

DECREE

ON INVESTMENT IN THE FORM OF BUILD-OPERATE-TRANSFER, BUILD-TRANSFER-OPERATE OR BUILD-TRANSFER CONTRACT

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the November 29, 2005 Investment Law;
Pursuant to the November 26, 2003 Construction Law;
Pursuant to the November 29, 2005 Enterprise Law;
Pursuant to the June 19, 2009 Law Amending and Supplementing a Number of Articles of the Laws concerning capital construction investment;
At the proposal of the Minister of Planning and Investment;

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1. Scope and subjects of regulation

1. This Decree provides for investment domains, conditions, order, procedures and incentives; and rights and obligations of parties to build-operate-transfer, build-transfer-operate and build-transfer contracts.

The Ministry of Planning and Investment shall, on a case-by-case basis, submit other project contracts of similar forms to the Prime Minister for consideration and decision.

2. This Decree applies to investors, state agencies competent to sign and perform project contracts, and agencies, organizations, individuals and enterprises involved in project implementation as provided for in this Decree.

Article 2. Interpretation of terms

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

1. Build-operate-transfer (BOT) contract means a contract signed between a competent state agency and an investor to build and operate an infrastructure facility in a specified duration. Upon the expiration of this duration, the investor shall transfer without compensation such facility to the Vietnamese State.

2. Build-transfer-operate (BTO) contract means a contract signed between a competent state agency and an investor to build an infrastructure facility. After completely building this infrastructure facility, the investor shall transfer it to the Vietnamese State. The Government will grant the investor the right to operate that facility for a specified duration to recover investment capital and earn profits.

3. Build-transfer (BT) contract means a contract signed between a competent state agency and an investor to build an infrastructure facility. After completely building this infrastructure facility, the investor shall transfer it to the Vietnamese State. The Government will create conditions for the investor to implement other projects for recovering investment capital and earning profits or shall make payments to the investor as agreed in the BT contract.

4. Project means the one to be implemented under a BOT, BTO or BT contract. Projects include national important projects and other projects classified into groups A, B and C under the construction law.

5. Another/other projects means a different project or projects which a competent state agency assigns to an investor for implementation under the terms agreed in the project contract.

6. Project contract means a BOT, BTO or BT contract as defined respectively in Clause 1, 2 or 3 of this Article and attached documents.

7. Investors include organizations and individuals defined in the Investment Law.
8. BOT, BTO or BT enterprise (below collectively referred to as project enterprise) means an enterprise established by an investor to design, build, operate and manage project works and implement other projects.
9. Feasibility study report (work construction investment project) means a combination of proposals relating to the contribution of capital for designing, building, operating and managing infrastructure facilities in the form of BOT, BTO or BT contract.
10. Infrastructure facilities means facilities encouraged for construction specified in Article 4 of this Decree.
11. Project work means a BOT, BTO or BT work.

Article 3. State agencies competent to sign and perform project contracts

1. State agencies competent to sign and perform project contracts include ministries, ministerial-level agencies, government-attached agencies and People's Committees of provinces or centrally run cities (below collectively referred to as ministries, branches and provincial-level People's Committees).
2. Based on their specific functions, tasks, powers and management conditions, ministries, branches and provincial-level People's Committees may authorize their attached agencies to sign and perform contracts of group-B and group-C projects.
3. State agency competent to sign and perform a project contract is a party to the project contract and has the rights, obligations and responsibilities as agreed with the investor in the project contract.
4. Depending on the characteristics and size of a project, a competent state agency may form a full-time section or designate a professional agency under its management to act as the focal point in exercising its rights and fulfilling its obligations indicated in the project contract but shall, in all cases, take total responsibility for the obligations committed in the project contract.

Article 4. Investment domains

1. The Government encourages the implementation of projects to build, operate and manage new infrastructure facilities or to improve, expand, modernize, operate and manage existing works in the following domains:
 - a/ Roads, road bridges, road tunnels and ferry landings;
 - b/ Railways, railway bridges and railway tunnels;
 - c/ Airports, seaports and river ports;
 - d/ Clean water supply systems; water drainage systems; and wastewater and waste collection and treatment systems;
 - e/ Power plants and power transmission lines;
 - f/ Other infrastructure facilities as decided by the Prime Minister.
2. For works specified at Point f, Clause 1 of this Article, ministries, branches and provincial-level People's Committees shall collect written opinions of concerned ministries, branches and localities and submit them to the Prime Minister for consideration and decision on a case-by-case basis.

Article 5. Capital sources for project implementation

1. Investors or project enterprises shall raise by themselves capital sources for project implementation as agreed in project contracts.
2. For a project capitalized at up to VND 1.5 trillion, the project enterprise's equity must not be lower than 15% of the project's total investment capital.
3. For a project capitalized at over VND 1.5 trillion, the project enterprise's equity shall be determined on the partially progressive principle below:
 - a/ For the investment capital portion of up to VND 1.5 trillion, the project enterprise's equity must not be lower than 15% of this capital portion;
 - b/ For the investment capital portion of over VND 1.5 trillion, the project enterprise's equity must not

be lower than 10% of this capital portion.

4. Other projects must satisfy the equity requirement (if any) under law.

Article 6. Use of state capital for project implementation

1. The total state capital for implementation of a project must not exceed 49% of the total investment capital of that project.

2. For projects to be implemented to meet urgent needs for the use of infrastructure facilities and other important projects, ministries, branches and provincial-level People's Committees shall consider and decide on the use of state budget capital for building auxiliary works, organizing compensation, ground clearance and resettlement or performing other jobs to support project implementation.

3. Capital sources for supporting the implementation of a project specified in Clause 2 of this Article will not be included in the total investment capital of that project and shall be managed and used under regulations applicable to state-funded investment projects.

Article 7. Inter-branch working parties

1. Based on project negotiation and implementation requirements, a competent state agency shall set up an inter-branch working party to assist in project negotiation and implementation (below referred to as inter-branch working party). Such a party consists of:

a/ Some members representing the competent state agency;

b/ Representatives of central and local agencies in the locality where the project is to be implemented or which are involved in the project;

c/ Some independent legal, technical and financial experts as decided by the competent state agency.

2. Tasks of an inter-branch working party:

a/ To join in negotiating the project contract and assist the competent state agency in performing the tasks defined in this Decree;

b/ To join in solving problems arising from the project implementation;

c/ To perform other tasks at the request of the competent state agency.

3. The working duration of an inter-branch working party shall be decided by the competent state agency, depending on the project implementation requirements.

Article 8. Investment preparation expenses and tasks and powers of competent state agencies

1. Expenses for making and announcing lists of projects and selecting investors and other expenses relating to the performance of powers and responsibilities of competent state agencies shall be allocated from the state budget, based on approved cost estimates.

2. Expenses for formulating and appraising project feasibility study reports or project proposals, including expenses relating to the preparation of other projects (excluding project proposals made by investors under Article 11 of this Decree) shall be allocated from the state budget and other revenue sources (if any).

3. Depending on the characteristics and size of a project, the investor selected to implement the project shall pay project preparation expenses specified in Clause 2 of this Article to the competent state agency.

Chapter II

DRAWING UP AND ANNOUNCEMENT OF LISTS OF PROJECTS

Article 9. Making of lists of projects

1. Based on socio-economic development plannings and plans in each period and pursuant to Article 4 of this Decree, ministries, branches and provincial-level People's Committees shall make lists of BOT, BTO and BT projects of branches and localities (below referred to as lists of projects).

2. For each project, a list of projects must contain the following principal details:

a/ Name of the project;

b/ Objectives of the project;

c/ Expected location for implementation of the project and other projects (if any);

d/ Summarized major technical parameters and estimated total investment capital for the project implementation;

e/ Name, address, telephone number and fax number of the state agency competent to sign and perform the project contract.

3. Depending on objectives, characteristics and location of each project on the list of projects, ministries, branches and provincial-level People's Committees shall send the list of projects to concerned ministries, branches and localities for opinion.

4. A written request for opinions of the agencies defined in Clause 3 of this Article must explain the objectives, location, designed capacity, estimated investment capital, and essential technical and financial requirements of each project on the list of projects.

5. Based on their functions, tasks and powers defined by law, within 30 working days after receiving a list of projects, concerned ministries, branches and localities shall give written opinions on the issues specified in Clause 4 of this Article and other issues.

6. An announced list of projects may be modified or supplemented in case of any modifications in branch or local socio-economic development plannings or plans or in a project on the list.

Article 10. Announcement of lists of projects

1. In January every year, ministries, branches and provincial-level People's Committees shall publish lists of projects on their websites and the Bidding Newspaper in 3 consecutive issues. The announced list of projects must contain the principal details specified in Clause 2, Article 9 of this Decree.

2. The minimum time limit for an investor to select and register to implement a project with a competent state agency is 30 working days from the date of the last publication of the list of projects under Clause 1 of this Article.

3. Upon the expiration of the time limit specified in Clause 2 of this Article, the competent state agency shall publish the list of investors that have registered in writing to implement projects on the Bidding Newspaper and the websites of ministries, branches and localities.

Article 11. Projects proposed by investors

1. Investors may request implementation of projects outside the announced list of projects and shall make and send project proposals to ministries, branches and provincial-level People's Committees for approval.

2. A project proposal must contain the details specified in Clause 2 of Article 12.

3. A dossier of request for approval of a project proposal comprises:

a/ A written request for approval;

b/ A document evidencing the investor's legal status and financial and technical capacity;

c/ A written introduction of the financial capacity and experience of implementing similar projects (if any);

d/ Other documents necessary for explaining the project proposal.

4. Ministries, branches and provincial-level People's Committees shall receive project proposals falling within their functions, tasks and powers and consider and approve them under Clauses 3, 4 and 5, Article 9 of this Decree.

For proposals of projects not yet included in branch development plannings, ministries, branches and provincial-level People's Committees shall consider and supplement according to their competence these projects to these plannings or submit such supplementation to the Prime Minister for consideration and approval.

5. In case the project proposals are approved, ministries, branches and provincial-level People's Committees shall decide to add the projects to the lists of projects and publish the principal details of these projects under Clause 2, Article 9 on their websites and the Bidding Newspaper in 3

consecutive issues. Within 30 working days from the date of the last publication, if no other investors register to implement the projects, ministries, branches and provincial-level People's Committees shall decide to designate investors with the approved project proposals to negotiate project contracts.

6. If other investors register to implement projects, ministries, branches and provincial-level People's Committees shall organize bidding for selecting investors under Article 13 of this Decree.

Article 12. Elaboration and approval of project proposals and feasibility study reports

1. Depending on the characteristics and size of a project, the competent state agency shall make a feasibility study report or a project proposal for use as a basis for making a bidding dossier and negotiating a project contract with the investor.

2. A project proposal comprises:

a/ Analysis of the necessity and advantages of implementation of the project in the form of BOT, BTO or BT contract as compared to other forms of investment;

b/ Expected capacity, location and area of construction, work items, and land use demand;

c/ Analysis and preliminary selection of technologies and techniques; conditions for the supply of supplies, equipment, materials, energy, services and technical infrastructure; ground clearance and resettlement plans (if any); the project's impacts on the eco-environment, fire and explosion prevention and fighting and security;

d/ Preliminary determination of the project's total investment capital;

e/ Determination of goods prices and service charges expected to be collected from the operation of the work;

f/ Determination of the work construction and operation duration, and methods of management and operation (for BOT and BTO projects);

g/ Conditions for and methods of transfer and receipt of the work under the provisions of Chapter VI of this Decree;

h/ Proposed application of investment incentives and supports and government guarantee (if any) under the provisions of Chapter VII of this Decree;

i/ Preliminary evaluation of the project's socio-economic benefits;

j/ For BT projects, in addition to the details specified at Points a, b, c, d, g, h and i of this Clause, a project proposal must indicate payment conditions or conditions for implementing other projects.

3. For BOT and BTO projects, a feasibility study report must contain the details prescribed by the construction law and the details specified in Clause 2 of this Article.

4. For BT projects, in addition to the details prescribed by the construction law, a feasibility study report must contain the relevant details specified at Points a, b, c, d, g, h, i and j, Clause 2 of this Article.

5. The competence to approve feasibility study reports and project proposals is specified as follows:

a/ The Prime Minister may approve feasibility study reports and proposals of national important projects under the National Assembly's resolutions; projects requiring land area of 200 ha or more; projects requiring government guarantee; and group-A projects capitalized at VND 1.5 trillion or more;

b/ Ministers, heads of ministerial-level agencies and chairpersons of provincial-level People's Committees may approve feasibility study reports and proposals of other projects of groups A, B and C.

Chapter III

SELECTION OF INVESTORS FOR NEGOTIATING PROJECT CONTRACTS

Article 13. Bidding for selecting investors

For a project on the announced list of projects with 2 or more investors registering to implement, the competent state agency shall organize domestic or international open bidding for selecting investors.

Article 14. Designation of investors

Investors may only be designated in any of the following cases:

1. Within the time limit specified in Clause 2, Article 10 of this Decree, only one investor registers to implement the project;
2. The case specified in Clause 5, Article 11 of this Decree.
3. The project should be implemented to meet urgent needs for use of infrastructure facilities as decided by the Prime Minister at the proposal of a ministry, branch or provincial-level People's Committee and based on the appraisal report of the Ministry of Planning and Investment.

Article 15. Negotiation and signing of project contracts and related contracts

1. Based on investor selection results specified in Articles 13 and 14 of this Decree, the competent state agency shall negotiate the project contract with the selected investor.
2. The rights and obligations of project enterprises and the right to receive projects under Articles 16 and 17 of this Decree and contracts related to project implementation (if any) may be negotiated simultaneously with project contracts.
3. After finishing negotiations, project contracts and contracts related to project implementation (if any) shall be initialed between the involved parties.
4. After a project is granted an investment certificate under the provisions of Chapter V of this Decree, the investor and the competent state agency shall officially sign the project contract. In case of any modifications in the project contract as compared with the initialed one, the investor shall notify such modifications to the investment certificate-granting agency before officially signing the project contract.

Chapter IV

PROJECT CONTRACTS

Article 16. Contents of a project contract

1. A project contract indicates the objectives, scope and contents of the project; the rights and obligations of the parties to design, build, operate and manage the project work and other projects (if any).
2. The rights and obligations of a project enterprise shall be agreed by either of the following methods:
 - a/ After being established, the project enterprise shall sign the project contract to join the investor as a party to the project contract;
 - b/ The competent state agency, the investor and the project enterprise shall sign a document permitting the project enterprise to receive and exercise the rights and fulfill the obligations of the investor as indicated in the project contract. This document is an integral part of the project contract.

Article 17. Right to receive projects

1. The parties may agree on the lender's receipt of some or all of the rights and obligations of the project enterprise (below referred to as the right to receive projects) in case the project enterprise or the investor fails to fulfill the obligations indicated in the project contract or the loan contract. After receiving a project, the lender shall fulfill all the obligations of the project enterprise or the investor as indicated in the project contract.
2. The conditions and procedures for exercise and contents of the lender's right to receive a project must be specified in the loan contract, written loan guarantee or another agreement signed between the project enterprise or the* investor and the lender, and are subject to approval of the competent state agency.

Article 18. Transfer of rights and obligations under project contracts

1. An investor may transfer some or all of his/her/its rights and obligations under the project contract.
2. The transfer of part or the whole of another project must comply with conditions and procedures prescribed in the investment and construction laws and relevant legal documents.
3. The transfer under Clauses 1 and 2 of this Article is subject to approval of a competent state agency and must not affect the objectives, size, technical standards and implementation progress of

the project and other conditions agreed in the project contract.

Article 19. Modification and supplementation of project contracts

1. A project contract may be modified and supplemented in case of any change in the agreed size, work technical standards or total investment capital, or due to the occurrence of a force majeure event and in other cases as indicated in the project contract.
2. The parties shall agree in the project contract on the conditions for modification and supplementation of the project contract.
3. The modification and supplementation of a project contract is subject to approval of the investment certificate-granting agency.

Article 20. Term of a project contract

1. The term of a project contract shall be agreed by the parties to suit the domain, size and characteristics of the project and may be extended or shortened under the conditions specified in the project contract.
2. For BOT and BTO contracts, the parties shall agree on the specific points of time and duration for building and completion of a work; specific points of time and duration for operation-transfer of a work (for BOT contracts) and specific points of time and duration for transfer-operation (for BTO contracts).
3. For BT contracts, the parties shall agree on the specific points of time and duration for building and transfer of a BT work, and specific points of time and duration for operation and completion of another project depending on the project's domains, size and characteristics in accordance with the investment and construction laws and relevant legal documents.

Article 21. Termination of project contracts

1. A project contract will terminate upon the expiration of the agreed term or will terminate ahead of time when any of the parties breaches the contract without applying effective remedies, a force majeure event occurs or in other cases indicated in the project contract.
2. The parties shall agree in the project contract the conditions for contract termination and handling measures when it terminates ahead of time in the cases specified in Clause 1 of this Article.

Article 22. Application of foreign laws governing project contracts and related contracts

1. The competent state agency and a foreign investor may agree to apply foreign laws to:
 - a/ Project contracts;
 - b/ Contracts under which the performance obligations are guaranteed by the competent state agency under Article 40 of this Decree .
2. The application of foreign laws under Clause 1 of this Article must not contravene the Vietnamese law.

Article 23. Security for the project contract performance obligation

1. Measures to secure the project contract performance obligation shall be applied in the form of bank guarantee or other obligation security measures under the civil law.
2. For projects capitalized at up to VND 1.5 trillion, the amount for securing the project contract performance obligation must not be lower than 2% of total investment capital.
3. For projects capitalized at over VND 1.5 trillion, the amount for securing the project contract performance obligation shall be determined on the partially progressive principle below:
 - a/ For the investment capital portion of up to VND 1.5 trillion, the amount for securing the project contract performance obligation must not be lower than 2% of this capital portion;
 - b/ For the investment capital portion of over VND 1.5 trillion, the amount for securing the project contract performance obligation must not be lower than 1% of this capital portion.
4. The security for the project contract performance obligation is valid from the date the project contract is officially signed to the date the work is completed.

Chapter V

PROCEDURES FOR GRANTING INVESTMENT CERTIFICATES AND IMPLEMENTING PROJECTS

Article 24. Investment certificate-granting agencies

1. The Ministry of Planning and Investment grants investment certificates for:
 - a/ National important projects;
 - b/ Projects whose contracts are signed by ministries and branches or their authorized agencies being competent state agencies;
 - c/ Projects to be implemented in many provinces and centrally run cities.
2. Provincial-level People's Committees grant investment certificates for the projects not mentioned in Clause 1 of this Article.

Article 25. Dossiers, order and procedures for examining dossiers and granting investment certificates

1. An investor shall submit 10 dossier sets, including at least one original, to the investment certificate-granting agency defined in Article 24 of this Decree for examination and grant of an investment certificate.
2. A dossier of application for an investment certificate comprises:
 - a/ A written application for a certificate;
 - b/ The initialed project contract and contracts related to the project implementation (if any);
 - c/ The feasibility study report;
 - d/ The joint venture contract and the project enterprise charter (if any).
3. To-be-examined contents include:
 - a/ Rights and obligations of the parties to the project contract;
 - b/ Project implementation schedule;
 - c/ Land use demand;
 - d/ Environmental solutions;
 - e/ The investor's proposals on investment incentives or government guarantee (if any).
4. The investment certificate-granting agency shall examine the dossier and grant an investment certificate to the investor within 45 working days after receiving a valid dossier.

Article 26. Details of an investment certificate

An investment certificate contains the following principal details:

- a/ Names and addresses of the investor and project enterprise;
 - b/ Name of the project;
 - c/ Objectives and size of the project;
 - d/ Project implementation location and land area to be used;
 - e/ Total investment capital of the project;
 - f/ Project implementation schedule; capital raising schedule under the project contract;
 - g/ Investment incentives and supports (if any).
2. For BT projects, in addition to the details prescribed for BOT work construction projects under Clause 1 of this Article, an investment certificate must indicate payment conditions or conditions for implementation of other projects under the project contract.

Article 27. Business registration, establishment and management of project enterprises

1. An investor shall make business registration to establish a project enterprise or shall supplement a business line in the business registration certificate (for investors that have established economic

entities). The dossier, order and procedures for business registration or supplementation of business lines comply with the Enterprise Law.

2. An investment certificate granted to a foreign investor is also a business registration certificate of a project enterprise.

3. The managerial apparatus, powers and responsibilities of the project enterprise shall be decided by the investor in accordance with the terms of the project contract, the Enterprise Law, the Investment Law and relevant legal documents.

Article 28. Conditions for project implementation

1. A project shall be implemented after the investor is granted an investment certificate and under other conditions as agreed in the project contract.

2. Other projects shall be implemented according to the schedule agreed by the parties in the project contract in accordance with the investment and construction laws.

Article 29. Selection of contractors for project implementation

1. The project enterprise shall select consultancy, procurement and engineering and other contractors for the project implementation. The selection of contractors falling within the scope of regulations of the Bidding Law must comply with the legal provisions on bidding.

2. Contractor selection results must be notified to the competent state agency within 15 working days after the issuance of the contractor selection decision.

Article 30. Preparation of construction grounds

1. Provincial-level People's Committees shall clear grounds and complete procedures for allocating or leasing land for project implementation under law and the land use conditions indicated in project contracts.

2. Compensation, ground clearance and resettlement expenses shall be borne by project enterprises and included into the total investment capital of projects, unless compensation and ground clearance are funded with state budget capital under Clause 2, Article 6 of this Decree.

Article 31. Elaboration of technical designs, work construction supervision and management

1. Based on the feasibility study report and the project contract, a project enterprise shall elaborate and send a technical design to the competent state agency for supervision and inspection. In case of any modifications in the technical design as compared to the feasibility study report, the project enterprise shall submit them to the competent state agency for consideration and decision.

2. The project enterprise may itself, or hire an independent consultancy organization to, manage and supervise work construction and test before take-over work items and the whole work according to the agreed design under the construction law and agreements in the project contract.

3. The competent state agency shall supervise and assess the fulfillment of obligations of the investor and the project enterprise in satisfying with the requirements on planning, objectives, size, technical standards, quality, capital raising progress and implementation of the project, environmental protection and other issues as agreed in the project contract.

4. The adjustment of total investment capital, technical standards and other conditions agreed in the project contract may be considered only in the following cases:

a/ The project is affected by a natural disaster or other force majeure events;

b/ There appear elements which help bring higher benefits to the project;

c/ Planning adjustments directly affect the location, size, nature and objectives of the project;

d/ Other cases as provided for by the Government.

Article 32. Management and operation of works

1. Project enterprises shall manage and operate works or operate other projects (for BT projects) under law and conditions agreed in project contracts.

2. Project enterprises may hire management organizations to perform the jobs mentioned in Clause 1

of this Article provided that they shall assume all responsibilities of the management organization.

3. In the course of operating works, BOT and BTO enterprises have the following obligations:

a/ To equally treat all lawful users of products and services provided by project enterprises; not to abuse the right to operate works for practicing discrimination against or refusing to provide services to users;

b/ To regularly maintain and repair works under project contracts, ensuring that works are operated according to their designs;

c/ To provide products and services with quantity and quality as agreed in project contracts in the operation duration until the works are transferred (for BOT projects);

d/ To ensure that works are used under the terms of project contracts.

4. BT enterprises shall implement other projects under conditions agreed in project contracts, investment certificates, investment and construction laws, and relevant legal documents.

Article 33. Goods prices, service charges and revenues

1. Prices of goods and charges of services provided by project enterprises shall be specified in project contracts on the principle of fully offsetting expenses, taking into account market prices and ensuring benefits of project enterprises, users and the State.

2. Conditions for adjusting goods prices, service charges and revenues must be specified in project contracts.

3. When adjusting goods prices, service charges and other revenues (if any), project enterprises shall notify such adjustment to competent state agencies 30 working days in advance. The adjustment of prices of goods, charges of services and other revenues managed by the State is subject to approval of competent state agencies.

Article 34. Supports for collection of service charges

Project enterprises will be given all favorable conditions to properly and fully collect service charges and other lawful revenues from the operation of works. When necessary, project enterprises may request competent state agencies to assist in collecting charges and other revenues from the operation of works.

Chapter VI

TRANSFER OF PROJECT WORKS

Article 35. General regulations on transfer of project works

1. For a BOT work, after the expiration of the work operation duration specified in Clause 2, Article 20 of this Decree, the investor shall transfer without compensation such BOT work to the competent state agency.

2. For a BTO work, after completing the work under Clause 2, Article 20 of this Decree, the investor shall transfer without compensation the work to the competent state agency and may continue operating the work under the conditions agreed in the project contract.

3. For a BT work, after completing the work under Clause 3, Article 20 of this Decree, the investor shall transfer the work to the competent state agency under the conditions indicated in the project contract.

Article 36. Finalization and transfer of BOT works

1. Within 6 months after completing a project work as agreed in the project contract, the investor shall make a dossier of finalization of the value of work construction investment capital in accordance with the construction law.

2. The competent state agency shall agree with the investor on the selection of a capable and experienced independent audit institution to audit the value of investment capital for the project work construction.

3. The transfer of a work complies with the following procedures and conditions:

a/ One year before the date of transfer or within the time limit agreed in the project contract, the

investor or the project enterprise shall publish on newspapers such transfer and issues relating to procedures and time limit for liquidation of contracts and payment of debts;

b/ The competent state agency shall inspect the quality, value and practical conditions of the work against the agreements in the project contract, list the transferred assets, determine damage (if any) and request the project enterprise to repair or maintain the work;

c/ The investor and the project enterprise shall ensure that the transferred assets are neither used as assets for guaranteeing the fulfillment of financial obligations nor mortgaged or pledged for securing the fulfillment of other obligations of the investor or the project enterprise arising before the time of transfer, unless otherwise provided for in the project contract;

d/ The project enterprise shall transfer technologies, provide training and conduct regular maintenance and overhaul of the work to ensure technical conditions for the normal operation of the work in compliance with the requirements of the project contract;

e/ After receiving a project work, the competent state agency shall manage and operate it according to its functions and competence.

Article 37. Transfer of BT and BTO works

1. BT works shall be transferred under the conditions and procedures specified in Article 36 of this Decree.

2. In addition to the provisions in Clause 2, Article 35 and Points b and c, Clause 3, Article 36, BTO works shall be transferred under agreements in project contracts.

3. The Ministry of Finance shall guide the finalization of the value of project works under Article 36 and this Article.

Chapter VII

INVESTMENT INCENTIVES AND SECURITY FOR INVESTORS AND PROJECT ENTERPRISES

Article 38. Investment incentives and supports

1. BOT and BTO enterprises are entitled to enterprise income tax incentives under the law on enterprise income tax.

2. Goods imported for implementing projects of BOT and BTO enterprises and contractors defined in Article 29 of this Decree are eligible for incentives under the law on import duty and export duty.

3. BOT and BTO enterprises are exempt from land use levy for the land area allocated by the State or from land use rent throughout the project implementation duration.

4. Incentives for BT enterprises are specified as follows:

a/ BT enterprises and contractors defined in Article 29 of this Decree are entitled to import duty incentives for goods imported for building BT works under the law on import duty and export duty.

Import duty on goods imported for implementing other projects complies with the law on import duty and export duty.

b/ BT enterprises are exempt from land use rent and levy for the land area used for building BT works in the work construction duration;

c/ Other projects are liable to enterprise income tax depending on the domains and geographical areas of investment under the laws on investment and enterprise income tax.

Article 39. Taxes on contractors participating in project implementation

1. Foreign contractors (if any) participating in project implementation shall pay taxes and enjoy tax exemption or reduction under the law on taxes applicable to foreign contractors.

2. Vietnamese contractors shall fulfill tax obligations under the law on taxes applicable to Vietnamese enterprises.

Article 40. Guarantee for obligations of investors, project enterprises and other enterprises

When necessary and depending on the characteristics of a project, the Government shall designate a competent agency to guarantee loans, supply materials, sell products and fulfill other contractual

obligations for the investor, the project enterprise or other enterprises participating in project implementation, and to guarantee state enterprises' obligation to sell materials and purchase products and services of the project enterprise.

Article 41. Right to mortgage assets

1. Project enterprises may pledge or mortgage its assets and land use rights in accordance with law.
2. The pledge or mortgage of assets of project enterprises is subject to approval of a competent state agency, must not affect projects' objectives, progress and operation indicated in project contracts, and must comply with law.

Article 42. Right to buy foreign currencies

1. In the course of building and operating a work, the investor or the project enterprise may buy foreign currencies at credit institutions licensed to conduct foreign exchange operations for current transactions, capital transactions and other transactions under the law on foreign exchange management, covering:

- a/ Payment of rent of equipment and machinery hired from overseas;
- b/ Import of machinery, equipment and other products and services for the project implementation;
- c/ Payment of foreign debts (both principal and interest);

d/ Payment of bank loans in foreign currencies (both principal and interest) for the import of machinery, equipment and other products and services for the project implementation;

e/ Transfer abroad of capital, profits, investment liquidation amounts and payments for the supply of techniques, services, intellectual property, and other lawful incomes (applicable to foreign investors).

2. The Government shall balance, or support the balance of, foreign currencies for important projects on energy, transport work construction and waste treatment.

Article 43. Assurance for provision of public services

1. Project enterprises may use land, roads and other auxiliary works for project implementation in accordance with law.

2. In case of scarcity of public services or restrictions on users of public works, project enterprises will enjoy priority in the use of services or the grant of the right to use public works for project implementation.

3. Competent state agencies shall assist project enterprises in carrying out necessary procedures to enjoy priority in the use of public services and works.

Article 44. Settlement of disputes

1. Disputes between competent state agencies and investors or project enterprises and between project enterprises and economic entities participating in project implementation must be first settled through negotiation or conciliation.

If failing to settle their disputes through negotiation or conciliation, the parties may bring such disputes to Vietnamese arbitral bodies or courts for settlement under Vietnamese law, except the cases specified in Clauses 2 and 3 of this Article.

2. Disputes between competent state agencies and foreign investors or project enterprises arising in the performance of project contracts and guarantee contracts under Article 40 of this Decree shall be settled at Vietnamese arbitral bodies or courts or arbitral councils set up by the parties as agreed.

3. Disputes between project enterprises and foreign organizations or individuals or Vietnamese economic institutions and between investors themselves shall be settled under the Investment Law.

Article 45. Capital and asset assurance

1. Investors' investment capital and lawful assets will never nationalized or confiscated through administrative measures.

2. When it is necessary to compulsorily purchase or requisition assets of investors, the State shall make payment or compensation for their assets and capital under the Investment Law or other

conditions agreed in project contracts.

Chapter VIII

STATE MANAGEMENT OF INVESTMENT PROJECTS IN THE FORM OF BOT, BTO OR BT CONTRACT

Article 46. Tasks and powers of the Ministry of Planning and Investment

1. To elaborate and promulgate according to its competence or submit to the Government for promulgation legal documents on investment in the form BOT, BTO or BT contract.
2. To guide regulations on the making and approval of project proposals and feasibility study reports; and to select investors and negotiate project contracts, contents of a project contract, order of and procedures for the grant, modification and revocation of investment certificates, and other relevant issues falling within its competence defined in this Decree.
3. To comment on plannings and lists of projects drafted by ministries, branches and provincial-level People's Committees.
4. To assume the prime responsibility for, and coordinate with concerned ministries and branches in, submitting to the Prime Minister for consideration and decision the implementation of projects neither in the domains nor in the forms of project contract specified in this Decree.
5. To comment on the selection of investors for negotiating project contracts and appoint its representatives to join inter-branch working groups at the request of ministries, branches or provincial-level People's Committees on a case-by-case basis.
6. To examine application dossiers, and grant, modify and revoke investment certificates for projects falling within its competence as listed in Clause 1, Article 24 of this Decree.
7. To join in examining projects' issues falling within its functions and competence at the request of ministries, branches or provincial-level People's Committees.
8. To assume the prime responsibility for, and coordinate with ministries, branches or provincial-level People's Committees in, guiding, examining and inspecting according to their competence project activities; to review and evaluate the implementation of investment projects in the form of BOT, BTO or BT contract.
9. To perform other tasks and exercise other powers as provided for by law.

Article 47. Tasks and powers of the Ministry of Finance

1. To perform the tasks and exercise the powers defined in Clauses 3, 5 and 7, Article 46 of this Decree.
2. To guide the implementation of regulations on project preparation expenses and use of operating funds of competent state agencies in the course of project management; financial contents of project contracts; conditions for and methods of payment to BT project investors; and other relevant issues falling within its competence as defined in this Decree.
3. To coordinate with the Ministry of Planning and Investment in performing the tasks specified in Clause 8, Article 46 of this Decree.
4. To perform other tasks and exercise other powers as provided for by law.

Article 48. Tasks and powers of the Ministry of Justice

1. To join in negotiating issues relating to applicable laws, settlement of disputes, government guarantee and other legal issues of project contracts at the request of competent state agencies on a case-by-case basis.
2. To appraise and comment on the disparity between the terms of project contracts and domestic laws.
3. To negotiate the terms of, and give legal opinions on, project contracts on a case-by-case basis.
4. To perform other tasks and exercise other powers as provided for by law.

Article 49. Tasks and powers of other ministries and branches

1. To perform the tasks and exercise the powers defined in Clauses 3, 5 and 7, Article 46 of this Decree.
2. To make and announce lists of projects of ministries and branches in accordance with this Decree.
3. To comment on plannings on and policies for implementation of projects in the domains under their management.
4. To receive projects outside lists of projects already announced and prepare feasibility study reports or project proposals respectively under Articles 11 and 12 of this Decree.
5. To personally, or authorize their attached competent state agencies to, sign and implement project contracts under Article 3 of this Decree.
6. To approve plans and results of bidding for selection of investors for negotiating project contracts falling within their competence.
7. To coordinate with the Ministry of Planning and Investment in performing the tasks mentioned in Clause 8, Article 46 of this Decree.
8. To perform other tasks and exercise other powers as provided for by law.

Article 50. Tasks and powers of provincial-level People's Committees

1. To perform the tasks and exercise the powers defined in Clauses 3, 5 and 7, Article 46 of this Decree.
2. To draw up and announce lists of projects of localities in accordance with this Decree.
3. To comment on plannings on and policies for implementation of projects in the domains under their management.
4. To receive projects outside lists of projects already announced and prepare feasibility study reports or project proposals respectively under Articles 11 and 12 of this Decree.
5. To personally, or authorize their attached competent state agencies to, sign project contracts under Article 3 of this Decree.
6. To examine application dossiers, and grant, modify and revoke investment certificates for the projects falling within their competence as provided for in Clause 2, Article 24 of this Decree.
7. To approve plans and results of bidding for selection of investors for negotiating project contracts falling within their competence.
8. To coordinate with the Ministry of Planning and Investment in performing the tasks mentioned in Clause 8, Article 46 of this Decree.
9. To perform other tasks and exercise other powers as provided for by law.

Chapter IX

IMPLEMENTATION PROVISIONS

Article 51. Effect

This Decree takes effect on January 15, 2010, and replaces the Government's Decree No. 78/2007/ND-CP of May 11, 2007, on investment in the form of BOT, BTO or BT contract.

Article 52. Transitional provisions

1. Project investors that are granted investment certificates before the effective date of this Decree may continue implementing projects under project contracts and investment certificates.
2. Projects for which investor selection decisions are issued before the effective date of this Decree are not required to comply with regulations on bidding for selection of investors under Article 13 of this Decree.
3. Unless it is approved by the Prime Minister, investors that have signed project contracts before the effective date of this Decree and are not yet granted investment certificates shall modify these project contracts and carry out procedures for the grant of investment certificates in accordance with this Decree.

Article 53. Organization of implementation

1. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with concerned ministries and branches in, guiding the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall, within the ambit of their functions and powers, implement this Decree.

THE GOVERNMENT
PRIME MINISTER
(signed)

Nguyen Tan Dung