

**DECREE  
PROVIDING GUIDELINES FOR IMPLEMENTATION OF  
LAW ON INVESTMENT**

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

Pursuant to the *Law on Investment* 59-2005-QH11 dated 29 November 2005;

On the proposal of the Minister of Planning and Investment;

**Decrees:**

**CHAPTER I**

**General Provisions**

**Article 1** *Governing scope*

1. This Decree provides guidelines for implementation of the *Law on Investment* passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 8th Session on 29 November 2005 in relation to investment activities for business purposes; rights and obligations of investors; guarantees for legitimate rights and interests of investors; encouragement and investment incentives; State administration of investment in Vietnam.
2. The Government shall provide separate regulations on offshore investment; and on investment activities in the form of build-operate-transfer contract, build-transfer-operate contract and build-transfer contract and investment activities and business of State owned capital.
3. Indirect investment activities in the form of purchase of shareholding, shares, bonds and other valuable papers; and investment through securities investment funds and through other intermediary financial institutions shall be implemented in accordance with the law on securities and other relevant laws.

**Article 2** *Interpretation of terms*

In this Decree, the following terms shall be construed as follows:

1. *Investment assets* means tangible or intangible assets owned or managed by an investor in order to perform his or her investment project, including:
  - (a) Shareholding, shares and other valuable papers of the investor;
  - (b) Bonds, debts and other forms of borrowing;
  - (c) Contractual rights comprising rights pursuant to turn-key contracts, construction contracts, management contracts, and product or revenue sharing contracts;
  - (d) Rights to recover debts and contractual rights with economic value;

- (e) Technology and intellectual property rights including trademarks, industrial designs, inventions, trade names, origin or appellation of origin of goods;
  - (f) Concessional rights including rights pertaining to exploration and exploitation of natural resources;
  - (g) Real property and rights with respect to real property including the right to lease out, to assign, to mortgage or to provide guarantees;
  - (h) Items of revenue derived from investment activities such as profits, interest on shareholding, dividends, royalties and all types of fees;
  - (i) Assets and rights with different economic value in accordance with law and international treaties of which Vietnam is a member.
2. *New investment projects* include projects which are implemented for the first time or investment projects in new establishments which are independent from the project currently operating.
3. *Investment project for expansion of scale* means a project which is currently being implemented and is developed for expansion of the scale, increases output capacity or business capability, renovates technology, improves product quality or reduces environmental pollution in existing establishments.

**Article 3** *Application of laws on investment, international treaties, foreign laws and international custom*

- 1. Investment activities of investors within the territory of Vietnam must comply with the provisions of the *Law on Investment*, this Decree and other relevant laws;
- 2. Special investment activities which are regulated by other laws shall be subject to such laws.
- 3. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions which are different from the provisions in this Law, the provisions of such international treaty shall prevail.
- 4. Applicable to foreign investment activities, where the law of Vietnam does not yet contain any provision, the parties may agree in the contract on establishment of the enterprise or business co-operation contract or charter of the enterprise on application of foreign law and international custom if application of such foreign law and international custom is not contrary to the fundamental principles of the law of Vietnam.

**Article 4** *Language to be used*

The files of an investment project and official correspondence with State bodies of Vietnam shall be prepared in Vietnamese; all files of a foreign investment project including all documents therein shall be prepared in Vietnamese and a commonly used foreign language. If there is any difference between the foreign language version of a document and the Vietnamese version, the Vietnamese version shall apply.

## CHAPTER II

### Forms of Investment

**Article 5** *Forms of investment*

Investors shall carry out investment activities in Vietnam in the forms of investment stipulated in articles 21 to 26 inclusive of the *Law on Investment* and the provisions of this Decree.

**Article 6** *Establishment of economic organizations and implementation of investment projects*

1. Domestic investors with an investment project associated with the establishment of an economic organization shall perform business registration in advance in accordance with the *Law on Enterprises* and relevant laws and shall carry out investment procedures in accordance with the *Law on Investment* and this Decree.
2. Foreign investors investing in Vietnam for the first time must have an investment project in order to be issued with an investment certificate; the investment certificate shall also be the business registration certificate.
3. With respect to foreign investors issued with an investment certificate in Vietnam:
  - (a) If they have a new investment project but do not establish a new legal entity, they shall only conduct investment procedures in accordance with the provisions of this Decree;
  - (b) If they have a new investment project associated with the establishment of a new legal entity, they shall conduct procedures for establishment of an economic organization in accordance with the provisions in clause 2 of this article.

**Article 7** *Establishment of economic organizations with one hundred (100) per cent capital of investors*

1. Domestic investors and foreign investors shall be permitted to establish economic organizations with one hundred (100) per cent of their investment capital in the forms of limited liability companies, shareholding companies, partnerships, private enterprises and other forms in accordance with the provisions of the *Law on Enterprises* and relevant laws.
2. Enterprises carrying out investment with one hundred (100) per cent foreign owned capital which have already been established in Vietnam shall be permitted to co-operate with each other or with foreign investors in order to establish an enterprise with one hundred (100) per cent foreign capital.
3. An enterprise carrying out investment with one hundred (100) per cent foreign owned capital shall be a legal entity in accordance with the law of Vietnam and shall be established and operate as from the date of issuance of the investment certificate.

**Article 8** *Establishment of joint venture economic organizations between domestic investors and foreign investors*

1. Foreign investors investing in Vietnam shall be permitted to have a joint venture with domestic investors in order to establish a limited liability company with two or more members, a shareholding company or a partnership in accordance with the provisions of the *Law on Enterprises*.
2. An enterprise established pursuant to the provisions in clause 1 of this article shall be permitted to have a joint venture with domestic investors and/or foreign investors in order to establish an enterprise in the form of a limited liability company with two or more members, a shareholding company or a partnership in accordance with the provisions of the *Law on Enterprises*.
3. An enterprise carrying out investment in the form of a joint venture may establish it on the basis of a joint venture contract which shall be a legal entity in accordance with the laws of Vietnam and shall be established and operate as from the date of issuance of the investment certificate.

**Article 9** *Form of investment on the basis of business co-operation contracts*

1. *Business co-operation contract* means a document signed by investors (hereinafter referred to as *the co-operating parties*) for the purposes of conducting investment and business, and which stipulates the responsibilities of each investor and the sharing of business results between investors, without creating a new legal entity.
2. A business co-operation contract in the sector of prospecting, exploration for and exploitation of petroleum and a number of other natural resources in the form of a product sharing contract shall be performed in accordance with relevant laws and the *Law on Investment*.

**Article 10** *Co-ordination board and operating office to implement a business co-operation contract*

1. During the process of business, the co-operating parties may agree to establish a co-ordination board to perform the business co-operation contract.

The co-ordination board shall not be the leadership body of the co-operating parties. The functions, duties and powers of the co-ordination board shall be as agreed by the co-operating parties.

2. If a business co-operation contract has a foreign party then the foreign co-operating party shall be permitted to establish an operating office in Vietnam to act as its representative during the performance of the business co-operation contract.

The operating office of a foreign co-operating party shall have a seal, may open bank accounts, recruit employees, sign contracts and conduct all business activities within the scope of the rights and obligations stipulated in the investment certificate and business co-operation contract.

The operating office of a foreign co-operating party must be registered with the investment certificate-issuing body.

**Article 11** *Investment in the form of capital contribution, purchase of shareholding, merger and acquisition of enterprises*

1. An investor shall have the right to purchase shareholding, to merge or acquire an enterprise in order to participate in management of investment activities in accordance with the provisions of the *Law on Enterprises* and relevant laws and shall be entitled to equal treatment without any discrimination with respect to the purchase of shareholding, merger and acquisition of enterprises.
2. A foreign investor cannot contribute capital or purchase shareholding in excess of the undertakings on percentage purchase, forms of investment and schedules stipulated in international treaties of which Vietnam is a member;
3. A foreign investor which merges or acquires a company or branch in Vietnam must ensure the following conditions:
  - (a) [Such merge or acquisition] shall not be contrary to the provisions in relation to merger and acquisition of enterprises specified in the Law on Enterprises;
  - (b) Where a foreign investor merges or acquires an enterprise which has a market share of foreign investors above thirty (30) per cent in Vietnam in the year in which the transactions of merger or acquisition are conducted, the investor must forward a written opinion of the administrative body for competition to the investment certificate-issuing body for the latter's consideration for issuance of an investment certificate.

4. The merging and acquiring enterprise shall assume the rights and obligations of the merged and acquired enterprise unless otherwise agreed by the parties.

**Article 12** *Investment in the form of a shareholding company with foreign invested capital*

*Shareholding company with foreign invested capital* means a company which is established and organizes its operation in accordance with the *Law on Enterprises*. A shareholding company with foreign invested capital must have at least one founding shareholder being a foreign investor. A shareholding company with foreign invested capital shall be a legal entity as from the date of issuance of the investment certificate.

**Article 13** *Branches and representative offices of economic organizations*

1. An economic organization which has already been established in Vietnam shall be permitted to open a branch [and/or] representative office outside its head office in order to carry out its business activities and to serve its business activities.
2. In a case where it is necessary to open a branch or representative office overseas to conduct transactions, marketing and product sales, there must be compliance with the regulations on opening a branch or representative office overseas.

The opening of a branch in order to carry out offshore investment activities must comply with the regulations on offshore investment activities.

3. Foreign investors investing in Vietnam through establishment of a branch in order to carry out investment activities must comply with the conditions and committed schedules in international treaties of which Vietnam is a member.

**Article 14** *Conversion of forms of investment of enterprises with foreign invested capital*

1. An enterprise with foreign invested capital which has been issued with an investment licence and/or an investment certificate in accordance with the Law on Foreign Investment and the Law on Investment may convert its form of investment in accordance with the Law on Investment.
2. The conversion of the form of investment of an enterprise with foreign invested capital must conform with the undertakings in international treaties of which Vietnam is a member. The order and procedures for conversion of forms of investment shall be subject to article 81 of this Decree.

## CHAPTER III

### **Investment Sectors and Geographical Areas, Investment Incentives and Support**

#### SECTION 1

##### **Investment Incentives**

**Article 15** *Incentive investment sectors*

1. The incentive investment sectors stipulated in article 27 of the *Law on Investment* shall comprise sectors in which investment is encouraged and sectors in which investment is specially encouraged.
2. The list of investment incentive sectors is stipulated in Appendix A issued with this Decree.

**Article 16** *Geographical areas of investment incentives*

1. The geographical areas of investment incentives stipulated in article 28 of the *Law on Investment* shall comprise areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions.
2. The list of areas with specially difficult socio-economic conditions is stipulated in Appendix B1 and the list of areas with difficult socio-economic conditions is stipulated in Appendix B2 issued with this Decree.

**Article 17** *Sectors in which investment is prohibited, sectors in which investment is conditional*

1. The list of sectors in which investment is prohibited is stipulated in Appendix C issued with this Decree.
2. The list of sectors in which investment is conditional applicable to foreign investors is stipulated in Appendix D issued with this Decree.

**Article 18** *Applicable entities for investment incentives*

1. Investors who implement investment projects on the list of investment incentive sectors and geographical areas issued with this Decree shall be entitled to investment incentives in accordance with the Law on Investment and other provisions of relevant laws.
2. The investment incentives stipulated in clause 1 of this article shall also apply to investment projects for expansion of scale, for raising output capacity or business capacity, for renovation of technology or raising product quality, or for reducing environmental pollution if such investment projects are in the investment incentive sectors or geographical areas specified in this Decree.
3. Investment projects in industrial zones, export processing zones, high-tech zones and economic zones referred to in Appendix A attached to this Decree shall be entitled to incentives in accordance with the provisions of ~~on the basis of investment incentive sectors and geographical areas stipulated in~~ this Decree.
4. With respect to investment incentives which are removed under Vietnam's undertakings in international treaties of which Vietnam is a member, the application of the incentives shall be subject to such international treaties.

**Article 19** *Corporate income tax incentives*

Investors with investment projects in the list of the investment incentive sectors and geographical areas issued with this Decree shall be entitled to preferential tax rates, and the duration of entitlement to such rates and of exemption from and reduction of tax shall be in accordance with the law on corporate income tax.

**Article 20** *Import and export duty incentives*

Investors importing goods to form fixed assets; raw materials, supplies and components imported for performance of projects in the list of investment incentive sectors or the list of areas with difficult or specially difficult socio-economic conditions issued with this Decree shall be exempt from duty in accordance with the law on import and export duties.

**Article 21** *Incentives in relation to land use tax, land use charges and land and water surface rent*

Investors [with projects] to which the State allocates or leases land; or allocates land with payment of a land use charges [and which is included in] the list of investment incentive sectors and geographical areas issued with this Decree shall be entitled to reduction of land use tax,

land use charge [and/or] land and water surface rent and the duration of exemption or reduction in accordance with the provisions of the law on land and the law on taxation.

**Article 22** *Procedures for implementation of investment incentives*

1. With respect to domestic investment projects which are not subject to investment registration and projects which are subject to investment registration stipulated in article 45 of the Law on Investment, investors shall, on the basis of the entities and conditions for entitlement to investment incentives stipulated in this Decree and relevant laws, determine incentives and carry out procedures for entitlement to investment incentives at the authorized State body

Where an investor requests certification of investment incentives, it shall carry out the procedures for investment registration and the investment certificate-issuing body shall record investment incentives in the investment certificate.

2. With respect to domestic investment projects which are subject to the investment evaluation stipulated in article 47 of the Law on Investment and which are eligible as an entity entitled to incentives and satisfy conditions for entitlement to incentives, the investment certificate-issuing body shall record investment incentives in the investment certificate.
3. With respect to foreign investment projects which are eligible as an entity entitled to incentives and satisfy conditions for entitlement to incentives, the investment certificate-issuing body shall record investment incentives in the investment certificate.
4. Based on the incentives stipulated in the investment certificate, entities entitled to incentives and the conditions for entitlement to incentives in fact satisfied by the investors, the investors shall carry out the procedures in accordance with the relevant law in order for the authorized bodies to implement such incentives for the investors.

**Article 23** *Amending and supplementing investment incentives and early termination of investment incentives*

1. If during implementation of an investment project an investor has satisfied further conditions for investment incentives, the investor shall have the right to request the investment certificate-issuing body to amend or supplement the investment incentives recorded in the issued investment certificate.
2. If, during implementation of an investment project, an investor fails to satisfy in practice the conditions for entitlement to investment incentives stipulated in the investment certificate for three consecutive years, the investment incentives shall be revoked.

**Article 24** *Investment by Vietnamese residing overseas*

Vietnamese residing overseas who invest in Vietnam shall be entitled to incentives in accordance with the law on investment

The Prime Minister of the Government shall stipulate special policies applicable to Vietnamese residing overseas who invest in Vietnam.

**Article 25** *Application of incentives to investment projects before the effective date of this Decree*

1. An investor entitled to incentives pursuant to the *Law on Promotion of Domestic Investment*, the *Law on Foreign Investment*, the *Law on Co-operatives* and the law on tax shall continue to be entitled to investment incentives pursuant to its issued investment certificate or investment licence.
2. In a case where a newly promulgated law or policy provides more favourable benefits and incentives than those which the investor previously enjoyed, such investor shall be

entitled to the benefits and incentives in accordance with the new regulations from the effective date of such new law or policy for the remaining duration (if any) of incentives.

3. In a case where a project has already been performed before the effective date of this Law on Investment and falls within the category of entities entitled to the investment incentives stipulated in this Decree, the investor shall be entitled to the investment incentives for the remaining duration from the effective date of this Decree. The procedures for implementation of incentives shall be carried out in accordance with article 22 of this Decree.

## SECTION 2

### Investment Support

#### **Article 26** *Technology transfer support*

1. The State shall create favourable conditions for and ensure the legitimate rights and interests of technology transfer parties, including capital contribution by technology, in order to implement investment projects in Vietnam in accordance with the law on intellectual property and the law on technology transfer.

The value of technology used for capital contribution or of technology transferred shall be as agreed by the parties and shall be stipulated in the technology transfer contract.

2. The State shall encourage the transfer of modern technology, source technology and other technologies in order to create new products; to improve production and competitive capacity and product quality; and to save and effectively use materials, fuel, energy and natural resources; encourage investment activities for reform of technology and improvement of the technological degree.
3. Based on the objectives of socio-economic development, the Government shall provide supportive programs on research, technology deployment and transfer to small and medium enterprises, high-tech projects and new technology projects.
4. The rights and obligations of technology transfer parties and the procedures for technology transfer shall be implemented in accordance with the provisions of the law on technology transfer.

#### **Article 27** *Training support*

1. The State shall encourage the establishment of training support funds from contributions and aid from domestic and foreign organizations and individuals:
  - (a) Training support funds shall be established for non-profit purposes; shall be entitled to tax exemption and reduction in accordance with the law on tax;
  - (b) Training fees of economic organizations shall be accounted as deductible expenses when determining taxable corporate income.
2. The State shall provide support from the State budget for the training of employees in economic organizations via training support plans and programs.
3. The Government shall have support plans and programs to help small and medium enterprises train their manpower and to improve the competitive capacity of such enterprises.

#### **Article 28** *Support and encouragement for investment development and support for investment services*

1. The Government shall provide support for investment development to projects which satisfy the following criteria:

- (a) Projects in a number of important industries and sectors in major economic programs which directly affect economic restructuring and accelerate sustainable economic growth but where the State budget cannot grant and commercial banks cannot provide loans on normal conditions due to the risks;
  - (b) [Projects] consistent with the strategy and policy of current law;
  - (c) [Projects] consistent with international commitments.
2. Forms of credit support for investment development shall include the following:
- (a) Direct lending;
  - (b) Funding interest payments after investment; and
  - (c) Investment credit guarantees.

The limit of capital loans and funding of interest payments shall be in accordance with regulations of the Government.

3. The State shall encourage and support organizations and individuals, without discrimination between different economic sectors, to carry out the following investment support services:
- (a) Investment consultancy, management consultancy;
  - (b) Intellectual property consultancy, technology transfer consultancy;
  - (c) Vocational training, economic-technical, management skills training;
  - (d) Provision of market information, technical scientific information and other economic and social information as requested by investors;
  - (dd) Marketing, trade and investment promotion;
  - (e) Establishment of and participation in social and socio-professional organizations;
  - (f) Establishment of design centres and testing centres to support the development of small and medium enterprises.

**Article 29** *Investment support for construction of infrastructure outside the fence of industrial zones, export processing zones and high-tech zones*

1. The Government shall support construction of infrastructure works up to the fence of industrial zones, export processing zones and high-tech zones.
2. Based on the master plan for development of industrial zones, export processing zones and high-tech zones approved by the Prime Minister, ministries, ministerial equivalent bodies and provincial people's committees shall develop investment plans and organize construction of technical and social infrastructure systems outside the fence of the industrial zones, export processing zones and high-tech zones within the scope of their administration, including:
  - (a) Support for construction of roads to industrial zones, export processing zones and high-tech zones;
  - (b) The Government shall encourage and shall have incentive policies for economic sectors to invest in construction of residential housing for workers and social infrastructure works;

Provincial people's committees shall develop master plans and developmental plans for the above construction works and shall balance support sources from their local budgets;

- (c) The Government shall encourage and shall have incentive policies for enterprises with the function of investment in construction and business of works to supply electricity, to supply fresh water and provide water drains, to communicate information and so forth up to the fence of industrial zones, export processing zones and high-tech zones.

**Article 30** *Investment support for infrastructure systems inside the fence of industrial zones and export processing zones*

1. With respect to localities with difficult socio-economic conditions and specially difficult socio-economic conditions, the Prime Minister shall provide for conditions, principles and limits regarding construction works entitled to partial support for capital funding from the local budget in order to support investors constructing and developing technical infrastructure systems inside the fence of industrial zones and export processing zones.
2. Provincial people's committees shall use their local budgets in accordance with the *Law on the State Budget* to support investors investing in and developing technical infrastructure systems inside the fence of industrial zones and export processing zones.

**Article 31** *Methods of investment and construction of technical infrastructure in industrial zones and export processing zones*

1. Depending on the size and nature of each industrial zone or export processing zone and its technical infrastructure, such zones may be constructed and operated by one or more investors who must ensure agreement between themselves on the approved detailed plan for construction of such zone and must clearly stipulate the rights and obligations of each investor.
2. With respect to geographic areas with specially difficult socio-economic conditions and based on the specific conditions of each province, provincial people's committees shall submit to the Prime Minister for his consideration and decision the establishment of an income-receiving professional unit to be the investment owner of an investment project for construction and operation of infrastructure of an industrial zone or export processing zone.

**Article 32** *Investment support for development of infrastructure of economic zones and high-tech zones*

1. The Government shall grant investment capital from the State budget and preferential credit to support investment in and development of technical and social infrastructure systems outside functional areas in economic zones and for service works and important public utility works.
2. Entities entitled to support from the State budget in the investment support program for national targets shall include:
  - (a) Social and technical infrastructure systems outside functional areas in economic zones;
  - (b) Compensation for land clearance within functional areas and resettlement areas, and for re-settled agricultural areas for households whose land is recovered;
  - (c) Sewage treatment works and concentrated water treatment works of functional areas.

3. In addition to the entities supported by the State budget as stipulated in clause 2 of this article, investment in development of infrastructure of economic zones shall be entitled to State credit for investment and development in accordance with law.
4. The Government shall encourage and have incentive policies for enterprises of all economic sectors to invest in and develop technical and social infrastructure systems of economic zones.
5. The Prime Minister shall decide methods of mobilization of other capital sources for investment in and development of technical and social infrastructure of economic zones.
6. Investment support for development of infrastructure of high-tech zones shall be implemented in accordance with regulations on high-tech zones promulgated by the Government.

**Article 33** *Entry and exit visas*

Investors carrying out investment activities, managers and foreign experts and technical workers regularly working for investment projects in Vietnam and their family members shall be granted multiple entry and exit visas. The duration of a visa shall be a maximum of five years each time of issuance.

## CHAPTER IV

### **Rights and Obligations of Investors**

**Article 34** *Autonomy in investment and business*

1. Investors shall have autonomy in investment and business in accordance with article 13 of the *Law on Investment*, except for investment and business in sectors and industries in which investment and business is prohibited by law.
2. With respect to conditional sectors and industries, investors shall have autonomy in investment and business if they satisfy the stipulated conditions for such sectors and industries.

**Article 35** *Right to access and use investment resources*

1. Investors shall have the equal right to access and use resources on credit or land use rights without discrimination between economic sectors. Credit lending and other State support shall be provided on the basis of the feasibility of a project.
2. Provincial people's committees shall publish the approved master plan and other plans for land use so that investors may know about the land fund for investment development.

**Article 36** *Right to employ labour*

1. Investors shall have the right to employ domestic employees, and to hire foreign employees as managerial and technical workers and as experts in accordance with the requirements of their production or business, unless otherwise stipulated by international treaties of which Vietnam is a member in such case the provisions of such international treaties shall prevail.
2. The salary of an employee shall be agreed by the investor and such employee in accordance with labour regulations and shall be paid in Vietnamese dong; the minimum salary shall be stipulated by the Ministry of Labour, War Invalids and Social Affairs.
3. The General Federation of Labour and the Ministry of Labour, War Invalids and Social Affairs shall provide detailed regulations on operation of unions in foreign invested enterprises in order to ensure the right to participate in unions, the operation of unions and the protection of employee's rights.

**Article 37** *Right relevant to investment activities to export, import, advertise, conduct market research, process and re-process*

1. Investors may directly export, import, authorize [dealers] to export or import, advertise, conduct market research in, process and re-process goods relevant to implementation of investment projects.
2. Investors shall have the right to invest in the sectors of importation, distribution and other commercial services in accordance with the Law on Investment, this Decree and specialized laws pursuant to the schedules undertaken in international treaties of which Vietnam is a member.

**Article 38** *Right to open accounts and purchase foreign currency*

1. Investors shall be entitled to open Vietnamese dong accounts and foreign currency accounts with Vietnamese banks licensed to operate, ~~joint venture banks or branches of foreign banks~~ in Vietnam.

In special cases and subject to approval from the State Bank of Vietnam, investors may open ~~loan capital~~ accounts in offshore banks. The State Bank of Vietnam shall provide detailed regulations on the conditions and procedures for opening and closing such ~~loan capital~~ accounts at foreign and domestic banks.

2. Investors shall be entitled to purchase foreign currency from credit institutions authorized to trade in foreign currencies for current transactions, capital transactions and other transactions in accordance with the law on foreign exchange control.
3. The Government shall guarantee support for foreign exchange balancing in cases where banks authorized to trade foreign currencies cannot meet the demand for foreign currencies of investors with respect to important projects in the following sectors:
  - (a) Energy;
  - (b) Waste treatment;
  - (c) Construction and development of transportation infrastructure.
4. With respects to projects in the sectors stipulated in clause 3 of this article being specially important projects in the program of the Government from time to time, the Prime Minister of the Government shall make a decision guaranteeing foreign currency balancing for an investor and such matter shall be stipulated in the investment certificate.

**Article 39** *Mortgage of land use rights and assets attached to land*

Investors shall be entitled to mortgage land use rights and assets attached to land with credit institutions authorized to operate in Vietnam in accordance with the law on land and relevant laws.

**Article 40** *Other rights of investors*

1. To enjoy investment incentives in accordance with the provisions of relevant laws and this Decree.
2. To access and use public services on the principle of non-discrimination.
3. To select forms of investment, scale of investment and ratio of investment, and to determine their business or investment activities unless otherwise stipulated by international treaties of which Vietnam is a member;

4. To access legal instruments, policies relating to investment; databases on the national economy and on each economic sector and other socio-economic information relating to investment activities.
5. To provide comments on laws and policies relating to investment in accordance with law. Providing comments on laws and policies relating to investment shall be carried out during the drafting process.
6. To make complaints and denunciations and to take court proceedings in accordance with law, against any organization or individual in breach of the law on investment.
7. To exercise other rights in accordance with law.

**Article 41** *Rights of investors investing in production and business in industrial zones, export processing zones, high-tech zones and economic zones and rights of investors conducting business in infrastructure*

1. In addition to the rights stipulated in articles 34 to 40 inclusive of this Decree, investors investing in production and business in industrial zones, export processing zones, high-tech zones and economic zones shall have the following rights:
  - (a) To receive transfers of land use rights, and to be leased or sub-leased land in industrial zones, export processing zones, high-tech zones and economic zones with infrastructure facilities from enterprises investing in infrastructure construction and business in order to build factories, offices and other construction works servicing production and business in goods and services and to be issued with certificates of land use rights in accordance with the law on land.
  - (b) To lease or purchase already constructed factories, offices and warehouses in industrial zones, export processing zones, high-tech zones and economic zones in order to service production and business in goods and services in accordance with contracts signed with enterprises investing in infrastructure construction and business.
  - (c) To use, with payment of money, infrastructure works, public utility and service works including road transportation systems, electricity supply systems, water supply systems, water drainage systems, communications systems, water sewage treatment systems and waste treatment systems and other common services in industrial zones, export processing zones, high-tech zones and economic zones in accordance with contracts signed with enterprises investing in infrastructure construction and business.
2. Investors investing and conducting business in infrastructure of industrial zones, export processing zones, high-tech zones and economic zones shall have these rights:
  - (a) To transfer land use rights, and to lease and sub-lease out, in accordance with the law on land, land with already constructed infrastructure in industrial zones, export processing zones, high-tech zones and economic zones in order for investors to carry out production and business activities.
  - (b) To collect fees in accordance with contracts signed with lessees for the use of infrastructure, public utility and service works invested in by the enterprise which constructed and conducts business in the infrastructure of an industrial zone, export processing zone, high-tech zone or economic zone.
  - (c) To construct factories, offices and warehouses in industrial zones, export processing zones, high-tech zones and economic zones for lease or for sale.
  - (c) To determine land leasing and sub-leasing prices where such land contains constructed infrastructure; to determine the charges for use of infrastructure works, public service and utility works in industrial zones, export processing zones, high-

tech zones and economic zones; and to determine leasing and selling prices of factories, offices and warehouse and service charges.

**Article 42** *Rights of investors in respect of investment guarantee in case of change in law and policies*

1. .In a case where a newly promulgated law or policy adversely affects the lawful interests an investor obtained before such new law or policy took effect, the investor shall be guaranteed enjoyment of the incentives stipulated in the investment certificate or shall be subject to one or several of the following measures:
  - (a) Continue to enjoying the existing rights and incentives;
  - (b) Be entitled to deduct losses from taxable income; be subject to tax reduction or exemption in accordance with law;
  - (c) Be entitled to adjust the objectives of the project;
  - (d) Be considered for compensation in some necessary cases.
2. With respect to the measures for compensation referred to in paragraph (d) of clause 1 of this article, the investment certificate-issuing body shall recommend the Prime Minister of the Government issue a specific decision guaranteeing the investor's interests as a consequence of the change in law or policy adversely affecting such investor's interests.
3. In a case where a project has continued enjoyment of the incentives stipulated in an investment certificate or investment licence which contains any provision contrary to an international commitment of which Vietnam is a member, the provisions of the international treaties shall apply.

The Government shall make separate regulations to support the interests of the investor as a result of application of international treaties affecting the entitlement of investors to incentives

**Article 43** *Obligations and responsibilities of investors*

1. Obligations of investors:
  - (a) To comply with the provisions on investment; to carry out investment activities in accordance with contents of investment registration and investment certificates.
  - (b) To fully perform financial obligations in accordance with law;
  - (c) To comply with the law on accounting, auditing and statistics;
  - (d) To perform obligations in accordance with the law on insurance and labour; to respect the honour and dignity of, and to protect the legitimate rights of employees;
  - (dd) To respect political and social-political organizations and to create favourable conditions for employees to establish and participate in political and socio-political organizations;
  - (e) To comply with the law on environmental protection;
  - (g) To perform other obligations in accordance with law.
2. Investors shall be responsible for
  - (a) the accuracy and truthfulness of the contents of investment registration and investment project files, and for the legality of certifying documents;

- (b) submitting periodical reports on investment activities within the scope and contents regulated by this Decree and relevant laws to the State administrative body for investment;
- (c) providing documents and information relating to the contents of examination, supervision and inspection of investment activities to the State bodies in accordance with law.

## CHAPTER V

### **A Number of Provisions on Commencement of Implementation of Investment Projects and Organization of Business**

#### **Article 44** *Commencement of investment projects*

1. The investor shall be responsible for commencing implementation of the project in accordance with the objectives, contents and schedule undertaken and the provisions in the investment certificate.
2. The investor who has registered his investment must notify the State administrative body for investment in writing of the temporary suspension of the investment project at least fifteen (15) days prior to the date of temporary suspension of the investment project.
3. The temporary suspension of the implementation of an investment project shall be implemented as follows:
  - (a) The investor shall notify the reasons and period of temporary suspension of the implementation of the project to the State administrative body for investment;
  - (b) Where the project has been issued with an investment certificate, the State administrative body for investment shall notify the investor in writing of a period for temporary suspension of the implementation of the project.
4. Upon resumption of operation, the investor must give notice in writing to the State administrative body for investment.
5. The Ministry of Finance shall provide detailed guidelines on exemption and reduction of land rent for investors in the period of temporary suspension implementation of projects

#### **Article 45** *Termination of operation of investment projects*

1. An investor shall terminate its operation in the cases stipulated in article 65 of the Law on Investment.
2. The investment certificate-issuing body shall have the right to make a decision on termination of the operation of a project in the following cases:
  - (a) The investment project has not been commenced or is unable to be implemented in accordance with the undertaken schedule within twelve (12) months from the date of issuance of the investment certificate, except where an extension or temporary suspension of the implementation of the project is allowed in accordance with article 44 of this Decree;
  - (b) The operation [of the project] must be terminated in accordance with law resulting from a serious breach of the laws.

3. In a case of termination of the operation of a project pursuant to the judgement or decision of a court or arbitration body as a result of a serious breach of law, the investment certificate-issuing body shall make a decision to terminate the operation on the basis of such decision or judgement of the court or arbitration body.
4. A decision on termination of the operation of a project shall be sent to the investor and archived at the investment certificate-issuing body.

Based on the decision on termination of the operation of a project stipulated in clauses 1, 2 and 3 of this article, the investment certificate-issuing body shall revoke the investment certificate and notify relevant bodies

#### **Article 45** *Hiring management*

1. Domestic and foreign investors shall be entitled to hire a management organization or individual to manage the investment and to manage business operations in accordance with such investor's operational needs.
2. The hiring of a management organization or individual must be carried out pursuant to a management contract between the investor and the management organization or individual.

The rights and obligations of the investor and of the management organization or individual shall be stipulated in a contract.

Management fees shall be as agreed between the parties in the management contract and shall be accounted for as operational expenses of the enterprise.

3. The hiring of an organization or individual to provide management services must conform to the undertakings in international treaties of which Vietnam is a member.
4. The management organization or individual shall be liable to pay taxes and perform other financial obligations in accordance with the law on taxation and ~~must comply with~~ relevant laws.

#### **Article 47** *Assignment of capital*

1. An investor shall be entitled to assign its capital and perform the procedures for registration of members or registration of shareholders in the register of members or register of shareholders in accordance with the Law on Enterprises and relevant laws.

Investors must notify the investment certificate-issuing body of the assignment of capital for amendment of the investment certificate.

2. Conditions for the assignment of capital:
  - (a) The requirements shall be ensured in accordance with the Law on Enterprises, this Decree and relevant laws;
  - (b) The ratio and conditions shall be ensured consistent with the provisions of an international treaty of which Vietnam is a member;
  - (c) The assignment of capital being the value of land use rights must conform to the laws on land.

#### **Article 48** *Assignment of projects*

1. An investor shall be entitled to assign all or part of the project implemented by it to other investors.

2. Conditions for the assignment of a project:
  - (a) Ensuring the requirements specified in the Law on Enterprises, this Decree, relevant laws;
  - (b) Ensuring the ratio and conditions consistent with the provisions of an international treaty of which Vietnam is a member;
  - (c) The assignment of land use rights attached to the project must conform to the laws on land.
3. In the case of assignment of an investment project in respect of investment projects which are subject to investment registration and are issued with an investment certificate, the investor shall register [such assignment] with the investment certificate-issuing body.
4. The file for assignment of an investment project shall comprise:
  - (a) [An application] for registration of the assignment of a project;
  - (b) The project assignment contract;
  - (c) A document on the legal status of the assignee;
  - (d) A report on the operational status of the project;
5. The investment certificate-issuing body shall receive the file for registration of the assignment of a project and amend the investment certificate within ten (10) working days from the date of receipt of the valid and complete file.

**Article 49** *Liquidation of investment projects*

1. If, during the process of investment activities, an investment project may be terminated in accordance with the conditions stipulated in article 45 of this Decree, the investor shall notify the investment certificate-issuing body in order for [the latter] to revoke the investment certificate except for the cases stipulated in clauses 2 and 3 of article 45 of this Decree.
2. Procedures for liquidation of an investment project shall be as follows:
  - (a) In the case of liquidation of an investment project not associated with dissolution of the economic organization, liquidation shall be carried out in accordance with the law on liquidation of property and liquidation of contracts.
  - (b) In the case of liquidation of a project associated with dissolution of the economic organization, the investor shall carry out procedures for dissolution of the economic organization in accordance with the provisions of the *Law on Enterprises* and relevant laws.
3. Upon termination of the project associated with dissolution of an economic organization referred to in clause 2 of this article, the economic organization shall carry out procedures for liquidation of the investment project. The time-limit for liquidation of the investment project shall not exceed six (6) months from the date of revocation of the investment certificate.
4. Where the economic organization is unable to establish a liquidation committee to carry out the liquidation of the project or fails to carry out the liquidation within the time-limit stipulated in clause 3 of this article, the dispute between the parties related to the project shall be referred to a court or arbitration body for resolution in accordance with law.

5. If, during the process of liquidation of an investment project associated with dissolution of the economic organization referred to in clause 3 of this article, the debts<sup>1</sup> of the economic organization are insufficient to pay debts, the liquidation shall terminate and [the matter] shall be resolved in accordance with the procedures stipulated by the law on bankruptcy.

**Article 50** *Relation of sale and purchase of goods between export processing zones or export processing enterprises and domestic market*

1. During the process of business activities, investors in export processing zones shall be permitted to purchase goods from the Vietnamese market in order to produce, process, re-process or assemble goods for export or to export (except goods on the list of goods the export of which is prohibited).
2. Investors in export processing zones shall be permitted to sell the following goods on the Vietnamese market:
  - (a) Products produced by the investor and not on the list of goods the import of which is prohibited;
  - (b) Products for which there is a demand on the domestic market;
  - (c) Scrap and waste products which are collected from production and are permitted to be imported and are not on the list of scrap and waste products the import of which is prohibited in accordance with current regulations.
3. The relation of sale and purchase of goods between an export processing zone or export processing enterprise and the domestic market shall be subject to the regulations of the Ministry of Trade.

**Article 51** *Bonded warehouses*

1. With respect to export processing zones and industrial zones, economic organizations producing goods for export shall be permitted to establish a bonded warehouse in order to serve import or export activities. Goods delivered into the bonded warehouse shall temporarily not be subject to payment of import duties.

Permission and conditions for establishment of a bonded warehouse shall be subject to regulations of the Ministry of Finance.
2. Goods delivered into a bonded warehouse must not be sold on the Vietnamese market. Where the Ministry of Trade permits the sale of goods on the Vietnamese market, the investor must pay import duties and other taxes in accordance with law.
3. Where goods delivered into a bonded warehouse are damaged or reduced in quality and are unable to satisfy production requirements, they must be re-exported or destroyed. The destruction of such goods must be implemented in accordance with regulations and shall be subject to supervision by the customs office, tax office and the environmental authority.

## CHAPTER VI

### Order and Procedures for Direct Investment

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1 Phillips Fox Note: This is the literal translation.

## SECTION I

### Authority to Approve and Issue Investment Certificates

#### **Article 52** *Authority to approve and issue investment certificates*

1. Bodies authorized to approve and issue investment certificates shall be stipulated in articles 53 to 56 of this Decree.
2. With respect to special investment activities stipulated in other laws, the authority to approve and issue investment certificates or investment licences shall be subject to such laws.

#### **Article 53** *Projects for which the Prime Minister of the Government shall approve issuance of investment certificates*

The Prime Minister of the Government shall approve issuance of investment certificates to projects which satisfy one of the following criteria:

1. Investment projects in the following sectors, irrespective of scale and source of invested capital:
  - (a) Construction and commercial operation of airports; air transportation;
  - (b) Construction and commercial operation of sea ports, national highways; business of sea transportation in respect of projects with foreign owned capital.
  - (c) Exploration, exploitation of petroleum and rare and precious natural resources.
  - (d) Postal and delivery services; telecommunications and wave transmission services in respect of foreign investment projects.
  - (dd) Radio and television broadcasting, press or publication.
  - (e) Investment and business of casino, games with price in respect of foreign investment projects;
  - (g) Production and processing of cigarettes in respect of foreign investment projects;
  - (h) Establishment of colleges and universities postgraduate facilities or equivalent levels;
  - (i) Establishment of scientific research institutes in respect of projects with foreign invested capital.
  - (k) Investment in establishment of industrial zones, export processing zones, high-tech zones and economic zones.
2. Investment projects not covered by clause 1 of this article and having [invested capital] of 1500 billion VND or more in the following sectors:
  - (a) Energy, exploitation and processing of minerals, metallurgy, processing of petroleum.
  - (b) Recreation, tourism, cultural or sport resorts.
3. Other investment projects having invested capital of 3000 billion VND or more.

**Article 54** *Investment projects which the Ministry of Planning and Investment shall issue investment certificates*

The Ministry of Planning and Investment shall issue, amend and revoke investment certificates in respect of the following investment projects:

1. Projects which the Prime Minister of the Government approves the issuance of an investment certificate as stipulated in article 53 of this Decree;
2. Projects with foreign owned capital having [invested capital of] 800 billion VND or more;
3. Projects in other sectors and having invested capital of 1.500 million VND or more.

**Article 55** *Projects which provincial people's committees shall register, approve and issue investment certificates*

1. People's committees of provinces and cities under central authority (hereinafter referred to as *provincial people's committees*) shall carry out investment registration, issuance, amendment and revocation of investment certificates for projects not stipulated in articles 53, 54 and 56 of this Decree.
2. Departments of Planning and Investment shall act as a focal body to advise ~~assist~~<sup>2</sup> the provincial people's committee in carrying out investment registration, issuance, amendment and revocation of investment certificates for investment projects which fall under the authority of provincial people's committees to issue investment certificates.

**Article 56** *Projects which management committees of industrial zones, export processing zones, high-tech zones and economic zones shall register, approve and issue investment certificates*

Provincial people's committee shall delegate management committees of industrial zones, export processing zones, high-tech zones or economic zones shall carry out investment registration, issuance, amendment and revocation of investment certificates in respect of investment projects in industrial zones, export processing zones, high-tech zones or economic zones which fall under the authority of the provincial people's committees to carry out investment registration or issue investment certificates as stipulated in article 55 of this Decree.

## SECTION II

### Procedures for Investment Registration and Verification

**Article 57** *Procedures for investment associated with establishment of economic organization*

1. Domestic investors shall carry out the procedures for establishment of an economic organization and for business registration in accordance with the provisions of the *Law on Enterprises* and relevant laws.

The investor shall carry out investment procedures for each project in accordance with the provisions of this Decree.

2. A foreign investor who invests in Vietnam for the first time must have an investment project and carry out procedures for investment registration or investment verification at the authorized State administrative body for issuance of an investment certificate.

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<sup>2</sup> The literal translation is "submit".

Economic organizations with foreign invested capital which have been established in Vietnam, if they have a new investment project, may carry out procedures for such project and shall not be required to establish a new economic organization.

**Article 58** *Contents of investment registration and of investment certificates*

1. The investment registration form and the form of an investment certificate shall be provided by the Ministry of Planning and Investment for uniform application throughout the country.
2. An investment certificate shall contain the following main items:
  - (a) Name and address of the investor;
  - (b) Location in which the investment project will be implemented and land area to be used;
  - (c) Objectives and scale of the investment project;
  - (d) Total invested capital;
  - (dd) Duration and schedule of implementation of the investment project;
  - (e) Confirmation of investment incentives and support (if any).
3. The investment certificates which are issued to foreign investors who invest for the first time in Vietnam shall, in addition to the items stipulated in clause 2 of this article, contain other items of business registration stipulated in article 25 of the *Law on Enterprises*.

The investment certificate issued to a foreign investor shall also be the business registration certificate of the enterprise.

**Article 59** *Projects not required to carry out procedures for investment registration*

1. With respect to domestic investment projects which have invested capital of below fifteen (15) billion VND and are not on the list of sectors in which investment is conditional, investors shall not be required to carry out procedures for investment registration.
2. Where a domestic investor has a need for certification of investment incentives in his or her investment certificate, he or she must carry out the procedures for investment registration stipulated in article 61 of this Decree in order to be issued with an investment certificate.

**Article 60** *Bodies receiving investment project files*

1. The Ministry of Planning and Investment shall receive investment project files in the following cases:
  - (a) Projects under the approval authority of the Prime Minister of the Government stipulated in article 53 of this Decree;
  - (b) Projects under the authority of the Ministry of Planning and Investment to issue investment certificates stipulated in article 54 of this Decree.
2. Departments of planning and investment shall receive investment project files which the provincial people's committees shall carry out the registration, approve and issue an investment certificate as stipulated in article 55 of this Decree.
3. Management committees of industrial zones, export processing zones, high-tech zones or economic zones shall receive investment project files in respect of projects which the management committees of industrial zones, export processing zones, high-tech zones

or economic zones shall carry out the registration, approve and issue an investment certificate as stipulated in article 56 of this Decree.

**Article 61** *Procedures for investment registration applicable to domestic investment projects*

1. Procedures for investment registration shall apply to domestic investment projects which have invested capital of between fifteen (15) billion VND and less than three hundred (300) billion VND and are not on the list of sectors in which investment is conditional.
2. The investor shall submit an investment registration on the investment registration form to the provincial administrative body for investment.

Where an investor so requests, the investment certificate-issuing body shall issue an investment certificate within a time-limit of fifteen (15) working days from the date of receipt of the valid investment registration form.

3. Investors shall be liable before the law for the truthfulness and accuracy of information and items stated on investment registration forms.

**Article 62** *Procedures for investment registration applicable to foreign investment projects*

1. Procedures for investment registration shall apply to foreign investment projects which have invested capital of below three hundred (300) billion VND and are not on the list of sectors in which investment is conditional.
2. A file for investment registration shall comprise:
  - (a) Investment registration on the investment registration form provided by the Ministry of Planning and Investment ~~issued with this Decree~~ presenting main items in relation to legal status of the investor; objectives, scale, location in which the project will be implemented; invested capital, schedule of implementation of the project; need for land area to be used and undertaking on environmental protection; proposal for investment incentives (if any);
  - (b) Joint venture contract or business co-operation contract and charter of the enterprise (if any).
  - (c) Report on financial capability of the investor: with respect to an economic organization currently operating, financial statements for the two most recent years shall be required; with respect to newly established economic organizations or investors being foreigners, certification of their account made by a bank or a document evidencing their ability to raise capital.
3. With respect to investment projects for the first time in Vietnam, in addition to the documents stipulated in clause 2 of this article, the investors shall submit files for business registration corresponding to each form of an enterprise as stipulated in the law on enterprises and relevant laws.
4. Within a time-limit of fifteen (15) working days from the date of receipt of a valid file for investment registration and a valid file for business registration, the investment certificate-issuing body shall issue an investment certificate without request for any additional documents.
5. Investors shall be liable before the law for the information and items stated on files for investment registration and files for business registration.

**Article 63** *Procedures for evaluation in respect of investment projects which have invested capital of three hundred (300) billion VND or more and are not included in the list of sectors in which investment is conditional*

1. Procedures for investment registration shall apply to investment projects which have invested capital of three hundred (300) billion VND or more and are not on the list of sectors in which investment is conditional.
2. An investment project file shall comprise:
  - (a) Written request for issuance of an investment certificate;
  - (b) Written certification of the legal status of the investor;
  - (c) Reports on financial capability of the investor: the financial statements for the two most recent years or a certification of their account made by a bank or a document evidencing their ability to raise capital;  

The investors shall be responsible for the contents of their reports on financial capability.
  - (d) Economic-technical explanatory statement comprising the following main items: objectives, scale, location in which the project will be implemented; invested capital, schedule of implementation of the project; need for land use (including area, schedule of land use, lay-out of the site and compensation plan) and undertaking on environmental protection; proposal for investment incentives (if any);
  - (dd) With respect to investment projects using State owned capital, written consent of the representative body of the owner to the investment or a decision of the board or management of a corporation or of the board of management of the economic group approving the investment shall be required;
3. With respect to foreign invested projects which the investors invest for the first time in Vietnam, in addition to the documents referred to clause 1 of this article, the investors shall submit files for business registration corresponding to each form of an enterprise as stipulated in the law on enterprises and relevant laws
4. Contents of economic group shall comprise:
  - (a) Conformity with the planning of technical infrastructure, zoning for land use, construction planning or planning for use of minerals and other natural resources.  

With respect to investment projects which have not been included in the above planning, the administrative body for investment shall be responsible for acting as a focal body to work with authorized State administrative bodies for planning in order to notify<sup>3</sup> the investor within a time-limit of thirty (30) days from the date on which the investor makes its request.
  - (b) Needs for land use: area, schedule of land use; zoning drawing, general lay-out of the project work, plan for compensation and site clearance, movement and resettlement;
  - (c) Schedule of implementation of the project: schedule of capital contribution, of construction of project works and of implementation of objectives of the project;
  - (d) Environmental solutions: assessment of main environmental impacts and solutions for resolution consistent with environmental protection standards;
  - (dd) With respect to foreign invested projects which the investors invest for the first time in Vietnam, during the process of evaluation, the authorized State body shall also

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3 Phillips Fox Note: The literal translation is "answer".

consider the validity of the contents of business registration corresponding to each form of an enterprise stipulated in the law on enterprises.

**Article 64** *Conditions and evaluation of conditional investment projects*

1. With respect to conditional investment projects, upon implementation of investment and commencement of a project, the investor must comply with the conditions stipulated in the relevant laws.

The authorized State body shall, on the basis of conditions and procedures stipulated by law, evaluate conformity with conditions which the investment project must satisfy for issuance of an investment certificate.

2. With respect to foreign investment projects, investors shall comply with the conditions for implementation of an investment project stipulated in Appendix D issued with this Decree.

The authorized investment certificate-issuing body shall evaluate conformity with conditions which the investment project must satisfy for issuance of an investment certificate.

3. With respect to investment projects in the education, training, health care, banking and insurance sectors, the investor shall make a deposit and purchase insurance for clients, unless otherwise stipulated by law.

The Ministry of Finance shall make regulations on making of deposits and purchase of insurance for clients.

**Article 65** *Procedures for evaluation of investment projects which have invested capital of below three hundred (300) billion VND and are on the list of sectors in which investment is conditional*

With respect to investment projects which have invested capital of below three hundred (300) billion VND and are on the list of sectors in which investment is conditional, the investor shall carry out the investment procedures as follows:

1. With respect to domestic investment projects, a project file shall comprise:
  - (a) The documents stipulated in clauses 1 and 2 of article 63 of this Decree;
  - (b) Explanatory statement on the conditions which the investment project must satisfy.
2. With respect to projects with foreign invested capital, a project file shall comprise:
  - (a) The documents stipulated in clauses 1,2 and 3 of article 63 of this Decree;
  - (b) Explanatory statement on the conditions which the investment project must satisfy.
3. Contents of evaluation:
  - (a) Conditions which the investment project must satisfy in accordance with the provisions in Appendix D issued with this Decree, specialized laws and international treaties of which Vietnam is a member.
  - (b) With respect to projects with foreign invested capital which foreign investors invest for the first time in Vietnam, the investment certificate-issuing body shall consider the validity of the file for business registration corresponding to each form of an enterprise as stipulated in the law on enterprises and relevant laws.

**Article 66** *Procedures for evaluation of investment projects which have invested capital of three hundred (300) billion VND or more and are on the list of sectors in which investment is conditional*

Procedures for evaluation of investment projects which have invested capital of three hundred (300) billion VND or more and are on the list of sectors in which investment is conditional shall be stipulated as follows:

1. An investment project ~~file for investment evaluation~~ shall comprise:
  - (a) The documents stipulated in clauses 1 and 32 of article 63 of this Decree;
  - (b) Explanatory statement on the conditions which the investment project must satisfy.
2. The contents of evaluation shall be as stipulated in articles 63.3 and 65.3 of this Decree.

**Article 67** *Procedures for evaluation of investment projects which fall under the decision making authority of the Prime Minister of the Government*

1. An investor shall submit ten (10) sets of a file, including at least two sets of original copies, to the Ministry of Planning and Investment.
2. Within a time-limit of three days, the Ministry of Planning and Investment shall check the validity of the file and forward it to relevant ministries, branches and provincial people's committees for their opinion.

Where a project file is invalid, the Ministry of Planning and Investment shall notify the investor of its refusal to consider the project or shall request [the investor] to amend or add to the file.

3. Bodies from which opinions are sought shall carry out evaluation and send their written opinions to the Ministry of Planning and Investment within a time-limit of fifteen (15) working days from the date of receipt of a project file and shall be liable for project issues under their administration. If upon expiry of such time-limit a written opinion has not been provided by any such body, it shall be deemed to have accepted [the project].
4. The Ministry of Planning and Investment shall be responsible to:
  - (a) Gather opinions from the bodies from which opinions were sought, prepare a report on evaluation and submit it to the Prime Minister of the Government for his consideration and decision within a time-limit of twenty five (25) working days from the date of receipt of a valid and complete file accompanied by the project file and photocopy opinions of the relevant ministries, branches and provincial people's committees.
  - (b) Where there are different opinions on important aspects of a project, the Ministry of Planning and Investment shall hold consultative meetings with the competent representatives of relevant bodies for clarification prior to submission to the Prime Minister of the Government.
  - (c) Based on the project file and opinions of relevant bodies or request of the Prime Minister of the Government, the Ministry of Planning and Investment shall request the investor to explain, amend or add to the file where necessary.
  - (d) Within a time-limit of five days from the date of receipt of approval of the investment project from the Prime Minister of the Government, the Ministry of Planning and Investment shall issue an investment certificate.
  - (dd) Where an investment project is not approved, the Ministry of Planning and Investment shall notify the investor in writing stating clearly the reasons therefor.

5. Within a time-limit of ten working days from the date of receipt of the report on evaluation of the investment project from the Ministry of Planning and Investment, the Office of the Government shall notify in writing the opinion of the Prime Minister of the Government about the investment project.
6. Within a time-limit of seven days from the date of issuance of the investment certificate, the Ministry of Planning and Investment shall send an original copy of the investment certificate to the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the Ministry responsible for administration of the economic-technical branch, the provincial people's committee and the relevant management committee of an industrial zone, export processing zone, high-tech zone or economic zone.

**Article 68** *Procedures for evaluation of investment projects which fall under the decision making authority of the Ministry of Planning and Investment*

1. An investor shall submit ten (10) sets of a file, including at least two sets of original copies, to the Ministry of Planning and Investment.
2. Within a time-limit of three days, the Ministry of Planning and Investment shall check the validity of the file and forward it to relevant ministries, branches and provincial people's committees for their opinion.

Where a project file is invalid, the Ministry of Planning and Investment shall notify the investor of its refusal to consider the project or shall request [the investor] to amend or add to the file.

3. Bodies from which opinions are sought shall carry out evaluation and send their written opinions to the Ministry of Planning and Investment within a time-limit of fifteen (15) working days from the date of receipt of a project file and shall be liable for project issues under their administration. If upon expiry of such time-limit a written opinion has not been provided by any such body, it shall be deemed to have accepted [the project].
4. The Ministry of Planning and Investment shall be responsible to:
  - (a) Gather opinions from the bodies from which opinions were sought, consider and make a decision within a time-limit of twenty five (25) working days from the date of receipt of a valid and complete file;
  - (b) Where there are different opinions on important aspects of a project, the Ministry of Planning and Investment shall hold consultative meetings with the competent representatives of relevant bodies for consideration and decision; submit the matter to the Prime Minister of the Government for his decision in the case where such matter falls outside its authority.
  - (c) Based on the project file and opinions of relevant bodies, the Ministry of Planning and Investment shall request the investor to explain, amend or add to the file where necessary.
  - (d) Where an investment project is not approved, the Ministry of Planning and Investment shall notify the investor in writing stating clearly the reasons therefor.
5. Within a time-limit of seven (7) days from the date of issuance of the investment certificate, the Ministry of Planning and Investment shall send an original copy of the investment certificate to the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the Ministry responsible for administration of the economic-technical branch, the provincial people's committee and the relevant management committee of an industrial zone, export processing zone, high-tech zone or economic zone.

**Article 69** *Procedures for evaluation of investment projects which fall under the decision making authority of provincial people's committees*

1. An investor shall submit eight (8) sets of the file, including at least two sets of original copies, to the Department of Planning and Investment.
2. Within a time-limit of three days, the Department of Planning and Investment shall evaluate the validity of the file and forward it to relevant departments and branches for their opinion.

With respect to conditional investment projects stipulated in Appendix D issued with this Decree, the Department of Planning and Investment shall forward the file to the ministry responsible for administration of the relevant economic-technical branch.

Where a project file is invalid, the Department of Planning and Investment shall notify the investor of its refusal to consider the project or shall request [the investor] to amend or add to the file.

3. Bodies from which opinions are sought shall carry out evaluation and send their written opinions to the Department of Planning and Investment within a time-limit of fifteen (15) working days from the date of receipt of a project file and shall be liable for project issues under their administration. If upon expiry of such time-limit a written opinion has not been provided by any such body, it shall be deemed to have accepted [the project].
4. The Department of Planning and Investment shall be responsible to:
  - (a) Gather opinions from the bodies from which opinions were sought, prepare a report on evaluation and submit it to the people's committee for consideration and decision within a time-limit of twenty (20) working days from the date of receipt of a valid and complete file accompanied by the project file and photocopy opinions from the relevant departments and branches.  
Where there are different opinions on important aspects of a project, the Department of Planning and Investment shall hold consultative meetings with the competent representatives of relevant bodies for submission to the provincial people's committee for consideration and decision; or for submission of the matter to the Prime Minister of the Government for his decision in the case where such matter falls outside the authority of the provincial people's committee;
  - (b) Based on the project file and opinions from relevant bodies, the Department of Planning and Investment shall request the investor to explain, amend or add to the file where necessary;
  - (c) Within a time-limit of five days from the date of receipt of approval of the project from the people's committee, the Department of Planning and Investment shall submit it to the people's committee for issuance of issue an investment certificate to the investor.
  - (d) Where an investment project is not approved, the Department of Planning and Investment shall notify the investor in writing stating clearly the reasons therefor.
5. Investment projects with a capital scale of below three hundred (300) billion VND and which are on the list of conditional investment projects stipulated in Appendix D issued with this Decree shall only be subject to evaluation of the conditions which the investment projects must satisfy.

**Article 70** *Procedures for evaluation of investment projects which fall under the decision making authority of management committees of industrial zones, export processing zones, high-tech zones and economic zones*

1. An investor shall submit eight (8) sets of the file, including at least two sets of original copies, to the management committee of the industrial zone, export processing zone, high-tech zone or economic zone.
2. Within a time-limit of three days, the management committee of the industrial zone, export processing zone, high-tech zone or economic zone shall evaluate the validity of the file and forward it to the ministry responsible for administration of the relevant economic-technical branch for its opinion in the case of conditional investment projects stipulated in Appendix D issued with this Decree.

Where a project file is invalid, the management committee of the industrial zone, export processing zone, high-tech zone or economic zone shall notify the investor of its refusal to consider the project or shall request [the investor] to amend or add to the file.

3. The ministry responsible for administration of the relevant economic-technical branch shall evaluate and provide a written opinion on investment conditions and shall, within a time-limit of fifteen (15) working days from the date of receipt of the project file, send [such opinion] of project issues under its administration to the management committee of the industrial zone, export processing zone, high-tech zone or economic zone. If upon expiry of such time-limit a written opinion has not been provided by the ministry, it shall be deemed to have accepted [the project].
4. The management committee of an industrial zone, export processing zone, high-tech zone or economic zone shall be responsible to:
  - (a) Organize evaluation and make a decision on issuance of an investment certificate within a time-limit of thirty (30) working days from the date of receipt of a valid and complete file.
  - (b) Based on the project file and the opinion of the ministry responsible for administration of the relevant economic-technical branch in respect of conditional investment projects, the management committee of the industrial zone, export processing zone, high-tech zone or economic zone shall request the investor to explain, amend or add to the file where necessary.

Where there are different opinions on important aspects of a project, the management committee of the industrial zone, export processing zone, high-tech zone or economic zone shall hold consultative meetings with the competent representatives of relevant bodies for consideration and decision;

- (c) Where an investment project is not approved, the management committee of the industrial zone, export processing zone, high-tech zone or economic zone shall notify the investor in writing stating clearly the reasons therefor.
5. Investment projects on a capital scale of below three hundred (300) billion VND and which are on the list of conditional investment projects stipulated in Appendix D issued with this Decree shall only be subject to evaluation of the conditions which the investment projects must satisfy.

## SECTION III

### Procedures for Amendment of Investment Projects

#### **Article 71** *Procedures for amendment of investment projects*

1. The amendment of an investment project shall be carried out in accordance with the following procedures:
  - (a) Amendment of an investment project without carrying out procedures for investment registration or investment evaluation;
  - (b) Amendment of an investment project associated with amendment of investment registration or of an investment certificate in accordance with the procedures for investment registration;
  - (c) Amendment of an investment project associated with amendment of investment registration or of an investment certificate in accordance with the procedures for investment evaluation.
2. When there is a need for an amendment relating to the objective, scale, location, form, capital or duration of a project, the investor shall carry out the following procedures:
  - (a) With respect to projects subject to investment registration, the investor shall decide himself and register the amendment with the provincial State administrative body for investment within a time-limit of ten days from the date of decision on amendment;
  - (b) With respect to projects subject to investment evaluation, the investor shall submit a written request for the amendment in the investment project to the authorized investment certificate-issuing body for consideration of the amendment.

The written request for the amendment in the investment project shall comprise contents in relation to the status of the implementation of the project; reasons for the amendment; amendments in contents which were evaluated.

3. The body authorized to issue or amend the items of investment certificates referred to in clause 2 of this article shall be the body which has issued the investment certificate for such project.

With respect to an investment project, upon amendment, the investment certificate-issuing body shall only evaluate amendments in contents which were evaluated.

Where an amendment in an investment certificate falls outside its authority, the investment certificate-issuing body shall seek an opinion of the authorized State body prior to issuance of the amended investment certificate.

#### **Article 72** *Amendment of investment projects without carrying out procedures for investment registration or investment evaluation:*

1. Domestic investment projects which, upon amendment, have an invested capital of bellow fifteen (15) billion VND and which are not on the list of sectors of investment subject to conditions.
2. Investment projects whose amendments are not related to the objective, scale, location, form, capital or duration of a project.

**Article 73** *Investment projects subject to registration of amendment of investment [shall comprise:]*

1. Investment projects subject to registration of amendments of investment shall comprise projects with amendments relating to the objective, scale, location, form of investment, capital or duration of a project and are in the following categories:
  - (a) Domestic investment projects which, upon amendment, have an invested capital from fifteen (15) billion to below three hundred (300) billion VND and which are not on the list of conditional investments.

With respect to domestic investment projects which were not subject to investment registration, but, upon amendment, are subject to investment registration, procedures for investment registration shall be carried out in accordance with article 61 of this Decree.
  - (b) Foreign investment projects which, upon amendment, have an invested capital of below three hundred (300) billion VND and which are not on the list of conditional investments.
2. A file for registration of amendments of an investment project shall comprise:
  - (a) Document on registration of amendments of the investment project;
  - (b) Photocopy of the investment certificate (if any);
  - (c) Joint venture contract or business co-operation contract and amended charter of the enterprise in respect of projects with foreign invested capital (if any).
3. The investor shall himself decide and register the amendments with the Department of Planning and Investment or the management committee of the industrial zone, export processing zone, high-tech zone or economic zone within a time-limit of ten (10) days from the date of decision on amendment.
4. Amendment of an investment project shall be carried out by way of amendment of and/or addition to the contents of the investment certificate in respect of projects which were issued with an investment certificate or by way of issuance of a new investment certificate in respect of projects which have not been issued with an investment certificate.

The Department of Planning and Investment or the management committee of the industrial zone, export processing zone, high-tech zone or economic zone shall notify the investor of the amendment of the investment certificate or of the issuance of a new investment certificate within a time-limit of fifteen (15) days from the date of receipt of a valid and complete file.

**Article 74** *Amendment of investment projects in accordance with procedures for investment evaluation [shall comprise:]*

1. Investment projects subject to evaluation of amendments of investment shall comprise projects with amendments relating to the objective, scale, location, form, capital or duration of a project and which are in the following categories:
  - (a) Investment projects which, upon amendment, have an invested capital of three hundred (300) billion VND or more.
  - (b) Projects on the list of conditional investments or which upon amendment will be on the list of conditional investments.

2. A file for evaluation of amendment of an investment project shall comprise:
  - (a) Document on amendment of the investment project including status of implementation of the project; explanation of reasons for the amendment; changes in contents which were evaluated for issuance of the investment certificate;
  - (b) Photocopy of the investment certificate (if any);
  - (c) Joint venture contract or business co-operation contract and amended charter of the enterprise in respect of projects with foreign invested capital (if any).
  - (d) In addition to the above documents and depending on the specific amendments, the file shall also include written approval from the ministry in charge of the relevant economic-technical branch with respect to amendments relating to the sector in which investment is conditional; written approval from the body in charge of administration of natural resources and environment if there is any amendment relating to exploitation of natural resources or any significant impact on the environment; and written approval from the provincial people's committee for the new location of the project.
3. Procedures for amendment of investment projects:
  - (a) The State administrative body for investment shall evaluate the amendments of the investment project proposed by the investor and relating to items required to be evaluated pursuant to articles 63, 65 and 66 of this Decree;
  - (b) The State administrative body for investment shall evaluate and amend the investment certificate within a period of fifteen (15) days from the date of receipt of a valid and complete file.

**Article 75** *Amendment of investment projects associated with amendment of items of business registration*

1. In the case of amendment of an investment project associated with an amendment of the items of business registration, the investor shall carry out the amendment of business registration in accordance with the law on business registration.
2. With respect to enterprises with foreign invested capital, the file for amendment of business registration shall be submitted together with the file for amendment of the investment project.

The State administrative body for investment shall consider the amendment of business registration and the amendment of the investment registration at the same time in order to amend or add to the investment certificate.

#### SECTION IV

##### **Files for Additions Applicable to Foreign Investment Projects**

**Article 76** *Files for additions applicable to foreign investment projects*

Foreign investors who have an investment project for the first time in Vietnam shall, in addition to the documents stipulated in Sections I, II and III of this Chapter, submit a charter of an enterprise, a joint venture contract or business co-operation contract with the items stipulated in articles 77 to 80 of this Decree.

**Article 77** *Charter of enterprise with foreign invested capital*

1. The charter of the enterprise must contain the contents stipulated in article 22 of the *Law on Enterprises*.

2. In addition to the contents stipulated in clause 1 of this article, the charter of an enterprise with foreign invested capital must contain these contents:
  - (a) Duration of operation of the project;
  - (b) Project implementation schedule and schedule of capital contribution.
3. The authorized representatives of investors or joint venture parties must sign each page of the charter of the enterprise and again at the end of the charter of the enterprise, which must then be registered with the investment certificate-issuing body.

**Article 78** *Contents of joint venture contract*

A joint venture contract must contain the following main items:

1. The names and addresses of the organizations and individuals investing in participation in the joint venture, and of the legal representatives of the joint venture parties; the name and address of the joint venture enterprise.
2. Form of enterprise.
3. Sector, line and scope of business.
4. Legal capital, capital contribution portion of each party, method and schedule of legal capital contributions.
5. Duration of operation of the project.
6. Main products.
7. Rights and obligations of the joint venture parties.
8. Principles of financial management; [principles] of distribution of profits and dealing with losses during business.
9. Procedures for amendment and termination of the contract, conditions for assignment, conditions for termination of operations and dissolution of the enterprise.
10. Liability for breach of contract and method of dispute resolution.

Apart from the above items, the joint venture parties may agree on other items which are not contrary to the laws in the joint venture contract.

The joint venture contract must be signed by the authorized representatives of the joint venture parties on each page and again at the end of the contract. The joint venture contract shall become effective as from the date of issuance of the investment certificate.

**Article 79** *Contents of business co-operation contract*

A business co-operation contract must contain the following principal items:

1. The names, addresses, and authorized representatives of the business co-operation parties (hereinafter referred to as *the co-operating parties*); and the transaction address or address of the location in which the project will be implemented.
2. Objectives and scope of business.
3. Making of the contribution portion by the co-operating parties, distribution of business results, and project implementation schedule.
4. Main products, ratio of export products and of domestic consumption.

5. Term of the contract (in the case of a project with foreign invested capital, the term of the contract shall not exceed the duration stipulated in article 52 of the *Law on Investment*).
6. Rights and obligations of the co-operating parties.
7. Financial principles.
8. Procedures for amendment and termination of the contract and the conditions for assignment.
9. Liability for breach of contract and method of dispute resolution.

Apart from the above items, the co-operating parties may agree on other items in the business co-operation contract. A business co-operation contract must be signed by the authorized representatives of the co-operating parties on each page and again at the end of the contract. A business co-operation contract between a Vietnamese party and a foreign party shall become effective as from the date of issuance of the investment certificate.

**Article 80** *Procedures for capital contribution, purchase of shareholding in, merger or acquisition of an enterprise in respect of direct investment*

1. A domestic investor who purchases shareholding in, merges or acquires an enterprise in the form of direct investment stipulated in article 21 of the Law on Investment must carry out business registration with the business registration body in accordance with the Law on Enterprises.
2. A foreign investor who purchases shareholding, merges or acquires an enterprise in Vietnam in the form of investment stipulated in article 11 of this Decree shall carry out the following procedures:
  - (a) Where the foreign investor contributes capital to or purchase shareholding of a Vietnamese enterprise, the enterprise shall carry out business registration with the business registration body in accordance with the Law on Enterprises;
  - (b) Where the foreign investor contributes capital to or purchase shareholding of a foreign enterprise operating in Vietnam, it shall carry out procedures for amendment of its project at the body authorized to issue investment certificates for issuance of an investment certificate.

A file for capital contribution or purchase of shareholding shall comprise:

- Name and address of the enterprise or branch of the enterprise to be equitized or sold; the decision of the members' council or of the board of management on sale of shareholding.
  - Names and addresses of the parties to the transaction, including contact information and general information on the branch or sector of the transaction.
  - Charter of the enterprise.
- (c) Where a foreign investor acquires or merges enterprises operating in Vietnam, the following procedures shall be carried out at the body authorized to issue investment certificates for issuance of an investment certificate.

A file for acquisition of an enterprise operating in Vietnam shall comprise:

- Name and address of the acquired enterprise; decision of the members' council or of the board of management on the sale of the enterprise;

- Names and addresses of the parties to the transaction, including contact information and general information on the branch or sector of the transaction;
- Contract for acquisition of an enterprise. The contract must contain the following main items: the name and address of the purchased company; procedures and conditions for acquisition of an enterprise; plan for employment of employees; procedures, conditions and period for transfer of assets, capital, shares or bonds of the purchased company; period for implementation of the acquisition; responsibilities of the parties to the transaction;
- Charter of the purchased company.
- Description of the transaction and explanation on the effect of the transaction on the Vietnamese market in accordance with the requirements specified in article 11.3 of this Decree.

A file for merge of an enterprise operating in Vietnam shall comprise:

- File for merge of an enterprise in accordance with the law on merge of enterprises stipulated in article 153 of the Law on Enterprises.
- Description of the transaction and explanation on the effect of the transaction on the Vietnamese market in accordance with the requirements specified in article 11.3 of this Decree.

**Article 81** *Procedures for conversion of forms of investment of enterprises with foreign invested capital*

Procedures for conversion of the form of investment of an enterprise with foreign invested capital referred to in article 14 of this Decree shall be carried out as follows:

1. The conversion of the form of investment associated with the conversion of the form of an enterprise must comply with the provisions of the Law on Enterprises on conversion of companies.
2. To convert the form of investment, an enterprise with foreign invested capital or parties to a business co-operation contract shall submit a file for conversion of a form of investment comprising the following documents to the investment certificate-issuing body:
  - (a) Decision of the board of management of the joint venture enterprise or the decision of the investor (in the case of enterprises with one hundred (100) percent foreign owned capital); or the agreement of business co-operation parties (in the case of business co-operation contracts);
  - (b) Charter of a converted enterprise; business co-operation contract (in the case of the form of a business co-operation contract).
3. The decision of the board of management of the joint venture enterprise or the decision of the investor (in the case of enterprises with one hundred (100) percent foreign owned capital); or the agreement of business co-operation parties (in the case of business co-operation contracts) shall be notified to creditors and employees within a period of fifteen (15) days from the date on which the decision is adopted.
4. The investment certificate-issuing body shall issue a decision to amend the investment certificate and give notification to the enterprise within a period of thirty (30) working days from the date of receipt of the valid and complete file stipulated in clause 2 of this article.

## CHAPTER VII

## State Administration of Investment

### Article 82 *Contents of State administration of investment*

1. Formulation of strategies, planning, plans and policies for the development of investment and direction of the implementation thereof for mobilization and accommodation of resources for investment and development.
2. Promulgation of policies and laws concerning investment activities, and guidance and organization of the implementation thereof in compliance with the schedule on international economic integration; supervision of the promulgation of legal instruments concerning investment; collection of, making recommendations on or revocation of legal instruments which are inappropriate [to the real situation] or promulgated not in accordance with the authority [of the State bodies] or having inappropriate content.
3. Issuance, amendment and revocation of investment certificates; monitoring, guidance and gathering of information on investment registration and issuance of investment certificates.
4. Assessment of impacts and macro-economic efficiency of investment activities.
5. Provision of guidance and assistance to investors in implementation of investment projects and resolution of problems and requests of investors during investment activities.
6. Co-ordination between State administrative bodies at all levels in management of investment activities.
7. Examination, inspection, and supervision of the observance of the laws on investment by State bodies and investment activities of investors.
8. Resolution of complaints and denunciations of organizations and individuals concerning investment activities in accordance with authority. Granting rewards to organizations and individuals with achievements in investment activities, and dealing with breaches of law by organizations and individuals.
9. Support for human resource training for investment-related activities.
10. Implementation of State administration of international co-operation, negotiation and signing of international treaties relating to investment activities in accordance with the law on international treaties.
11. State administration of investment promotion activities; building of an information system serving investment activities

### Article 83 *Responsibilities for State administration of investment*

1. The Government shall exercise uniform State administration of investment throughout the whole country; direct the formulation and implementation of strategies, promulgate policies, legal instruments, and approve master plans and specific plans on the development of investment in respective branches, sectors and economic zones.
2. The Prime Minister of the Government shall direct ministries, branches and localities to strictly comply with the law and policies on investment; assign and/or delegate powers amongst ministries, branches and localities to undertake State administration of investment; direct resolution of difficulties in administration and management of investment activities beyond the authority of ministries, branches and localities; and decide on the policy for investment projects under his authority.
3. Ministries, branches, provincial people's committees and management committees of industrial zones, export processing zones, high-tech zones and economic zones shall be

responsible for providing guidelines on investment in sectors and localities under their administration to ensure prompt, simple and transparent investment procedures.

4. The Government, ministries, branches, provincial people's committees and management committees of industrial zones, export processing zones, high-tech zones and economic zones shall schedule talks with enterprises and investors for the reception of recommendations and to deal with problems arising during the process of investment.
5. Ministries, ministerial equivalent bodies and provincial people's committees shall not be permitted to issue regulations specifying sectors in which investment is prohibited and sectors in which investment is conditional, specifying investment incentives which exceed the brackets stipulated by law, or specifying additional procedures which may obstruct investment activities.

**Article 84** *Responsibilities of the Ministry of Planning and Investment for State administration of investment*

The Ministry of Planning and Investment shall be responsible before the Government for State administration of investment activities, comprising:

1. Presiding over and co-ordinating with ministries, branches and localities in formulation and review of legal documents and policies on investment.  
  
Guiding, monitoring and checking the implementation of the provisions of the law on investment.
2. Organizing and co-ordinating with ministries, branches and local authorities in formulation of planning or plans for investment and development, gathering [information] and directing the implementation thereof.
3. Presiding over and co-ordinating with ministries, branches and provincial people's committees in preparation of and submission to the Prime Minister of the Government for approval lists of national projects calling for domestic investment capital and foreign investment capital.
4. Co-ordinating with ministries, branches and provincial people's committees in the preparation of programmes, specific plans and organizing the implementation of investment promotion activities either domestically or overseas; establishing representative organizations on investment promotion in regions or countries with potential to invest in Vietnam.
5. Organizing evaluation for issuance, amendment and revocation of investment certificates with respect to investment projects falling within the approval authority of the Prime Minister of the Government and investment projects falling under the authority of the Ministry of Planning and Investment.
6. Acting as a focal body to gather matters arising from the formation, [commencement] and implementation of investment projects beyond the authority of ministries, branches and localities and submit them to the Prime Minister of the Government for his consideration and decision.
7. Presiding over and co-ordinating with ministries and branches in drafting, negotiating and submission to the Government for execution of or accession to international treaties relating to investment activities in accordance with the law on international treaties.
8. Assessment of impacts and macroeconomic efficiency of investment activities.
9. Checking and inspecting investment activities in accordance with its authority; supervising State administration of investment in accordance with its authority.

10. Gathering the status of investment activities for report to the Prime Minister of the Government on an annual or semi-annual basis.

**Article 85** *Responsibilities of the Ministry of Finance for State administration of investment*

1. Presiding over and co-ordination with ministries and branches in formulation of laws and policies on support and investment incentives; providing guidelines on order and procedures for support and investment incentives.
2. Issuing investment licences in respect of projects in sectors which fall under its authority; examining, inspecting and supervising activities of the projects which have been issued with an investment licence.
3. Evaluating and giving its opinions in writing on issues relating to finance or guarantees of the Government for finance in respect of investment projects which fall under the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.
4. Carrying out specialized examination, inspection and supervision of the implementation of the financial or accounting regime of investment projects.
5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investors in respect of taxes, charges and fees, customs formalities, management of finance and other financial activities.

**Article 86** *Responsibilities of the Ministry of Trade for State administration of investment*

1. Presiding over and co-ordinating with ministries and branches in formulation of laws and policies on trade relating to investment activities.
2. Issuing investment licences in respect of projects in sectors which fall under its authority; examining, inspecting and supervising activities of the projects which have been issued with an investment licence.
3. Giving its opinions in writing on issues relating to trade activities of investment projects which fall under the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.
4. Carrying out specialized examination, inspection and supervision of trade activities of investment projects.
5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems relating to trade activities of investment projects.

**Article 87** *Responsibilities of the Ministry of Natural Resources and Environment for State administration of investment*

1. Presiding over and co-ordinating with relevant ministries and branches in formulation of laws and policies and providing guidelines for implementation of the regulations on land management, site clearance, compensation, management of natural resources and of the environment relating to investment activities.
2. Evaluating and giving its opinions in writing on issues relating to land, site clearance, compensation, management of natural resources and of the environment of investment projects which fall under the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.

4. Carrying out specialized examination, inspection and supervision of the implementation of regimes and policies relating to land, site clearance, compensation, management of natural resources and of the environment of investment projects.
5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investors in the fields of land management, site clearance, compensation, management of natural resources and of the environment.

**Article 88** *Responsibilities of the Ministry of Science and Technology for State administration of investment*

1. Presiding over and co-ordinating with ministries and branches in formulation of laws and policies and providing guidelines for implementation of regulations on science and technology relating to investment activities.
2. Giving its opinions in writing on issues relating to science and technology of investment projects which fall under the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.
3. Carrying out specialized examination, inspection and supervision of the implementation of regimes and policies relating to science and technology of investment projects.
4. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investors in the fields of science and technology of investment projects.

**Article 89** *Responsibilities of the State Bank of Vietnam for State administration of investment*

1. Presiding over and co-ordinating with ministries and branches in formulation of laws and policies and providing guidelines for implementation of regulations on credit and foreign exchange control relating to investment activities.
2. Issuing investment licences in respect of projects which fall under its authority; examining, inspecting and supervising activities of projects which have been issued with an investment licence.
3. Giving its opinions in writing on issues relating to credit and foreign exchange control of investment projects which fall under the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.
4. Carrying out specialized examination, inspection and supervision of the implementation of regimes and policies relating to credit and foreign exchange control of investment projects.
5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investors in the fields of credit and foreign exchange control of investment projects

**Article 90** *Responsibilities of technological – economical ministries and branches for State administration of investment*

Ministries, ministerial equivalent bodies and Government bodies shall, within the scope of their respective duties and powers, be responsible for exercising State administration of investment within the respective sectors delegated to them, in particular:

1. Co-ordination with the Ministry of Planning and Investment and relevant ministries and branches in the formulation of laws and policies relating to investment activities.
2. Presiding over and co-ordinating with relevant ministries and branches in formulation and promulgation of laws, policies, standards and technical regulations and providing

guidelines for implementation of regulations in technically or economically specialized fields relating to investment activities.

3. Submitting conditions for investment in sectors in which investment is conditional in technical or economic branches to the Government form promulgation.
4. Preparation of master plans, specific plans and lists of projects calling for capital within branches; arranging for specialized mobilization and promotion of investment.
5. Evaluating and giving their opinions in writing on conditions for investment in respect of conditional investment projects

Giving their opinions in writing on issues which fall under their authority in respect of investment projects which fall under the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.

6. Carrying out specialized examination, inspection and supervision of the implementation of conditions for investment and State administration in respect of investment projects which fall under their authority.
7. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investment projects in the fields which fall under their specialized administration.

**Article 91** *Responsibilities of provincial people's committees for State administration of investment*

1. On the basis of the master plan for socio-economic development, to co-ordinate with relevant ministries and branches in preparation and promulgation of lists of projects calling for investment within their localities; organization of mobilization and promotion of investment.
2. Presiding over registration of investment, evaluation, issuance of investment certificates, amendment and revocation of investment certificates, making decisions on termination of operation of investment projects prior to expiry of duration applicable to investment projects falling within their authority.
3. Evaluating and giving their opinions in writing on the items specified in article 48 of the Law on Investment in respect of investment projects in their respective localities falling within the approval authority of the Prime Minister of the Government and of the Ministry of Planning and Investment.
4. Performing the responsibility for State administration of investment projects in their respective localities, including the following items:
  - (a) Monitoring, supervision and checking of implementation of objectives provided for in investment certificates, schedule of capital contribution and commencement of investment projects.
  - (b) Monitoring, supervision and checking of the performance of financial obligations, labour relations and wages; protection of legitimate interests of employees and of employers, operation of socio-political organizations and protection of the ecological environment.
  - (c) Granting certificates of land use rights and supervising the land use; implementing site clearance; permitting the establishment of branches and representative offices;
  - (d) Dealing with difficulties and problems of investors; making proposals to the Prime Minister of the Government or relevant ministries or branches deal with matters beyond their authority.

- (dd) Presiding over or co-ordinating with ministries and branches in examination, inspection and supervision of investment projects in their respective localities.
  - (e) Evaluation of efficiency of investment activities in their respective localities.
5. Submitting reports on investment activities in their respective localities on a quarterly, semi-annual and annual basis to the Ministry of Planning and Investment for gathering.

**Article 92** *Responsibilities of management boards of industrial zones, export processing zones, high-tech zones and economic zones for State administration of investment*

1. Contributing their opinions with ministries, branches, localities in formulation of legal instruments, policies and master plans concerning investment activities, concerning development of their industrial zone, export processing zone, high-tech zone or economic zone.
2. Carrying out investment registration, evaluation, issuance, amendment and revocation of investment certificates in respect of investment projects which fall under their authority.
3. Evaluating and giving their opinions in writing in respect of investment projects which fall under the authority of the Prime Minister of the Government and of the Ministry of Planning and Investment to approve the issuance of investment certificates and which will be implemented in their industrial zones, export processing zones, high-tech zones or economic zones.
4. Examining, inspecting and supervising the realization of objectives provided for in investment certificates, the schedule of capital contribution and commencement of investment projects; labour relations and wages; protection of legitimate interests of employees and of employers, operation of socio-political organizations and protection of the ecological environment in respect of projects in their industrial zones, export processing zones, high-tech zones or economic zones.
5. Dealing with difficulties and problems of investors in industrial zones, export processing zones, high-tech zones or economic zones; and making proposals to the Prime Minister of the Government, relevant ministries and branches or provincial people's committees deal with matters beyond their authority.
6. Evaluation of investment efficiency in industrial zones, export processing zones, high-tech zones or economic zones.
7. Submitting reports on investment activities in industrial zones, export processing zones, high-tech zones or economic zones on a quarterly, semi-annual and annual basis to the Ministry of Planning and Investment and the provincial people's committee for gathering.
8. Performance of other responsibilities for administration of investment stipulated by the Prime Minister of the Government.

**Article 93** *Organization of management boards of industrial zones, export processing zones, high-tech zones and economic zones*

1. *The management board of an industrial zone, export processing zone, high-tech zone or economic zone* means the body in charge of management of such industrial zone, export processing zone, high-tech zone or economic zone within the locality of a province or city under central authority. The management board of an industrial zone, export processing zone, high-tech zone or economic zone shall be established by a decision of the Prime Minister of the Government upon the proposal of the chairman of the provincial people's committee and the Minister of Internal Affairs, and shall be subject to direction and management in respect of its organization, permanent staff, working plan and operational budget by the provincial people's committee.
2. The functions, duties, powers, organizational structure and regulations for operation of

management boards of industrial zones, export processing zones, high-tech zones and economic zones and their relationship with provincial people's committees shall be stipulated by the Government.

**Article 94** *Master plan for development of industrial zones, export processing zones, high-tech zones and economic zones*

1. Based on the strategy, master plan and plan for socio-economic development from time to time, zoning and plan for land use of the country and of each locality, the Ministry of Planning and Investment shall preside over and co-ordinate with relevant ministries, branches and local authorities to study and formulate a nationwide master plan for development of industrial zones and export processing zones (hereinafter referred to as Master Plan for Development of Industrial Zones) and submit it to the Prime Minister of the Government for his consideration and approval.

The establishment and objectives of operation of industrial zones and export processing zones shall be based on the Master Plan for Development of Industrial Zones in accordance with the decision of the Prime Minister of the Government.

2. Based on the strategy of socio-economic development and strategy of technical and technological development from time to time, the Ministry of Science and Technology shall preside over and co-ordinate with relevant ministries, branches and local authorities to study and formulate a nationwide master plan for development of high-tech zones and submit it to the Prime Minister of the Government for his consideration and approval.

The establishment and objectives of operation of high-tech zones shall be based on the master plan for development of high-tech zones in accordance with the decision of the Prime Minister of the Government.

3. Based on the strategy and nationwide plan for socio-economic development, zoning for land use of the country; plan for socio-economic development of each locality, the Ministry of Planning and Investment shall preside over and co-ordinate with relevant ministries, branches and local authorities to study and formulate a nationwide master plan for development of economic zones from time to time and submit it to the Prime Minister of the Government for his consideration and approval.

The establishment and objectives of operation of economic zones shall be based on the master plan for development of economic zones in accordance with the decision of the Prime Minister of the Government.

4. The Ministry of Planning and Investment shall, on the basis of the master plan for socio and economic development from time to time, co-ordinate with ministries, branches and local authorities to formulate criteria which shall be used as a basis for construction of industrial zones, export processing zones, high-tech zones and economic zones.

**Article 95** *Co-ordination of State administration in investment*

1. Ministries, ministerial equivalent bodies and provincial people's committees shall co-ordinate within the scope of their respective authority when exercising State administration of investment.
2. Ministries, ministerial equivalent bodies and provincial people's committees shall reach agreement with the Ministry of Planning and Investment prior to the issuance of master plans, policies and guidelines relating to investment. In cases of differing opinions, they shall report to the Prime Minister of the Government for his decision.
3. Depending on the nature and content of State administration of investment, investment administration bodies shall, within their authority, periodically hold briefing meetings between ministries and people's committees to deal with difficulties of investors.

4. With respect to important national projects which concern a number of ministries, branches and localities, such ministries, branches and localities shall preside over establishment of an inter-ministerial working group for co-operation in the implementation of investment projects.

**Article 96** *Performance of investment promotional activities*

1. Investment promotional activities shall comprise:
  - (a) Formulating strategies, specific plans and policies in order to attract domestic and foreign investment capital, creating conditions for mobilization of investment capital from all economic sectors;
  - (b) Disseminating, broadcasting, introducing, and providing information on the investment environment, investment potential and opportunities;
  - (c) Establishment of investment promotional agencies inside and outside Vietnam in order to mobilize, support and guide investors in respect of policies, provisions of law on investment and selection of industries and localities for implementation of investment projects.
  - (d) Preparation of lists of [sectors] calling for national capital and lists of [sectors] calling for capital of branches and localities in accordance with master plans and strategies for socio-economic development in each period.
2. Based on objectives and strategies of calling for investment, the State administrative body for investment shall prepare specific plans for investment promotion and shall submit them to the Ministry of Planning and Investment to co-ordinate performance thereof.
3. Funds for investment promotional activities by State bodies shall be granted from the State Budget and managed uniformly in accordance with guidance of the Ministry of Finance.

Annually, ministries, ministerial equivalent bodies, Government bodies and provincial people's committees shall formulate specific plans for investment promotion and estimated expenses for annual investment promotional activities.

The Ministry of Finance shall co-ordinate with the Ministry of Planning and Investment in guiding the formulation of expenses for investment promotional activities and management of finance concerning investment promotional activities.

**Article 97** *Inspection of investment activities and dealing with breaches in relation to investment*

1. The scope of inspection of investment and the organization and operation of the investment inspectorate shall be subject to the Law on Investment and the law on inspection.
2. Any breach of the law on investment and penalization of such breaches shall be subject to law.

**Article 98** *Dispute resolution*

1. Disputes relating to investment activities in Vietnam shall be resolved through negotiation, conciliation, arbitration or courts in accordance with law.
2. Disputes amongst domestic investors or between domestic investors and State administrative bodies of Vietnam relating to investment activities in the territory of Vietnam shall be resolved by an arbitrator or court of Vietnam.

3. Disputes of which one party is a foreign investor or disputes between foreign invested enterprises shall be resolved by one of the following bodies or organizations:
- (a) A Vietnamese court;
  - (b) A Vietnamese arbitrator;
  - (c) A foreign arbitrator;
  - (d) An international arbitrator;
  - (dd) An arbitrator established pursuant to the agreement of the parties.
4. Disputes between foreign investors with State administrative bodies of Vietnam relating to investment activities within the territory of Vietnam shall be resolved by an arbitrator or court of Vietnam, unless otherwise agreed in the contract signed between the representative of the State competent body with the foreign investor or stipulated in an international treaty of which Vietnam is a member.

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## CHAPTER VIII

### Implementing Provisions

**Article 99** *Application of the laws to projects carrying out investment prior the date of effectiveness of the Law on Investment*

1. Domestic investment projects which have been implemented prior to the date of effectiveness of the *Law on Investment* shall not be required to carry out procedures for investment registration or evaluation; where an investor has a requirement for issuance of an investment certificate, the investor shall register with the body authorized to issue investment certificates and shall not be required to carry out procedures for investment evaluation (if his project is subject to investment evaluation).
2. Foreign investment projects which have been issued with an investment licence prior to the date of effectiveness of the *Law on Investment* shall not be required to carry out procedures for issuance of an investment certificate; where an investor has a requirement for re-registration of investment in accordance with the *Law on Investment*, the investor shall carry out procedures for registration for re-issuance of an investment certificate.

Where a foreign investment project has been submitted to the body authorized to issue investment certificates, but has not been issued with an investment licence prior to the date of effectiveness of the *Law on Investment*, the investment certificate-issuing body shall issue an investment certificate on the basis of the submitted investment project file and the provisions of the *Law on Investment* and this Decree.

**Article 100** *Implementing provisions*

1. This Decree shall be of full force and effect as of 1 July 2006. All previous provisions which are inconsistent with this Decree are hereby repealed.
2. The Ministry of Planning and Investment shall be responsible for providing guidelines for the implementation of this Decree.

Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and Chairmen of people's committees of provinces and cities under central authority shall be responsible for providing guidelines and implementation of this Decree.

On Behalf of the Government  
Prime Minister

PHAN VAN KHAI

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- A2 List of encouraged sectors
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## APPENDIX D

### LIST OF SECTORS IN WHICH INVESTMENT IS CONDITIONAL APPLICABLE TO FOREIGN INVESTORS

*(Issued with Decree /2006/ND-CP dated / /2006  
Providing Guidelines for the Implementation of the Law on Investment)*

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1. Broadcasting and television.
2. Production, publishing and distribution of cultural products.
3. Investment in fields of insurance, banking, brokerage, trading of securities, monetary and other related services.
4. Exploration and exploitation of minerals.
5. Construction, installation, operation and maintenance of telecommunication equipment.
6. Construction and operation of river ports, sea ports and airports.
7. Transportation of goods and passengers by railway, airway, roadway and sea and waterways.
8. Catching of ~~Fishing~~ and aquaculture.
9. Production of tobacco;
10. Real estate business.
11. Import, export and distribution business;
12. Education and training
- 13~~2~~. Other investment sectors specified in international treaties of which Vietnam is a member, committing to restrict the opening of the investment market to foreign investors;
- 14~~3~~. With respect to investment in the above sectors, conditions applicable to foreign investors shall conform to the measures stipulated in international treaties of which Vietnam is a member.