

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

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Hanoi, May 4, 2018

DECREE

ON INVESTMENT IN THE FORM OF PUBLIC-PRIVATE PARTNERSHIP

Pursuant to the Law on Government organization dated June 195, 2005;

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

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

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

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

Pursuant to the Law on Public Property Management dated June 21, 2017;

At the request of the Minister of Planning and Investment;

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

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Decree sets forth sectors, requirements, and procedures for investment in form of Public-Private Partnerships (hereinafter referred to as PPP).

Article 2. Regulated entities

This Decree applies to ministries, ministerial-level agencies, Governmental agencies, People's Committees of provinces (hereinafter referred to as ministries and People's Committees of provinces), investors, special purpose entities, lenders and entities involved in investment in the form of PPP.

Article 3. Interpretation of terms

For the purpose of this Decree, these terms can be construed as follows:

1. “PPP” (Public-Private Partnerships) means any form of investment on the basis of a contract between a regulatory agency and an investor, a special purpose entity to build, innovate, operate and manage infrastructure and public service project.
2. “Project contract” means any of contracts prescribed in Clause 3, 4, 5, 6, 7, 8, 9 and 10 of this Article and other similar contracts prescribed in Clause 4 Article 40 hereof.
3. “BOT contract” (Build-Operate-Transfer) means a type of contract to build an infrastructure project between a regulatory agency and an investor or special purpose entity; after completion of the works, the investor or special purpose entity shall be entitled to operate it for a specified period of time; upon expiry, the investor or special purpose entity shall transfer it to the regulatory agency.
4. “BTO contract” (Build-Transfer-Operate) means a type of contract to build an infrastructure project between a regulatory agency and an investor or special purpose entity; after completion of works, the investor or special purpose entity shall transfer it to the regulatory agency, and shall be entitled to operate it for an agreed period of time.
5. “BT contract” (Build-Transfer) means a type of contract to build an infrastructure project between a regulatory agency and an investor or special purpose entity (if any); after completion of works, the investor or special purpose entity shall transfer it to the regulatory agency, and then the investor will be allotted a land parcel, headquarters, infrastructure or right to operate the works or services used for carrying out Other project.
6. “BOO contract” (Build-Own-Operate) is a type of contract to build an infrastructure project between a regulatory agency and an investor or special purpose entity; after completion of the works, the investor or special purpose entity shall take ownership of this project and have the right to operate it for a specified period of time; upon expiry, the investor or special purpose entity shall terminate the project as prescribed in law on investment.
7. “BTL contract” (Build-Transfer-Lease) means a type of contract to build an infrastructure project between a regulatory agency and an investor; after completion of the works, the investor or special purpose entity shall transfer it to the regulatory agency and shall be entitled to provide services on the basis of operation of such project for a specified period of time; then the regulatory agency shall lease and make payment for the investor or special purpose entity’s services.
8. “BLT contract” (Build-Lease-Transfer) means a type of contract to build an infrastructure project between a regulatory agency and an investor or special purpose entity; after completion of the works, the investor shall have the right to provide services on the basis of operation of such project for a specified period of time; the regulatory agency shall lease and make payment for the investor or special purpose entity’s services; when the lease term expires, such project shall be transferred to the regulatory agency.

9. “O&M contract” (Operate-Manage) means a type of contract to operate in whole or in part of a project between a regulatory agency and an investor or special purpose entity for a specified period of time.

10. “Mixed contract” means a contract in combination of contracts prescribed in Clauses 3, 4, 5, 6, 7, 8, and 9 of this Article.

11. “Other project” means a corresponding project of BT project which is transferred to the investor to operate as per the law.

12. “Pre-feasibility study report” means a document that contains the preliminary information on the need, feasibility and effectiveness of the PPP project as the basis for the competent authority to approve the project investment proposal.

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

14. “Total investment” means the total estimated investment as prescribed in special law and the initial working capital for the operation of the PPP project.

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

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

17. “Special purpose entity” means an enterprise incorporated by an investor or a joint venture of investors to undertake a PPP project.

18. “Lender” means the organization extending credit to the investor or special purpose entity to undertake the PPP project.

Article 4. Investment sectors and classification of projects

1. The state encourages PPP projects in following sectors:

a) Transport;

b) Power plants, transmission lines;

c) Public lighting system; clean water supply system; water drainage system; sewage/waste collection and disposal system; parks; parking lots; storage yards; cemeteries;

d) Head offices of regulatory bodies; state-owned housing for government employees; social housing; resettlement housing;

dd) Health; education and training, vocational training; culture; sports; tourism; science and technology, meteorology and hydrology; IT application;

e) Infrastructure works for commerce, urban areas, economic zones, industrial parks, industrial complexes, concentrated IT parks; hi-technology zones; incubators, technical facilities, common working areas supporting for SMEs;

g) Agriculture and rural development; services enhancing the correlation of agricultural production with farm product processing and sale;

h) Other sectors decided by the Prime Minister.

2. The PPP projects are classified into national importance and the Group A, B and C projects according to given criteria prescribed in law on public investment.

3. Ministries, ministerial-level agencies shall provide guidance on investment sectors that fall within Ministries' jurisdiction.

Article 5. Expenses associated with the investment preparation and the execution of the projects allocated by Ministries, People's Committees of provinces and regulatory bodies

1. The expenses associated with the investment preparation and the execution of the projects include those incurred in:

a) Making and evaluation of pre-feasibility study reports, feasibility study reports;

b) The investor selection processes;

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

d) Project announcement;

dd) Operation of the Centralized PPP Unit for PPP projects (hereinafter referred to as Centralized PPP Unit);

e) Hiring consultants to assist in the activities within the area of the responsibility of regulatory agencies prescribed in Clause 7 Article 8 of this Decree;

g) Holding relating conferences and seminars;

h) Other expenses.

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

a) The State budget, according to the balancing of annual budget plans for investment and development projects of the ministries and People's Committees of provinces;

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

c) The receipts from the sale of Bidding Documents;

d) The money repaid by the selected investor;

dd) Other lawful sources of capital.

3. The expenses prescribed in Point c, d, dd, e, g and h Clause 1 of this Article shall be allocated from the State budget included in the budget of capital expenditures, recurrent expenditures outlined by ministries and People's Committees of provinces.

Article 6. The funding for investment preparation

1. According to the capacity of mobilizing legitimate sources of funds, the ministry or People's Committee of province shall take initiative in mobilizing suitable funds for the PPP project preparation.

2. When using the sources of funds prescribed in Clause 1 hereof, the ministry or People's Committee of province shall request the successful bidder to reimburse the costs to create the sources of funds for preparation of other potential PPP projects.

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

Article 7. PPP Steering Committee and Centralized PPP Unit

1. The PPP Steering Committee is set up and operates under the decision of the Prime Minister.

2. Based on specific management requirements and conditions, ministries and People's Committees of provinces shall appoint an affiliated specialized agencies to be the Centralized PPP Unit in charge of the execution of the PPP projects of Ministries, sectors and localities. In exceptional circumstances, a ministry shall request the Government to establish a dedicated PPP Unit within scope of management.

Article 8. Sponsoring Authority

1. Ministries and People's Committees of provinces are those who have the authority to sign the project contracts within their functions, tasks, powers, and adhere to their rights and obligations agreed upon in the project contract with investors or projects designated by the competent authority (hereinafter referred to as Sponsoring Authority).

2. In the event that public property is contributed to a PPP project in accordance with law on management and use of public property at People's armed forces, socio-political organizations,

political-socio-profession organizations, social organizations, socio-professional organizations, other organizations established in compliance with law on associations, the aforesaid organizations shall request the Prime Minister to designate a Sponsoring Authority to such a PPP project.

3. The ministry shall assign an affiliate, People's Committee of province shall assign a specialized agency or affiliate or the People's Committee of district to prepare for the PPP project, including making of pre-feasibility study report, feasibility study report, and selection of preferred bidder in accordance with this Decree and law on bidding.

4. According to functions, tasks, entitlements and specific conditions in each Ministry or People's Committee of province, a Sponsoring Authority shall be designated as follows:

a) The ministry may designate an affiliate or People's Committee of province may designate a specialized agency or the People's Committee of district to act as a Sponsoring Authority of group B or group C project;

b) The ministry or People's Committee of province may designate an affiliated public sector entity which covers recurrent expenditures and capital expenditure by its own budget to act as a Sponsoring Authority of group B or group C project, except for the case of service contract as prescribed in special law.

5. The designation prescribed in Clause 4 of this Article must be performed in writing, specifying the scope of authority designation, responsibilities of Sponsoring Authority.

6. Regulatory agencies or authorized agencies (hereinafter referred to as competent authorities) defined in Clause 4 of this Article shall establish a project management unit or assign an available project management board that is competent to perform their obligations under a project contract; but in any circumstances, such competent authority still be held accountable for their obligations therein.

7. When necessary, the competent authority may appoint an independent consultancy organization to assist in the performance of duties prescribed in Clauses 3 and 6 of this Article.

Article 9. Procedures for undertaking PPP projects

1. Except for the case prescribed in Clause 3 hereof and BT projects prescribed in Clause V of this Decree, a PPP project shall be undertaken under the following procedures:

a) Making and appraising pre-feasibility study report, approving project investment proposal and announcing the project;

b) Making, appraising and approving feasibility study report;

c) Selecting preferred bidder;

- d) Negotiating, establishing special purpose entity (if any), and concluding project contract;
- dd) Undertaking the project; preparing the final account and transferring the facilities.

2. With regard to group C projects, pre-feasibility study report and approval for project investment proposal are not required to be made or appraised as prescribed Point a Clause 1 hereof, but the project must be announced once the feasibility study report is approved.

3. A hi-tech project in compliance with law on high technology shall be undertaken under the following procedures:

- a) Making and appraising pre-feasibility study report, approving project investment proposal and announcing the project;
- b) Selecting preferred bidder;
- c) Making feasibility study report (by preferred bidder);
- d) Appraising and approving feasibility study report;
- dd) Performing steps prescribed in Point d and dd Clause 1 hereof.

4. In necessary circumstances, in response to the need of PPP project, the competent authority shall decide to hold a tender to select preferred bidder (as prescribed in Point c Clause 1 hereof) after approving the technical design and estimate provided that the open competitive bidding is guaranteed. Ministries and ministerial-level agencies shall provide guidelines for this matter within their authorities.

Chapter II

SOURCES OF PROJECT FINANCE

Article 10. Equity and mobilized capital

- 1. Investors shall be responsible for contributing the equity and mobilize other capital to execute the project as agreed upon in the project contract.
- 2. The rate of equity shall be determined according to the following rules:
 - a) With regard to a project funded by total investment of up to VND 1,500 billion, the equity shall account for at least 20% of such total investment;
 - b) With regard to the project funded by total investment of more than VND 1,500 billion, the rate of equity is determined according to the following rules: the rate shall account for least 20% for the portion of equity up to VND 1,500 billion; and the rate shall account for at least 10% for the portion of equity more than VND 1,500 billion.

3. The State contribution to PPP projects prescribed in Clauses 2 and 4 Article 11 of this Decree shall not be included in the total investment for the identification of the equity rate.

4. In case of a BT contract, the investor must also meet requirements for equity (if any) in accordance with law on investment, construction, housing, real estate business and relevant law provisions to undertake Other project.

Article 11. State contribution to PPP project

1. The State contribution to PPP project shall be in form of:

- a) State's stakes;
- b) Payment capital for investor;
- c) Land fund, head offices, infrastructure compensated for the investor or right operate Facilities or perform Services conceded to the investor under a BT contract;
- d) Funds for supporting the construction of auxiliary facilities, compensation and land clearing and relocation.

2. State's stakes shall be:

- a) Used for financing the construction of Facilities to ensure the feasibility of the project;
- b) Allocated from public investment capital in accordance with law on public investment or public property as per the law on management and use of public property;
- c) Allocated from sources of public investment capital not applicable to BT projects.

3. Payment capital for investors:

- a) Payment capital intended for investors of BLT and BTL contracts;
- b) Payment capital for investors are allocated from public investment capital, fund for recurrent expenditures on public services, revenue sources from public services.

4. Funds for supporting the construction of auxiliary facilities, compensation and land clearing and relocation shall be allocated from public investment capital.

5. If the People's Committee of province uses foreign loans of the Government as the State contribution to PPP project, it shall comply with laws and regulations on on-lending of foreign loans of the Government to the People's Committee of province.

6. In case of project proposed by the investor, the State contribution to PPP project prescribed in Clauses 2 and 3 hereof shall only be contributed if the project does not apply direct contracting in compliance with the laws and regulations on bidding.

Article 12. Value of State contribution to PPP project

1. The value of State contribution to PPP project shall be determined according to the financial plan, the ability to balance sources of funds and other resources.
2. If the State's stake is public property, the ministry or People's Committee of province shall determine its value in compliance with law on management and use of public property which is the State portion in the project.
3. The competent authorities prescribed in Clause 1 Article 31 hereof shall determine the value of State contribution to PPP project when approving feasibility study report.
4. The Ministry of Finance shall provide guidelines for determination of value of public property in the PPP project.

Article 13. Planning public investment capital as State funding for the PPP project

1. According to approval for project investment proposal issued by competent authority as prescribed in Section 1 Chapter III hereof, the ministry or the People's Committee of province shall include the public investment capital of the PPP project in its mid-term public investment plan.
2. Based on the mid-term public investment plan and the approved feasibility study report, the ministry or People's Committee of province shall include the public investment capital of the PPP project in its annual public investment plan.
3. With regard to a group C project, based on the approved feasibility study report, the ministry or People's Committee of province shall include the public investment capital of the PPP project in its mid-term or annual public investment plan.

Article 14. Making of estimates of recurrent expenditures and revenues from public services as payment capital for investors

Ministries and People's Committees of provinces shall make estimates of recurrent expenditures and revenues from public services as payment capital for investors in accordance with law on state budget and relevant law provisions on used budget.

Article 15. Realization of State contribution to PPP project

1. Disbursement of State's stakes:

a) If the public investment capital is contributed, based on the completed workload or construction value tested and accepted by the investor or special purpose entity, the regulatory agency shall disburse the state funding and make payments to the investor or special purpose entity according to the amount, value, progress and conditions agreed in the project contract;

b) If the public property is contributed, the competent authority shall hand over or transfer it to the investor or special purpose entity according to the value and progress agreed in the project contract.

2. Disbursement of payment capital for investor:

a) The payment capital for the investor for the service according to the BTL contract, BLT contract as prescribed in Clause 3 Article 11 of this Article shall be disbursed since the service is rendered as agreed upon in the project contract;

b) The payments prescribed in Point a of this Clause shall be made periodically according to the amount and quality of service specified in the project contract.

3. The land fund, head offices, infrastructure, or right to operate works or services compensated for the investor of BT project shall be done in accordance with Chapter V hereof.

4. State funding for the auxiliary works, the compensation and land clearing and the resettlement prescribed in Clause 4 Article 11 of this Decree shall be disbursed according to the regulation on public investment project.

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

Chapter III

INVESTMENT POLICIES AND ANNOUNCEMENT OF PPP PROJECTS

Section 1: PROJECTS SET UP BY MINISTRIES AND PEOPLE'S COMMITTEES OF PROVINCES

Article 16. The power to approve project investment proposal

1. The National Assembly has power to approve project investment proposal of projects of national importance.

2. The Prime Minister has power to approve project investment proposal of the following:

a) Group A projects using at least 30% of central government budget or using under 30% thereof but greater than VND 300 billion in the total investment of the project;

b) Group A projects that applying BT contract.

3. Ministers Heads of ministerial-level agencies, Governmental agencies has power to approve project investment proposal of projects other than those prescribed in Clause 1 and 2 hereof within their scope of management.

4. The People's Council of province has power to approve project investment proposal of the following:

a) Group A projects other than those prescribed in Clause 2 hereof;

b) Group B projects using public investment capital;

c) Group B projects that applying BT contract.

5. The People's Committee of province has power to approve project investment proposal of projects other than those prescribed in Clauses 1, 2 and 4 hereof in the province.

Article 17. Procedures for approving project investment proposal

1. Procedures for approving project proposal of projects of national importance shall be conducted in law on public investment.

2. Procedures for approving project proposal of projects under competence of Prime Minister:

a) The entity prescribed in Clause 3 Article 8 hereof shall prepare a pre-feasibility study report;

b) The ministry or the People's Committee of province shall assign Centralized PPP Unit to appraise the pre-feasibility study report;

c) If the project is funded by central government budget, the Ministry of Planning and Investment shall take charge and cooperate with relevant ministries in appraising the sources of funds and ability to balance sources of funds as to public investment capital in the project;

d) If the project is funded by local government budget, Department of Planning and Investment shall take charge and cooperate with relevant agencies in appraising the sources of funds and ability to balance sources of funds as to public investment capital in the project;

dd) Ministries and People's Committees of provinces shall submit one or multiple projects (in a list) which are set up and appraised as prescribed in Points a, b, c and d of this Clause to the Prime Minister for approving project proposal.

3. Procedures for approving project proposal of projects under competence of Ministers, Heads of ministerial-level agencies, Governmental agencies:

a) The entity prescribed in Clause 3 Article 8 hereof shall prepare a pre-feasibility study report;

b) Ministers, Heads of ministerial-level agencies, Governmental agencies shall assign the Centralized PPP Unit to appraise the pre-feasibility study report;

c) If the project is funded by central government budget, the Ministry of Planning and Investment shall take charge and cooperate with relevant ministries in appraising the sources of funds and ability to balance sources of funds as to public investment capital in the project (if any);

d) The entity prescribed in Clause 3 Article 8 hereof shall submit one or multiple projects (in a list) which are set up and appraised as prescribed in Points a, b, and c of this Clause to the Ministers, Heads of ministerial-level agencies, Governmental agencies for approving project proposal.

4. Procedures for approving project proposal of projects under competence of People's Council of province:

a) The entity prescribed in Clause 3 Article 8 hereof shall prepare a pre-feasibility study report;

b) The People's Committee of province shall assign the Centralized PPP Unit to appraise the pre-feasibility study report;

c) If the project is funded by central government budget, the Ministry of Planning and Investment shall take charge and cooperate with the Ministry of Finance in appraising the sources of funds and ability to balance sources of funds as to public investment capital in the project;

d) If the project is funded by local government budget, Department of Planning and Investment shall take charge and cooperate with relevant agencies in appraising the sources of funds and ability to balance sources of funds;

dd) The People's Committee of province shall submit one or multiple projects (in a list) which are set up and appraised as prescribed in Points a, b, c and d of this Clause to the People's Council of province for approving project proposal.

5. Procedures for approving project proposal of projects under competence of People's Committee of province:

a) The entity prescribed in Clause 3 Article 8 hereof shall prepare a pre-feasibility study report;

b) The People's Committee of province shall assign the Centralized PPP Unit to appraise the pre-feasibility study report;

c) The entity prescribed in Clause 3 Article 8 hereof shall submit one or multiple projects (in a list) which are set up and appraised as prescribed in Points a and b of this Clause to the People's Committee of province for approving project proposal.

6. Regarding projects using recurrent expenditures or revenues from public services to make payment to the investors, ministries and People's Committees of provinces shall determine the ability to balance sources of funds in accordance with law on state budget.

7. With regard to a hi-tech project prescribed in Clause 3 Article 9 hereof, the pre-feasibility study report and the project investment proposal shall be approved concurrently as the basis for selection of preferred investor.

Article 18. Making of feasibility study report

1. Bases for making of feasibility study report:

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

b) The need for investment and development of sectors or regions;

c) Regulations on PPP investment prescribed in Article 4 hereof.

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

3. Contents of pre-feasibility study report:

a) The need for investment; evaluation of advantages and impact of the PPP project on the community within the scope of project;

b) Conformity with the investment sector; the program or the plan for the development of sectors, regions and the plan for the local socio-economic development;

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

d) Preliminary analysis of technical specifications, standards, requirements for quality of works and services; preliminary design plan in accordance with law on construction (in case of which there is construction phase);

dd) Expected socio-economic effectiveness of project; environmental impact assessment report in accordance with law on environmental protection;

e) Intended master plan for the compensation and land clearing and the resettlement;

g) The preliminary financial analysis containing information such as: Total investment, structure of sources of funds and fundraising plan; State contribution to PPP project (if any); expenditures;

revenues, prices, and fees for goods or services; capital recovery period, profits; expected requirements for Other project (in case of BT project);

h) Preliminary selection of type of project contract;

i) Risks likely occur during the undertaking of project and risk allocation between parties in risk management;

k) The project progress and contract duration; the duration of the construction and development of the works; the plan for the management, operation or service supply;

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

m) Other contents deemed necessary as prescribed in special law.

Article 19. Documents required to apply for approving project proposal

1. An application for approving project proposal.

2. The pre-feasibility study report.

3. A report on evaluation of pre-feasibility study report.

4. A report on appraisal of sources of funds and ability to balance sources of funds in accordance with law on public investment in case of projects using public investment capital as State contribution to PPP project.

5. A written opinion of the finance authority in accordance with law on state budget regarding projects using recurrent expenditures or revenues from public services to make payment to the investors.

Article 20. Conditions and contents of approval for project proposal

1. Conditions for approving a project proposal:

a) In conformity with the planning for the development of sectors, regions; and the plan for the local socio-economic development that are approved by competent authorities;

b) In conformity with the investment sector prescribed in Article 4 of this Decree;

c) Free of duplication with projects obtaining an approval for project investment proposal;

d) Capital recovery potentials;

dd) In conformity with ability to balance sources of funds of State contribution to PPP project;

e) An environmental impact assessment report is made in accordance with law on environment protection.

2. Contents of an approval for PPP project investment proposal: Name of project; objectives; preliminary information on scale, capacity, location; intended contract duration, total investment, structure of sources of funds and State contribution to PPP project (if any).

Article 21. Project announcement

1. Within 07 working days from the day on which the project investment proposal is approved, ministries and the People's Committee of province shall issue the announcement about a single project or the project portfolio on the National Electronic Procurement System according to the regulations on bidding.

2. The announced project shall at least contain:

a) The name of the project and the type of project contract;

b) The objectives, scope, location of the project and the Other project (in case of BT contract);

c) The summary of the requirements for techniques, criteria, quality of the project facilities, products or services;

d) Proposed total investment; State contribution to the PPP project (if any);

dd) The proposed progress of the project, including: the time of the feasibility study report; bidding time for selection of preferred investor; construction, completion and operation;

e) The updated information on the progress of the project prescribed in Point dd of this Clause;

g) The contact address of regulatory agencies or procuring entity.

Section 2. PROJECTS PROPOSED BY THE INVESTORS

Article 22. Conditions for making project proposal

1. Investors may propose the projects other than the ones approved by ministries, regulatory bodies and People's Committees of provinces and make an announcement about such projects according to the regulation in Section 1 of this Chapter.

2. Requirements for the projects proposed by the investors:

a) The projects shall satisfy the requirements defined in the regulation in Clause 1 Article 20 of this Decree;

b) The investor being a state-owned enterprise shall establish a joint venture with another enterprise when proposing the project provided that competitiveness in bidding is ensured as prescribed in law on bidding.

Article 23. Project proposal made by the investor

1. A written proposal for the project execution, including commitment to take all risks and bear all costs if the project proposal is not approved.
2. Pre-feasibility study report (including regulations prescribed in Clause 3 Article 18 hereof) or feasibility study report in case of group C project (including regulations prescribed in Clause 1 Article 29 hereof).
3. A document confirming legal personality, capacity and experience of the investor.
4. Other necessary documents used for explaining the project proposal (if any).

Article 24. Approval for project investment proposal made by investor

1. The project investment proposal of the investor shall be appraised and approved according to the regulation in Article 17 of this Decree.
2. If at least 2 investors submit two project proposals for the same project (made in accordance with Article 23 hereof):
 - a) The ministry or People's Committee of province shall consider choosing a project proposal which is the most feasible and effective proposal based on factors related to the need for investment; technical-based and financial-based feasibility; socio-economic effectiveness; investor's qualifications and other factors;
 - b) The Ministry of Planning and Investment shall provide guidance on the implementation of this Article.
3. Time limit for appraisal and approval for project investment proposals made by investors (excluding period of time for appraising sources of funds and ability to balance sources of public investment funds):
 - a) Group A projects: up to 60 days after receiving a duly completed proposal;
 - b) Group B projects: up to 30 days after receiving a duly completed proposal;

Article 25: Announcement of project proposal made by the investor

1. If the project investment proposal is approved, the ministry or People's Committee of province shall make an announcement about the proposal and the information about the investor making such proposal according to the regulation in Article 21 of this Decree.

2. If a project includes contents relating to the intellectual property rights, trade secret, technology or agreements on mobilizing capital used for a project that needs top secret, then investors shall make a deal with ministry or People's Committee of province on the contents of the announcement.

Section 3. CONVERSION OF PUBLIC INVESTMENT PROJECT TO PPP PROJECT

Article 26. Forms of conversion

1. A public investment project meet the conditions prescribed in Clause 1 Article 20 hereof shall be considered to be converted into PPP project in form of one of project contracts prescribed in Clauses 3, 4, 5, 6, 7, 8 and 10 Article 3 hereof or another contract prescribed in Clause 4 Article 40 hereof.

2. Conversion plan

a) The competent authority shall withdraw the whole of public investment capital invested in the works. The investor refunds the public investment capital according to the progress stated in the project contract; arrange the remaining fund to keep investing in the PPP project;

b) The competent authority shall use the whole or a part of public investment capital to contribute as State fund to the PPP project. The investor shall arrange the remaining fund to keep investing in the PPP project.

3. The value of public investment capital prescribed in Points a and b Clause 2 hereof shall be determined according to the final account of works until the conversion in accordance with instructions of the Ministry of Finance.

Article 27. Procedures for converting form of investment

1. The authority competent to approve the conversion proposal and its feasibility study report is the competent authority that approved the former project proposal.

2. Documents required to apply for approving the conversion proposal and feasibility study report:

a) An application for conversion of form of investment, stating: Reasons for conversion; form and plan for conversion prescribed in Article 26 hereof;

b) A report on the project execution until the conversion time as prescribed in law on public investment;

c) Feasibility study report of the new PPP project;

d) Appraisal of feasibility study report of the new PPP project;

dd) If the new PPP project intends to use recurrent expenditures and revenues from public services, the required documents shall include a written opinion of the finance agency prescribed in Clause 5 Article 19 hereof.

3. Procedures for approving the conversion proposal and feasibility study report of new project shall be carried out in accordance with Articles 30 and 31 hereof.

4. After the competent authority approves the conversion proposal and feasibility study report of new project, the ministry or People's Committee of province shall conduct the selection of preferred investor.

Chapter IV

FORMATION, APPRAISAL AND APPROVAL FOR FEASIBILITY STUDY REPORTS

Article 28. Responsibility for the formation of the feasibility study report

1. The ministry or People's Committee of province shall assign the entity prescribed in Clause 3 Article 8 hereof to make a feasibility study report on the project as the basis for selection of preferred investors.

2. With regard to the project that is proposed by the investor and approved according to the regulation in Article 24 of this Decree, the ministry or People's Committee of province shall request the investor to make the feasibility study report.

3. With regard to hi-tech project prescribed in Clause 3 Article 9 hereof, the ministry or People's Committee of province shall request the investor to make the feasibility study report.

4. Assigning investors to prepare the feasibility report prescribed in Clauses 2 and 3 hereof shall be carried out according to the written agreement between the ministry or People's Committee of province and the investor. The agreement shall specify the purposes, requirements and expenses for the feasibility study report, expense for independent consultants who are hired to carry out the appraisal, and the approaches to the case as follows:

a) For projects prescribed in Clause 2 hereof, the agreement must state approaches to the case that if the feasibility study report is not approved, the investor shall bear all the costs incurred, and if another investor becomes the preferred bidder, the investor making the project proposal shall have the preferred bidder reimburse costs incurred in making of feasibility study report;

b) For projects prescribed in Clause 3 hereof, the agreement must state approaches to the case that if the feasibility study report is not approved and the project fails to come to the stage of negotiation and conclusion of contract, the investor shall bear all the costs incurred.

Article 29. Contents of feasibility study report

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

- a) A detailed analysis of the need for the investment and the advantages of the project in comparison with other form of investment; consultation on impact of the project with one of the following: People’s Council, People’s Committee, National Assembly delegation of province or city where the project is undertaken; professional association in conjunction with to the investment sector;
- b) An evaluation report on conformity of the project with the planning, the development plan of sectors and regions;
- c) The objectives, the scope, the components (if any) and the location of the project; the demand for land and other resources;
- d) A description of the technique, technology to satisfy the requirements for the quality of the works, products or the supply services; an assessment on the current conditions of works, machinery, devices, the value of property (applied to the O&M contracts); the fundamental design (applied to projects of which there is construction phase);
- dd) The socio-economic effect and the impacts of the project on environment, society and national defense and security.
- e) A plan for compensation and land clearing and resettlement;
- g) The project financial plan (including the contents prescribed in Point g Clause 3 Article 18 of this Decree);
- h) The capital mobilization for the project; evaluation of the need and the liquidity ratio of the market; the survey on the interest of the investors and the lenders in the project;
- i) Type of project contract;
- k) The project progress and contract duration; the duration of the construction and development of the works; the plan for the management, operation or service supply;
- l) An analysis of risk, responsibilities of the parties for the risk management during the execution of the project;
- m) A petition for investment incentive and guarantee (if any);
- n) Other contents deemed necessary as prescribed in special law.

2. Ministries and ministerial-level agencies shall provide guidance on the contents of feasibility study report provided that these contents conform to the performance and project management of the regulatory bodies.

Article 30. Appraisal of feasibility study report

1. Authority to appraise for feasibility study report:

a) The national appraisal board is in charge of appraising the projects of national importance; projects funded by ODA and concessional loans granted by foreign sponsors as State's stakes in the national defense and security and religious sectors;

b) Ministers, Heads of ministerial-level agencies, Presidents of People's Committees of provinces shall request the Centralized PPP Unit to carry out the appraisal of projects other than those prescribed in Point a hereof.

2. Contents of the appraisal:

a) The need for project execution: the correlation between the project and the planning, the program for the development of specific sector, region and local area; the advantage of the PPP project in comparison with other form of investment;

b) The conformity of basic factors: the objectives and the scope, location of the project; requirements for technical design, technology; unit price, quotas, design solutions for costs saving in plans for project management and operation or service supply. The fundamental design shall be appraised as prescribed in law on construction (in case of project of which there is construction phase) or as prescribed in special law (in case of project of which there is no construction phase);

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

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

dd) The appropriateness of type of project contract: type of contract, contract duration; risks in construction, operation, and management of project, prevention and risk mitigation;

e) Other necessary information.

3. Regarding projects funded by public investment capital, ministry or People's Committee of province shall appraise the sources of funds and ability to balance sources of funds of public investment capital as prescribed in law on public investment, serving as the basis for approval for feasibility study report.

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

a) For projects of national importance: within 90 days;

- b) For group A projects: within 40 days;
- c) For group B or group C projects: within 30 days.

5. The appraisal agency may hire consultants to appraise part or all of contents prescribed in Clause 2 of this Article.

Article 31. Authority to approve the feasibility study report

1. Authority to approve the feasibility study report:

- a) The Prime Minister is in charge of appraising the projects of national importance; projects funded by ODA and concessional loans granted by foreign sponsors as State's stakes in the national defense and security and religious sectors;
- b) Ministers, Heads of ministerial-level agencies, Governmental agencies, Presidents of People's Committees of provinces have authority to approve feasibility study report of projects other than those prescribed in Point a hereof.

2. Documents required to apply for approving the feasibility study report:

- a) Application for approving the feasibility study report;
- b) The feasibility study report;
- c) A report on appraisal of pre-feasibility study report;
- d) The approval for project investment proposal (except for group C project); report on appraisal of sources of funds and ability to balance sources of funds as to group C project funded by public investment capital;
- dd) Relevant materials or legal documents.

3. With respect to a group C project funded by public investment capital, the feasibility study report which is approved is the basis for including the public investment capital in the mid-term and annual public investment plan as prescribed in Clause 3 Article 13 hereof.

Article 32. Adjustment to the feasibility study report

1. A project shall be adjusted in the following cases:

- a) The project is affected by natural disasters or other force-majeure events;
- b) There are elements that may make the project more effective in terms of finance and socio-economic aspects;

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

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

dd) Other cases according to special law or the regulations stipulated by the Prime Minister.

2. Procedures for the appraisal, approval and feasibility study report adjustment shall be carried out according to the regulation in Article 30 and 31 of this Decree.

Chapter V

PROCEDURES FOR UNDERTAKING BT PROJECT

Article 33. Procedures for undertaking BT project

1. Procedures:

a) Making and appraising pre-feasibility study report, approval for project investment proposal and announcing the project as prescribed in Chapter III hereof;

b) Prepare, evaluate, and approve the feasibility study reports according to the regulation in Chapter IV of this Decree;

c) Prepare, evaluate, and approve the design and estimate in accordance with law on construction and special law;

d) Select preferred bidder; negotiate and sign the project contract according to the regulation in Chapter VI of this Decree;

dd) Build the works; prepare the final account and transfer the works according to the regulation in Chapters VII and VIII of this Decree.

2. Responsibilities for making design and estimate:

a) The ministry or People's Committee of province shall assign the entity prescribed in Clause 3 Article 8 hereof to make a design and estimate;

b) For projects proposed by the investor, the ministry or People's Committee of province shall assign the investor to make a design and estimate. Assigning investors to prepare the feasibility report shall be carried out according to the written agreement between the ministry or People's Committee of province and the investor. The agreement shall specify the purposes, requirements and expenses incurred in design and engagement of independent consultants who are hired to carry out the appraisal, and the approaches to the case in which another investor is selected for undertaking the project.

3. Appraisal and approval for design and estimate:

a) The construction authority, under law on construction, or the authorized agency, under special law, shall appraise the design and estimate;

b) The ministry or People's Committee of province or the Sponsoring Authority shall appraise the design and estimate.

4. The investor of BT project is not required to apply for approving the project investment proposal and puts down deposit as prescribed in law on investment to undertake Other project.

Article 34. Methods of payment for investor of BT project

1. Compensating land use right, head offices, infrastructure as prescribed in law on management and use of public property.

2. Conceding right to operate works or services to the investor in accordance with special law.

Article 35. Rules for compensating land use right, head offices, infrastructure

1. The land use right, head offices, or infrastructure planned to be compensated for the investor is determined and approved in the feasibility study report, forming the basis for selection of preferred investor.

2. The construction planning in scale 1:2.000 or 1:500 (if any) of the land fund planned to be compensated for the investor must be made and approved as per the law before the feasibility study report is approved. If the planning is adjusted leading variation in land levies or land rents, the competent authority and the investor shall revalue them to prevent government budget loss and ensure the balance of interests between the investor and inhabitants.

3. Approaches to the case of adjustments to land fund planned to be compensated for the investor shall be stated in the project contract, including: Permitted adjustments; commitment on not disfiguring master planning of the regions when adjusting the planning; mechanism for re-negotiating if the adjusted planning make the value of land use right varies.

4. Procedures for compensating land use right, head offices, infrastructure for the investor of BT project shall be done in accordance with law on management and use of public property.

Article 36. Rules for executing BT contract according to concession of right to operate works or services

1. Scope and period of concession of right to operate works or services to the investor shall be determined according to the balance of interests between the state and the investor.

2. Scope and period of concession of right to operate works or services to the investor determined as prescribed in Clause 1 hereof must be approved in the feasibility study report, forming the basis for selection of preferred investors.
3. The date on which the right to operate works or services is conceded to the investor shall conform to the agreement in the project contract.
4. The investor must undertake that its exercising of the right to operate works or services will not affect the works within the competent authority involvement, in case of joint operation.

Chapter VI

SELECTION OF PREFERRED INVESTOR, INCORPORATION OF SPECIAL PURPOSE ENTITY AND CONCLUSION OF PROJECT CONTRACT

Article 37. Selection of preferred investor

1. The selection of preferred investor shall be done in accordance with law on bidding.
2. An investor may receive concession in the selection of preferred investor progress if such organization has a feasibility study report approved by the ministry or People's Committee of province.

Article 38. Incorporation of special purpose entity

1. Upon receiving the approval for preferred investor, except for the case prescribed in Clause 2 hereof, the investor shall incorporate a special purpose entity to undertake the project. Documents and procedures for the incorporation of the special purpose entity shall adhere to the regulations pertaining enterprises.
2. With regard to BT projects or group C projects, investors shall establish a special purpose entity according to the regulation in Clause 1 of this Article or undertake the project itself on the condition that it must carry out independent management and make accounting report on the capital and project-related activities.
3. Management, operation, and dissolution of special purpose entity shall be done in accordance with law on enterprises, investment and project contract.
4. The equity of investor shall be contributed according to the schedule agreed upon in the project contract. Upon registering the incorporation of special purpose entity, the investor shall determine the rate of equity to be contributed to the charter capital of the special purpose entity in accordance with law on enterprises. If the charter capital of the special purpose entity is less than the equity that the investor commits to raise, the project contract must include road map to raise the charter capital of special purpose entity, in accordance with the project progress.

Article 39. Conclusion of the project contract

According to the approval for preferred investor and negotiation and finalization of contract, the competent authority shall conclude the project contract in one of the following methods:

1. The competent authority and the investor conclude a project contract. In this case, the competent authority, the investor and special purpose entity (if any) shall enter into the written permission allowing the special purpose entity to exercise the rights and assume obligations of the investor specified in the project contract. This document is an integral part of the project contract.
2. The investor and special purpose entity shall jointly form a party in the project contract together with the competent authority.

Article 40. Contents of the project contract

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

- a) The objectives, scope, location, time limit and progress of the project; time for the construction of works in the project;
- b) Requirements that technique, technology, quality of works, products or supplied services must conform to;
- c) The total investment and financial plans of the project;
- d) Value, conditions, rate and progress of disbursement of State contribution to PPP project (if any); approaches to the case of adjustments to land fund planned to be compensated for the investor of BT project leading the variation of land use right value;
- dd) Requirements for the use of land and related work;
- e) The compensation and land clearing and settlement;
- g) The construction, inspection, monitoring, quality control, acceptance testing and preparation of the final account of the project;
- h) Inspection, operation, maintenance, sales and development of projects; project transfer;
- i) The safety and environment protection;
- k) The conditions and procedures for project acceptance of the lenders;
- l) Sharing of risks and responsibilities of the parties to the contract, including the competent authority, authorized agency (in case of authorization) and the investor; rules for dispute settlement; force majeure events;

- m) The incentives and investment guarantee (if any);
- n) The laws on governing relation of contracting parties in the contracts, relevant contracts and solutions to handling disputes;
- o) The effect and duration of the project contract;
- p) The rules and conditions for amendments and termination of the project contract; the transfer of rights and obligations agreed under the project contract;
- q) Other matters according to the agreement between the contracting parties.

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

3. The mixed contract prescribed in Clause 10 Article 3 hereof shall be decided by the ministry or People's Committee of province in consideration of economic efficiency and the balance of interests between the state, investor and end-users.

4. In case of application of a contract other than those prescribed in Clauses 3, 4, 5, 6, 7, 8, 9, and 10 Article 3 hereof:

a) The ministry or People's Committee of province shall send a proposal for application such a contract to the Ministry of Planning and Investment; the Ministry of Planning and Investment shall then forward it to the Prime Minister for approval.

b) A proposal for application of other contract shall contain: The need and advantages of other contract as compared with those contracts prescribed in Article 3 hereof; method of construction, ownership, management, operation and transfer of the works; methods of performing services, recovery of investment and profits; international experience in applying the proposed contract (if any).

5. Based on the regulation laid down in Clause 1 of this Article, Ministries and ministerial-level agencies shall provide the form of project contract in conformity with the requirements for execution and management of projects under their scope of management.

Article 41. Publishing project contract

1. Within 7 working days from the day on which the project contract is signed, the competent authority shall publish it on the national bidding network.

2. Information to be published:

a) Name of project; number of contract and date of signing;

b) Name and address of the competent authority;

- c) Name and address of investor; name and address of special purpose entity;
- d) Location of the project and land use area;
- dd) Essential parameters to supervise the quality of works and services provided by the investor in the inauguration phase;
- e) Total investment; paid-up capital and raised capital; State contribution to PPP project (if any);
- g) Type of contract, contract duration, intended date of transfer (if any);
- h) Fees of goods or services; collection methods and locations (if any),
- i) Other necessary information.

3. If the project contract is revised leading change to the information prescribed in Clause 2 hereof, the competent authority shall update it on the national bidding network within 7 days from the date on which the contract addendum is signed.

4. Information prescribed in Clause 2 hereof is recommended to be posted on the website of the competent authority or other means of mass media.

Article 42. Lenders' right to take over the project

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

2. A written agreement on the project must be made between the lenders and regulatory agencies or the contracting parties.

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

Article 43. Transfer of rights and obligations under the project contract

1. Investors may transfer a part or all of the rights and obligations under the project contract to the lender or another investor upon completion of the works (if the project has construction phase) or upon operation stage (if the project has not construction phase).

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

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

4. The transferee must:

a) Have capacity of finance and management to execute the project contract and relevant contract;

a) Undertake to assume rights and obligations of the transferor as stated in the project contract and relevant contracts; and

c) Meet other requirements agreed upon in the project contract, loan agreement and other agreements between the competent authority, investor and special purpose entity.

5. If the transfer of rights and obligations under the project contract leads to a change to enterprise registration, the special purpose entity shall apply for registration of such change as prescribed in law on enterprises.

6. If the transferor earns an income from transfer of rights and obligations under the project contract, it shall fulfill financial obligations as prescribed in laws and regulations on taxation and project contract.

Article 44. Amendments to the project contract

Project contract may be amended due to a change of scale, technical standards, the contractual total investment or a force-majeure event, the adjustment to the feasibility study report as prescribed in the regulation in Article 32 of this Decree and other cases specified in the project contract.

Article 45. Contract duration

1. The duration of the project contract shall be agreed upon between the parties according to the field, the scope, the characteristic and type of contracts, projects.

2. Project contract may ends its validity if the agreed contract term expire, or else the project contract may be terminated prior to the maturity date due to the violation of one of the parties without that defaulting party's effective remedies, due to force majeure events or other cases specified in the project contract.

3. The parties shall negotiate the conditions for the termination of the project contract and measures to handle any issue that may arise during the contract termination.

Article 46. Application of foreign laws

The contracting parties may negotiate the application of foreign laws to govern the project contract and other relevant agreements as prescribed in the Civil Code.

Article 47. Performance Security

Regulatory agencies and investor shall negotiate the form, value, duration of Performance Security according to the regulations on bidding.

Chapter VII

UNDERTAKING OF PROJECT

Article 48. Selection of preferred bidder

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

Article 49. Construction site preparation

1. People's Committees of provinces are responsible for carrying out the land clearing and completing the procedures for land allocation and lease to carry out the project according to the laws on land, project contracts and relevant contracts.
2. The competent authority shall cooperate with People's Committee of province in the implementation of the regulation set forth in Clause 1 of this Article.

Article 50. Making, appraising and approving construction design

1. Except for BT projects prescribed in Chapter V hereof, based on the feasibility study report and the regulations defined in the contract project, the investor and the special purpose entity shall draw up the technical design and send it to a construction authority for appraisal and to the competent authority for supervision. The adjustment to technical design that may affect the scope, technical standards and progress of the project must be approved in writing by a competent authority before approval.
2. The inspection of construction design shall comply with the law on construction.

Article 51. Contract performance supervision

1. The investor and special purpose entity are responsible for controlling the quality of the project construction and services.
2. Except for BT projects prescribed in Clause 2 Article 52 hereof, the investor shall monitor by themselves or engage an independent consultant to monitor or supervise the construction and the

acceptance testing of construction constituents and all of construction works according to the design, the operation plan prescribed in the project contract.

3. Competent authorities are responsible for monitoring the obligation fulfillment of investors, special purpose entities according to the project contract.

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

Article 52. Project quality supervision

1. Whilst the construction of works under the project contract is in progress , in addition to the duties specified in Article 51 of this Decree, the competent authority shall be required to:

a) Inspect the construction supervisor's performance according to the requirements defined in the project contract;

b) Inspect the compliance with procedures, standards and norms for the management and operation of project as agreed upon in the project contract;

c) Carry out the inspection of the quality of a part or all of works when there is any suspicion of the quality or any request of a regulatory agency;

d) Ask the investors to request the contractor to adjust or suspend the project execution whenever the quality of the execution does not meet the statutory requirements.

2. In case of a BT project, the competent authority shall, by itself or assign a project management unit or project management board prescribed in Clause 6 Article 8 hereof to cooperate with the investor to supervise the quality of the works under the project contract. Matters, scope of and responsibilities for supervision are stipulated in regulations and laws on construction.

3. In case of necessity, the competent authority, project management unit, or project management board may, subject to Clause 6 Article 8 hereof, engage a qualified consultant to assist in their fulfillment of the obligations specified in Clause 2 of this Article.

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

Article 53. Project management and operation

1. The investor or special purpose entity shall carry out the management, operation of the project or carry out Other project under the terms of the project contract.

2. During the operation of the project or the rendering of project-related services, the special purpose entity is required to:

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

Article 54. Price, cost of goods, service charges and revenues

1. Price, cost of goods, services, other revenues and conditions, procedures for adjustment shall be agreed upon in the project contract according to the principles that benefits of investors, projects enterprises, customers and the State shall be ensured, and these parties concerned shall receive proper conditions to recover their capital as well as gain profits.
2. The agreement about and adjustment to price, fees of goods, services and other revenues managed by the State shall comply with the laws on prices, fees and the conditions specified in the project contract.
3. When adjusting prices, fees of goods, services and other revenues (if any), the investor or special purpose entity shall send a notice to the intended users for a period of 30 days prior to the date of adjustment.

Article 55. Assistance in collecting service charges

Investors and special purpose entities are enabled to collect fees and service charges and other amounts receivable specified in the project contract.

Article 56. Supervision, evaluation of investment activities and financial disclosure

1. The supervision and evaluation of projects shall be carried out according to the laws on the monitoring and evaluation of the investment and the agreement defined in the project contract.
2. Investors, special purpose entities shall carry out the disclosure of financial reports, audit reports in accordance with the law and the agreements specified in the project contract.

Chapter VIII

PREPARING FINAL ACCOUNT AND TRANSFER OF THE PROJECT

Article 57. Preparing final account for the project

1. Within 06 months from the day on which the project is completed, the competent authority and investor shall prepare final account of investment capital used for the project development as follows:

a) For projects of national importance, group A projects: 9 months;

b) For group B projects: 6 months;

c) For group C projects: 3 months.

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

3. In case of BT project, the competent authority shall prepare the final account of investment capital as prescribed in law on final account of projects funded by state budget.

4. Upon completion of the final account, the ministry or People's Committee of province shall send a report to the Ministry of Finance for monitoring.

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

Article 58. Transfer of the project

1. For the project contract that has terms and conditions concerning the transfer of the project, the regulatory agencies and investors shall obtain agreements about the conditions and procedures for project transfer in the project contract.

2. The transfer of the project shall comply with the following conditions and procedures:

a) One year before the date of transfer or within the time limit specified in the project contract, investors, special purpose entities shall make the public announcement about the transfer of works, procedures and time limits for completing all contractual rights and obligations as well as debt repayment;

b) The competent authority shall inspect the quality, value, condition of the project under the terms and conditions of the project contract, make a list of assets to be transferred, determine any loss or damage (if any), and request the special purpose entities to repair and maintain the project;

c) Investors, special purpose entities shall ensure that the transferred asset is not collateralized for the fulfillment of the financial obligations or other obligations of the investors, special purpose entities that may arise before the date of transfer, unless otherwise agreed in the project contract;

d) Special purpose entities are responsible for technology transfer, training and the periodical maintenance and the overhaul in order to ensure the normal technical conditions of the project in accordance with the requirements defined in the project contract;

dd) After taking over the project, the regulatory agency shall carry out the management and operation of such project inside their area of competence.

Chapter IX

INCENTIVES AND INVESTMENT GUARANTEES

Article 59. Investment incentives

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

Article 60. Taxes levied on contractors involved in the project

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

Article 61. Guarantee for fulfillment of obligations assumed by investors, special purpose entities and other enterprises

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

Article 62. Mortgage of property, right to operate the project

1. Investors, special purpose entities may use their property, land use rights and the right to operate the project as collateral to the lenders according to the laws of and the civil laws. The

duration of such collateralization shall not exceed the duration of the project contract, unless otherwise agreed in the project contract.

2. Agreement on the aforesaid mortgage shall be made in writing and signed by the lender and the contracting parties.

3. Such collateralization shall not be allowed to affect the target, scope, technical standards, progress of the project and other conditions specified in the project contract.

Article 63. Guarantee of exercise of land use rights

The land use purpose shall be guaranteed not to change during the execution of the project contract, even when the lender exercises the right to take over the project according to Article 42 of this Decree.

Article 64. Guarantee of balancing of foreign currency

1. Investors, special purpose entities shall be entitled to purchase foreign currency at credit institutions that are licensed to perform foreign exchange transactions to meet the needs for current transactions, capital transactions and other transactions or transfer of capital, profits, liquidated outward investment according to the laws on foreign exchange management.

2. Based on the socio-economic development orientation, foreign exchange management policy, the ability of foreign currency balancing in each period and the target, the nature of the project, the ministry or People's Committee of province shall cooperate with the State Bank to request the Prime Minister to decide balance foreign currency for the projects subject to approval of the National Assembly, the Prime Minister and other important infrastructure projects.

Article 65. Guarantee of provision of public services

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

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

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

Article 66. Guarantee of property ownership

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

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

Article 67. Settlement of disputes

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

2. The dispute between a competent agency and a foreign investor or a special purpose entity established by a foreign investor under the regulation in Article 38 of this Decree in the process of the project contract execution and the guarantee contract stipulated in Article 61 of this Decree shall be settled by the arbitration or Vietnamese court or the arbitration council established under the agreement between the parties concerned.

3. The dispute between a special purpose entity and a foreign organization/individual or a Vietnamese organization, and the dispute among the investors shall be resolved in accordance with laws and regulations on investment.

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

Chapter X

RESPONSIBILITIES FOR STATE MANAGEMENT OF INVESTMENT PROJECTS UNDER THE FORM OF A PPP CONTRACT

Article 68. Responsibilities of the Ministry of Planning and Investment

1. Enable the Government to consistently manage investment activities in the form of PPP contract across the country.

2. Provide guidelines for this Decree and other matters *intra vires* as prescribed in this Decree.

3. Verify and submit the result of verification of other contracts proposed by the ministries, People's Committees of provinces to the Prime Minister for consideration and decision.

4. Take charge and cooperate with the Ministry of Finance in appraising the sources of funds and ability to balance state contribution to the project within their competence; include the state contribution to the PPP project in the mid-term and annual public investment plan.

5. Give their opinions on issues within their assigned duties or delegated powers at the request of the ministries, People's Committees of provinces.
6. Preside over and cooperate with Ministries, provincial People's Committee in inspecting the proposal in which other forms of investment are specified in this Decree.
7. Preside over and collaborate with Ministries, regulatory agencies and People's Committees of provinces in monitoring, testing, inspecting, reporting and assessing the implementation of the projects throughout the country.
8. Establish and manage the system of national information, national database on public-private partnership investment.
9. Organize training sessions to enhance the capability of implementing investment projects in the form of public-private partnerships.
10. Perform other duties and exercise other powers as prescribed by law.

Article 69. Responsibilities of the Ministry of Finance

1. Take charge and cooperate with relevant ministries in providing guidance on cost of investment preparation of ministries, People's Committees of provinces; mechanisms for management and use of sources of funds for investment preparation; determining value of public property contributed to PPP projects; disbursement of State contribution to PPP project; the financial plan of the project; preparing final account of construction projects and other related matters within their jurisdiction specified in this Decree.
2. Provide guidelines for planning the payment capital for investor using recurrent expenditures and revenues from public services.
3. Give their advice on the measures relating to investment guarantee and investment incentives.
4. Give their opinions on issues within their assigned duties or delegated powers at the request of the ministries, People's Committees of provinces.
5. Perform other assigned duties and exercise other delegated powers as prescribed by law.

Article 70. Responsibilities of the Ministry of Justice

1. Provide legal advice on the project contract, the Government guarantee and documents related to the project signed by regulatory agencies in accordance with laws and regulations on issuance of legal opinions.
2. Participate in the negotiation of issues relating to applicable law, dispute settlement, government guarantees, other legal issues relating to project contracts and other similar contracts at the request of the Ministries and provincial People's Committee.

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

Article 71. Responsibilities of the State Bank of Vietnam

1. Cooperate with ministries and People's Committees of provinces in requesting the Prime Minister to ensure the balancing of foreign currency for projects.

2. Give their opinions on issues within their assigned duties or delegated powers at the request of the ministries, People's Committees of provinces.

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

Article 72. Responsibilities of the Ministry of Construction

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

2. Give their opinions on issues within their assigned duties or delegated powers at the request of the ministries, People's Committees of provinces.

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

Article 73. Responsibilities of Ministries, ministerial-level agencies

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

2. Take charge and cooperate with the Ministry of Finance in promulgating rate of return for PPP projects within its scope of management.

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

4. Ensure the compliance with feasibility study report that is approved and project contract that is concluded; take legal responsibility for the concluded project contract.

5. Provide guidance on the implementation of the provisions enshrined in this Decree.

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

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

8. Request the Prime Minister to consider and decide the implementation of the forms of investment guarantee, involvement of private sector in public services within public sector entities which have not been governed in this Decree.

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

Article 74. Responsibilities of People's Committees of provinces

1. Perform the state management of investment in the form of public-private partnership arrangements in the province under the Government's delegation of authority.
2. Formulate, announce projects that fall under their authority.
3. Ensure the compliance with feasibility study report that is approved and project contract that is concluded; take legal responsibility for the concluded project contract.
4. Provide their advice on matters within their assigned duties and delegated powers at the request of the Ministries, provincial People's Committee.
5. Aggregate and evaluate information about the execution of the projects that fall inside their area of competence.
6. Take charge and cooperate with regulatory agencies in carrying out land clearing for the execution of the project.
7. Request the Prime Minister to consider and decide the implementation of the forms of investment guarantee, which have not been governed in this Decree.
8. Perform other duties and exercise other powers as prescribed by law.

Chapter XI

IMPLEMENTATION

Article 75. Entry in force

1. This Circular comes into force as of June 19, 2018.
2. This Decree supersedes Government's Decree No. 15/2015/ND-CP dated February 14, 2015 on public-private partnerships.
3. Regulations on project investment proposal in PPP projects in Articles 10, 17, 19, 24, and 33 of Government's Decree No. 136/2015/ND-CP dated December 25, 2015 on guidelines for Law on Public Investment shall be annulled.

Article 76. Transitional provisions

1. With regard to projects that the competent authorities have approved project investment proposals (in a separate document or in an approval for planning), project proposals, and state

contribution to project before effective date of this Decree, approval for project investment proposal is not required as prescribed in this Decree.

2. The feasibility study report was approved before the effective date of this Decree is not required to be re-approved under the provisions of this Decree.

3. With regard to projects in which approval for preferred investor or investment agreement is signed before effective date of this Decree but failing to apply for certificate of investment registration, such an application is not required. Contracting parties shall negotiate and conclude contracts as prescribed in this Decree.

4. The project contracts that are initialed or investment agreements that are signed before the effective day of this Decree shall not be re-negotiated.

5. Projects issued with the certificates of investment registration before the effective day of this Decree shall proceed according to the regulation defined in the certificates of investment registration. Where it is necessary to adjust the project, contracting parties shall modify the project contract in accordance with this Decree and relevant law provisions and no application for amendment to certificate of investment registration is required. If the modified project contract has discrepancies as compared with the certificate of investment registration which is issue before effective date of this Decree, involved parties shall adhere to the modified project contract and take legal responsibility for such a modification.

6. The execution of project which has been officially signed before the effective day of this Decree shall proceed according to the project contract.

7. If a project has obtained a written commitment or approval by the Prime Minister or ministries, People's Committees of provinces on incentives and investment guarantee and other contents related to the implementation of the project before the effective day of this Decree, the execution of the project shall proceed according to such documents.

8. The projects other than those mentioned above shall be governed under the Decision of the Prime Minister according to the proposal from the Ministry of Planning and Investment.

Article 77. Implementation

The Ministers, Heads of ministerial-level agencies, Heads of Governmental agencies, the President of the People's Committees of provinces and central-affiliated cities are responsible for providing guidance on the implementation of this Decree within their assigned duties and delegated powers. Difficulties arising during the implementation of this Decree shall be reported to Prime Minister for consideration./.

**PP. THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Xuan Phuc

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