

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM  
Independence - Freedom - Happiness

No. 07-2003-ND-CP

Hanoi, 30 January 2003

**DECREE  
ON  
AMENDMENT OF A NUMBER OF ARTICLES  
OF REGULATIONS ON MANAGEMENT OF  
INVESTMENT AND CONSTRUCTION  
ISSUED WITH DECREE 52-1999-ND-CP OF  
THE GOVERNMENT DATED 8 JULY 1999  
AND DECREE 12-2000-ND-CP OF THE  
GOVERNMENT DATED 5 MAY 2000**

**The Government**

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

On the proposal of the Minister of Construction, the Minister of Planning and Investment, and the Minister of Finance;

**Decrees:**

**Article 1**

To amend a number of articles of the *Regulations on Management of Investment and Construction* issued with Decree 52-1999-ND-CP of the Government dated 8 July 1999 and Decree 12-2000-ND-CP of the Government dated 5 May 2000 (hereinafter referred to as *Decree 52-CP* and *Decree 12-CP* respectively) as follows:

1. To amend and add to article 3.2(dd) of Decree 52-CP as follows:

"(dd) With respect to investment projects of Vietnamese representative offices in foreign countries; projects of a national confidential nature relating to national security and defence; and projects for

purchase of copyrights, investment projects shall be prepared in accordance with article 1.11 of this Decree<sup>1</sup> (except for matters inconsistent with the nature of the project); and evaluation of projects, investment decisions and management of investment implementation shall be subject to a separate decision of the Prime Minister of the Government on the basis of the proposal and recommendation from the body which has the project."

2. To amend and add to article 1.1.2 of Decree 12-CP<sup>2</sup> as follows:

"2. In respect of Group A projects which consist of many component projects or sub-projects and each component project or sub-project can be independently operated, exploited or implemented in accordance with the investment stages stated in the written approval of the pre-feasibility study or in the written decision supporting the project from the competent body, each such component project or sub-project shall be implemented from the stage of investment preparation to management of investment implementation as an independent investment project."

3. To amend and add to article 8 of Decree 52-CP as follows:

**"Article 8** *Management of planning projects*

1. The Ministry of Planning and Investment shall be the State administrative body in charge of master planning of overall regional and inter-provincial socio-economic development in the whole country, with the following responsibilities:

- (a) Guiding the contents, order of preparation, evaluation and management of projects for master planning of overall socio-economic development; and of master planning of branch development.
- (b) Organizing the preparation of projects for master planning of overall socio-economic development in regional and inter-provincial key areas for submission to the Prime Minister of the Government for approval.
- (c) Evaluation of local projects for master planning of overall socio-economic development as prepared by people's committees of provinces and cities under central authority (hereinafter referred to as *provincial people's committees*) in accordance with the powers delegated to them, and of master

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1 *Phillips Fox Note: Article 22 of Decree 52-CP (as amended by Decree 07-2003-ND-CP).*

2 *Phillips Fox Note: See article 6.2 of Decree 52-CP (as amended by Decree 12-CP).*

planning of branch development as prepared by ministries managing such branches, for submission to the Prime Minister of the Government for approval.

The matters to be evaluated shall comprise:

- Whether the master plan is consistent with the strategy for socio-economic development;
- Whether the master plan is appropriate to the allocation of power resources;
- The uniformity of master planning of regional socio-economic development, master planning of territorial socio-economic development, master planning of branch development, and construction master planning;
- Whether the master plan is feasible.

2. The Ministry of Construction shall be the State administrative body in charge of master planning of urban and rural construction and of construction of key areas, with the following responsibilities:

- (a) Guiding the contents, order of preparation, evaluation and management of projects for master planning of urban and rural construction and for construction of key areas.
- (b) Organizing the preparation of projects for construction master planning of regional key areas for submission to the Prime Minister of the Government for approval.
- (c) Evaluation of projects for master planning of urban and rural construction as prepared by provincial people's committees for submission to the Prime Minister of the Government for approval in accordance with delegated powers.

The matters to be evaluated shall comprise:

- Whether a construction master plan is consistent with the strategy for socio-economic development, and the long-term construction master plan;
- Whether a construction master plan is appropriate to residential allocations;
- The uniformity of construction master planning with the master planning for socio-economic development and

territorial master planning, and with the master planning of branch development;

- Whether a master plan is feasible, and the means for managing the construction master plan.
3. Provincial people's committees shall organize the preparation of master planning of overall socio-economic development, master planning of overall development of urban space and of residential allocations; master planning of urban construction and of industrial zones within their respective provinces; and shall approve them or submit them for approval as the basis for construction of investment projects.
  4. Ministries managing branches shall organize the preparation of master planning of branch development.
  5. The Ministry of Finance shall guide advance payments and the making of payments for expenses for the preparation and evaluation of planning projects.
  6. In respect of projects for master planning of overall socio-economic development, master planning of branch development, and master planning of urban and rural construction, when research is conducted into preparation of a project, opinions must be widely obtained from the relevant ministries, branches and localities. When research is conducted into preparation of master planning of urban and rural construction, the body preparing the project must publicly announce it, and solicit opinions from resident citizens and the people's councils of the planning area. Construction master planning projects (including overall and detailed planning) which have been approved by the competent level must be publicly announced on a regular basis both at people's councils at all levels and in public areas in the planning area in order that citizens may implement it and inspect its implementation.
  7. The Ministry of Planning and Investment and the Ministry of Construction shall (depending on their respective functions) check legal instruments on master planning of socio-economic development, master planning of branch development, and construction master planning in order to issue them or submit them to the competent body for issuance."

4. To amend and add to article 10.2 of Decree 52-CP as follows:

"2. Authority to make investment decisions in relation to projects funded by the State Budget:

- (a) The Prime Minister of the Government shall make investment decisions in relation to important national projects on which the National Assembly has made a decision advocating the investment. The State Evaluation Council for Investment Projects shall organize evaluations of such projects and submit them to the Prime Minister of the Government to make an investment decision.
- (b) Ministers, heads of ministerial equivalent bodies and Government bodies, the financial management body of the Central Party, central bodies of socio-political organizations (as defined in the *Law on the State Budget*) and chairmen of provincial people's committees shall make investment decisions in relation to Group A projects within master planning of socio-economic development and master planning of branch development which has been approved or which has a decision advocating the investment in writing from the competent level, after the Prime Minister of the Government approves the investment.

The person authorized to make the investment decision in relation to Group A projects shall organize an evaluation of the feasibility study report, and shall be responsible to obtain written opinions from the ministry managing the branch, from the Ministry of Planning and Investment, from the Ministry of Construction (in the case of construction investment projects), from the Ministry of Finance and from the ministries, branches and localities concerned with the project, in order to report to the Prime Minister of the Government for approval of the investment. Within a time-limit of fifteen (15) working days from the date on which the ministries, branches and localities are requested to provide an opinion, they shall be responsible to respond in writing.

Projects funded by the State Budget at the local level must be forwarded to the people's council for discussion and decision and must be publicly announced.

The contents of a report requesting approval of the investment shall comprise:

- Whether the project is consistent with the strategy for socio-economic development, the master planning of

- branch development, and the construction master plan as approved by the competent level;
- The regime for exploiting and using natural resources; the technology plan;
  - The financial ability of the project;
  - State incentives and assistance for the project;
  - The effectiveness of the investment project;
  - The duration of project implementation;
  - Impact on the environment and ecology, fire and explosion prevention and fighting, safety, resettlement, national security and defence.

The report requesting approval of the investment shall be accompanied by a report of the opinions of the ministries, branches and localities concerned.

In the case of Group A projects not yet within master planning of socio-economic development, master planning of branch development and construction master planning which has been approved, or if there is not yet a decision in writing from the competent level advocating the investment, the Prime Minister of the Government must consider and pass a pre-feasibility study report and approve the investment prior to preparation of a feasibility study report.

Ministers, heads of ministerial equivalent bodies and Government bodies, the financial management body of the Central Party, central bodies of socio-political organizations (as defined in the *Law on the State Budget*) and chairmen of provincial people's committees shall make investment decisions or delegate authority to make investment decisions in relation to Group B and C projects which are consistent with approved master planning.

In respect of Group B projects not yet within approved master planning, there must be written approval from the person authorized to approve master planning prior to preparation of a feasibility study report.

In respect of Group C projects, the investment decision-making body must ensure the balancing of investment capital in order that the project will be implemented within two years.

- (c) Depending on the specific conditions at each ministry, branch and locality, the person authorized to make investment decisions may permit an entity stipulated in sub-clause (d) below to make investment decisions in relation to Group B and C projects. The person delegating shall be responsible before the law for such delegation, and the person delegated shall be responsible before the law and before his principal for his decision.
- (d) Entities which may be delegated to make investment decisions:
- Applicable to ministries: General directors and directors of departments; chairmen of boards of management of corporations; directors of State owned enterprises; heads of bodies under the ministry; commanders-in-chief of military zones, army corps, service branches, border guards and equivalent under the Ministry of Defence.
  - Applicable to the provincial level: Directors of departments; chairmen of people's committees of districts, towns and provincial cities (hereinafter referred to as *district level*); chairmen of boards of management of corporations; directors of State owned enterprises, and heads of bodies under provincial people's committees.
- (dd) Chairmen of people's committees at the district and commune level may make investment decisions for their locality in relation to projects funded from the State Budget (including additional items funded by the budget of the higher level) with investment capital of less than three billion dong (district level) and of less than one billion dong (commune level) depending on the specific conditions at each locality as specifically decided by the provincial people's committee on the basis of master planning and specific plans for local socio-economic development as approved by the competent level and on the implementation capability of the entity to which authority is delegated.

Prior to making an investment decision, a people's committee at the district or commune level shall be responsible to obtain opinions from capable expert organizations (including consultancy organizations) in order to evaluate the project. Implementation of the project must be managed correctly in accordance with regulations.

In respect of projects at the commune level for the construction of technical and social infrastructure funded by State Budget investment funds, after they have been passed by the commune people's council, the district people's committee must approve the objectives of investment and planning. If the investment is funded by contributions of the people, the commune people's committee shall be responsible to organize implementation of investment and construction in accordance with the *Regulations on Organization of Mobilization, Management and Utilization of Voluntary Contributions by the People for Infrastructure Construction of Communes and Towns* issued with Decree 24-1999-ND-CP of the Government dated 16 April 1999.

- (e) Any person authorized to make investment decisions may not use administrative capital sources for the purpose of investment in new construction. In respect of renovation and expansion, where the administrative capital used for investment is one billion or more Vietnamese dong, the procedures for investment preparation and investment implementation must be carried out in accordance with this Decree."

5. To amend and add to article 1.5 of Decree 12-CP<sup>3</sup> as follows:

*"Authority to make investment decisions in relation to projects using credit facilities for investment and development of the State and by credit facilities guaranteed by the State*

2. The Prime Minister of the Government shall make investment decisions in relation to important national projects on which the National Assembly has made a decision advocating the investment. The State Evaluation Council for Investment Projects shall organize evaluations of such projects and submit them to the Prime Minister of the Government to make an investment decision.

In respect of Group A, B and C projects in which enterprises invest, the enterprises themselves shall conduct the project evaluation, and shall themselves make investment decisions in accordance with regulations and shall be responsible before the law; investment projects in Group A and B must ensure consistency with the approved master planning; in respect of Group A projects, the Prime Minister of the Government must approve the investment prior to an investment decision being made. The report requesting approval of the investment shall have the contents stipulated in

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3 Phillips Fox Note: See article 11 of Decree 52-CP (as amended by Decree 12-CP).



article 1.4 of this Decree<sup>4</sup> (excluding the report of the opinions of the ministries, branches and localities concerned).

The ministry managing a branch or the provincial people's committee shall organize evaluation of the feasibility study report for a Group A project of an enterprise managed by it and shall be responsible to obtain written opinions from the Ministry of Planning and Investment, from the Ministry of Construction (in the case of construction investment projects), from the Ministry of Finance and from the ministries, branches and localities concerned with the project in order to provide an overall report to the Prime Minister of the Government to approve the investment. The matters to be evaluated in the feasibility study report of the project shall be the items on which the investor must apply for permission for the investment stated in article 1.4 of this Decree<sup>4</sup>. Within a time-limit of fifteen (15) working days from the date on which ministries, branches and localities receive a complete file requesting an opinion, they shall be responsible to respond in writing.

Group A and B investment projects not yet within approved master planning shall be implemented as prescribed in article 1.4(b) of this Decree<sup>4</sup>.

Depending on the specific conditions of each enterprise, the person authorized to make investment decisions may delegate the director of a subsidiary entity to make investment decisions in relation to Group B and C projects. The person delegating shall be responsible before the law for such delegation, and the person delegated shall be responsible before the law and before his principal for his decision."

6. To amend and add to articles 1.6.1, 1.7.1 and 1.7.3 of Decree 12-CP<sup>5</sup> as follows:

*"Authority to make investment decisions in relation to projects using investment and development funds of an enterprise and other funds*

1. The Prime Minister of the Government shall make investment decisions in relation to important national projects on which the National Assembly has made a decision advocating the investment. The State Evaluation Council for Investment Projects shall

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4 *Phillips Fox Note: See article 10.2 of Decree 52-CP (as amended by Decree 12-CP and Decree 07-2003-ND-CP).*

5 *Phillips Fox Note: See articles 12.1, 13.1 and 13.3 of Decree 52-CP (as amended by Decree 12-CP).*

organize evaluations of such projects and submit them to the Prime Minister of the Government to make an investment decision.

In respect of Group A, B and C projects in which an enterprise invests (irrespective of its economic sector) the enterprise shall itself conduct the project evaluation and shall itself make the investment decision in accordance with regulations and shall be responsible before the law; all investment projects must ensure consistency with the approved master planning; in respect of Group A projects, the Prime Minister of the Government must approve the investment or delegate a minister or a chairman of a provincial people's committee to approve the investment prior to an investment decision being made.

The ministry managing a branch or the provincial people's committee shall organize evaluation of the feasibility study report for a Group A project of an enterprise managed by it and shall be responsible to obtain written opinions from the Ministry of Planning and Investment, from the Ministry of Construction (in the case of construction investment projects), from the Ministry of Finance and from the ministries, branches and localities concerned with the project in order to provide an overall report to the Prime Minister of the Government to approve the investment. The matters to be evaluated in the feasibility study report of the project shall be the items on which the investor must apply for permission for the investment stated in article 1.4 of this Decree<sup>6</sup> (except for items on the technology plan, financial capability, effectiveness of the investment project and the report of the opinions of the ministries, branches and localities concerned). Within a time-limit of fifteen (15) working days from the date on which ministries, branches and localities receive a complete file requesting an opinion, they shall be responsible to respond in writing.

Group A and B projects not yet within approved master planning shall be implemented as prescribed in article 1.4(b) of this Decree<sup>6</sup>.

3. In respect of projects funded by a number of different capital sources, the investor shall be responsible to separate items of works or work sections of the project in order to arrange finance separately for each such item or work section, and shall manage each such item or work section in accordance with the regulations applicable to the type of capital source which is arranged.

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6 *Phillips Fox Note: See article 10.2 of Decree 52-CP (as amended by Decree 12-CP and Decree 07-2003-ND-CP).*

In respect of projects funded by a number of different capital sources but with inseparable items of works or work sections, the project shall be managed in accordance with the regulations applicable to the type of capital source with the highest ratio in the total investment capital of the project.

In respect of projects using capital contribution of a number of members, the members shall agree on and determine the method of management and organization of management of the project on the basis of the ratio of their capital contribution and the characteristics of the project."

7. To add a new clause 3 to article 14 of Decree 52-CP as follows:

"3. Any act by a contractor of demanding money or receiving a bribe shall be strictly prohibited during the appointment of contractors and in acceptance by contractors, and during testing for commissioning and finalization of investment capital.

It shall be strictly prohibited for investors to stipulate contents in invitations to tenderers in order to create unequal competition between contractors, or to arrange a tender by imposing conditions contrary to the regulations for mercenary motives.

Investors directly managing the implementation of a project and project management boards shall be responsible to use invested capital efficiently; to implement fully the contents of the regulations on financial management; to pay compensation for material loss and damage caused by wastage of capital invested by the State or enterprises. Investors who commit such offences shall be criminally prosecuted in accordance with law.

*Project management board* means an organization undertaking the role and responsibility of the investor, and shall have the task of directly managing the implementation of a project and shall be responsible before the law and the investor."

8. To amend article 15.3 and to add a new clause 4 to article 15 of Decree 52-CP as follows:

"3. Responsibilities of investment and construction consultancy organizations:

(a) When investment and construction consultancy organizations conduct their business activities, they must ensure fully the conditions and have the capabilities stipulated by the Ministry of Construction.

- (b) Consultancy organizations shall be responsible before the law and the investor for the items of the undertakings in contracts, especially for eco-technical matters fixed in their consultancy products, and they must pay compensation for any loss and damage they cause.
  - (c) Consultancy organizations must purchase professional indemnity insurance, and premiums shall be included in the price for their consultancy products. The purchase of professional indemnity insurance shall be a legal condition for investment and construction consultancy activities.
  - (d) With respect to projects funded by the State Budget, funded by credit facilities guaranteed by the State, and funded by credit facilities for investment and development of the State which require to hire foreign consultants, the foreign consultancy organization which or expert who is hired must have a partnership with a Vietnamese consultant for implementation (unless the Prime Minister of the Government otherwise permits). Domestic consultants shall be permitted to have a partnership or association with, or to hire, a foreign consultancy organization or expert during the activity of consultancy on investment and construction.
  - (dd) In its consultancy products, an organization providing consultancy on investment and construction shall be strictly prohibited from appointing the use of types of materials or technical materials from one specific manufacturer or supplier; shall only be permitted to make a general request about the technical requirements of materials or technical materials.
  - (e) It shall be strictly prohibited for organizations providing consultancy on investment and construction to purchase or sell legal entity status in order to participate in a tender, or to purchase or sell tenders, or to disclose information about a tender to bidders participating in the tender.
4. The Ministry of Finance shall provide regulations on a regime of professional indemnity insurance for investment and construction consultants."
9. To amend and add to article 16.2 of Decree 52-CP as follows:
- "2. Responsibilities of construction enterprises:
- (a) When construction enterprises carry out construction and installation works, they must ensure fully the conditions and

have the capabilities stipulated by the Ministry of Construction.

- (b) Construction enterprises shall be responsible before the law and the investor for the items of the undertakings in contracts for construction and installation, and they must pay compensation for any loss and damage they cause.
- (c) Construction enterprises must purchase insurance for materials, equipment and workshops servicing the execution of works, insurance to cover employee accidents, and third party civil liability insurance. Premiums shall be included in manufacturing expenses. The purchase of professional indemnity insurance shall be a legal condition for construction activities by construction enterprises.
- (d) It shall be strictly prohibited for construction enterprises to purchase or sell legal entity status in order to participate in a tender; to fix, purchase or sell tenders; or to collude with an investor during a tender."

10. To amend and add to article 20 of Decree 52-CP as follows:

**"Article 20** *Investment inspection*

- 1. Inspection of investment activities of the national economy, branches, sectors and localities shall be referred to as *inspection of overall investment*. Inspection of investment projects in which an authorized person has approved investment or for which there is an investment decision shall be referred to as *inspection of investment projects*.
- 2. The requirements for and contents of investment inspection shall be:
  - (a) To inspect overall investment; to monitor and inspect the scale, speed, structure and effectiveness of investment in the economy, branches and localities during each period; to monitor and inspect implementation of investment in accordance with approved master planning, plans and programs.
  - (b) To inspect whether the issuance of investment decisions by the authorized ministries, branches and levels is consistent with the approved master planning and plans.
  - (c) To inspect whether investors implement projects in accordance with the items approved by the authorized level,

and to inspect compliance of investors with State regulations on investment and construction.

- (d) During the process of inspection, to make recommendations to the investment decision-making body, the investor or other relevant bodies to consider and deal with any issues which arise.

3. Organization of implementation of investment inspection:

- (a) The Prime Minister of the Government shall direct implementation of inspection of overall investment, of important national projects and of Group A projects for which the Prime Minister of the Government made the investment decision or approved the investment.

The Ministry of Planning and Investment shall guide the work of investment inspection nationwide; and shall organize implementation of inspection of overall investment, of important national projects and of Group A projects for which the Prime Minister of the Government made the investment decision or approved the investment, and shall collate quarterly reports on investment inspection nationwide for submission to the Prime Minister of the Government.

- (b) Ministries, and provinces and cities under central authority shall organize implementation of overall inspection of the projects under their management authority and shall collate six-monthly reports for submission to the Prime Minister of the Government.
- (c) Investors and project management boards shall have the task of inspecting investment projects in accordance with regulations, and shall collate three-monthly overall reports for submission to the investment decision-making body (on capital, speed, tenders and quality) and make recommendations on remedial solutions.
- (d) No authorized level shall be permitted to make amendments to an investment in respect of a project for which an investment inspection has not been carried out in accordance with regulations.
- (dd) The Ministry of Finance shall co-ordinate with the Ministry of Planning and Investment to guide expenses for the work of investment inspection.

The Ministry of Planning and Investment shall provide detailed guidelines on the matters prescribed for investment inspection."

11. To repeal article 1.9 of Decree 12-CP<sup>7</sup>; to amend and add to article 22 of Decree 52-CP as follows:

**"Article 22** *Formulating an investment project*

1. Investors must engage consultancy organizations with legal entity status and sufficient capability to satisfy project requirements in order to prepare a pre-feasibility study report, a feasibility study report or an investment report and shall be responsible for the items requested in such reports.

With respect to a number of investors with sufficient capability, if they themselves prepare the pre-feasibility study report, feasibility study report or investment report, there must be a decision assigning them the task of preparing the project from the investment decision-making body.

2. Group A projects within approved master planning or which have a written decision advocating the investment from the competent level shall not be required to prepare a pre-feasibility study report and may immediately prepare a feasibility study report.

With respect to Group A projects not within approved master planning or which do not have a written decision advocating the investment from the competent level, the investor shall prepare a pre-feasibility study report for submission to the Prime Minister of the Government to consider and approve.

With respect to Group B projects for which the investor organizes preparation of a feasibility study report, if it is considered necessary to prepare a pre-feasibility study report, the investment decision-making body shall consider and decide the issue.

3. The following projects shall not be required to prepare a feasibility study report and may only prepare an investment report, designs and estimated budget:
- (a) Projects with invested capital on a small scale (below three billion Vietnamese dong), and projects for repairs or maintenance using professional funds.

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<sup>7</sup> *Phillips Fox Note: See article 22.2(a) of Decree 52-CP (as amended by Decree 12-CP).*

- (b) Small scale projects for social infrastructure (Group C projects) funded by the State Budget (not for business purposes) which are consistent with the master planning and the plan for socio-economic development, and where the decision-making body has advocated the investment.
4. Small projects for the procurement of machinery and equipment shall not be required to prepare a feasibility study report and may only prepare an investment report and estimated budget."
12. To amend and add to article 26.6 of Decree 52-CP as follows:

"6. Power to evaluate investment projects:

The investment decision-making body shall organize evaluation of the feasibility study report following the contents stipulated in article 27 of these Regulations.

With respect to projects using credit capital, the lending organization shall evaluate a financial plan and a repayment plan in order to approve or not approve a loan prior to the competent body making the investment decision.

The investment decision-making body may use its subsidiary expert bodies with sufficient capability to evaluate the feasibility study report and may invite expert bodies from the other ministries and branches concerned to evaluate a project. With respect to projects using State Budget funds and managed at the provincial level, provincial people's committees shall assign the Department of Planning and Investment to be the co-ordinator in evaluating a project with responsibility to obtain opinions from the Department of Finance and from the Department of Construction (in the case of construction investment projects) and other bodies concerned on the contents of evaluation of a project."

13. To amend and add to article 28 of Decree 52-CP as follows:

"The State Evaluation Council for Investment Projects shall be established in accordance with the decision of the Prime Minister of the Government for evaluation or re-evaluation of the following projects:

1. Large and important investment projects prior to the Government submitting them to the National Assembly to pass and make a decision advocating the investment.
2. Investment projects which have gone through the evaluation process but the Prime Minister of the Government considers it necessary that they be re-evaluated.



3. Investment projects and planning projects at the request of the Prime Minister of the Government.

The Minister of Planning and Investment shall act as chairman of the State Evaluation Council for Investment Projects."

14. To repeal article 1.12 of Decree 12-CP<sup>8</sup>; to amend and add to article 38.3.1 of Decree 52-CP as follows:

"3. Power to approve technical designs and total estimated budget:

3.1 In respect of construction investment projects funded by capital from the State Budget, funded by credit facilities guaranteed by the State, and funded by credit facilities for investment and development of the State:

- (a) The technical designs and total estimated budgets of important national projects for which the Prime Minister of the Government made the investment decision and Group A projects using State Budget capital shall be approved by the minister or head of the ministerial equivalent body or Government body or chairman of the provincial people's committee which has the investment project or by the body authorized to make the investment decision, after an evaluating opinion has been obtained from the Ministry of Construction.

In the case of specialist construction works belonging to Group A projects using State Budget capital, they shall be implemented as follows: irrigation, agricultural or forestry construction works shall be assigned to the Ministry of Agriculture and Rural Development; traffic construction works shall be assigned to the Ministry of Transport and Communications; construction works of mines, electricity generating plants, power lines and transformer stations shall be assigned to the Ministry of Industry; construction works of posts and telecommunications in which specialist technology is essential shall be assigned to the Ministry of Posts and Telecommunications; construction works of national security, defence and protection of State secrets shall be assigned to the Ministry of Defence and the Ministry of

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8 *Phillips Fox Note: See articles 38.3.1(a) and 38.3.1(d) of Decree 52-CP (as amended by Decree 12-CP).*

Police to organize the evaluation and approval of technical designs and total estimated budgets.

With respect to Group A projects using credit facilities guaranteed by the State or funded by credit facilities for investment and development of the State, and investment projects for the procurement of equipment with particular specialized requirements, the ministries, branches and localities shall themselves organize the evaluation of technical designs and total estimated budgets and shall submit them to the competent body for approval.

The body responsible for organization of evaluation of technical designs and total estimated budgets shall be responsible before the law for the contents of its evaluation.

- (b) The technical designs and total estimated budgets of Group B and Group C construction investment projects which are managed by ministries, branches and central bodies shall be approved by the body authorized to make the investment decision, after an evaluating opinion has been obtained from the specialist body managing construction at the investment decision level.

The technical designs and total estimated budgets of Group B and Group C construction investment projects which are managed by localities shall be approved by the chairman of the provincial people's committee after an evaluating opinion has been obtained from the Department of Construction or from the specialist department for construction (depending on the nature of the project).

The technical designs and total estimated budgets of Group A, B and C construction investment projects in which enterprises invest and themselves organize the evaluation shall be approved by the body authorized to make the investment decision.

- (c) The body authorized to approve technical designs and total estimated budgets as stipulated in sub-clauses (a) and (b) above may permit the head of an entity at a lower level to approve directly technical designs and total estimated budgets, but must be responsible before the law for such delegation, and the person delegated shall

be responsible before the law and before his principal for his decision.

- (d) With respect to construction investment projects which have technical designs and designs for execution of works (detailed designs), depending on the complexity and technical standard of the items of works and on the professional expertise of the management team of the investor, the body authorized to approve technical designs and total estimated budgets may delegate the investor to approve detailed designs and estimated budgets for items of works, consistent with the technical designs and total estimated budgets which have already been approved.

The investor must submit detailed designs and estimated budgets for items of works to the competent level for consideration and approval when they contain changes in comparison with the technical designs and total estimated budgets which have already been approved.

During the construction process, an investor shall only be permitted to change designs and estimated budgets after the investment decision-making body has inspected and approved them. Where it is necessary to immediately deal with a design change, the investor shall be permitted to make a decision and shall be responsible before the law and before the investment decision-making body for his decision."

15. To amend and add to article 45.5 of Decree 52-CP as follows:

- "5. Prior to commencement of works of projects using State Budget funds, credit facilities guaranteed by the State, credit facilities for investment and development of the State and credit facilities for investment and development of State owned enterprises, there must be technical designs and total estimated budgets approved by the competent level, and it shall be prohibited to have a situation of carrying out design at the same time as the works are being executed.

With respect to Group A projects which do not yet have approved technical designs and total estimated budgets but it is necessary to commence construction, there must be designs and estimated budgets for those items of works to be commenced which have been approved by the competent body and a legal contract as a result of a tender. After thirty (30) per cent of the total invested capital has been implemented at the latest, there must be technical

designs and total estimated budgets approved by the competent person.

The Ministry of Construction shall be responsible to inspect the implementation of the provisions in this clause and to itself deal with, or recommend the competent body deal with, entities which deliberately fail to implement these provisions."

16. To amend and add to article 47.3 of Decree 52-CP as follows:

"3. The Prime Minister of the Government shall make a decision on establishment of a State Acceptance Board for Construction Works which shall be responsible to check and consider the acceptance responsibilities of investors and to carry out directly acceptance of works in Group A projects and in important national projects when deemed necessary and in other projects upon request from the Prime Minister of the Government.

The Minister of Construction shall be the chairman of the State Acceptance Board.

The Prime Minister of the Government shall provide regulations on the organizational structure, duties, powers and responsibilities of the State Acceptance Board."

17. To amend articles 49.1, 49.6, 49.8, 49.9 and 49.12 of, and to add a new article 49.13 to Decree 52-CP as follows:

"1. In the case of projects or tender packages for construction and installation works implemented in the form of appointment of a contractor, payments of invested capital shall be made on the basis of the value of works implemented and accepted in each stage or on the basis of the value of accepted volumes each month in accordance with signed contracts."

"6. The investor and the body which issued the capital or loan capital shall be responsible to consider and facilitate satisfaction of necessary requirements on advances of capital for a number of high-value components and semi-finished products used for construction which must be pre-manufactured in order to ensure that the schedule of investment is achieved; and for special materials or materials which must be stored on a seasonal basis and for a number of other work items which arise during the process of investment implementation."

"8. In the final year of construction or of commissioning of an item or the works, the volume of construction and installation of the item or the works for that year shall only be fully paid for when the

contractor has provided a complete balance sheet of the works to the investor. In the case of foreign contractors, temporary retention and payments shall be made in accordance with international practice.

Every year, the body which issued the capital or loan capital shall retain temporarily five per cent of the total planned investment capital of the project and provide a full announcement after the investor has provided a complete balance sheet of invested capital on time as provided for in article 1.18 of this Decree<sup>9</sup> for the planned year."

- "9. Payments of invested capital for tender packages for construction and installation works implemented in the form of a tender shall be made in accordance with the schedule for implementation of the tender package stated in the contract appointing the contractor and the value of the signed contract (in the case of packaged contracts) or on the basis of the successful price unit and specific terms and conditions stated in the contract.

Upon completion of construction, payments for tender packages must not have exceeded the total estimated budget and total invested capital approved by the investment decision-making body.

Time-limits for payment: Within a time-limit of ten (10) working days from the date on which a contractor submits complete payment procedures, the investor must pay the value of the volume of works implemented to the contractor. Within a time-limit of seven working days from the date on which the body which issued the capital or loan capital receives a complete and valid file from the investor applying for payment, and based on such file, the said body shall be responsible to make payment in the form stipulated in this clause and in the unamended contents of article 49 of Decree 52-CP."

- "12. With respect to investment professional funds for construction and some special project works, the Ministry of Finance shall provide specific guidelines on temporary retention and payments."
- "13. With respect to tender packages or projects implemented under a contract for design-supply of equipment and materials-construction (abbreviated as *EPC contract* in English), advances of capital to procure equipment shall be based on the schedule for payment in the supply contract. With respect to other work, advances of

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9 *Phillips Fox Note: See article 56.2 of Decree 52-CP (as amended by Decree 12-CP and Decree 07-2003-ND-CP).*

capital shall equal fifteen (15) per cent of the value of the tender package but shall not exceed the annual capital plan of the tender package."

18. To amend and add to article 56.2 of Decree 52-CP as follows:

"2. Time-limits for balance sheets of invested capital:

- (a) With respect to important national projects, investors must complete balance sheets of invested capital and submit same to the investment decision-making body for approval twelve (12) months at the latest after a project has commenced operation.
- (b) With respect to Group A projects, investors must complete balance sheets of invested capital and submit same to the investment decision-making body for approval nine months at the latest after a project has commenced operation.
- (c) With respect to Group B projects, investors must complete balance sheets of invested capital and submit same to the investment decision-making body for approval six months at the latest after a project has commenced operation.
- (d) With respect to projects with items of works which can be independently commissioned and used, investors must complete balance sheets of invested capital and submit same to the investment decision-making body for approval three months at the latest after the date of handover."

19. To amend and add to article 57 of Decree 52-CP as follows:

"All investment projects using capital from the State Budget, credit facilities guaranteed by the State and credit facilities for investment and development of the State shall be subject to the following provisions with respect to the audit and approval of balance sheets of invested capital:

1. Audit of balance sheets of invested capital:

All reports of balance sheets of invested capital must be audited before they may be approved. The body approving balance sheets shall decide on the form of audit of balance sheets in accordance with the following provisions:

- (a) Hire an independent auditing organization operating in Vietnam to audit the balance sheets. If the body approving balance sheets conducts itself the audit, it must be done by an expert body with sufficient capability.

- (b) Responsibility to audit balance sheets:
- The body which issues the capital or loan capital and makes payment shall be responsible to certify the amounts of money issued to and paid for the project.
  - The independent auditing organization or the expert body which conducts an audit of the report of balance sheets of invested capital shall be responsible before the law for the results of such audit.
2. Approval of balance sheets:
- (a) The Minister of Planning and Investment shall approve the balance sheets of invested capital for projects for which the Prime Minister of the Government made the investment decision and for Group A projects using State Budget capital.
- (b) For the remaining projects, the investment decision-making body shall also be the body approving the balance sheets of invested capital.
3. Costs for the audit and approval of balance sheets of invested capital shall be included in the approved total estimated budget. The Ministry of Finance shall provide guidelines for the management and utilization of the costs for the audit and approval of balance sheets of invested capital."
20. To amend and add to article 60 of Decree 52-CP as follows:
- "1. The form of direct project management and implementation by the investor shall apply to an investor satisfying all professional and specialized conditions appropriate for an investment project.
2. In respect of investment and construction projects funded with capital from the State Budget and which are managed in the form of direct project management and implementation by the investor, the investor must establish a project management board which satisfies all professional and specialized conditions in accordance with the regulations of the Ministry of Construction."
21. To amend and add to article 62 of Decree 52-CP as follows:
- "1. The turn-key form prescribed in these Regulations means a form of project management and implementation after a project has an investment decision. On the basis of the feasibility study report approved by the competent body, the investor shall select a

contractor and assign the contractor via an EPC contract to carry out the whole contract from survey, preparation of designs, purchase of materials and equipment, construction and installation up until complete handover of the works to the investor.

An EPC contract may apply to a project, a sub-project (component project) or a tender package.

The contents of an EPC contract shall follow the guidelines of the Ministry of Construction.

2. When projects funded with capital from the State Budget are implemented via an EPC contract, the investor must establish a project management board which satisfies the conditions in accordance with the regulations of the Ministry of Construction.
  3. Investors shall be responsible to hire consultants to supervise implementation of an EPC contract and shall organize checks and acceptance of the contract in accordance with regulations.
  4. If investors do not satisfy the conditions for direct project management and implementation, they are encouraged to apply the turn-key form via an EPC contract. If they do so apply, the investors must select a contractor with sufficient capability to organize the implementation of the project by ensuring quality, the schedule, an appropriate price and the other requirements stipulated by the investor in the EPC contract."
22. To amend and add to article 1.16.1 of Decree 12-CP<sup>10</sup> as follows:
- "1. The form of self-implementation shall only be applied in the following cases:
    - (a) Where the investor is an enterprise which is registered for production and construction activities appropriate to the requirements of the project, irrespective of the investment capital source.
    - (b) Where the investor is capable of carrying out production and construction activities appropriate to the requirements of any project for planting forests or perennials (including new plantations and tending trees planted annually); for aquaculture (in agriculture, forestry, fishing industries); for seedlings or for breeding animals; for exploitation of virgin soil and establishment of fields; mining investment projects,

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<sup>10</sup> Phillips Fox Note: See article 63.1 of Decree 52-CP (as amended by Decree 12-CP).



for producing coal or ore; projects for the regular maintenance and repair of manufacturing equipment or works; or projects for the construction of prisons."

**Article 2** *Dealing with unfinished investment projects*

In respect of investment projects which were approved prior to the date of effectiveness of this Decree but which have not yet commenced implementation or which remain unfinished, items of works in the stage of project implementation shall continue to be carried out in accordance with the provisions in this Decree and the projects shall not be required to be submitted for re-approval.

**Article 3**

Items on management of investment and construction in a number of the articles in Decree 52-1999-ND-CP and Decree 12-2000-ND-CP which are inconsistent with the contents of the amendments and additions prescribed in this Decree are hereby repealed.

**Article 4**

The Ministry of Construction, the Ministry of Planning and Investment and the Ministry of Finance shall, depending on the functions which have been allocated to them, be responsible for co-ordination with the relevant ministries and branches to guide and inspect implementation of this Decree.

Every six months and every year, ministries, branches, localities and State corporations shall be responsible to provide a report on the overall status of investment and construction by their entities and on any problems and forward the report to the Ministry of Construction, the Ministry of Planning and Investment and the Ministry of Finance which shall in turn report to the Prime Minister of the Government.

**Article 5**

This Decree shall be of full force and effect after fifteen (15) days from the date of its signing.

Ministers, heads of ministerial equivalent bodies, heads of Government bodies, chairmen of people's committees of provinces and cities under central authority, chairmen of boards of management of State owned enterprises, and other organizations concerned shall be responsible for implementation of this Decree.

On behalf of the Government  
Prime Minister

PHAN VAN KHAI