructure facility; after the completion of the facility, the investor(s) shall own and have the right to commercially operate such facility for a fixed term.

7. Build-Transfer-Lease contract (hereinafter referred to as BTL contract) means a contract signed between an authorized state agency and (an) investor(s) to build an infrastructure facility; after the completion of the facility, the investor(s) shall transfer [such facility] to the authorized state agency and shall have the right to provide services on the basis of commercial operation, exploitation of such infrastructure facility for a fixed term; the authorized state agency shall lease the services and make payments to the investor(s) in accordance with the conditions as provided in Clause 2 of Article 14 of this Decree.

8. Build-Lease-Transfer contract (hereinafter referred to as BLT contract) means a contract signed between an authorized state agency and (an) investor(s) to build an infrastructure facility; after the completion of the facility, the investor(s) shall have right to provide services on the basis of commercial operation and exploitation of such facilities for a fixed term; the authorized state agency shall lease the services and make payments to the investor(s) in accordance with the conditions as provided in Clause 2 of Article 14 of this Decree; at the end of the term for providing services, the investor(s) shall transfer the facilities to the authorized state agency.

9. Operate-Manage contract (hereinafter referred to as O&M contract) means a contract signed between an authorized state agency and (an) investor(s) to commercially operate part of a facility or the entire facility for a fixed term.

10. Other Project means a project implemented by (an) investor(s) to recover the capital [that the investor(s)] invested in an infrastructure facility.

11. Project proposal means document(s) presenting the contents of the preliminary study on the necessity, the feasibility and effectiveness of a project.

12. Feasibility study report means the document presenting the contents of the study on the necessity, the feasibility and effectiveness of a project.

13. Total investment means the total capital expenditure for the construction of a project facility and the initial working capital for project operation and exploitation.

14. Equity means the capital contributed by the investor(s) to implement a project in accordance with the provisions of Article 10 of this Decree.

15. Investor(s) means organizations or individuals conducting investment activities in accordance with the provisions of the laws on investment and other relevant laws.

16. Project enterprise means an enterprise established by (an) investor(s) to implement a project.

17. State enterprise means the enterprise having 100 per cent of the charter capital held by the State.

18. Lender means the organization providing credit to an investor(s) or project enterprise to implement a project.

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

1. Projects for the construction, renovation, operation, conduct of business, management of infrastructure facilities and provision of equipment or public services, including:

a) Infrastructure facilities for traffic and transportation and relevant services;

b) Lighting systems; water supply systems; drainage systems; waste and wastewater collection and treatment systems; social housings, resettlement housings, cemeteries;

c) Power plants, power transmission lines;

d) Infrastructure facilities in healthcare, education, training, vocational training, culture, sport and other relevant services; office buildings of state agencies;

dd) Commercial, scientific and technological, hydro-meteorological infrastructure facilities, infrastructure facilities of economic zones and information technology parks; information technology applications;

e) Agricultural and rural infrastructure facilities, development services for connecting the production with the processing and sales of agricultural products;

g) Other sectors pursuant to Prime Minister's decision.

2. Projects as prescribed in Clause 1 of this Article shall be classified in accordance with the laws on public investment, including projects of national importance, group A, B and C projects.<sup>4</sup>

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<sup>4</sup> Note: Group A, B and C projects are defined in the Law on Public Investment dated 18 June 2014.

3. Ministries and ministerial-equivalent bodies shall preside, coordinate with the Ministry of Planning and Investment to provide detailed guidelines on investment sectors within the management scope of the Ministries and branches.

**Article 5. Costs for investment preparation and project implementation of Ministries, branches and provincial-level People's Committees**

1. The costs for investment preparation and project implementation by Ministries, ministerial-equivalent bodies, Government bodies and People's Committees of provinces or cities under direct management of the Central Government (hereinafter collectively referred to as Ministries, branches and provincial-level People's Committees) shall include:

a) Costs for formulation, appraisal and approval of project proposal and a feasibility study report;

b) Costs for organizing the selection of the investor(s);

c) Operating costs of the project management unit of the authorized state agency, including costs for supervision of the project contract implementation and quality of the constructed facility;

d) Costs for project announcement;

dd) Operating costs of the unit being the focal point to manage PPP activities;

e) Costs for hiring consultants to support the implementation of a number of activities under the responsibilities of the authorized state agency in accordance with the provisions of Clause 5 of Article 8 of this Decree;

g) Costs for workshops, conferences and negotiation of project contracts and other relevant contracts;

h) Other costs.

2. The costs as stated in Items a, b, and c of Clause 1 of this Article shall be allocated from the following capital sources:

a) State budget as being balanced in the annual expenditure plan for development investment of the Ministries, branches and provincial-level People's Committees;

b) Capital sources for supporting investment preparation<sup>5</sup> pursuant to Article 6 of this Decree;

c) Revenues from the sale of request for proposals for selection of the investor(s);

d) Reimbursement made by the investor(s) being selected for project implementation;

dd) Other lawful capital sources.

3. The costs set out in Items d, dd e, g, h of Clause 1 of this Article shall be allocated from the state budget within the administrative expenditure plan of the Ministries, branches and provincial-level People's Committees.

### **Article 6. Capital sources for supporting investment preparation**

1. The Ministry of Planning and Investment shall mobilize and manage official development assistance (ODA) sources, concessional loans of foreign donors and other capital sources pursuant to the decision of the Prime Minister in order to support project preparation activities.

2. The capital sources provided in Clause 1 of this Article shall be granted to Ministries, branches and provincial-level People's Committees in order to support project preparation costs as stipulated in Item a and Item b of Clause 1 of Article 5 of this Decree.

3. The investor selected to implement a project shall reimburse the costs for supporting investment preparation and the costs for maintaining the capital sources for investment preparation in order to preserve the capital sources for investment preparation of other projects.

4. The Ministry of Planning and Investment shall preside and coordinate with the Ministry of Finance to provide guidance on the implementation of this Article.

### **Article 7. Steering Committee and focal unit for the management of PPP activities**

1. The State steering committee on public-private partnership shall be established and operate in accordance with decision of the Prime Minister.

2. Based on specific management requirements and conditions, Ministries, branches and provincial-level People's Committees shall assign a

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<sup>5</sup> Note: Literal translation. This can be interpreted to mean and include the "project development facility".

specialized unit under their direct management to be the focal point for the management of PPP activities of the Ministries, branches and localities (hereinafter collectively referred to as focal units). If necessary, the Ministries and branches shall make a proposal to the Prime Minister for deciding on the establishment of a specialized unit directly under their management to be the focal point for the management of PPP activities.

#### **Article 8. Authorized state agencies signing and implementing project contracts**

1. The ministries, branches and provincial-level People's Committees shall be the authorized state agencies signing project contracts within their functions, duties, and authority; and shall performing the rights and obligations as agreed with the investor(s) in the project contracts.

2. Based on specific functions, duties, rights and specific management conditions, the Ministries and branches may authorize organizations under the Ministries and branches; the provincial-level People's Committees may authorize the specialized bodies [under the provincial-level People's Committees] or the People's Committees at district level to sign and implement project contracts of group B and group C projects.

3. The authorization pursuant to Clause 2 of this Article must be made in writing, specifying the scope of authorization and responsibilities of the authorized bodies in investment preparation, negotiation, signing and implementation of the project contract.

4. The authorized state agencies and the agencies being authorized in accordance with Clause 2 of this Article, shall establish or assign a project management unit to implement the activities within their responsibilities; however, in all circumstances such agencies must be responsible for the obligations as agreed under the project contract.

5. If necessary, the authorized state agencies shall select independent consulting organisations to assist the implementation of certain obligations as provided in Clause 4 of this Article.

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

1. Except for group C projects as set out in Clause 2 of this Article, a project shall be implemented in accordance with the following procedures:

a) Formation, appraisal, approval and publication of the project in accordance with Chapter III of this Decree;

b) Formation, appraisal and approval of the feasibility study report in accordance with Chapter IV of this Decree;

c) Organization of investor selection; negotiation and signing of the investment agreement and project contract in accordance with Chapter V of this Decree;

d) Implementation of the procedures for the issuance of an investment registration certificate and establishment of the project enterprise as stipulated in Chapter VI of this Decree;

dd) Implementation of the project in accordance with Chapter VII of this Decree;

e) Finalization and transfer of the facility in accordance with Chapter VIII of this Decree.

2. Group C projects shall be implemented in accordance with the following procedures:

a) Formulation, appraisal, approval and publication of the project in accordance with Chapter III of this Decree;

b) Organization of investor selection; negotiation and signing of the project contract in accordance with Chapter V of this Decree;

c) Implementation of the project in accordance with Chapter VII of this Decree;

d) Finalization and transfer of the facility in accordance with Chapter VIII of this Decree.

## **Chapter II**

### **CAPITAL RESOURCES FOR PROJECT IMPLEMENTATION**

#### **Article 10. Equity and mobilized capital of the Investors**

1. The investor(s) shall be responsible for contributing equity and mobilizing other capital sources to implement the project as agreed in the project contract.

2. The investor's equity ratio must not be lower than 15% of the total investment capital. Regarding a project with the total investment capital of more than VND 1,500 billion, the equity ratio shall be determined on a progressive basis as follows:

a) For the capital portion of up to VND 1,500 billion, the equity ratio must not be lower than 15% of this portion;



b) For the capital portion of more than VND 1,500 billion, the equity ratio must not be lower than 10% of this portion.

3. The State investment capital for participation in the project implementation, as provided in Article 11 of this Decree, shall not be counted as part of the total investment capital when identifying the equity ratio.

4. The Other Project implemented by the investor(s), in order to recover capital invested in a BT project facility, must satisfy the requirements on owner's equity (if any) in compliance with the laws.

### **Article 11. Use of State investment capital for participation in the project implementation**

1. The State investment capital for participation in the project implementation includes capital from the State budget, Government bonds, local government bonds, ODA sources and concessional loans from foreign donors.

2. The State investment capital for participation in the project implementation shall be used for conducting the following activities:

a) To provide capital support to the construction of facilities with regard to projects having business activities and collecting user fees, but the revenues are not sufficient for recovering investment capital and gaining profits;

b) To make payment to the investor(s) providing services under BTL contract, BLT contract and other similar contracts;

c) To support the construction of ancillary facilities, to organize compensation, land clearance and resettlement.

3. The State investment capital as provided in Item a and Item b of Clause 2 of this Article shall only be used for participation in implementing the projects proposed by the Ministries, branches, provincial-level People's Committees or the projects being subject to ODA sources and concessional loans of foreign donors.

### **Article 12. Determination of the value of State investment capital for participation in the project implementation**

1. The value of State investment capital shall be determined on the basis of the financial plan of the project, the approval in-principle on the use of State investment capital set out in Clause 2 of Article 17 of this Decree, and the capability of mobilizing and balancing public capital of the State for project implementation.

2. When approving the feasibility study report or the project proposal (with regard to group C projects), the competent person as stipulated in Article 27 of this Decree shall determine the value of State investment capital for participation in the project implementation.

**Article 13. Making the plan for using the State investment capital for participation in the project implementation**

1. Ministries, branches and provincial-level People's Committees shall formulate and consolidate the plans on the State investment capital for the participation in the implementation of the projects, which have been announced in accordance with Article 18 of this Decree, into the medium term public investment plan of 5 years of the [relevant] sectors and localities.

2. On the basis of the medium term public investment plan, the approved feasibility study report or project proposal (with regard to group C projects), the Ministries, branches and provincial-level People's Committees shall formulate and consolidate the plans on the State investment capital for the participation in the project implementation into the annual public investment plans of their sector and localities.

3. The Ministry of Planning and Investment shall preside and coordinate with the Ministry of Finance to consolidate the plans on the use of State investment capital for the participation in the project implementation into the national public investment plans.

**Article 14. Disbursement of State investment capital for the participation in the project implementation**

1. Disbursement of State investment capital for supporting the construction of project facilities:

a) State capital contributed for supporting the construction of project facilities, as stipulated in Item a of Clause 2 of Article 11 of this Decree, shall be disbursed after the completion of the volume and value of construction works<sup>6</sup> as agreed in the project contract;

b) Based on the completed volume and value of construction works as examined and accepted by the investor, [or] project enterprise, the authorized State agency shall disburse and make payments to the investor(s), [or] project enterprise in accordance with the proportion, value, schedule, and conditions as agreed in the project contract.

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<sup>6</sup> Note: Literal translation. This can be interpreted to refer to the construction milestones.

2. Disbursements of the capital for making payments to the investor(s) implementing BTL contracts and BLT contracts:

a) The capital for making payments to the investor(s) providing services under BTL contracts, BLT contracts and other similar contracts, as stipulated in Item b of Clause 2 of Article 11 of this Decree, shall be disbursed from the time the services are provided as agreed in the project contract;

b) Payments, as set out in Item a of this Clause, shall be made periodically on the basis of the quantity and quality of the services as agreed in the project contract.

3. The use of a land fund to create the capital sources to make payments to the investor(s) implementing BT contracts must be approved by the competent agencies in accordance with the laws on land.

4. Disbursement of the capital for construction of ancillary facilities, organization of compensation, land clearance and resettlement:

Capital for construction of ancillary facilities, organization of compensation, land clearance and resettlement as provided in Item c of Clause 2 of Article 11 of this Decree shall be conducted in compliance with the regulations applicable to public investment projects.

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

### **Chapter III**

## **FORMULATION AND PUBLICATION OF PROJECTS**

### **Section 1**

## **PROJECTS PROPOSED BY MINISTRIES, BRANCHES AND PROVINCIAL-LEVEL PEOPLE'S COMMITTEES**

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

1. Projects selected to be developed under the public-private partnership investment form must meet the following requirements:

a) To conform to the master plans, plans for development of the sectors and regions and the socio-economic development plans of the localities;

b) To conform to the investment sectors set out in Article 4 of this Decree;

c) To be capable of attracting and receiving commercial capital sources, technologies and management experiences of the investor(s);

d) To be capable of steadily and continuously providing products and services which satisfy the quality standards and meet demands of the users;

dd) To have the total investment amount of 20 billion VND and above, except for projects developed under O&M contracts and the projects as provided in Item e of Clause 1 of Article 4 of this Decree.

2. Projects which are not within the master plans, plans for development of the sectors and regions and the socio-economic development plans of the localities must be considered for supplementation by the Ministries, branches, provincial-level People's Committees within the scope of their authority or must be proposed to the competent authority for approval.

3. Projects, which fulfil the requirements, set out in Clause 1 of this Article, and are capable of recovering capital from the business activities shall be prioritized to be selected.

#### **Article 16. Contents of project proposals**

1. Ministries, branches and provincial-level People's Committees shall organize the formulation of project proposals to be the basis for the selection of investment projects to be implemented under public-private partnership form.

2. Project proposals shall comprise of the following main contents:

a) The necessity of investment; the advantages of implementing the project under public-private partnership investment form compared to other investment forms; and the [proposed] type of project contracts;

b) The conformity of the project with the master plans, development plans and other requirements as provided in Clause 1 of Article 15 of this Decree;

c) Anticipation of the project objectives, scale, implementation location, demand for the use of land and natural resources;

d) Preliminary analysis on the technical requirements, standards, quality of the project facilities, products or services to be provided;

dd) Anticipated schedule and terms for project implementation; terms for construction, exploitation of [project] facilities; plans for organizing the management, commercial operation or provision of services;

e) Anticipated overall plan for compensation, land clearance and resettlement;

g) Anticipated conditions for implementation of the Other Project (applicable to projects developed under BT contracts);

h) Preliminary analysis of the financial plan of the project, including the [following] contents: the total investment capital of the project, the structure of the capital sources and the [capital] mobilization plan; the State investment capital for the participation in the project implementation (if any); expenditures; revenue sources, prices, fees of products or services; the term for recovering capital and gaining profits;

i) Preliminary anticipation of the risks in project implementation process and risk sharing between the authorized state agencies and the investor(s);

k) Proposal on forms of investment incentives and guarantees (if any);

l) Preliminary estimation on the socio-economic effectiveness of the project; impacts of the project on environment, society, security and national defence;

m) Other necessary contents.

3. Regarding projects, which include construction components, in addition to the contents set out in Clause 2 of this Article, the project proposal shall include preliminary design in accordance with the laws on construction.

### **Article 17. Appraisal and approval of project proposals**

1. Ministries, branches and provincial-level People's Committees shall organize the appraisal and approval of project proposals for projects of group A, B and C. The process and procedures for formulation, appraisal and approval of the proposal for projects of national importance, must be implemented in accordance with the laws on public investment.

2. Regarding projects using the State investment capital, based on the capital amount and capital sources expected to be used, the Ministries, branches and provincial-level People's Committees shall, prior to approving the project proposal, report to the competent agencies in compliance with the laws on public investment for obtaining approval-in-principal for such use [of the State investment capital].

3. The dossier requesting the approval-in-principal for the use of State investment capital for the participation in the project implementation shall include:

a) Document requesting the use of the State investment capital for the participation in the project implementation;

b) Project proposal;

c) Appraisal opinion of the authorized State agency on capital sources and capability of balancing the State investment capital for the participation in the project implementation.

4. The time-limit for issuing approval-in-principal for the use of State investment capital for the participation in the project implementation as set out in Clause 2 of this Article is maximum 30 days from the receipt of a complete dossier as provided in Clause 3 of this Article.

### **Article 18. Project publication**

1. Within 07 working days from the approval of a project proposal, the [relevant] Ministry, branch [or] provincial-level People's Committee shall publish the project and project list on the national procurement website system in accordance with the laws on procurement.

2. The project publicized must contain the following main items:

a) Project name and type of the project contract;

b) Objective, scale and location for implementation of the project and the Other Project (if any);

c) Summary of the technical requirements, standards, quality of the project facilities, products or services to be provided;

d) Estimation of the total investment capital and the State investment capital for the participation in the project implementation (if any);

dd) Anticipated schedule and terms for project implementation, including the timeline for the formulation of the feasibility study report, investor selection, the durations of the construction, completion and exploitation of the [project] facility;

e) Updates on the project implementation schedule pursuant to Item dd of this Clause;

g) Contact address of the authorized state agency.

### **Article 19. Conversion of investment form for projects invested with public investment capital**

1. Projects being invested with public investment capital may be considered for conversion of investment form in order to be developed under public-private partnership investment form if [such projects] satisfy the requirements the set out in Clause 1 of Article 15 of this Decree.

2. The Ministry of Planning and Investment shall provide guidelines on procedures for conversion of investment form set out in Clause 1 of this Article.

## **Section 2**

### **PROJECTS PROPOSED BY THE INVESTORS**

#### **Article 20. Conditions for proposing a project**

1. Investors may propose projects for implementation, which are not the approved and publicized projects, [or] not included in the project list approved and publicized by Ministries, branches and provincial-level People's Committees as provided in Section 1 of this Chapter.

2. Projects proposed by the investor(s) must satisfy the following requirements:

a) The requirements set out in Clause 1 of Article 15 of this Decree;

b) The investor(s) being a State owned enterprise must form a consortium with another enterprise in order to propose a project.

#### **Article 21. Requirements for the project proposal of the investor(s)**

1. The investor(s) shall formulate a project proposal dossier and submit it to the [relevant] Ministries, branches [or] provincial-level People's Committees.

2. Contents of a project proposal:

a) Document proposing the implementation of a project;

b) Project proposal (including contents set out in Clause 2 and Clause 3 of Article 16 of this Decree);

c) Documents certifying the legal status, capacity, experience of the investor(s);

d) Experience in implementing similar projects (if any);

dd) Other documents (if necessary) to explain the project proposal.

**Article 22. Appraisal and approval of the project proposal of the investor(s)**

1. Project proposal of the investor(s) shall be appraised and approved as stipulated in Article 17 of this Decree within a time limit of 30 days upon the receipt of a complete [project proposal] dossier.

2. The Ministry of Planning and Investment shall provide guidelines for implementation of this Article.

**Article 23. Publication of the investor's project proposal**

1. In case the project proposal of the investor(s) is approved, the [relevant] Ministry, branch, [or] provincial-level People's Committee shall publish such project proposal and information of the investor who proposes the project in accordance with Article 18 of this Decree.

2. In case the project proposal having contents relating to intellectual property rights, trade or technology secrets, or agreements on capital mobilization for project implementation which are required to be kept confidential, the investor(s) and the [relevant] Ministry, branch, [or] provincial-level People's Committee may agree on the contents to be published.

**Chapter IV**

**FORMULATION, APPRAISAL AND APPROVAL OF THE  
FEASIBILITY STUDY REPORTS**

**Article 24. Responsibilities for formulation of feasibility study reports**

1. Ministries, branches and provincial-level People's Committees shall organize the formulation of the feasibility study report of projects which shall be the basis to formulate the request for proposals for the investor selection and project contract negotiation.

2. Regarding projects proposed by the investor(s) and approved pursuant to Article 22 of this Decree, the [relevant] Ministry, branch, [or] provincial-level People's Committee may assign the investor(s) to formulate the feasibility study report.

3. The assignment to the investor(s) for formulating the feasibility study report shall be made on the basis of a written agreement between the [relevant] Ministry, branch, [or] provincial-level People's Committee and the



investor(s). Such written agreement must provide for the purposes, requirements, costs for formulation of the feasibility study report, and the costs for hiring independent consultants for the appraisal of the feasibility study report and the principle for handling the case where another investor is selected to implement the project.

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

1. A feasibility study report must contain the following main contents:

a) Detailed analysis of the necessity of investment and advantages of developing the project under the public-private partnership investment form compared to other investment forms; types of project contracts;

b) Assessment on the conformity of the project with master plans, development plans and other requirements pursuant to Clause 1 of Article 15 of this Decree;

c) Project's objectives, scale, components (if any) and project implementation location; demand for the use of land and natural resources;

d) Explanation on technical aspects and technology to satisfy the requirements for quality of the project facility, products or services to be provided;

dd) Assessment on the current conditions of facilities, machinery and equipment, value of assets (in case of O&M contracts); conditions for implementation of the Other Project (in case of BT contracts);

e) Project implementation schedule and terms; duration of construction and exploitation of the facility; and plans for organization of management, commercial operation or provision of services;

g) Overall plan for compensation, land clearance and resettlement;

h) Financial plan of the project (comprising the contents provided in Item h of Clause 2 of Article 16 of this Decree);

i) Ability to mobilize capital for project implementation; assessment of market demand and affordability; survey on the interests of the investor(s), and lenders in the project;

k) Analysis of the risks and responsibilities of the parties in risk management during the project implementation process;

l) Suggestions for investment incentives and guarantees (if any);

m) Socio-economic effectiveness of the project and its impacts on environment, society, security and national defence and security.

2. Regarding project having construction components, in addition to the contents set out in Clause 1 of this Article, the feasibility study report shall include the basic design in accordance with the laws on construction.

3. Formulation of a feasibility study report is not required for group C projects but the project proposal shall include the basic design and financial plan as the basis for selection of the investor(s) and negotiation of the project contract.

4. Ministries and branches shall coordinate with the Ministry of Planning and Investment to provide detailed guidelines on contents of feasibility study report in compliance with the requirements on implementation and management of projects within their sectors.

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

1. [The following agencies have] the authority to appraise feasibility study report:

a) The State appraisal committee shall appraise projects of national importance;

b) Ministers, Heads of ministerial-equivalent bodies and Chairmen of provincial-level People's Committees shall assign a focal unit, which manages PPP activities, to organize the appraisal of projects of group A and group B.

2. The appraisal dossier of the feasibility study report [shall include]:

a) The report on project appraisal;

b) The feasibility study report;

c) Relevant documents and legal documents;

3. Contents to be appraised [shall include]:

a) The necessity of implementing the project: the conformity of the project with master plans, development plans of sectors, regions and localities; the urgency and the advantages of developing the project under the public-private partnership investment form compared to other investment forms;

b) The evaluation on basic elements of the project: objectives and the conformity in terms of scale and location for implementation of the project; design, technical and technology requirements; plans for management and commercial operation or provision of services;

c) The feasibility of the project: the financial plan of the project, ability to mobilize the resources for project implementation; demand on the use of land, land clearance, and natural resources; capability to provide goods [or]

services, and solutions for organizing the implementation to satisfy the demand of users, and ensure users' ability to make payments; risks during the construction, exploitation and management processes of the project and measures to prevent and mitigate risks; interests of the investor(s) and lenders in the project;

d) The effectiveness of the project: results and contributions of the project to the socio-economic development duties; and [its] impacts on the environment, society, national defence and security;

dd) Other necessary contents.

4. Time limits for appraisal of a feasibility study report:

a) Regarding projects of national importance: no more than 90 days;

b) Regarding group A projects: no more than 40 days;

c) Regarding group B projects: no more than 30 days.

5. The appraisal agency is allowed to hire consultant(s) to appraise part of or the entire contents set out in clause 3 of this Article.

#### **Article 27. Authority for approving feasibility study report**

1. The Prime Minister shall approve the feasibility study report of projects of national importance.

2. Ministers, Heads of the ministerial-equivalent bodies and Chairmen of the provincial-level People's Committees shall approve the feasibility study report of group A and group B projects, except for projects using ODA and concessional loans from foreign donors in the security, national defence and religion sectors.

#### **Article 28. Amendment of feasibility study report**

1. The feasibility study report may be considered for amendments in the following cases:

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

b) Other factors, which bring higher efficiency to the project, occur;

c) Changes in master plans directly affect the location, scale and objectives of the project;

d) The project fails to attract investors after having conducted market surveys and the organized the pre-qualification or tendering for investor selection;

dd) Other cases under the decision of the Prime Minister.

2. The procedures for appraisal, approval and amendment of feasibility study report shall be conducted in accordance with Article 26 and Article 27 of this Decree.

## **Chapter V**

### **SELECTION OF INVESTOR AND SIGNING OF INVESTMENT AGREEMENT AND PROJECT CONTRACT**

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

1. The selection of investor may be conducted in the form of open bidding or direct appointment.

2. The investor(s) shall be entitled to incentives during the tendering process for investor selection when [such investor(s)] have the feasibility study report or project proposal (applicable to group C projects) approved by the [relevant] Ministry, branch, [or] provincial-level People's Committee.

3. The conditions, procedures for selection of the investor(s) and incentives for the investor(s) during the tendering process for investor selection shall be conducted in accordance with the laws on public procurement.

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

1. The authorized state agency shall organize the project contract negotiation with the selected investor(s) (hereinafter referred to as the parties) in accordance with Article 29 of this Decree.

2. Upon the completion of project contract negotiation, the authorized state agency and the investor(s) shall sign an investment agreement to confirm the following contents:

a) The draft of the project contract;

b) Rights and obligations of each party in implementing the procedures, provided in Article 40 and Article 42 of this Decree, in order to obtain an investment registration certificate and establish the project enterprise;

c) Other contents as agreed between the parties.

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

1. After the issuance of the investment registration certificate, as provided in Clause 3 of Article 40 of this Decree, the authorized state agency and the investor(s) shall sign the project contract.

2. Regarding group C projects, after the negotiation of the project contract is completed, the authorized state agency and the investor(s) shall sign the project contract.

3. The rights and obligations of the project enterprise shall be agreed in one of the following ways:

a) The project enterprise signs the project contract to join with the investor(s) as one party to the project contract;

b) The authorized state agency, the investor(s) and the project enterprise shall sign a document allowing the project enterprise to take over and perform the rights and obligations of the investor(s), as provided in the investment registration certificate and the project contract. This document shall form an integral part of the project contract.

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

1. Based on the objectives, characteristics, and type of the project contract, the parties agree on part or the entire of the following main contents:

a) Objectives, scale, location of the project; term and schedule for implementation of the project; term for construction of the project facility;

b) Technical and technology requirements, and quality of the project facility, products or services to be provided;

c) Total investment capital and financial plan of the project;

d) Conditions, proportion and schedule of disbursement of State investment capital for the participation in the project implementation (if any);

dd) Conditions for the use of land and relevant facilities;

e) Compensation, land clearance and resettlement;

g) Construction, examination, supervision, management of quality, acceptance and finalization of the project;

h) Assessment, operation, maintenance, conducting business activities on and exploitation of the project facility; transfer of the project facility;

i) Assurance of safety and environmental protection;

k) Conditions and procedures for exercising step-in rights of the lenders and appointed entities;

l) Risks sharing between the authorized state agency and the investor(s); force majeure events and principles for handling [these events];

m) Forms of investment incentives and guarantees (if any);

n) Laws governing the project contract and relevant contracts and dispute resolution mechanism;

o) Effectiveness and term of the project contract;

p) The principles, and conditions for amending, supplementing, terminating the project contract; transferring the rights and obligations under the project contract;

q) Other contents in accordance with agreements between the parties.

2. Documents enclosed with the project contract (if any) including annexes, materials and other documentations shall be an integral part of the project contract.

3. Based on the contract types set out in Clauses 3, 4, 5, 6, 7, 8 and 9 of Article 3 of this Decree, Ministries, branches and provincial-level People's Committees may propose other similar contract types which shall be submitted to the Prime Minister for consideration and decision.

4. Based on the provisions in Clause 1 of this Article, Ministries, and branches shall coordinate with the Ministry of Planning and Investment to provide detailed guidelines on the contents of the project contract in conformity with the requirements on implementation and management of projects within [their] sectors.

### **Article 33. Project step-in rights of lenders**

1. Lenders shall have the right to take over, or to appoint another competent entity to take over, all or part of the rights and obligations of the investor(s) or project enterprise (hereinafter referred to as project step-in rights) in the event that the investor or the project enterprise fails to fulfil the obligations under the project contract or loan agreements.

2. The agreement on project step-in rights shall be made in writing between the lender(s) and the authorized state agency or between the lender(s) and the parties signing the project contract. The lender(s) and the authorized state agency shall determine when to sign the agreement on project step-in rights.

3. After exercising any project step-in rights, the lender(s) or their appointed entity shall fulfil the respective obligations of the investor(s) and

the project enterprise as prescribed in the project contract and the agreement on project step-in rights.

**Article 34. Assignment of rights and obligations under the project contract**

1. The investor has the right to assign part or all of its rights and obligations under the project contract to the lender or another investor.

2. Any assignment of part or all of the rights and obligations under the project contract must not affect the objectives, scale, technical specifications, project implementation schedule and must comply with conditions for investment and conducting business in accordance with the laws on investment and other conditions as agreed in the project contract.

3. The agreement on assignment, prescribed in Clause 1 of this Article, shall be made in writing and signed between the parties to the project contract and the assignee. The lender(s) shall participate in negotiation of the assignment agreement as prescribed in the loan agreements.

**Article 35. Amendment and supplementation to the project contract**

The project contract may be amended or supplemented due to a change of scale, technical specifications of the project facility, total investment capital as agreed, or due to an event of force majeure, [or] an amendment of the feasibility study report as prescribed in Article 28 of this Decree and other circumstances as stipulated in the project contract.

**Article 36. Term of project contract**

1. The term of a project contract shall be as agreed by the parties in conformity with the sector, size, nature of the project and type of project contract.

2. The effectiveness of the project contract shall terminate upon the expiry of the agreed term or before the expiry of the term due to breach by one of the parties without effective remedial measures, due to a force majeure event; or in other circumstances as provided in the project contract.

3. The signing parties shall agree on the conditions of termination of the project contract and measures for handling the termination of the project contract.

### **Article 37. Applicability of foreign law**

1. The signing parties may agree on the application of foreign law governing the following contracts:

a) Project contracts to which one party is foreign investor;

b) Contracts for which the Government guarantees the performance of obligations as set out in Article 57 of this Decree.

2. Agreement on the applicability of foreign law, as set out in Clause 1 of this Article, must not contradict the provisions of the laws of Vietnam on selection and application of foreign law.

### **Article 38. Security for performance of project contract**

The authorized state agency and the investor may agree on the form, value and effective term of security for performance of project contract in accordance with the laws on public procurement.

## **Chapter VI**

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

#### **Article 39. Authority for issuance, amendment and revocation of the investment registration certificate**

1. The Ministry of Planning and Investment shall issue, amend and revoke the investment registration certificate for the following projects:

a) Projects of national importance;

b) Projects for which a Ministry, branch or an agency authorized by the Ministry or branch is the authorized state agency to sign the project contract;

c) Projects to be implemented in at least two provinces or cities under Central Government.

2. The provincial-level People's Committees shall issue, amend and revoke the investment registration certificates to projects other than those stipulated in Clause 1 of this Article.

3. The procedures for obtaining an investment registration certificate are not required for group C projects.



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

1. The application file for issuance of an investment registration certificate shall comprise:

- a) Written request for issuance of an investment registration certificate;
- b) Investment agreement and draft of the project contract;
- c) Feasibility study report and approval decision of the project;
- d) Approval-in-principal on the use of State investment capital for the participation in implementing the project (if any);
- dd) Joint venture contract and draft of the project enterprise charter (if any);
- e) Decision on investor selection.

2. The investor shall submit 05 sets of application files, including at least 01 set of originals, to the agency as prescribed in Article 39 of this Decree.

3. The agency, as prescribed in Article 39 of this Decree, shall issue the investment registration certificate within 25 days upon receipt of the valid application file.

4. The Ministry of Planning and Investment shall provide detailed guidance on the application file, process and procedure for issuance, amendment and revocation of an investment registration certificate.

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

1. An investment registration certificate shall contain the following main contents:

- a) Name and address of the investor;
- b) Name of the project;
- c) Objectives, scale, requirements, and conditions for implementation of the project (if any);
- d) Project implementation location and area of land to be used;
- dd) Total investment capital of the project; structure of the capital sources.
- e) Project term and implementation schedule;
- g) Value, proportion, schedule, and conditions for disbursement of State investment capital for the participation in the project implementation (if any);
- h) Investment incentives (if any).

2. For BT projects, in addition to the contents relating to project for construction of infrastructure facility, as set out in Clause 1 of this Article, the investment registration certificate must also provide conditions for implementation of the Other Project.

3. For the Other Project, procedures for issuance of an investment registration certificate shall be conducted in accordance with the laws on investment.

#### **Article 42. Establishment of the project enterprise**

1. Following the issuance of an investment registration certificate, the investor shall establish an enterprise for project implementation in conformity with the objectives and scope of operation as agreed in the project contract. The application file, procedures for establishment of project enterprise shall be conducted in accordance with the laws on enterprise.

2. Regarding BT projects and group C projects, the investor may decide to establish a project enterprise in accordance with the provisions in Clause 1 of this Article or to directly implement the project, but is required to organize the management of and carry out independent accounting on the investment capital sources and activities of the project.

### **Chapter VII**

#### **PROJECT IMPLEMENTATION**

#### **Article 43. Conditions for project implementation**

1. Project shall be implemented in accordance with the conditions as agreed in the project contract after the investment registration certificate is issued to the investor.

2. Group C projects shall be implemented after the project contract is signed.

3. The Other Project may be implemented simultaneously or after the completion of the infrastructure facility as agreed in the project contract.

#### **Article 44. Selection of contractors to implement the project**

The investor or the project enterprise shall issue regulations on selection of contractors for consultancy, provision of goods, construction and installation and other contractors on the basis of ensuring the fairness,

transparency and economic efficiency to be applied consistently during the implementation of the project.

#### **Article 45. Preparation of construction site**

1. The provincial-level People's Committee is responsible for organizing land clearance and completing procedures for land allocation or lease of land to implement the project in accordance with the laws on land, project contract and other relevant contracts.

2. The authorized state agency shall coordinate with the provincial-level People's Committee to fulfil the responsibilities prescribed in Clause 1 of this Article.

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

1. Based on the feasibility study report and the provisions of the project contract, the investor or the project enterprise shall formulate the technical design to be sent to the authorized state agency for supervision and inspection. Any change to the technical design, which affects the scale, technical standards and implementation schedule of the project must be approved in writing by the authorized state agency.

2. Appraisal of the construction design shall be conducted in accordance with the laws on construction.

#### **Article 47. Supervision on the implementation of project contract**

1. The investor [or] the project enterprise shall be responsible for quality of the project facility and services; shall supervise, manage on its own or employ an independent consulting organization to manage and supervise the construction, and the acceptance of each item and the entire of the [project] facility in accordance with the design and business plan as provided in the project contract.

2. The authorized state agency shall supervise the compliance with the obligations of the investor and the project enterprise as specified in the project contract.

3. If necessary, the authorized state agency may employ qualified organizations to support in performing the duties specified in Clause 2 of this Article.

#### **Article 48. Supervision of the quality of facilities**

1. While performing supervision of the quality of the facilities which are transferred to the State after the completion [of construction], in addition to the duties provided in Article 47 of this Decree, the authorized state agency shall be responsible for:

a) Examining the supervision of the facility construction process in accordance with the requirements specified in the project contract;

b) Examining the compliance with processes, standards, regulations for managing and operating the facility as provided in the project contract;

c) Organising the assessment of the quality of components of the facility, items of the facility and the entire constructed facility when there are questions concerning the quality or at the request of a state management body;

d) Requesting the investor to require the contractor to adjust or suspend the construction when the performance quality does not satisfy the requirements.

2. Supervision of quality of BT project facility shall be conducted in accordance with the procedures applicable to public investment projects.

3. The Ministry of Construction shall provide guidelines on implementation of the provisions of this Article.

#### **Article 49. Management and commercial operation of project facilities**

1. The investor or the project enterprise shall manage and commercially operate the project facility or implement the Other Project in accordance with the conditions as agreed in the project contract.

2. When operating the project facility or delivering services, the project enterprise shall be responsible for:

a) Providing goods and services and performing other obligations in accordance with the requirements and conditions as agreed in the project contract;

b) Ensuring that the use of the facility is in compliance with the conditions provided in the project contract;

c) Providing equal treatment to all users of products or services provided by the project enterprise; [the project enterprise shall] not using the rights to commercially operate the facility to deny providing services to users;

d) Conducting periodical maintenance, repair and ensuring that the facility operates safely in accordance with the design or process as being undertaken under the project contract.

**Article 50. Charges and fees for goods and services and other fees collectable**

1. Charges, fees and other fees collectable, and conditions and procedures for adjustment [of the charges, fees and other fees collectable] shall be agreed in the project contract on the principle of ensuring the interests of the investor, project enterprise, end-users and the State and enabling the investor to recover investment capital and gain profits.

2. Agreements on, adjustments of charges, fees for goods and services and other fees collectable regulated by the State must comply with the laws on charges, fees and be in accordance with the conditions as provided under the project contract.

3. When adjusting the charges, fees for goods or services and other fees collectable as prescribed in Clause 1 and Clause 2 of this Article, the investor or the project enterprise shall notify the authorized state agency and users of goods or services 30 days in advance.

**Article 51. Support in collecting service fees**

The investor and the project enterprise shall be given favourable conditions to collect properly and in full the service charges and fees and other fees; and shall be supported by the authorized state agency for collecting service fees and other collectable fees.

**Article 52. Investment supervision and evaluation, and financial publication**

1. Supervision and evaluation of projects shall be conducted in compliance with the regulations on investment supervision and evaluation and agreement(s) in the project contract.

2. The investor and the project enterprise shall make public the financial statements and audit reports in compliance with the laws and agreement(s) in project contract.

## **Chapter VIII**

### **FINALIZATION AND TRANSFER OF PROJECT FACILITIES**

#### **Article 53. Finalization of the project facilities**

1. The investor shall, within 06 months upon completion of [construction of] the project facility, carry out the finalization of investment capital for the construction of the facility.

2. The authorized state agency shall reach agreement with the investor on the selection of an experienced, competent and independent auditing organization to audit the value of the investment capital for the construction of the project facility.

3. The Ministry of Finance shall provide detailed guidelines on finalization of project facility value pursuant to provisions of this Article.

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

1. Regarding project contracts, which include provisions on the transfer of the project facilities, the authorized state agency and the investor shall reach an agreement in the project contract on the conditions and procedures for transfer of the project facility.

2. Transfer of the project facility shall be conducted under the following procedures and conditions:

a) One year prior to the date of transfer or within the term as agreed in the project contract, the investor and the project enterprise must publicize the transfer of the project facility and the term and procedures for contract liquidation, and repayment of debts via newspaper;

b) The authorized state agency shall organize evaluation of quality, value and status of the project facility as agreed in the project contract, make a list of assets to be transferred, determine damages (if any) and request the project enterprise to conduct reparation or maintenance of the facility;

c) The investor and the project enterprise must ensure that the assets to be transferred are not used to secure the performance of financial obligations or other obligations of the investor or the project enterprise, which have been arising before the transfer, unless the project contract provides otherwise;

d) The project enterprise shall be responsible for transferring technology, providing training and periodical maintenance and major overhaul to ensure the technical conditions for normal operation of the facility are in compliance with the requirements specified in the project contract; and

dd) After taking over the project facility, the authorized state agency shall manage and operate the facility in accordance with its functions and powers.

## **Chapter IX**

### **INVESTMENT INCENTIVES AND GUARANTEES**

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

1. The investor and the project enterprise shall be entitled to incentives on corporate income tax in accordance with the laws on corporate income tax.

2. Goods imported to implement a project shall be entitled to the incentives in accordance with the laws on import and export duties.

3. The investor and the project enterprise shall be subject to exemption from or reduction of land use fees for the area of land allocated by the State or shall be subject to exemption from or reduction of land rent for the whole project implementation term in compliance with the laws on land.

4. The investor and the project enterprise shall be entitled to other incentives in accordance with the laws.

#### **Article 56. Taxes applicable to contractors participating in project implementation**

Foreign contractors and domestic contractors participating in implementation of a project shall fulfil tax duties and shall be entitled to tax incentives in accordance with the laws.

#### **Article 57. Guarantees for obligations of the investor, project enterprise and other enterprises**

Based on the nature and requirements of project implementation, the Prime Minister shall appoint an agency to act on behalf of the Government to provide a guarantee for provision of raw materials, sales of products, services and other contractual obligations to the investor, project enterprise or other enterprises participating in project implementation and a guarantee for obligations of State-owned enterprises selling fuel, raw materials, purchasing products and services of the investor or project enterprise.

### **Article 58. Mortgage assets or the rights to commercially operate the project facility**

1. The investors and the project enterprises shall be permitted to mortgage assets, land-use rights and the rights to commercially operate the project facility to the lenders in accordance with the civil laws and the laws on land. The mortgage term shall not exceed the term of the project contract, unless otherwise agreed under the project contract.

2. The agreement to mortgage assets or the rights to commercially operate the project facility shall be made in writing and signed by the lenders and the parties signing the project contract.

3. Any mortgage of assets or rights to commercially operate the project facility must not affect the objectives, scale, technical specifications, project implementation schedule and other conditions as agreed in the project contract.

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

The land use purpose of the project shall remain unchanged in the entire implementation term of the project contract, even in the case the lenders exercise their step-in rights as prescribed in Article 33 of this Decree.

### **Article 60. Assurance of foreign currency balance**

1. The investors and project enterprises shall be permitted to buy foreign currency from the credit institutions permitted to conduct foreign exchange activities in order to satisfy the need for current transactions, capital transactions and other transactions or remittance abroad of capital, profits, proceeds from liquidation of offshore investment in accordance with the laws on foreign exchange control.

2. Projects for which the National Assembly having the authority to make approval-in-principal for investment; infrastructure construction projects within the Government investment programs and other important projects as decided by the Prime Minister shall be considered for satisfying the need for foreign currency to conduct the transactions provided in Clause 1 of this Article.

3. The Prime Minister shall decide on and appoint an agency to be responsible for providing the foreign currency balance guarantee for the projects prescribed in Clause 2 of this Article, based on the direction on socio-economic development, policies on management of foreign currency, the ability to balance foreign currency from time to time, and [based on] the



objective, nature of projects, and at the request of Ministries, branches [or] local authorities.

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

1. The investors and the project enterprises shall be permitted to use land, roads and other ancillary facilities to implement the project in compliance with the laws.

2. Where [certain] public services are scarce or where public facilities are limited to certain users, the investors, [or] project enterprises shall be given priority to be provided with [such] services or to be granted the right to use [such] public facilities to implement the project.

3. The authorized state agency shall be responsible for assisting the investors [or] project enterprises in conducting necessary procedures in order to obtain the priority in using public services and facilities.

### **Article 62. Assurance of property rights**

1. Lawful properties of the investors shall not be nationalized or expropriated by administrative measures.

2. In case of compulsory purchase or requisition of [investors'] properties by the State for the purposes of national defence, security or for the interests of the nation, in emergency situations, or for preventing and fighting against natural disasters, the investors shall be paid, compensated in accordance with the provision of the laws on investment, the laws on compulsory purchase, requisition of properties and other conditions as agreed in the project contract.

### **Article 63. Dispute settlement**

1. Any dispute arising between the authorized state agency and the investor or the project enterprise and any dispute arising between the project enterprise and other economic organizations participating in the implementation of a project must firstly be settled through negotiation and conciliation. In the event that the dispute cannot be settled through negotiation and conciliation, the parties may refer the dispute to an arbitration institution or courts of Vietnam in accordance with the laws of Vietnam, except for the cases prescribed in Clause 2 and Clause 3 of this Article.

2. Any dispute arising between the authorized state agency and a foreign investor or the project enterprise established by a foreign investor, in

accordance with Article 42 of this Decree, during implementation of the project contract and the guarantee agreements, prescribed in Article 57 of this Decree, shall be settled by arbitration or by the courts of Vietnam or by an arbitral tribunal established on the basis of an agreement between the parties.

3. Any dispute arising between the project enterprise and foreign individual or foreign organization and dispute between the project enterprise and Vietnamese economic organization and dispute among investors shall be settled in accordance with the provisions of the Law on Investment.

4. Disputes to be settled by arbitration as agreed under the project contract and other relevant contracts are commercial disputes. Awards of foreign arbitrations shall be recognized and enforced in accordance with the laws on recognition and enforcement of foreign arbitral awards.

## **Chapter X**

### **STATE RESPONSIBILITIES FOR MANAGEMENT OF PUBLIC – PRIVATE PARTNERSHIP INVESTMENT**

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

1. To assist the Government to manage consistently investment activities under public-private partnership form on national scale.

2. To preside over and coordinate with the relevant Ministries and branches to provide guidance on the management and use of capital sources for supporting investment preparation; procedures for the change of investment form of projects funded by public investment capital; the application file, procedures for approval of project proposal of the investors; the application file, procedures for issuance, amendment, revocation of investment registration certificate; the use of State investment capital for the participation in the project implementation; the transfer of rights and obligations under the project contract and other matters within the scope of its authority as provided in this Decree.

3. To appraise and submit to the Prime Minister for consideration and determination on other similar types of project contracts upon proposals of the Ministries, branches and provincial-level People's Committees.

4. To preside over and coordinate with the Ministry of Finance to synthesize plans for using the State investment capital for the participation in

the project implementation; and manage the capital sources for supporting investment preparation.

5. To coordinate with the Ministry of Finance to provide guidance on disbursement of State investment capital for the participation in the project implementation.

6. To issue, amend and revoke the investment registration certificate for projects within its authority; to appraise the source of State investment capital for the participation in the project implementation within its authority; to participate in appraisal of issues within the scope of its function and authority at the requests of Ministries, branches and provincial-level People's Committees.

7. To preside and coordinate with the Ministries, branches and provincial-level People's Committees to appraise the proposals on the application of other forms of investment guarantees which are not provided in this Decree.

8. To preside over and coordinate with Ministries, branches and provincial-level People's Committees in supervision, examination, inspection, consolidation and assessment of the implementation of PPP projects on the national scale.

9. To develop and manage the information system and national database on public private partnership investment.

10. To organize training and capacity building for the implementation of projects developed under public-private partnership form.

11. To perform other duties and powers in compliance with the laws.

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

1. To provide guidance on the use of costs for preparation and implementation of projects of Ministries, branches and provincial-level People's Committees; mechanism for implementation of projects developed under BT contracts; financial plan of projects; finalization of project facility and other issues within the scope of authority as prescribed in this Decree.

2. To preside over and coordinate with the Ministry of Planning and Investment to provide guidance on disbursement of State investment capital for the participation in project implementation.

3. To coordinate with the Ministry of Planning and Investment to formulate the plan for using State investment capital for the participation in

the project implementation and manage the capital sources for supporting investment preparation.

4. To provide opinions on investment incentives and guarantees for projects.

5. To provide opinions about the issues within the scope of its function and authority at the request of Ministries, branches, and provincial-level People's Committees.

6. To synthesize and assess data on public debts of projects and financial obligations of the Government.

7. To perform other duties and powers in compliance with the laws.

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

1. To provide opinions on project contracts, Government guarantee documents and other documents related to project contracts, which are signed by the state agencies.

2. To participate in negotiations on the matters related to the governing laws, dispute resolution, government guarantees and other legal issues of project contracts and other relevant contracts at the request of the Ministries, branches and provincial-level People's Committees.

3. To perform other duties and powers in compliance with the laws.

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

1. To provide opinions on the capability of balancing foreign currency for projects at the request of Ministries, branches and provincial-level People's Committees; to synthesize the demand for foreign currency of projects and manage the State foreign exchange reserves to ensure foreign currency balance for projects.

2. To participate in appraisal of issues within the scope of its function and authority, at the request of Ministries, branches and provincial-level People's Committees.

3. To perform other duties and powers in compliance with the laws.

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

1. To provide guidance on the implementation of the regulations on supervision and management of the quality of project facilities and the norms of operating costs of the project management units.

3. To participate in appraisal of projects with respect to issues within the scope of its function and authority, at the request of Ministries, branches and provincial-level People's Committees.

4. To perform other duties and powers in compliance with the laws.

#### **Article 69. Responsibilities of Ministries and branches**

1. To exercise state management on public-private partnership investment within their scope of management.

2. To formulate and publish the projects within their scope of management.

3. To preside over, coordinate with the Ministry of Planning and Investment to provide guidelines for specific provisions as assigned to them in this Decree.

4. To provide opinions with respect to issues within the scope of their function and authority at the request of the Ministries, branches and provincial-level People's Committees.

5. To consolidate and assess the implementation status of projects within the scope of management of the sectors.

6. To submit to the Prime Minister for consideration and determination on implementation other forms of investment guarantees, which are not provided in this Decree.

7. To perform other duties and powers in compliance with the laws.

#### **Article 70. Duties of provincial-level People's Committees**

1. To exercise state management of public-private partnership investment in their province as authorized by the Government.

2. To formulate and publish projects of the locality.

3. To appraise, issue, amend or revoke the investment registration certificate for projects within the authority [of the provincial-level People's Committee].

4. To provide opinions within the scope of their function and authority at the requests of Ministries, branches and provincial-level People's Committees.

5. To consolidate and evaluate the implementation status of projects under the scope of management of the locality.

6. To preside over and coordinate with the authorized state agency to organize site clearance to implement projects.

7. To submit to the Prime Minister for consideration and determination on the implementation of other investment guarantees, which are not provided in the provisions of this Decree.

8. To perform other duties and rights in compliance with the laws.

## **Chapter XI**

### **IMPLEMENTING PROVISIONS**

#### **Article 71. Effectiveness**

1. This Decree shall be effective as of 10 April 2015.

2. The following Decrees and Decisions shall expire on the effective date of this Decree:

a) Decree No. 108/2009/ND-CP, dated 27 November 2009, of the Government on investment under the forms of BOT, BTO and BT contracts;

b) Decree No. 24/2011/ND-CP, dated 05 April 2011, of the Government amending a number of provisions of Decree No. 108/2009/ND-CP on investment under the form of BOT, BTO and BT contracts;

c) Decision No. 71/2010/QĐ-TTg, dated 09 November 2010, of the Prime Minister on promulgation of Regulation on pilot investment in public – private partnership form.

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

1. Project list published, prior to the effective date of this Decree must be reviewed and re-approved in accordance with this Decree, except for [the project list] having been approved by the Prime Minister.

2. Feasibility study report approved, prior to the effective date of this Decree, shall not be subject to re-approval in accordance with this Decree.

3. Project, for which a decision on investor selection has been approved, prior to the effective date of this Decree, shall not be subject to re-selection of investor in accordance with this Decree.

4. Project contract initialled, prior to the effective date of the Decree, shall not be subject to re-negotiation.

5. Project for which an investment certificate has been issued or [for which] the project contract has been formally signed, prior to the effective date of this Decree, shall be implemented in accordance with the provisions of the investment certificate and the project contract.

6. Project for which an undertaking or a written agreement or commitment of the Prime Minister, Ministries, branches and provincial-level People's Committees on the use of State investment capital for the participation in the project implementation, investment incentives, guarantees and other contents relating to project implementation has been obtained, prior to the effective date of this Decree, shall be implemented in accordance with such agreement or commitment.

7. Other cases shall be implemented pursuant to decisions of the Prime Minister upon requests of the Ministry of Planning and Investment.

**Article 73. Organization for implementation**

Ministers and heads of ministerial equivalent bodies, heads of Government bodies, Chairmen of People's Committees of provinces and cities under direct management of Central Government within their functions and powers shall be responsible for providing guidelines for and implementing this Decree./.

**On behalf of the Government**

**PRIME MINISTER**

**(signed)**

**Nguyen Tan Dung**