

**DECISION No. 22/2003/QĐ-BTC OF FEBRUARY 18, 2003 ON FINANCIAL MECHANISMS IN THE USE OF LAND FUNDS FOR CREATION OF INFRASTRUCTURE CONSTRUCTION CAPITAL**

**THE MINISTER OF FINANCE**

*Pursuant to the Land Law and the 1998 and 2001 Laws Amending and Supplementing a Number of Articles of the Land Law;*

*Pursuant to the Government's Decree No. 04/2000/ND-CP of February 11, 2000 on the implementation of the Law Amending and Supplementing a Number of Articles of the Land Law; Decree No. 66/2001/ND-CP of September 28, 2001 amending and supplementing a number of articles of Decree No. 04/2000/ND-CP of February 11, 2000 on the implementation of the Law Amending and Supplementing a Number of Articles of the Land Law;*

*Pursuant to the Government's Decree No. 178/CP of October 28, 1994 on the tasks, powers and organizational apparatus of the Ministry of Finance;*

*After obtaining the opinions of the ministries, branches and People's Committees of the provinces and centrally-run cities; at the proposal of the director of the Public Property Management Department,*

**DECIDES:**

**Article 1.-** Scope of application

1. This Decision shall apply to the cases of using land funds for creation of infrastructure construction capital prescribed in Section 2, Chapter IV of the Government's Decree No. 04/2000/ND-CP of February 11, 2000 on the implementation of the Law Amending and Supplementing a Number of Articles of the Land Law, Clause 10, Article 1 of the Government's Decree No. 66/2001/ND-CP of September 28, 2001 amending and supplementing a number of articles of Decree No. 04/2000/ND-CP of February 11, 2000 on the implementation of the Law Amending and Supplementing a Number of Articles of the Land Law.

2. The list of infrastructure construction projects allowed to use land funds for creation of capital, which has been approved by the Prime Minister, such as:

- Projects to construct technical and social infrastructure works outside urban centers and rural population quarters: transport and communication, irrigation, electricity, water supply and drainage, schools, hospitals (health stations), public squares, stadiums and other infrastructure works;

- Projects to construct urban infrastructures;

- Projects to construct infrastructures in population quarters;

- Projects to construct other infrastructure works.

3. Land funds for creation of infrastructure construction capital are those included in the land use plannings already approved by the Prime Minister, including:

- Land assigned with the collection of land use levy;

- Land leased and land assigned in other forms now shifted to assigned land subject to land use levy (change of use purposes).

4. Forms of using land funds for creation of capital.

a/ Assigning land located right at the places where the projects' infrastructures are to be constructed;

b/ Assigning land located outside the areas where the projects' infrastructures are to be constructed;

c/ Assigning land as a result of the expansion of recovered land areas for projects to build traffic infrastructure works. Such expanded land areas shall be used for creation of infrastructure construction capital;

d/ Using land funds with many advantages for production, business, daily life and services for creation of investment capital to build public infrastructures in the localities.

**Article 2.-** Subjects of application

For domestic economic organizations (hereinafter also referred to as investors or organizations for short) which have made registration for real-estate dealing activities, meet all law-prescribed capital and technical conditions for executing investment projects, if they win construction bids or land use right auction (hereinafter referred to as land auctions), they shall be assigned by the State land under the projects using land funds for creation of infrastructure construction capital. Particularly for cases of using land funds for creation of capital under the provisions at Point d, Clause 4, Article

1 of this Decision, the subjects of application shall also include Vietnamese individuals (hereinafter referred to as individuals for short) who satisfy all capital and technical conditions.

**Article 3.-** Financial mechanisms applicable to projects using land funds for creation of infrastructure construction capital

Investment projects allowed to use land funds for creation of infrastructure construction capital must be opened to bidding for infrastructure construction or land auctions for such land funds as follows:

- In an investment project to construct infrastructures, if the bidding for infrastructure construction has been organized, land auctions shall not necessarily be organized, the bid-winning investors shall be assigned by the State land with the collection of land use levy. If land auctions are organized, the bid-winning investors shall be assigned to construct infrastructures.

- Where only one investor applies for executing the project, if he/she/it satisfies the conditions specified in Article 7 of this Decision, the bidder designation shall be applied.

The investors winning the project bidding or land auctions shall not be allowed to sell bids in any form.

**Article 4.-** Listing and publicization of projects using land funds for creation of infrastructure construction capital

Basing themselves on the lists of projects using land funds for creation of infrastructure construction capital and the plans on the use of land funds for creation of infrastructure construction capital, approved by the Prime Minister annually under Article 22 of the Government's Decree No. 04/2000/ND-CP of February 11, 2000 on the implementation of the Law amending and supplementing a number of articles of the Land Law, the People's Committees of the provinces and centrally-run cities (hereinafter referred to as the provincial-level People's Committees for short) shall direct the elaboration and submission of projects using land funds for creation of infrastructure construction capital for approval; publicize the following on the local mass media (radio and television stations, newspapers) for 20 days and post up in communes, wards, townships or urban districts, rural districts, towns and provincially-run cities where land is used for creation of infrastructure construction capital:

1/ The list of infrastructure construction works allowed to use land funds for capital creation, already approved by competent authorities, divided into two parts:

a/ The list of infrastructure construction works to be opened to bidding, corresponding to the assigned land funds;

b/ The list of land funds to be auctioned, corresponding to infrastructure construction works;

2. The list of land funds used for creation of capital for each infrastructure-construction work: location, acreage, category of land being in use, category of land permitted for changing use purpose in line with the planning on the use of the land plots, and other information related to the projects using land funds for creation of infrastructure construction capital.

3. The list of land funds used for creation of capital to construct public infrastructures in the localities, as prescribed at Point d, Clause 1, Article 1 of this Decision.

**Article 5.-** Bidding for works, land auctions for creation of infrastructure construction capital

Under the provisions of Articles 49, 50, 51, 52 and 53 of the Government's Decree No. 88/1999/ND-CP of September 1, 1999 promulgating the Bidding Regulation, the agencies (persons) competent to approve investment projects shall have to direct and organize project bidding.

1. In case of bidding for construction of the projects' infrastructures:

a/ To organize bidding to select investors to execute the projects under the current law provisions on bidding.

b/ To determine the price of land assigned to successful bidders for payment of the works' value. In this case, the price of assigned land subject to land use levy is the land price calculated according to the new use purpose. This price must be the price for transferring the land use right for the new use purpose of the land plot for creation of infrastructure construction capital.

On the above-said principle, the land price used for calculating the land use levy on the land plot used for creation of infrastructure construction capital shall be determined as being equal to the actual price for transferring the right to use adjacent (nearest) land areas with the same use purposes according to the new use purpose of such land plot; and concurrently the following

must be taken into account:

- The land price used for calculating compensations when the land funds for creation of infrastructure construction capital are recovered;

- The land price according to the new use purpose of the land plot used for creation of infrastructure construction capital, promulgated by the provincial-level People's Committees in compliance with the Government's regulations;

- The location and infrastructure conditions of the land plot used for creation of infrastructure construction capital;

- Other factors related to the land price.

c/ The successful bidders for infrastructure construction shall be assigned land. The payment value shall be determined as follows:

- The winning bid for infrastructure construction;

- The land price determined under Point b, Clause 1 of this Article.

2. In case of land auctions:

a/ The value of infrastructural works used for payment of the land funds is the cost estimate of the investment project to construct infrastructural works already approved by competent authorities under the current regulations on management of capital construction investment.

b/ The land price for payment of infrastructural construction works is the winning bid at the land auction.

3. The successful bidders for infrastructure construction or successful bidders at land auctions are investors who offer the lowest bid for infrastructural construction works or the highest land prices in auctions.

4. Where the land funds are used for creation of capital to build public infrastructures under Point d, Clause 4, Article 1 of this Decision, land auctions shall be organized. All collected land use levy amounts must be managed under the law provisions on the State budget. Before holding land auctions, if it is necessary to invest in the revamp of the land or invest in the building of infrastructural works and other related works, the current law provisions on management of capital construction investment must be complied with.

**Article 6.-** Conditions for auctioning land for creation of infrastructure construction capital

1. Land used for creation of infrastructure construction capital is land included in the land use plannings or detailed construction plannings already approved by competent authorities;

2. Land used for residence or as grounds for production, business, services and other purposes according to law provisions.

**Article 7.-** Selection of investors to participate in the bidding for infrastructure construction or in land auctions

1. The subjects eligible for participating in bidding for infrastructure construction or in land auctions are organizations and individuals (as specified in Article 2 of this Decision) wishing to use and deal in real estates, meeting all capital and technical conditions and having experiences in executing investment projects.

2. Investors wishing to participate in the bidding for infrastructure construction or in land auctions must send to the project owners or agencies competent to approve investment projects or decide on land auctions (in case of using land funds for creation of capital to construct public infrastructures) the dossiers of application for participation in the bidding for works or in land auctions. Such a dossier consists of:

- The business registration certificate showing business lines compatible with investment projects, the self-introduction statement enclosed with documents proving the professional, financial and technical capabilities and project execution experiences;

- Financial statements of the latest three years;

- The plan on the implementation of the infrastructure investment project and the project on using the assigned land fund;

- The written request for participating in the bidding or auction.

Where an individual applies for participation in the land auction as prescribed at Point d, Clause 4, Article 1 of this Decision, only the written request for participation in the auction and the plan on the use of the assigned land fund are required.

3. Conditions for selecting economic organizations and/or individuals to participate in the bidding for infrastructure construction or in land auctions:

- Having business registration certificates compatible with the execution of the investment projects;

- Having all capital and technical conditions as prescribed by law;

- Having the plan on the execution of the infrastructure investment project and the project on using efficiently the assigned land fund;

- One organization shall only be allowed to participate in one bidding unit in a bid package. Where a corporation (company) participates in a bidding under its name, its members and subsidiaries shall not be allowed to participate therein in the capacity of independent contractors.

In case of land auctions as specified at Point d, Clause 4, Article 1 of this Decision, where the land funds put up for auction have been divided into lots for building separate dwelling houses for each household or individual, the individuals participating in such auctions need to have only papers proving their financial capabilities.

#### **Article 8.- Organization of land auctions**

Land auctions shall be organized as follows:

- 30 days before conducting land auctions, the Auction Councils (organizing agencies) shall publicly announce the land lots put up for auction at least twice in two weeks on the mass media such as local radio and television stations, newspapers and other mass media and post up notices at the venues of the auctions, the offices of the People's Committees of the rural and urban districts, towns or provincially-run cities where land auctions are held.

The contents of such public notices include: The location, acreage, dimensions, current use purposes, land use planning, registration time, auction time and other relevant information.

- Completing procedures for participation in the auction.

- Introducing the land lots, land use planning, and construction plannings of the land lots put up for auction.

- Organizing the auctions on the principle of direct auction according to the auction regulations approved by the provincial-level People's Committee presidents in accordance with the current law provisions on auctions.

#### **Article 9.- Registration of participation in auctions**

1. The subjects selected under Article 7 of this

Decision may register and complete registration procedures at least two days before the date when the auction is held.

2. After their dossiers are approved by the Councils, the registering organizations and individuals must pay:

a/ Deposit money (guaranty money - advance money) as decided by the provincial-level People's Committees for each auction, which must not exceed 5% of the land value calculated according to the price of adjacent (nearest) land with similar infrastructure conditions, promulgated by the provincial-level People's Committees. The successful bidders shall have their deposit money deducted from the payable land use levies (for payment), and the unsuccessful bidders shall be refunded the deposit money right after the auction close. Where organizations and individuals have registered for participation in the land auctions and paid deposit money but fail to participate in the auctions or have won the auctions but refuse to execute the projects or withdraw the offered bids, they shall not be refunded the deposit money, which shall be remitted into the State budget.

b/ Auction participation fee, which must be paid upon registration of auction participation and shall not be refunded to the participation-registering organizations and individuals. The specific fee rates shall be decided by the provincial-level People's Committees, suited to the realities of their localities in accordance with the current law provisions on auctions.

#### **Article 10.- Determination of the land auction reserve prices**

The reserve prices shall be decided by the Auction Councils, which are determined under Point b, Clause 1, Article 5 of this Decision and must not be lower than the prices of adjacent (nearest) land with similar infrastructure conditions, promulgated by the provincial-level People's Committees in compliance with the Government's regulations.

#### **Article 11.- Conduct of land auctions**

1. Procedures for opening an auction

- Introducing the Council's members, the administrator and assistants (if any).

- Making a roll-call of the people having registered for participation in the auction, people qualified for participation in the auction.

- Introducing all information related to the land lots put up for auction, answering questions of the auction participants; distributing bid cards to every organization and individual participating in the auction; completing other necessary procedures.

2. Auction forms and order: To abide by the auction principle of directly casting secret cards, which are distributed by the Council.

- After the end of the first auction round (first round), the Auction Council shall announce the reserve price.

- Conducting the auction round by round continuously with the last round being the round when no more bid is offered after the Auction Council announces the highest bid. The highest bidder in this round shall be the auction winner, who shall be permitted to receive the land use right.

If auctions of the land funds for creation of capital to build public infrastructures in the localities under Point d, Clause 4, Article 1 of this Decision involve many land lots, the provincial-level People's Committees shall prescribe its form and order in accordance with the law provisions.

**Article 12.-** Consideration and approval of the results of the bidding for works or land auctions

Basing themselves on the results of the project bidding or land auctions, the project owners shall submit to the People's Committee presidents competent to approve investment projects for approval the results of the project bidding or land auctions. In case of land auctions for creation of capital to build public infrastructures in the localities under Point d, Clause 4, Article 1 of this Decision, the Auction Councils shall submit to the provincial-level People's Committee presidents for approval the auction results.

**Article 13.-** In case of only one investor applying for project execution

If only one investor applies for project execution, then:

- The value of the infrastructure work used for payment of the land fund shall be the cost estimate of the investment project to construct the infrastructural work, which has been approved by competent authorities according to the current regulations on management of capital construction investment.

- The land price used for determining the value of the land fund assigned to the investor for payment of the value of construction of infrastructural work is the land price determined according to the provisions at Point b, Clause 1, Article 5 of this Decision.

**Article 14.-** Conclusion of contracts

Basing themselves on the bidding (auction) results approved by competent State bodies, the project owners and successful bidders for infrastructure construction or at the land use right value auctions shall sign contracts. Such contracts must fully comply with the law provisions on economic contracts and the regulations on management of capital construction investment.

**Article 15.-** Payment, accounting and management of money amounts collected from land funds for creation of investment capital for infrastructure construction

1. After assigning land to the bid- or auction-winning investors, the provincial-level Finance and Pricing Services shall record as revenues the land use levy equal to the value of the land funds assigned to the investors for executing infrastructure construction projects and, at the same time, record the payment of the investment capital for building infrastructure construction of the projects.

2. If the value of the land funds assigned to the investors is larger than the value of the projects' works, the investors must remit the differences in cash into the local budgets. If the value of the land funds assigned to the investors is smaller than the value of the projects' works, the investors shall be paid the differences from the local budgets; such payment shall comply with the law provisions on the order of allocation of investment capital for capital construction.

3. The land use levy amounts collected from the land funds for creation of capital to build public infrastructures in the localities prescribed at Point d, Clause 4, Article 1 and Clause 4, Article 5 of this Decision, the cash differences (if any) between the value of the capital-creating land funds and the value of built infrastructural works of each project shall be remitted into the State budget according to the law provisions on the State budget. These amounts shall be used only for investment in building local infrastructures according to the approved projects.

**Article 16.-** Land use right registration

The documents on the winning of auctions or winning of bidding for the construction of works under the projects using land funds for creation of infrastructure construction capital together with other related dossiers as prescribed by law shall serve as a basis for assigning land to the successful bidders at land auctions or bidding for the construction of works to be paid with the capital-creating land funds. The documents on the winning of auctions or winning of bids of construction works, land-assigning decisions of competent State bodies and other related papers shall serve as a basis for the land assignees to register their land use right.

**Article 17.-** Rights and obligations of investors winning the bidding for works and land assignees

The auction winners that are assigned land must use such land for the right purposes stated in the project documents already approved by competent State bodies. If committing violations, their land shall be recovered under the law provisions on land.

The auction winners that are assigned land or the winners of bidding for infrastructure construction, that are assigned land for payment, shall enjoy the rights of those who are assigned by the State land with the collection of land use levy under the current law provisions.

The investors winning the bidding for infrastructure construction shall have to strictly perform the contracts signed with the project owners, ensuring the committed construction progress and volume. If committing violations, they shall be handled according to the law provisions on economic contracts.

**Article 18.-** Responsibilities of State bodies

1. The provincial-level People's Committees shall have to:

- Promulgate regulations on and direct the organization of, land auctions, direct the bidding for infrastructure construction;

- Decide to organize bidding for infrastructure construction or land auctions on a case-by-case basis;

- Decide the land prices for payment to the investors in case of project bidding;

- Approve the results of the land auctions and the bidding for infrastructure construction;

- Inspect and supervise the implementation of financial mechanisms in the use of land funds for creation of infrastructure construction capital under this Decision.

2. The provincial Finance and Pricing Services shall assume the responsibility for and coordinate with concerned branches in:

- Closely monitoring the formation and fluctuations of the actual price for transferring the land use right in the localities in order to determine the land prices for calculation of the land use levy in case of bidding for infrastructure construction works or determining the reserve prices for land auctions.

- Submitting to the provincial-level People's Committees for approval the land prices in case of determining land prices and bidding for infrastructure construction works. In this case, when submitting the land prices to the provincial-level People's Committees for approval, the provincial Finance and Pricing Services must consult the agencies in charge of expertising land and real estate prices (if any);

- Submitting to the provincial-level People's Committees for approval the land prices for determining the land funds for payment to the investors;

- Participating in the Land Auction or Bidding Councils, selecting investors to build infrastructure works;

- Making the budget estimates and the budget settlement of the use of land funds for creation of infrastructure construction capital according to the law provisions on the State budget;

- Recording as State budget revenues the land use levy of the land funds for creation of infrastructure construction capital, recording as State budget expenditures the capital construction investments;

- Assisting the provincial-level People's Committees in guiding, inspecting and supervising the implementation of this Decision.

**Article 19.-** Implementation provision

1. The provision on land auctions in this Decision shall also apply to the following cases:

- Assigning land subject to land use levy by the mode of auction;

- Non-business agencies and units, people's armed force units, political organizations, socio-political

organizations, social organizations, socio-professional organizations and economic organizations which are permitted by competent State bodies to transfer the land use right or sell works together with transferring land use right;

- Assigning land to economic organizations to build dwelling houses for sale or lease (except cases of equitization of State enterprises and shifting from land lease to land assignment with the collection of land use levy);

- Other cases as prescribed by law.

2. This Decision takes effect 15 days after its signing. All regulations on the financial mechanisms in the use of land funds for creation of infrastructure construction capital, which are contrary to this Decision, shall be annulled.

Incomplete projects shall comply with decisions of State bodies competent to approve them.

Projects which are not yet executed shall comply with this Decision.

**Article 20.-** The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, the presidents of the People's Committees of the provinces and centrally-run cities shall, depending on their respective functions, tasks and powers, have to direct concerned units to implement this Decision.

If facing any problems in the course of implementation, the ministries, branches and localities should report them to the Ministry of Finance for timely consideration and settlement.

**Minister of Finance**  
**NGUYEN SINH HUNG**