

**DECREE No. 108/2006/ND-CP OF SEPTEMBER 22, 2006, DETAILING AND GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE INVESTMENT LAW**

THE GOVERNMENT

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

*Pursuant to the November 29, 2005 Law on Investment;*

*At the proposal of the Minister of Planning and Investment;*

DECREES:

**Chapter I**

**GENERAL PROVISIONS**

**Article 1.-** Scope of regulation and subjects of application

1. Scope of regulation

a/ This Decree details and guides the implementation of a number of articles of the November 29, 2005 Law on Investment regarding investment activities for business purposes; rights and obligations of investors; guarantees for legitimate rights and interests of investors; investment encouragement and incentives; and state management of investment in Vietnam;

b/ Offshore investment; investment activities in the forms of build-operate-transfer contract, build-transfer-operate contract and build-transfer contract shall comply with separate regulations of the Government;

c/ Indirect investment activities in the forms of purchase of shares, share certificates, bonds and other valuable papers, investment in securities and investment through other intermediary financial institutions without direct participation of investors in managing and running economic organizations shall comply with the law on securities and relevant laws;

d/ Specific investment activities provided in a specialized law shall comply with that law.

2. This Law applies to investors defined in Clause 4, Article 3 of the Law on Investment; organizations and individuals involved in investment activities.

**Article 2.-** Interpretation of terms

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

1. Investment capital means amounts in Vietnam dong or freely convertible foreign currencies and other lawful assets used for carrying out investment activities in the form of either direct or indirect investment. Lawful assets include:

a/ Shares, share certificates or other valuable papers;

b/ Bonds, liabilities and other forms of debt;

c/ Rights under contracts including turn-key contracts, construction contracts, management contracts, product or revenue sharing contracts;

- d/ Rights to recover debts and contractual rights of economic value;
- e/ Technology and intellectual property rights, including trade marks, industrial designs, inventions, trade names, origin or appellation of origin of goods;
- f/ Rights of assignment, including rights to exploration and exploitation of natural resources;
- g/ Immovables, rights to immovables, including rights to lease, to transfer, to make capital contribution, to mortgage and to provide guarantee;
- h/ Profits generated from investment activities, including profits, share interests, dividends, royalties and assorted charges;
- i/ Assets and other rights of economic value as provided for by law and treaties to which Vietnam is a contracting party.

2. New investment project means a project executed for the first time or an investment project independent from a currently operating project.

3. Expansion investment project means an investment project for the development of a currently operating investment project in order to expand scale, increase output or business capacity, renew technology, improve product quality and mitigate environmental pollution.

4. Foreign investor investing in Vietnam for the first time means a foreign investor who for the first time has an investment project in Vietnam.

**Article 3.-** Application of investment law, treaties, foreign laws and international investment practice

1. The application of investment law, treaties, foreign laws and international investment practice shall comply with the provisions of Article 5 of the Investment Law.

2. When a Vietnamese law that is promulgated after Vietnam becomes a contracting party to a treaty contains provisions which are more favorable than those of the treaty, investors are entitled to select the application of the treaty or the Vietnamese law.

**Article 4.-** Language

The dossier of an investment project and official documents sent to Vietnamese state agencies must be in Vietnamese for domestic investment projects; for foreign investment projects, they must be in Vietnamese or in both Vietnamese and a common foreign language. If there is a disparity between the Vietnamese and the foreign language versions, the Vietnamese one shall be applied.

## **Chapter II**

### **FORMS OF INVESTMENT**

**Article 5.-** Forms of investment

Investors shall carry out investment activities in Vietnam in the forms of investment provided in Articles 21, 22, 23, 24, 25 and 26 of the Investment Law and the provisions of this Decree.

**Article 6.-** Establishment of economic organizations and execution of investment projects

1. Domestic investors that have an investment project associated with the establishment of an economic organization shall carry out procedures for business registration in accordance with the Enterprise Law and relevant laws and shall carry out investment procedures in accordance with the Investment Law and this Decree.
2. Foreign investors investing in Vietnam for the first time must have an investment project and shall carry out investment procedures in order to be granted an investment certificate under the provisions of the Investment Law and this Decree. The investment certificate is concurrently the business registration certificate.
3. For foreign investors that have been granted an investment certificate in Vietnam:
  - a/ If they have a new investment project but do not establish a new economic organization, they shall carry out investment procedures so as to be granted an investment certificate under the provisions of the Investment Law and this Decree;
  - b/ If they have a new investment project associated with the establishment of a new economic organization, they shall carry out investment procedures under the provisions of Clause 2 of this Article.

**Article 7.-** Establishment of economic organizations with 100% capital of investors

1. Domestic investors and foreign investors may invest in the form of 100% of their own capital to establish limited liability companies, joint-stock companies, partnerships or private enterprises under the provisions of the Enterprise Law and relevant laws.
2. Enterprises with 100% foreign investment capital which have been established in Vietnam may cooperate with one another and with foreign investors to establish new enterprises with 100% foreign investment capital.
3. An enterprise with 100% foreign investment capital shall have the legal person status under Vietnamese law, be established and operate from the date of grant of the investment certificate.

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

1. Foreign investors may enter into joint ventures with domestic investors to establish limited liability companies with two or more members, joint-stock companies or partnerships under the provisions of the Enterprise Law and relevant laws.
2. An enterprise established under the provisions of Clause 1 of this Article may enter into a joint venture with domestic investors and foreign investors to invest in the establishment of a new economic organization under the provisions of the Enterprise Law and relevant laws.
3. An enterprise investing in the form of a joint venture shall have the legal person status under Vietnamese law, be established and operate from the date of grant of the investment certificate.

**Article 9.-** Investment in the form of business cooperation contract

1. In the case of investment in the form of business cooperation contract between one or more foreign investors and one or more domestic investors (hereinafter referred to as business cooperation parties for short), the business cooperation contract must stipulate the interests and responsibilities of, and the sharing of business results to, each business cooperation party.

2. Business cooperation contracts in the domain of prospecting, exploration for and exploitation of oil and gas and some other natural resources in the form of product sharing contract must comply with the provisions of relevant laws and the Investment Law.

3. A business cooperation contract signed between domestic investors for investment and business purposes must comply with the provisions of law on economic contracts and relevant laws.

4. In the process of investment and business, the business cooperation parties may agree to establish a coordination board for the performance of the business cooperation contract. The functions, tasks and powers of the coordination board shall be as agreed by the business cooperation parties. The coordination board is not a leadership body of the business cooperation parties.

5. A foreign business cooperation party may set up an executive office in Vietnam to act as its representative in the performance of the business cooperation contract.

The executive office of a foreign business cooperation party shall have a seal; may open accounts, recruit employees, sign contracts and conduct business activities within the scope of its rights and obligations defined in the investment certificate and the business cooperation contract.

**Article 10.-** Investment in the form of contribution of capital to, purchase of shares from, merger with or acquisition of enterprises

1. Investors are entitled to contribute capital to, purchase shares from, merge with or acquire enterprises in order to participate in management of investment activities under the provisions of the Enterprise Law and relevant laws. Merging or acquiring enterprises shall take over the rights and obligations of merged or acquired enterprises, unless otherwise agreed by the parties.

2. When an investor contributes capital to, purchases shares from, merges with or acquires an enterprise in Vietnam, the investor shall comply with the provisions of treaties to which Vietnam is a contracting party on the ratio of capital contribution, forms of investment and the market opening roadmap; shall observe the provisions of the competition law and enterprise law on conditions for economic concentration; and shall meet investment conditions, if the investment project is in a conditional investment domain.

### **Chapter III**

#### **RIGHTS AND OBLIGATIONS OF INVESTORS**

**Article 11.-** Right to investment and business autonomy

1. Investors are entitled to investment and business autonomy as provided in Article 13 of the Investment Law, except for investment and business in the domains banned by law from investment and business.

2. For conditional investment domains, investors are entitled to investment and business autonomy if they meet investment conditions as required by law.

**Article 12.-** Right to access and use credit capital sources, land and natural resources

Investors have equal rights to access and use credit capital sources, land and natural resources in accordance with law.

**Article 13.-** Right to hire and employ laborers and set up trade unions

Investors are entitled to:

1. Hire domestic and foreign laborers as managers, technicians and specialists in accordance with the requirements of production and business. If a treaty to which Vietnam is a contracting party contains different provisions, the provisions of that treaty shall be applied.

2. Decide on salaries and minimum salary level for laborers in accordance with the labor law.

3. Set up trade unions in enterprises in accordance with law.

**Article 14.-** Rights to import, export, advertise, conduct marketing, conduct processing and re-processing related to investment activities

Investors are entitled to:

1. Directly export or entrust the export of, directly import or entrust the import of, equipment, machinery, supplies, raw materials and goods for investment activities; advertise, conduct marketing, process and re-process goods related to investment activities under the provisions of Article 15 of the Investment Law and the provisions of the commercial law.

2. Invest in the domains of importation, exportation, distribution and other commercial services in accordance with the investment law, the commercial law and treaties to which Vietnam is a contracting party.

**Article 15.-** Right to buy and sell goods between export processing enterprises and the domestic market

1. Export processing enterprises may buy goods from the domestic market for production, processing, re-processing or assembly of export goods or for export, except for goods banned from export.

2. Export processing enterprises may sell into the domestic market the following goods:

a/ Products made by export processing enterprises and not banned from import;

b/ Products made by export processing enterprises and needed by the domestic market;

c/ Scraps and defective products collected in the process of production which are not banned from import or are permitted for import under the commercial law and relevant laws.

3. The relationship of purchase and sale of goods between export processing enterprises and the domestic market shall be as provided for in the commercial law.

**Article 16.-** Right to open bank accounts and buy foreign currencies

1. Investors may open Vietnam dong and foreign currency accounts at credit institutions located in Vietnam in accordance with the law on foreign exchange management. If obtaining approval of the State Bank of Vietnam, investors may open accounts at overseas banks.

The conditions and procedures for opening, using and closing accounts at credit institutions located in Vietnam and overseas banks shall be as provided for in the law on foreign exchange management and relevant laws.

2. Investors may purchase foreign currencies from credit institutions licensed to deal in foreign currencies to meet the requirements for current transactions, capital transactions and other permitted transactions in accordance with the law on foreign exchange management.

3. The Government shall support foreign exchange balancing when licensed credit institutions cannot fully satisfy the demand for foreign currency of investors for a number of important investment projects in the following domains:

a/ Energy;

b/ Waste treatment;

c/ Construction of traffic infrastructure.

4. The Prime Minister shall decide to guarantee the foreign currency balancing for investors having investment projects in the domains specified in Clause 3 of this Article. A guarantee of foreign currency balance shall be stated in the investment certificates.

**Article 17.-** Right to access land funds, to mortgage land use rights and assets attached to land

1. Provincial-level People's Committees shall make public land use plannings and plans already approved by competent authorities so that investors can access land funds for investment development.

2. Investors may mortgage land use rights and assets attached to land with credit institutions licensed to operate in Vietnam to borrow capital for executing investment projects in accordance with the land law and relevant laws.

**Article 18.-** Other rights of investors

1. To enjoy investment preferences in accordance with the investment law and relevant laws.

2. To access and use public services and utilities on the principle of non-discrimination among investors.

3. To select forms of investment, scale of investment and ratio of investment capital, and to determine their investment and business activities. If a treaty to which Vietnam is a contracting party contains different provisions, the provisions of the treaty shall be applied.

4. To access legal documents and policies on investment; data on the national economy and each economic sector, and other socio-economic information relating to investment activities.
5. To give comments on investment law and policies right at the drafting stage in accordance with law.
6. To lodge complaints, denunciations or initiate lawsuits in accordance with law against any organizations or individuals that commit acts in violation of the investment law.
7. To exercise other rights as provided for by law.

**Article 19.-** Rights of investors in industrial parks, export processing zones, hi-tech parks or economic zones

1. In addition to the rights specified in Articles 11, 12, 13, 14, 15, 16, 17 and 18 of this Decree, investors investing in production and business activities in industrial parks, export processing zones, hi-tech parks or economic zones have the following rights:

a/ To lease or purchase workshops, offices, storehouses and storing yards already built in industrial parks, export processing zones, hi-tech parks or economic zones for production and business purposes;

b/ To use, with payment of charges, technical infrastructure works and service facilities, including systems of roads, electricity supply, water supply, water drainage, communication, wastewater treatment, waste treatment and other public works and utilities in industrial parks, export processing zones, hi-tech parks or economic zones;

c/ To transfer and receive the transfer of the rights to use, lease or sublease land on which technical infrastructure works have been built within industrial parks, export processing zones, hi-tech parks or economic zones for building workshops, offices and other works for production and business purposes in accordance with the land law and the real estate business law.

2. Investors investing and commercially operating infrastructures in industrial parks, export processing zones, hi-tech parks or economic zones have the following rights:

a/ To build workshops, offices, storehouses and storing yards in industrial parks, export processing zones, hi-tech parks or economic zones for sale or lease;

b/ To determine charge rates for lease or sub-lease of land areas with technical infrastructure; to determine charge rates for use of technical infrastructure works and other service facilities in industrial parks, export processing zones, hi-tech parks or economic zones; and to fix charge rates for lease or selling prices of workshops, offices, storehouses and storing yards, and to determine service charge rates;

c/ To collect charges for the use of infrastructure works, service facilities and public utilities in industrial parks, export processing zones, hi-tech parks or economic zones in accordance with regulations of the Ministry of Finance;

d/ To transfer to other investors the rights to use, lease and sub-lease land areas with technical infrastructure in industrial parks, export processing zones, hi-tech parks or economic zones in accordance with the land law and the real estate business law.

**Article 20.-** Right to investment guarantee in case of changes in law and policy



1. When a newly promulgated law or policy adversely affects legitimate interests to which investors are entitled before the new law or policy takes effect, investors shall be guaranteed either entitlement to the preferences stated in their investment certificates or application of one or some of the following measures:

- a/ Continued enjoyment of the existing rights and preferences;
- b/ Deduction of losses from taxable income;
- c/ Adjustment of the objectives of the project;
- d/ Consideration for compensation in some necessary cases.

2. With regard to the measure of compensation referred to at Point d, Clause 1 of this Article, the investment certificate-granting agency shall submit to the Prime Minister for decision the guarantee of the investor's interests upon any change in law or policy adversely affecting the investor's legitimate interests.

**Article 21.-** Obligations and responsibilities of investors

1. Obligations of investors:

- a/ To comply with the investment law; and conduct investment activities in accordance with the contents of investment registration documents and investment certificates;
- b/ To fulfill all financial obligations in accordance with law;
- c/ To observe the laws on accountancy, audit and statistics;
- d/ To perform obligations in accordance with the insurance and labor laws; to respect the honor, dignity and ensure legitimate rights and interests of laborers;
- e/ To respect political or socio-political organizations and create favorable conditions for laborers to found or participate in political or socio-political organizations in accordance with law;
- f/ To observe the environment law;
- g/ To perform other obligations as provided for by law.

2. Responsibilities of investors:

- a/ To be liable for the accuracy and truthfulness of the contents of investment registration documents, investment project dossiers and for the legality of documents in investment project dossiers;
- b/ To report on their investment activities under the provisions of this Decree and relevant laws and be liable for the accuracy and truthfulness of the contents of their reports;
- c/ To supply documents, materials and information relating to the contents of examination, inspection and supervisions of investment activities to competent state agencies in accordance with law.

**Chapter IV**

**DOMAINS AND GEOGRAPHICAL AREAS ENTITLED TO INVESTMENT PREFERENCES; INVESTMENT PREFERRENCES AND SUPPORTS**



## Section I. INVESTMENT PREFERENCES

### **Article 22.-** Domains and geographical areas entitled to investment preferences

1. The list of domains entitled to investment preferences, including domains entitled to special investment preferences and domains entitled to investment preferences, is included in Appendix I to this Decree.
2. The list of geographical areas entitled to investment preferences, including geographical areas facing extremely difficult socio-economic conditions and geographical areas with difficult socio-economic conditions, is included in Appendix II to this Decree.
3. Investment projects in the domains entitled to special investment preferences defined in Appendix I to this Decree are eligible for investment preferences like investment projects located in geographical areas with extremely difficult socio-economic conditions defined in Appendix II to this Decree.

### **Article 23.-** Conditional investment domains and domains banned from investment

1. Condition investment domains and domains banned from investment are defined in Articles 29 and 30 of the Investment Law.
2. The list of conditional investment domains applicable to foreign investors is included in Appendix III to this Decree. The list of domains banned from investment is included in Appendix IV to this Decree.

### **Article 24.-** Subjects entitled to investment preferences

Investors having investment projects, including expansion investment projects, in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to investment preferences in accordance with the Investment Law and relevant laws.

### **Article 25.-** Enterprise income tax and import duty preferences

1. Investors having investment projects in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to enterprise income tax preferences in accordance with the law on enterprise income tax.
2. Investors having investment projects in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to import duty preferences for imports in accordance with the law on import and export duties.

### **Article 26.-** Preferences related to land use tax, land use levy, land rent and water surface rent

Investors to whom the State assigns land without collection of land use levies, assigns land with collection of land use levies or the State leases land and who have investment projects in domains or geographical areas entitled to investment preferences defined in this Decree are entitled to exemption from or reduction of land use tax, land use levy, land rent or water surface rent in accordance with the land law and the taxation law.

### **Article 27.-** Procedures for implementation of investment preferences

Procedures for implementation of investment preferences shall be as provided in Article 38 of the Investment Law.

**Article 28.-** Adjustment and supplementation of investment preferences

1. If, during execution of an investment project, an investor satisfies conditions for enjoying more investment preferences, the investor is entitled to these investment preferences and has the right to request the investment certificate-granting agency to adjust and supplement investment preferences defined in the granted investment certificate.
2. If, during execution of an investment project, an investor fails to satisfy conditions for enjoying investment preferences, the investor is not entitled to these investment preferences.
3. The state management agency implementing investment preferences shall notify in writing the investment certificate-granting agency of the investors' failure to satisfy the conditions for entitlement to investment preferences.

**Article 29.-** Application of investment preferences

1. An investor currently entitled to investment preferences under the provisions of the Law on Domestic Investment Promotion, the Law on Foreign Investment in Vietnam, the Cooperatives Law and tax laws continues to be entitled to these investment preferences.
2. An investor who has a currently operating investment project and falls into the subject defined in Article 24 of this Decree continues to be entitled to investment preferences for the remaining preference period following the effective date of this Decree.
3. When a newly promulgated law or policy provides benefits and preferences higher than those that an investor are currently enjoying, the investor is entitled to the new benefits and preferences for the remaining preference period (if any) following the effective date of the new law or policy.
4. If a treaty to which Vietnam is a contracting party contains provisions different from those of Clauses 1, 2 and 3 of this Decree, the provisions of Article 3 of this Decree shall be applied.

**Section II. INVESTMENT SUPPORTS**

**Article 30.-** Technology transfer supports

1. The Government shall create favorable conditions for and shall ensure legitimate rights and interests of technology transfer parties, including capital contribution in technology to execute investment projects in Vietnam in accordance with the intellectual property law and the technology transfer law.

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

2. The Government shall encourage the transfer into Vietnam of advanced technology, source technology and other technologies for the creation of new products, raising of production capability, competitiveness, product quality, conservation and efficient use

of raw materials, fuels, energy and natural resources; and shall encourage investment in technology renewal, improvement of management capability and use of technology.

3. On the basis of socio-economic development objectives, the Government shall adopt policies to support small- and medium-sized enterprises and cooperatives to invest in research and development of technology and technology transfer.

4. The rights and obligations of technology transfer parties and the process and procedures for technology transfer shall be as provided in the technology transfer law.

**Article 31.- Training supports**

1. The Government shall encourage and support investors to set up training support funds from capital contributions and aid from organizations and individuals at home and abroad as follows:

a/ Training support funds shall be set up and operate for non-profit purposes, and are eligible for tax exemption and reduction in accordance with the taxation law;

b/ Training expenses paid by economic organizations shall be accounted as reasonable expenses when determining taxable enterprise income.

2. The Government shall provide supports from the budget for the training of laborers in economic organizations through the human resource training support programs.

3. The Government shall adopt plans and programs to support the training of human resources for small- and medium-sized enterprises.

**Article 32.- Supports for development investment and investment services**

1. The Government shall provide development investment supports for projects that satisfy the following conditions:

a/ Projects in important branches or domains under major economic programs which directly affect economic restructuring or accelerate sustainable economic growth but where the State does not grant and commercial banks do not provide loans on normal conditions because of risk factors;

b/ Projects complying with the provisions of law;

c/ Projects complying with the provisions of treaties to which Vietnam is a contracting party.

2. Credit support for investment development shall be provided in accordance with the law on the State's credit for development investment.

3. The Government shall encourage and support organizations and individuals, irrespective of their economic sector, to provide the following investment support services:

a/ Investment consultancy, management consultancy;

b/ Intellectual property consultancy, technology transfer consultancy;

c/ Vocational training, technical and management skills training;

d/ Supply of market information, scientific, technical and technological information and socio-economic information upon request of investors;

e/ Marketing, investment and trade promotion;

f/ Establishment of and participation in social and socio-professional organizations in accordance with law;

g/ Establishment of design centers and testing centers to support the development of small- and medium-sized enterprises.

**Article 33.-** Supports for investment in the construction of infrastructure outside the fences of industrial parks, export processing zones and hi-tech parks

1. The Government shall encourage and adopt preferential policies for all economic sectors to invest in building technical infrastructure works and social infrastructure outside the fences of industrial parks, export processing zones and hi-tech parks.

2. On the basis of the Prime Minister-approved master plan on development of industrial parks, export- processing zones, hi-tech parks and economic zones, ministries, branches and People's Committees of provinces and centrally run cities (below referred to as provincial-level People's Committees) shall work out investment plans and organize the building of technical infrastructure works and social infrastructure outside the fences of industrial parks, export processing zones, hi-tech parks and economic zones.

3. Provincial-level People's Committees shall balance local budgets to support investment in the building of technical infrastructure works and social infrastructure outside the fences of industrial parks, export processing zones, hi-tech parks and economic zones.

**Article 34.-** Supports for investment in infrastructure systems inside the fences of industrial parks and export processing zones

1. The Prime Minister shall stipulate the conditions, principles, limits and construction components eligible for central budget supports in some localities with difficult socio-economic conditions and in geographical areas with extremely difficult socio-economic conditions so that local administrations can join investors in investing in the development of technical infrastructure systems inside the fences of industrial parks and export processing zones.

2. Provincial-level People's Committees shall balance local budgets to support investors to invest in the development of technical infrastructure systems inside the fences of industrial parks and export processing zones.

**Article 35.-** Modes of investment in technical infrastructure systems in industrial parks and export processing zones

1. One or more investors may invest in and commercially operate technical infrastructure systems in industrial parks or export processing zones. They shall ensure compliance and consistence with the detailed plannings on the building of industrial parks and export processing zones already approved by competent authorities; and shall clearly define the rights and obligations of each investor.

2. For geographical areas with extremely difficult socio-economic conditions, on the basis of the practical local conditions, provincial-level People's Committees shall submit to the Prime Minister for permission the establishment of revenue-generating non-business units to act as investors of investment projects on building and

commercial operation of technical infrastructures in industrial parks or export processing zones.

**Article 36.-** Supports for investment in developing technical infrastructure systems in economic zones and hi-tech parks

1. The Government shall provide supports from the investment capital source of the budget for the following cases:

a/ Investment in developing technical infrastructure systems and social infrastructures outside functional zones and important public service facilities in economic zones;

b/ Compensation for ground clearance within functional zones, resettlement and re-sedentarization for households whose land is recovered;

c/ Investment in concentrated wastewater and waste treatment facilities of functional zones.

2. The Government shall encourage and adopt preference policies for investors of all economic sectors to invest in developing technical infrastructure systems and social infrastructure in economic zones.

3. The Prime Minister shall decide on modes of mobilizing capital from other sources for investment in developing technical infrastructure systems and social infrastructures in economic zones.

4. Supports for investment in developing infrastructure systems in hi-tech parks shall be provided in accordance with the law on hi-tech parks.

## **Chapter V**

### **PROCEDURES FOR DIRECT INVESTMENT**

#### **Section I. COMPETENCE TO APPROVE AND GRANT INVESTMENT CERTIFICATES**

**Article 37.-** Projects for which the Prime Minister shall approve the investment policy

1. Investment projects in the following domains, irrespective of the source of capital and the scale of investment:

a/ Building and commercial operation of airports; transportation by air;

b/ Building and commercial operation of national seaports;

c/ Exploration for, exploitation and processing of oil and gas; exploration for and exploitation of minerals;

d/ Radio and television broadcasting;

e/ Casino business;

f/ Production of cigarettes;

g/ Establishment of university-level training establishments;

h/ Establishment of industrial parks, export processing zones, hi-tech parks and economic zones.

2. Investment projects other than those defined in Clause 1 of this Article, irrespective of the source of capital, and having an investment capital of VND 1,500 billion or more in the following domains:

- a/ Electricity business; mineral processing; metallurgy;
- b/ Building of railway, road and inland waterway infrastructure;
- c/ Production and business of alcohol and beer.

3. Foreign investment projects in the following domains:

- a/ Ocean shipping business;
- b/ Establishment of networks for and provision of postal, delivery, telecommunications and Internet services; establishment of wave transmission networks;
- c/ Press printing and distribution; publishing;
- d/ Establishment of independent scientific research institutions.

4. When an investment project defined in Clause 1, 2 or 3 of this Article is included in the planning approved by the Prime Minister or by a person authorized by the Prime Minister and satisfies the conditions required by law and treaties to which Vietnam is a contracting party, the investment certificate-granting agency shall carry out procedures for granting a investment certificate to the project without having to submit the project to the Prime Minister for decision on the investment policy.

5. When an investment project defined in Clause 1, 2 or 3 of this Article is not included in the planning approved by the Prime Minister or by a person authorized by the Prime Minister or does not satisfy conditions for opening the market in treaties to which Vietnam is a contracting party, the investment certificate-granting agency shall assume the prime responsibility for consulting the branch-managing ministry, the Ministry of Planning and Investment and other concerned agencies, sum up their opinions and submit the project to the Prime Minister for decision on the investment policy.

6. When an investment project defined in Clause 1, 2 or 3 of this Article is in a domain which has no planning yet, the investment certificate-granting agency shall consult the branch-managing ministry, the Ministry of Planning and Investment and other concerned agencies, sum up their opinions and submit the project to the Prime Minister for decision on the investment policy.

**Article 38.-** Projects for which provincial-level People's Committees shall grant investment certificates

Provincial-level People's Committees shall make investment registration and grant investment certificates for the following projects:

- 1. Investment projects outside industrial parks, export processing zones, hi-tech parks and economic zones, including also investment projects defined in Article 37 of this Decree and for which the Prime Minister has approved the investment policy.
- 2. Investment projects on development on infrastructures in industrial parks, export processing zones or hi-tech parks in localities which have not yet set up industrial park, export processing zone and hi-tech park management boards.

**Article 39.-** Projects for which industrial park, export processing zone, hi-tech park and economic zone management boards shall grant investment certificates

Industrial park, export processing zone, hi-tech park and economic zone management boards (hereinafter referred to as management boards) shall make investment registration and grant investment certificates for the following projects:

1. Investment projects within industrial parks, export processing zones, hi-tech parks and economic zones, including also investment projects defined in Article 37 of this Decree and for which the Prime Minister has approved the investment policy.
2. Investment projects on development of infrastructures in industrial parks, export processing zones, hi-tech parks and economic zones.

**Article 40.-** Agencies receiving investment project dossiers

1. Provincial/municipal Planning and Investment Services shall receive dossiers of investment projects defined in Article 38 of this Decree to be executed in their localities .
2. Management boards shall receive dossiers of investment projects defined in Article 39 of this Decree to be executed in their localities.
3. For an investment project to be executed in a locality not yet covered by the administrative management of a province or a centrally run city or an investment project to be executed in more than one province or centrally run city, its dossier shall be submitted to the Planning and Investment Service of the locality where the investor has opened or intends to set up the head office or branch or executive office in order to execute the investment project.
4. Agencies receiving investment project dossiers shall guide and check the validity of investment project dossiers and carry out investment procedures under the provisions of this Decree.

**Article 41.-** Contents of investment certificates

1. The form of investment certificate shall be prescribed by the Ministry of Planning and Investment for uniform application nationwide.
2. An investment certificate contains the following major details:
  - a/ Name and address of the investor;
  - b/ Location of execution of the investment project; the land area requirement;
  - c/ Objectives and scale of the investment project;
  - d/ Total investment capital;
  - e/ Project execution duration;
  - f/ Execution schedule of the investment project;
  - g/ Certification of investment preferences and supports (if any).
3. For a foreign investor who has an investment project associated with the establishment of an economic organization, the investment certificate contains the details specified in Clause 2 of this Article and the details of a business registration



certificate provided in the Enterprise Law. The investment certificate is concurrently the business registration certificate.

4. An investment certificate with the contents stipulated in Clause 3 of this Article shall be granted to a domestic investor defined in Clause 1, Article 6 of this Decree who wishes to carry out investment procedures at the same time with procedures for establishment of an economic organization.

## Section II. CERTIFICATION OF INVESTMENT

### **Article 42.-** Domestic investment projects not subject to investment registration

1. Investors are not required to make investment registration for domestic investment projects capitalized at under VND 15 billion and outside conditional investment domains.

2. When an investor defined in Clause 1 of this Article wishes to obtain certification of investment preferences or an investment certificate, the investor shall make investment registration so as to be granted an investment certificate under the provisions of Article 43 of this Decree.

### **Article 43.-** Investment registration for domestic investment projects

1. Domestic investors shall make investment registration for domestic investment projects capitalized at between VND 15 billion and under VND 300 billion and falling into the following cases:

a/ Being outside conditional investment domains defined in Article 29 of this Decree;

b/ Being other than those specified in Clause 1, Article 37 of this Decree.

2. The investor shall make investment registration with the investment project dossier-receiving agency defined in Article 40 of this Decree.

3. The agency receiving investment project dossiers shall hand over receipt slips upon receipt of investment registration documents.

4. When an investor wishes to have an investment certificate or certification of investment preferences, the investment certificate-granting agency shall base itself on the investment registration document to issue an investment certificate within 15 working days after the date of receipt of the valid investment registration document.

5. Within 7 working days after the date of grant of an investment certificate, the investment certificate-granting agency shall send its copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the branch-managing agency and concerned agencies.

### **Article 44.-** Investment registration for foreign investment projects

The procedures for investment registration of foreign investment projects defined in Article 46 of the Investment Law shall be carried out as follows:

1. An investment registration dossier comprises:

a/ Investment registration document (made according to a set form);

b/ Business cooperation contract, for investment under a business cooperation contract;

c/ Report on the financial capability of the investor (which is made by the investor and for which the investor shall bear responsibility).

2. For an investment project associated with the establishment of an economic organization, in addition to the dossier referred to in Clause 1 of this Article, the investor shall also submit:

a/ The business registration dossier corresponding to the type of enterprise as provided for in the enterprise law and relevant laws;

b/ The joint venture contract, for investment in the form of establishment of a joint-venture economic organization between a domestic investor and a foreign investor.

3. Within 15 working days after the date of receipt of the valid investment registration dossier and business registration dossiers, the investment certificate-granting agency shall check the validity of the investment registration dossier or the business registration dossier (in case of establishment of an economic organization associated with an investment project) and grant an investment certificate. It may not require any additional papers.

4. Within 7 working days after the date of grant of an investment certificate, the investment certificate-granting agency shall send its copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the branch-managing agency and concerned agencies.

**Article 45.-** Examination of investment projects capitalized at VND billion 300 or more and outside conditional investment domains

1. An investment examination dossier comprises:

a/ An application for an investment certificate (made according to a set form);

b/ Written certification of the legal status of the investor: copy of the establishment decision or business registration certificate or a document of equivalent validity, for investors being organizations; copy of the passport or people's identity card, for investors being individuals;

c/ Report on the investor's financial capability (which is made by the investor and for which the investor shall bear responsibility).

d/ Econo-technical exposition containing the following major details: objectives, scale and location of investment; investment capital; project execution schedule; land use requirements; and technological and environmental solutions;

e/ Business cooperation contract, for investment under a business cooperation contract.

2. In order to carry out investment procedures at the same time with business registration procedures, in addition to the dossier referred to in Clause 1 of this Article, the investor shall also submit:

a/ The business registration dossier corresponding to the type of enterprise as stipulated in the enterprise law and relevant laws;

b/ Joint venture contract, for investment in the form of establishment of a joint-venture economic organization between a domestic investor and a foreign investor.

3. Examination contents:

a/ Conformity with: the technical infrastructure planning; the land use planning; the construction planning; the planning on prospecting, exploitation and processing of minerals and other natural resources.

For an investment project in a domain with no planning yet or which is not included in any of the aforesaid plannings, the investment certificate-granting agency shall consult state management agencies with planning competence;

b/ Land use requirements: land area, land category and land use schedule;

c/ Project execution schedule: investment capital disbursement schedule, construction schedule and schedule of achievement of project objectives;

d/ Environmental solutions: assessment of environmental impact factors and treatment solutions in accordance with the environment law.

**Article 46.-** Examination of investment projects capitalized at under VND billion 300 and in conditional investment domains

1. An examination dossier comprises:

a/ Papers referred to in Clauses 1 and 2, Article 44 of this Decree;

b/ Exposition on the capability to satisfy the conditions which the project is required by law to satisfy, for investment projects in conditional investment domains defined in Article 29 of the Investment Law and Appendix III to this Decree.

2. Examination contents:

a/ Capability to satisfy the conditions required by the Investment Law and relevant laws;

Concerned ministries and branches shall examine the capability to satisfy the conditions which the investment project is required by law to satisfy, for investment projects in conditional investment domains defined in Article 29 of the Investment Law and Appendix III to this Decree;

When investment conditions are provided by law or a treaty to which Vietnam is a contracting party, the investment certificate-granting agency shall decide to grant an investment certificate without having to gather examination opinions of concerned ministries and branches;

b/ For a domestic investment project that satisfies the investment conditions as required by law, the investment certificate-granting agency shall grant an investment certificate according to the investment registration procedures defined in Article 43 of this Decree.

**Article 47.-** Examination of investment projects capitalized at VND billion 300 or more and in conditional investment domains

1. An examination dossier comprises:

a/ Papers referred to in Clauses 1 and 2, Article 45 of this Decree;

b/ Exposition on the capability to satisfy the market entry conditions required for investment projects in conditional investment domains defined in Article 29 of the Investment Law and Appendix III to this Decree.

2. The examination contents shall be as stipulated in Clause 3 of Article 45 and Clause 2 of Article 46 of this Decree.

**Article 48.-** Process of examination of investment projects falling within the approving competence of the Prime Minister

1. An investor shall submit 10 sets of the investment project dossier, including at least one original set.

2. Within 3 working days after the date of receipt of an investment project dossier, the dossier-receiving agency shall check its validity and send it to concerned ministries and branches for examination opinions.

For an invalid dossier, the dossier-receiving agency shall notify the investor thereof for revision and supplementation of the dossier.

3. Within 15 working days after the date of receipt of an investment project dossier, the consulted agency shall give written examination opinions and take responsibility for the project's matters under its management.

4. Within 25 working days after the date of receipt of a complete and valid dossier, the investment certificate-granting agency shall make an examination report and submit it to the Prime Minister for decision on the investment policy.

5. Within 7 working days after the date of receipt of the examination report submitted by a provincial-level People's Committee or a management board, the Government Office shall notify the Prime Minister's opinion on the investment project.

6. Within 5 working days after the date of receipt of the approval of the Prime Minister, the provincial-level People's Committee or management board shall grant an investment certificate.

7. When the investment project is disapproved, the investment project dossier-receiving agency shall send a written notice to the investor, clearly stating the reason for disapproval.

8. Within 7 working days after the date of grant of an investment certificate, the investment project dossier-receiving agency shall send its copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the branch-managing agency and concerned agencies.

**Article 49.-** Process of examination of investment projects subject to examination for grant of investment certificates

1. The investor shall submit to the provincial-level Planning and Investment Service 8 sets of the investment project dossier, including one original set, for projects for which the provincial-level People's Committee shall grant investment certificates; or submit to the management board 4 sets of the investment project dossier, including one original set, for projects for which the management board shall grant investment certificates.

2. Within 3 working days after the date of receipt of an investment project dossier, the dossier-receiving agency shall check its validity and send it to concerned provincial-level services and branches for examination. When necessary, it shall send the dossier to concerned ministries and branches for opinions

For an invalid dossier, the dossier-receiving agency shall notify the investor thereof for revision and supplementation of the dossier.

3. Within 15 working days after the date of receipt of an investment project dossier, the consulted agency shall give written examination opinions and take responsibility for the project's matters under its management.

4. Within 20 working days after the date of receipt of a complete and valid dossier, the provincial-level Planning and Investment Service shall make an examination report and submit it to the provincial-level People's Committee for decision. Within 5 working days after the date of receipt of the examination report, the provincial-level People's Committee shall grant an investment certificate.

When the investment project is disapproved, the investment project dossier-receiving agency shall send a written notice to the investor, clearly stating the reason therefor.

5. Within 7 working days after the date of grant of an investment certificate, the investment project dossier-receiving agency shall send its copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the branch-managing agency and concerned agencies.

**Article 50.-** Competence of branch-managing ministries to examine the grant of investment certificates

1. Branch-managing ministries shall examine the satisfaction of investment conditions and the conformity with plannings by investment projects in conditional investment domains defined in Article 29 of the Investment Law, Appendix III to this Decree and Article 82 of the Investment Law.

2. Pursuant to the provisions of Articles 29 and 82 of the Investment Law, branch-managing ministries shall prepare investment conditions and submit them to the Government for promulgation; formulate and approve plannings or submit them to competent agencies for approval.

After being promulgated by competent authorities, investment conditions and plannings be publicized on the mass media and posted at the head offices of investment project dossier-receiving agencies.

### Section III. ADJUSTMENT OF INVESTMENT PROJECTS

**Article 51.-** Adjustment of investment projects

1. When adjusting an investment project's objectives, scale, location, form, capital or execution schedule, the investor shall carry out procedures to adjust the investment certificate.

2. The adjustment of an investment project may be made in one of the following processes:

a/ Procedures for adjustment registration or adjustment examination are not required;

b/ The adjustment is subject to registration;

c/ The adjustment is subject to examination.

3. Investment projects for which adjustment registration or examination procedures are not required include:

a/ Projects adjusted but not changing their objectives, scale, location, form, capital or execution schedule;

b/ Domestic investment projects which, after adjustment, are capitalized at under VND 15 billion and outside conditional investment domains;

c/ Domestic investment projects which, after adjustment, are capitalized at under VND 300 billion and do not change their investment objectives and location.

**Article 52.-** Registration and examination of adjustments to investment projects

1. Registration of adjustments to investment projects

a/ Projects subject to adjustment registration include projects which, after adjustment of their objectives, scale, location, form, capital or execution schedule, fall in the following cases: foreign investment projects which, after adjustment, are capitalized at under VND 300 billion and outside conditional investment domains; domestic investment projects which, after adjustment, are not in any conditional investment domains, except for those specified in Clause 3, Article 51 of this Decree; domestic investment projects which, after adjustment, are still in a conditional investment domain, do not change their investment objectives, and still satisfy the investment conditions specified for those projects, except for those specified in Clause 3, Article 51 of this Decree;

b/ A dossier of registration of adjustments to an investment project comprises: written registration of certification of the adjusted contents of the investment project; a copy of the investment certificate; the revised version of the joint-venture contract or business cooperation contract or enterprise charter (for foreign investment projects);

c/ Within 15 working days after the date of receipt of a complete and valid dossier, the investment certificate-granting agency shall grant a new investment certificate (for a project not yet granted an investment certificate) or adjust the granted one.

2. Examination of adjustments to investment projects:

a/ Investment projects subject to adjustment examination include projects which, after adjustment of their objectives, scale, location, form, capital or execution schedule, fall into the following cases: foreign investment projects which, after adjustment, are subject to examination for grant of investment certificates; domestic investment projects which, after adjustment, are in a conditional investment domain, except for those specified at Point a, Clause 1 of this Article;

b/ A dossier of examination of adjustments to an investment project comprises: written request for adjustments to the investment project; exposition on the adjustment reason; changes in the ongoing project; a report on the project execution by the time of adjustment; a copy of the investment certificate; the revised version of the joint-venture contract or business cooperation contract or enterprise charter (for foreign investment projects);



c/ Within 30 working days after the date of receipt of a complete and valid dossier, the investment certificate-granting agency shall examine the adjustments and grant a new investment certificate (for a project not yet granted an investment certificate) or adjust the granted one;

d/ When an investment project, after adjustment, falls within the approving competence of the Prime Minister but is not included in the planning or falls into a conditional investment domain where investment conditions have not yet been provided for by law, the investment certificate-granting agency shall collect examination opinions of concerned ministries and branches and submit the case to the Prime Minister for decision before granting a new investment certificate or adjusting the granted one;

e/ When adjustments are related to a conditional investment domain, the investment certificate-granting agency shall collect examination opinions of concerned ministries and branches before granting a new investment certificate or adjusting the granted one.

3. Within 7 working days after the date of grant of an adjusted investment certificate, the investment certificate-granting agency shall send its copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the branch-managing agency and concerned agencies.

#### Section IV. OTHER PROVISIONS ON FOREIGN INVESTMENT PROJECTS

**Article 53.-** Contents related to dossiers of foreign investment projects

A foreign investment project executed in the form of joint venture or business cooperation contract must, in addition to the documents defined in Articles 44, 45, 46 and 47 of this Decree, have a joint venture contract or a business cooperation contract with the contents stipulated in Articles 54 and 55 of this Decree.

**Article 54.-** Contents of a joint-venture contract

A joint-venture contract contains the following principal details:

1. Names and addresses of investing organizations or individuals participating in the joint venture and representatives at law of joint venture parties; name and address of the joint venture enterprise.
2. Type of enterprise;
3. Business domains, lines and scope.
4. Charter capital, contributed capital portion of each party, mode and schedule of charter capital contribution.
5. Project execution schedule.
6. Operational duration of the project.
7. Project execution location.
8. Rights and obligations of the joint venture parties.
9. Principles of financial management; sharing of profits and handling of losses in business.



10. Modes of revision and termination of the contract, conditions for the transfer, termination of operation and dissolution of the enterprise.

11. Liabilities for breach of contract, mode of settlement of disputes.

Apart from the above details, the joint venture parties may reach agreement on other details in their joint-venture contract which are not contrary to law.

Competent representatives of the joint venture parties shall initial on every page and sign at the end of their contract. A joint venture contract takes effect on the date of grant of the investment certificate.

**Article 55.-** Details of a business cooperation contract

A business cooperation contract contains the following principal details:

1. Names, addresses and competent representatives of the parties to the business cooperation contract; contact address or address of the project execution location.
2. Business purposes and scope.
3. Contributions of the business cooperation parties, sharing of investment and business results, contract performance schedule.
4. Project execution schedule.
5. Term of the contract.
6. Rights and obligations of the business cooperation parties.
7. Financial principles.
8. Modes of revision and termination of the contract, transfer conditions.
9. Liabilities for breach of contract, mode of settlement of disputes.

Apart from the above details, the business cooperation parties may reach agreement on other details in their business cooperation contract which are not contrary to law.

Competent representatives of business cooperation parties shall initial on every page and sign at the end of their contract. A business cooperation contract between a Vietnamese party and a foreign party takes effect on the date of grant of the investment certificate.

**Article 56.-** Procedures for direct investment in the form of contribution of capital to, purchase of shares from, merger with or acquisition of enterprises

An investor contributing capital to, purchasing shares from, merges with or acquires an enterprise in Vietnam under the provisions of Article 10 of this Decree shall carry out procedures as follows:

1. When a foreign investor purchases shares of a Vietnamese enterprise, that enterprise shall carry out business registration procedures in accordance with the enterprise law.
2. When an investor purchases shares of a foreign-invested enterprise currently operating in Vietnam, the investor shall carry out procedures to adjust an investment project under the provisions of Articles 51 and 52 of this Decree.

3. When an investor contributes capital for investment, the investor shall carry out investment procedures in accordance with the investment law.

4. When a foreign investor merges with or acquires an enterprise currently operating in Vietnam, the investor shall carry out investment procedures so as to be granted an investment certificate under the provisions of this Decree. A dossier of enterprise merger or acquisition comprises:

a/ Written proposal for merger with or acquisition of the enterprise indicating the name, address and representative of the foreign investor merging with or acquiring the enterprise; name, address, representative, charter capital and operation domain of the merged or acquired enterprise; brief information on the enterprise merger or acquisition; and proposals (if any);

b/ Decision of the members' council or the enterprise owner or the shareholders' general meeting on the sale of the enterprise;

c/ The enterprise merger or acquisition contract. This contract contains the following principal details: name, address of the head office of the merged or acquired enterprise; procedures and conditions for the merger or acquisition; plan on the use of laborers; procedures, conditions and deadline for the transfer of assets, capital, shares and bonds of the merged or acquired company; deadline for the merger or acquisition; and responsibilities of the parties;

d/ Charter of the merged or acquired enterprise;

e/ Draft charter of the enterprise after the merger or acquisition is permitted (if there are changes);

f/ Written certification of the legal status of the foreign investor: a copy of the establishment decision or the paper of equivalent validity, for investors being economic organizations; a copy of the passport, for investors being individuals.

**Article 57.-** Procedures for conversion of investment form of foreign investment projects

1. An investor having a project which has been granted an investment certificate or which has been granted an investment license under the provisions of the Law on Foreign Investment in Vietnam is entitled to convert the form of investment of the project into another form of investment under the provisions of Article 21 of the Investment Law.

2. An investor who has been granted an investment license under the provisions of the Law on Foreign Investment in Vietnam shall conduct the conversion under separate regulations of the Government on re-registration and conversion of foreign-invested enterprises.

3. Procedures for conversion of the form of investment of a foreign investment project shall be carried as follows:

a/ The conversion of the investment form associated with the transformation of the type of enterprise must comply with the provisions of the enterprise law;

b/ A foreign-invested enterprise or the business cooperation parties shall send to the investment certificate-granting agency a dossier of conversion of the investment form.

This dossier comprises: written proposal for conversion of the investment form; decision of the members' council or enterprise owner or shareholders' general meeting or the agreement of the business cooperation parties (for an investment project in the form of business cooperation contract) on the conversion of the investment form; draft charter of the converted enterprise; the business cooperation contract (for an investment project in the form of business cooperation contract);

c/ The decision of the members' council of the joint venture enterprise or the decision of the investor (for enterprises with 100% foreign investment capital); the agreement of the business cooperation parties (for business cooperation contracts) on the conversion of the investment form must be notified to creditors and laborers within 15 working days after the date of the decision;

d/ Within 30 working days after the date of receipt of a complete and valid dossier referred to at Point b, Clause 3 of this Article, the investment certificate-granting agency shall adjust the investment certificate and notify the investor thereof.

## Section V. SOME PROVISIONS ON PROCEDURES FOR USE OF STATE CAPITAL FOR INVESTMENT AND BUSINESS

### **Article 58.-** Investment and business using state capital

1. Investment projects must obtain approval of competent authorities when using the following state capital for investment:

a/ State budget capital;

b/ Development investment credit of the State;

c/ State-guaranteed credit;

d/ Development investment capital of state enterprises;

e/ Investment capital of the State Capital Investment and Trading Corporation.

2. After the use of state capital for investment is appraised and approved by a competent agency, the investor shall carry out investment procedures under the provisions of this Decree so as to be granted an investment certificate. Written approval of the use of state capital for investment is a mandatory document in the investment registration dossier or the investment examination dossier.

### **Article 59.-** Agencies appraising and approving the use of state capital for investment

1. Agencies competent to decide on the use of state budget capital shall appraise and approve the use of state capital for investment by investment projects funded with state budget capital.

2. The Vietnam Development Bank shall appraise and decide on projects eligible for development investment credit of the State.

3. The Ministry of Finance shall appraise and decide on state guarantees for investment projects funded with credit capital that are on the list of state-guaranteed investment projects.

4. The management board of an economic group, a state corporation or other state enterprise or the general director or director of a state enterprise without a

management board shall appraise and decide on the use of development investment capital by the state enterprise for investment.

5. The competence of the State Capital Investment and Business Corporation to appraise and approve the use of state capital for investment shall be decided by the Prime Minister.

6. Appraisal agencies shall organize appraisal and notify the investors of their approval or disapproval of the use of state capital for investment.

**Article 60.-** Dossiers of appraisal of investment projects funded with state capital

A dossier of appraisal of an investment project comprises:

1. The investor's written proposal for the use of state capital addressed to the appraisal agency in charge of the relevant capital source as defined in Article 59 of this Decree.

2. Written justification of the proposal for the use of state capital for investment, containing the following details:

a/ Name of the project;

b/ Investment objectives and scale of the project;

c/ Location of execution of the investment project;

d/ Investment capital amount; investment capital source; and state capital portion in the project;

e/ Exposition on the project's conformity with the socio-economic development strategy, planning and plan already approved by competent authorities; exposition on the appropriateness of the use of investment capital;

f/ Investment benefits, including financial and socio-economic benefits;

g/ Exposition on the capability to recover investment capital; the capability to repay loans and the loan repayment plan (if any);

h/ Duration of the investment project;

i/ Execution schedule of the investment project.

**Article 61.-** Contents of appraisal of investment projects funded with state capital

The appraisal contents include:

1. The investment project's conformity with the socio-economic development strategy, planning and plan already approved by competent authorities in each period (of the whole country, the region or the territory concerned).

2. Appropriateness of the investment and business with state capital; investment purposes and benefits; method of management appropriate to each source of capital and type of investment project.

3. Conformity with the investment support policy (if any).

4. Execution schedule and duration of the investment project.

5. The capability to recover investment capital; the capability to repay loans and the loan repayment plan (if any).

6. Investment benefits, including financial and socio-economic benefits.

## **Chapter VI**

### **PROVISIONS ON EXECUTION OF INVESTMENT PROJECTS AND ORGANIZATION OF BUSINESS ACTIVITIES**

#### ***Article 62.-*** Execution of investment projects

Investors shall execute investment projects according to the committed objectives, contents and schedules and the provisions of their investment certificates. While executing investment projects, they shall observe the provisions of law on land, environment, labor, business registration and investment registration, and relevant laws.

#### ***Article 63.-*** Execution of investment projects associated with construction

When executing an investment project involving the construction of works, the investor shall comply with the provisions of law on construction management.

#### ***Article 64.-*** Hire of management

1. Investors may hire organizations or individuals to manage investment and business activities to meet the investors' operation requirements.

2. The hiring of a management organization or individual shall be effected under a contract signed between the investor and that organization or individual.

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

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

3. The hiring of an organization or individual to provide management services must comply with the provisions of treaties to which Vietnam is a contracting party.

4. Organizations or individuals providing management services shall pay taxes and perform financial obligations in accordance with the taxation law and relevant laws.

#### ***Article 65.-*** Transfer of capital

1. An economic organization is entitled to transfer its capital in the enterprise and carry out procedures of registration of members or shareholders in the register of members or shareholders in accordance with the enterprise law and relevant laws.

A foreign-invested enterprise, when transferring its capital, shall notify the investment certificate-granting agency thereof for adjusting its investment certificate.

2. Conditions for the transfer of capital:

a/ Assurance of requirements provided for in the Enterprise Law, this Decree and relevant laws;

b/ Assurance of ratios and conditions provided for in treaties to which Vietnam is a contracting party;

c/ The transfer of capital being land use right value must comply with the provisions of law on land and relevant laws.

**Article 66.-** Transfer of projects

1. An investor is entitled to transfer a project that the investor is executing to another investor. Conditions for transfer of a project shall be as stipulated in Clause 2, Article 65 of this Decree.
2. When the transfer of a project of an economic organization is not associated with the termination of operation of the transferring economic organization, the transfer of the project must comply with the conditions and procedures for capital transfer defined in Article 65 of this Decree.
3. When the transfer of a project is associated with the termination of investment and business operations of the transferring economic organization, the transfer of the project must comply with the conditions and procedures for merger or acquisition of enterprises defined in Article 56 of this Decree.
4. When the transfer of an investment project is associated with the termination of operation of the transferring economic organization and the transferee establishes an economic organization to continue executing the investment project, the transfer of the project must be conducted according to investment procedures defined in this Decree.
5. A dossier of transfer of an investment project comprises: written registration of the project transfer; project transfer contract; document on the legal status of the transferee; and report on the execution of the project.
6. Within 10 working days after the date of receipt of a complete and valid dossier, the investment certificate-granting agency shall grant a new investment certificate (if an investment certificate has not yet been granted) or adjust the granted investment certificate.

**Article 67.-** Temporary cessation or extension of execution of investment projects

1. When an investor temporarily ceases or extends the execution of an investment project, resulting in a change in the committed project execution schedule, at least 15 working days before the date of such temporary cessation or extension, the investor shall notify the investment state management agency of the reason for and the duration of temporary cessation or extension of the project execution.
2. When the investment certificate-granting agency does not approve the temporary cessation or extension of the project execution, within 15 working days after the date of receipt of the investors' notice, it shall issue a written reply to the investor.

Upon resumption of operation, the investor must notify in writing the state management agency in charge of investment thereof.

**Article 68.-** Termination of operation of investment projects

1. The termination of operation of an investment project shall be as stipulated in Article 65 of the Investment Law.
2. The investment certificate-granting agency is entitled to decide on the termination of operation of a project in the following cases:
  - a/ The project has been granted an investment certificate but at the expiration of a period of 12 months the investor fails to commence executing the project or the project is executed over 12 months behind its execution schedule indicated in the

investment certificate, except for permitted temporary cessation or extension of the project execution stipulated in Article 67 of this Decree;

b/ Serious violations of law that are subject to operation termination in accordance with law.

3. When, under a court judgment or ruling or an arbitral award, the operation of a project must be terminated due to serious violations of law, the investment certificate-granting agency shall decide to terminate the project's operation as determined in the court judgment or ruling or the arbitral award.

4. The decision on termination of an investment project shall be sent to the investor concerned and preserved at the investment certificate-granting agency.

Pursuant to the decision on termination of the investment project, the investment certificate-granting agency shall revoke the investment certificate and notify related agencies thereof.

**Article 69.-** Liquidation of investment projects

1. If, during the process of investment activities, the investment project is terminated under the conditions defined in Clauses 1, 2 and 3, Article 65 of Investment Law, the investor shall notify the investment certificate-granting agency thereof, carry out procedures for liquidation of the investment project, and return the investment certificate.

2. Procedures for liquidation of an investment project are as follows:

a/ When the liquidation of an investment project is not associated with the dissolution of the economic organization, the liquidation shall be conducted in accordance with the law on liquidation of assets or contracts;

b/ When the liquidation of an investment project is associated with the dissolution of the economic organization, the investor shall carry out the procedures for the dissolution of the economic organization in accordance with the enterprise law and relevant laws.

3. The time limit for liquidation of an investment project must not exceed 6 months counting from the date of decision on the termination of operation of the investment project. If permitted by a competent state agency, the time limit for liquidation of an investment project may be extended but it must not exceed 12 months.

At the end of the liquidation, the investor shall notify the investment certificate-granting agency thereof and return the granted investment certificate.

4. When an investment project cannot be liquidated within the time limit defined in Clause 3 of this Article because of a dispute among investors in the economic organization concerned, the dispute shall be brought to a court or an arbitration for settlement according to the provisions of law.

5. If, during the liquidation of an investment project, the economic organization cannot pay its debts, the liquidation shall terminate and be handled in accordance with the bankruptcy law.

**Article 70.-** Bonded warehouses



1. In export processing zones or industrial parks, economic organizations producing exports may set up bonded warehouses to serve export and import activities. Goods delivered into bonded warehouses are not liable to import duty.

The setting up of and conditions for setting up a bonded warehouse shall be as stipulated in the Government's Decree No. 154/2005/ND-CP of December 15, 2005, detailing a number of articles of the Customs Law on customs procedures, inspection and supervision.

2. Goods delivered into bonded warehouses may not be sold in the Vietnamese market. For those goods that are not subject to import ban or temporary import cessation, if selling them in the Vietnamese market, the investor shall carry out import procedures at the customs office, pay import duties and perform other financial obligations in accordance with law.

3. If goods delivered into bonded warehouses are damaged or deteriorated in quality and fail to meet production requirements, they must be re-exported or destroyed. Their destruction must comply with the provisions of law on customs, taxation and environment.

## **Chapter VII**

### **STATE MANAGEMENT OF INVESTMENT**

**Article 71.-** Contents, powers and responsibilities of state management of investment

1. Contents of state management of investment:

a/ Formulating, and directing the implementation of, strategies, plannings, plans and policies on development investment with a view to mobilizing and regulating resources for development investment;

b/ Promulgating, disseminating, guiding, and organizing the implementation of, policies and laws on development investment; elaborating technical standards and regulations on investment activities; supervising the promulgation of legal documents on investment; reviewing, proposing the cancellation of, or canceling legal documents which are no longer appropriate, are promulgated ultra vires or contain inappropriate provisions;

c/ Performing state management of international cooperation, negotiating and concluding treaties relating to investment activities in accordance with these treaties;

d/ Performing state management of investment promotion activities; building a national information system to serve investment activities;

e/ Granting, adjusting and revoking investment certificates; uniformly managing investment registration activities and the grant of investment certificates;

f/ Examining, inspecting and supervising the implementation of the provisions of the investment law on the state management of investment and investors' activities;

g/ Guiding and supporting investors to execute investment projects and settling their problems and requests during investment activities;

h/ Assessing macro economic impacts and benefits of investment activities;

- i/ Collaborating with state management agencies at all levels in managing investment activities;
- j/ Conducting professional training and retraining to enhance investment management capacity of investment state management agencies at all levels;
- k/ Settling according to competence complaints and denunciations of organizations and individuals related to investment activities. Commending and rewarding organizations and individuals that make achievements in investment activities or handling organizations and individuals committing law-breaking acts.

**2. Powers and responsibilities of state management of investment:**

- a/ The Government shall perform uniform state management of investment activities nationwide; direct the formulation and implementation of strategies, plannings and plans on development investment in all branches, sectors and economic regions; promulgate policies and legal documents on investment; and decentralize the state management of investment to ministries, branches and localities;
- b/ The Prime Minister shall direct ministries, branches and localities to implement laws and policies on investment; approve, or decentralize the approval of plannings; decides on investment guidelines for investment projects under his/her competence; decide or permit the establishment of industrial parks, export processing zones, hi-tech parks and economic zones; direct the settlement of problems that arise in the course of administration of investment activities and fall beyond the competence of ministries, branches or localities.
- c/ The Prime Minister, ministries, branches, provincial-level People's Committees, management boards of industrial parks, export processing zones, hi-tech parks and economic zones shall adopt programs on talks with the community of enterprises and investors;
- d/ Ministries, ministerial-level agencies, provincial-level People's Committees and management boards shall manage and guide investment activities in the domains and geographical areas under their respective management; ensure transparent, simplified investment procedures and comply with time limits;
- e/ Ministries, ministerial-level agencies, provincial-level People's Committees may not promulgate documents determining domains banned from investment, conditional investment domains and investment preferences in violation of the provisions of law.

***Article 72.- Powers and responsibilities of the Ministry of Planning and Investment***

- 1. To assume the prime responsibility for, and coordinate with other ministries, branches and provincial-level People's Committees in, formulating and reviewing legal documents and policies on investment. To guide, disseminate, monitor and examine the implementation of legal documents on investment. To promulgate forms of documents related to investment procedures for nationwide application.
- 2. To organize and coordinate with other ministries, branches and localities in the formulation and synthesis for submission to the Government of development investment plannings and plans; a national master plan on development of industrial parks, export processing zones and economic zones.

3. To assume the prime responsibility for, and coordinate with other ministries, branches and provincial-level People's Committees in, drawing up a list of national projects calling for investment capital and submit it to the Prime Minister for approval; to give advice on the addition to the plannings of investment projects falling under the approving competence of the Prime Minister but not yet included in any planning; to give opinions to investment certificate-granting agencies on the necessity of investment projects falling within the approving competence of the Prime Minister and in domains that do not yet have any plannings for submission to the Prime Minister for approval.
4. To examine important national investment projects and other investment projects according to decisions of the Prime Minister.
5. To perform state management of investment promotion activities; to formulate programs and plans and organize the implementation of national programs on investment mobilization and promotion; to coordinate with other ministries, branches and provincial-level People's Committees in organizing investment promotion activities; to open investment promotion offices in foreign countries; to manage the national investment promotion fund.
6. To assume the prime responsibility for, and coordinate with other ministries and branches in, negotiating and submitting international agreements on investment activities to the Government for signing or accession; to perform international cooperation on investment activities.
7. To conduct professional training and retraining to enhance investment management capacity of investment state management agencies at all levels.
8. To coordinate with the General Office of Statistics in organizing the making of statistics on investment in accordance with the statistics law; to organize and build a national information system to serve investment activities.
9. To coordinate with other ministries, branches and localities in settling matters arising in the process of formation, preparation and execution of investment projects.
10. To assess socio-economic impacts of investment activities.
11. To examine, supervise and inspect investment activities according to its competence; to develop programs and plans on inter-branch examination and supervision of investment activities; to examine the grant, adjustment and revocation of investment certificates by investment certificate-granting agencies under the provisions of the Investment Law and this Decree; to examine and supervise the observance of plannings already approved by competent authorities in the course of investment.
12. Biannually and annually, to review the situation of investment activities and report it to the Prime Minister.

**Article 73.- Powers and responsibilities of the Ministry of Finance**

1. To assume the prime responsibility for, and coordinate with other ministries and branches in, formulating laws and policies on investment supports and preferences; to provide guidance on the order and procedures for enjoying investment supports and preferences within its competence.

2. To license projects in the domain within its competence; to examine, inspect and supervise activities of licensed projects.
3. To examine and give written opinions on matters related to finance and financial guarantee of the Government in investment projects within the approving competence of the Prime Minister and projects in conditional investment domains.
4. To examine, inspect and supervise the implementation of the finance, accounting, tax and customs laws in investment activities.
5. To assume the prime responsibility for, and coordinate with concerned ministries, branches and provincial-level People's Committees in, settling investors' difficulties and problems in the domains of taxes, charges, fees, customs procedures, financial management and other financial activities.

**Article 74.-** Investment state management responsibilities and powers of the Ministry of Trade

1. To assume the prime responsibility for, and coordinate with other related ministries and branches in, formulating commercial laws and policies on investment activities.
2. To license projects in the domain within its competence; to examine, inspect and supervise activities of licensed projects.
3. To examine and give written opinions on matters related to commercial activities of investment projects within the approving competence of the Prime Minister and projects in conditional investment domains; to publicize investment-related conditions committed in treaties to which Vietnam is a contracting party.
4. To examine, inspect and supervise commercial activities related to investment activities.
5. To assume the prime responsibility for, and coordinate with concerned ministries, branches and provincial-level People's Committees in, settling difficulties and problems in commercial activities of investment projects.

**Article 75.-** Investment state management responsibilities and powers of the Ministry of Natural Resources and Environment

1. To assume the prime responsibility for, and coordinate with other related ministries and branches in, formulating laws and policies, and guiding the implementation of regulations on land management, ground clearance compensation, management of natural resources and environment related to investment activities.
2. To examine and give written opinions on matters related to land, ground clearance compensation, management of natural resources and environment in investment projects within the approving competence of the Prime Minister and projects in conditional investment domains.
3. To examine, inspect and supervise the implementation of regimes and policies on land, ground clearance compensation, management of natural resources and environment related to investment activities.
4. To assume the prime responsibility for, and coordinate with other ministries, branches and provincial-level People's Committees in, settling investors' difficulties

and problems in the domains of land, ground clearance compensation, extraction and use of natural resources and environmental protection.

**Article 76.-** Investment state management responsibilities and powers of the Ministry of Science and Technology

1. To assume the prime responsibility for, and coordinate with other related ministries and branches in, formulating laws and policies, and guiding the implementation of regulations on science and technology related to investment activities; to submit to the Prime Minister a master plan on development of hi-tech parks.
2. To examine and give written opinions on matters related to science and technology in investment projects within the approving competence of the Prime Minister and projects in conditional investment domains.
3. To examine, inspect and supervise the implementation of regimes and policies on science and technology related to investment activities.
4. To assume the prime responsibility for, and coordinate with concerned ministries, branches and provincial-level People's Committees in, settling investment projects' difficulties and problems in the domain of science and technology.

**Article 77.-** Investment state management responsibilities and powers of the Ministry of Construction

1. To assume the prime responsibility for, and coordinate with other related ministries and branches in, formulating laws and policies, and guiding the implementation of regulations on construction.
2. To examine and give written opinions on matters related to state management of construction in investment projects within the approving competence of the Prime Minister and projects in conditional investment domains.
3. To examine, inspect and supervise the implementation of regimes, policies, standards and regulations on construction related to investment activities.
4. To assume the prime responsibility for, and coordinate with concerned ministries, branches and provincial-level People's Committees in, settling investment projects' difficulties and problems in the domain of construction.

**Article 78.-** Investment state management responsibilities and powers of the State Bank of Vietnam

1. To assume the prime responsibility for, and coordinate with other related ministries and branches in, formulating laws and policies, and guiding the implementation of regulations on credit and foreign exchange management related to investment activities.
2. To license projects in the domain within its competence; to examine, inspect and supervise activities of licensed projects.
3. To examine and give written opinions on matters related to credit and foreign exchange management in investment projects within the approving competence of the Prime Minister and projects in conditional investment domains.
4. To examine, inspect and supervise the implementation of regimes and policies on credit and foreign exchange management related to investment activities.

5. To assume the prime responsibility for, and coordinate with concerned ministries, branches and provincial-level People's Committees in, settling investment projects' difficulties and problems in the domain of credit and foreign exchange management.

**Article 79.-** Investment state management responsibilities and powers of branch-managing ministries

Ministries and ministerial-level agencies shall, within the scope of their respective tasks and powers, perform state management of investment in their assigned domains, specifically as follows:

1. To coordinate with the Ministry of Planning and Investment, related ministries and branches in formulating and promulgating laws and policies related to investment activities.
2. To assume the prime responsibility for, and coordinate with related ministries and branches in formulating and promulgating laws, policies and technical standards and regulations, and guide the implementation thereof.
3. To submit to the Government for promulgation investment conditions for conditional investment domains in econo-technical branches.
4. To formulate their branches' plannings, plans and lists of projects calling for investment capital; to organize investment mobilization and promotion for their respective branches.
5. To publicize their branches' plannings, plans, technical standards, investment conditions and lists of projects calling for investment capital.
6. To examine and give written opinions on the capability to meet conditions required for investment projects with respect to investment projects within the approving competence of the Prime Minister and projects in conditional investment domains.
7. To conduct specialized examination, inspection and supervision of the satisfaction of investment conditions and perform state management of investment projects within their respective competence.
8. To assume the prime responsibility for, and coordinate with provincial-level People's Committees and related ministries and branches in, settling investment projects' difficulties and problems in the domains under their specialized management.

**Article 80.-** Investment state management responsibilities and powers of provincial-level People's Committees

1. On the basis of the socio-economic development plannings, to coordinate with related ministries and branches in drawing up and publicizing lists of local projects calling for investment; to organize mobilization and promotion of investment.
2. To assume the prime responsibility for organizing investment registration, examination, grant, adjustment and revocation of investment certificates, decide on early termination of operation of investment projects within their competence.
3. To perform state management of investment projects in their localities which are located outside industrial parks, export processing zones, hi-tech parks and economic zones according to the following principal contents:



a/ Monitoring, supervising and examining the realization of investment objectives indicated in investment certificates, the capital contribution and project execution progress; supervising and examining the fulfillment of financial obligations, labor relations, wages, the protection of legitimate rights and interests of laborers and labor users, activities of socio-economic organizations, and the protection of the ecological environment; assuming the prime responsibility for or joining ministries and branches in inspecting investment projects in their localities;

b/ Organizing ground clearance work; granting land use right certificates and supervising land use;

c/ Settling investors' difficulties and problems; for those beyond their competence, reporting them to the Prime Minister or related ministries or branches for settlement;

d/ Evaluating the impacts of investment activities in their localities.

4. To direct the formulation of detailed plannings on the construction of industrial parks and export processing zones, and approve detailed plannings on the construction of industrial parks and export processing zones under the provisions of law on construction.

5. Quarterly, biannually and annually, to assume the prime responsibility for, and coordinate with the management boards in reviewing investment activities in their localities before reporting to the Ministry of Planning and Investment.

**Article 81.-** Investment state management responsibilities and powers of management boards of industrial parks, export processing zones, hi-tech parks and economic zones

1. To contribute opinions to ministries, branches and localities in the formulation of legal documents, policies and plannings related to investment activities and development of industrial parks, export processing zones, hi-tech parks and economic zones.

2. To register investment; to examine investment projects within their competence and grant, adjust and revoke investment certificates of these investment projects.

3. To examine, inspect and supervise the realization of investment objectives indicated in the investment certificates, the capital contribution and project execution progress; to coordinate in supervising and examining the observance of laws on labor and wages; the protection of legitimate rights and interests of laborers and labor users, activities of socio-economic organizations, and the protection of the ecological environment in investment projects in industrial parks, export processing zones, hi-tech parks and economic zones.

4. To settle difficulties and problems of investors in industrial parks, export processing zones, hi-tech parks and economic zones; for those beyond their competence, reporting them to the Prime Minister or related ministries, branches or provincial-level People's Committees for settlement.

5. To evaluate the impacts of investment activities in industrial parks, export processing zones and economic zones.

6. Quarterly, biannually and annually, to send reports on investment activities in industrial parks, export processing zones, hi-tech parks and economic zones to provincial-level People's Committees and the Ministry of Planning and Investment.



**Article 82.-** Organizational apparatus of management boards

1. The management board is a body managing industrial parks, export processing zones, hi-tech parks and economic zones within a province or centrally run city. It is established under decision of the Prime Minister at the proposal of the provincial-level People's Committee president and the Minister of Home Affairs; and submits to the direction and management by the provincial-level People's Committee in the management board's organization, payroll, work program and operation fund (unless otherwise stipulated by the Prime Minister).
2. The specialized trade, finance, customs agencies and other agencies, if necessary, shall arrange their representatives in industrial parks, export processing zones, hi-tech parks and economic zones to deal with matters under their respective management.
3. Specific functions, tasks and powers, organizational structure and operation regulation of management boards shall be decided by the Prime Minister.

**Article 83.-** State management of investment promotion

1. Investment promotion covers the following contents:
  - a/ Formulating strategies, plans and policies on attraction of domestic and foreign investment capital; creating conditions for mobilizing investment capital of all economic sectors;
  - b/ Implementing programs on propaganda, popularization, introduction and supply information on the investment environment, potential and opportunities;
  - c/ Organizing investment promotion establishments in Vietnam and foreign countries to mobilize, support and assist investors in understanding investment policies and laws and in selecting domains and locations for executing investment projects;
  - d/ Drawing up a list of national projects calling for investment capital and lists of projects calling for investment capital in branches and localities in conformity with the socio-economic development plannings and orientations in each period.
2. On the basis of strategies and plans on attraction of investment capital, investment state management agencies shall make annual investment promotion plans and send them to the Ministry of Planning and Investment for coordination in their implementation.
3. The investment promotion funds of state management agencies are allocated from the budget and comply with regulations and guidance of the Ministry of Finance.

Annually, ministries, ministerial-level agencies, government-attached agencies and provincial-level People's Committees shall formulate investment promotion plans and estimate funds for investment promotion activities.

The Ministry of Finance shall coordinate with the Ministry of Planning and Investment in guiding the estimation of funds for investment promotion activities and perform financial management of these activities.

**Article 84.-** Inspection of investment activities and handling of investment-related violations

1. The scope of investment inspection, organization and activities of investment inspection shall be as provided for in the Investment Law and the provisions of law on inspection of state management of investment and investment projects.
2. Acts in violation of investment law and the handling of investment-related violations shall be as provided for by law.

**Article 85.-** Settlement of disputes

The settlement of disputes over investment activities shall be as provided in Article 12 of the Investment Law and relevant laws.

## **Chapter VIII**

### **IMPLEMENTATION PROVISIONS**

**Article 86.-** Application of laws to investment projects executed before the Investment Law takes effect

1. For domestic investment projects that are executed before the Investment Law takes effect, investment registration or examination procedures are not required; an investor that wishes to have an investment certificate shall carry out registration procedures under the provisions of this Decree.
2. Foreign investment projects that are granted investment licenses before the Investment Law takes effect shall comply with the provisions of Article 88 of the Investment Law, Article 170 of the Enterprise Law and the Government's regulations on re-registration and transformation of foreign-invested enterprises.

**Article 87.-** Application of investment to foreign investors that establish private enterprises; investment in education, training, health and other domains affecting the public

Pursuant to the provisions of the Investment Law, this Decree and the enterprise law, the Prime Minister shall provide for investment in the establishment of private enterprises by foreign investors; payment of deposits and customers' insurance for investment in education, training and health and other domains affecting the public.

**Article 88.-** Implementation provisions

1. This Decree takes effect 15 days after its publication in "CONG BAO".
2. This Decree supersedes:
  - a/ Decree No. 24/2000/ND-CP of July 31, 2000, detailing the implementation of the Law on Foreign Investment in Vietnam; Decree No. 27/2003/ND-CP of March 19, 2003, amending and supplementing a number of articles of Decree No. 24/2000/ND-CP of July 31, 2000, detailing the implementation of the Law on Foreign Investment in Vietnam; and Decree No. 36/CP of April 24, 1997, promulgating the Regulation on industrial parks, export processing zones and hi-tech parks;
  - b/ Decree No. 51/1999/ND-CP of July 8, 1999, detailing the implementation of the Law on Domestic Investment Promotion (amended); Decree No. 35/2002/ND-CP of March 29, 2002, amending and supplementing Lists A, B and C included in the appendices to Decree No. 51/1999/ND-CP of July 8, 1999, detailing the implementation of the Law on Domestic Investment Promotion (amended);

c/ The list of domains and geographical areas entitled to investment preferences stipulated in Decree No. 164/2003/ND-CP of December 22, 2003, detailing the Law on Enterprise Income Tax; Decree No. 152/2004/ND-CP of August 6, 2004, amending and supplementing a number of articles of Decree No. 164/2003/ND-CP of December 22, 2003, detailing the Law on Enterprise Income Tax;

d/ The list of domains and geographical areas entitled to investment preferences stipulated in Decree No. 149/2005/ND-CP of December 8, 2005, detailing the implementation of the Law on Import Duty and Export Duty;

e/ Other regulations on investment contrary to this Decree.

3. Ministers, heads of ministerial-level agencies and government-attached agencies and presidents of provincial-level People's Committees shall, within the scope of their respective functions and tasks, guide and implement this Decree.

On behalf of the Government  
Prime Minister

*NGUYEN TAN DUNG*

## **APPENDIX I**

### **LIST OF DOMAINS ENTITLED TO INVESTMENT PREFERENCES**

*(Promulgated together with the Government's Decree No. 108/2006/ND-CP of September 22, 2006)*

#### **A. LIST OF DOMAINS ENTITLED TO SPECIAL INVESTMENT PREFERENCES**

##### **I. Manufacture of new materials and production of new energy; manufacture of products of high technology, of bio-technology and of information technology; mechanical manufacturing**

1. Manufacture of composite materials, light construction materials, precious and rare materials.

2. Manufacture of high-quality steel, alloys, special metal, porous iron and steel billet.

3. Investment in the construction of establishments using solar energy, wind energy, biogas, geothermic and tidal energy.

4. Production of medical equipment for analytical and extractive technology in the medical sector; orthopaedic equipment, specialized vehicles and equipment for the disabled.

5. Application of advanced technology, bio-technology for production of medicines for human use up to international GMP standard; production of antibiotic materials.

6. Production of computers, telecommunication and communication and Internet equipment and key information technology products.

7. Production of semi-conductors and hi-tech electronic components; production of software products, items of digital information; provision of services on software,

research into information technology and training of human resources for information technology.

8. Investment in the production and manufacture of precision mechanical engineering equipment; equipment and machines for examination and control of industrial manufacturing safety; industrial robots.

## **II. Breeding, rearing, growing and processing agricultural, forest and aquaculture products; salt making; production of artificial strains, new plant varieties and livestock breeds**

9. Afforestation, tending of forests.

10. Breeding, rearing and growing agricultural, forest and aquaculture products on uncultivated land, unexploited waters.

11. Fishery in offshore sea waters.

12. Production of artificial strains, new plant varieties and livestock breeds of high economic value.

13. Production, mining and refining of salt.

## **III. Use of high technology and modern techniques; protection of the ecological environment; research, development and nursery of high technology**

14. Application of high technology or new technology which has not yet been used in Vietnam; application of bio-technology.

15. Treatment of pollution and protection of environment; production of equipment for pollution treatment and equipment for observation and analysis of the environment.

16. Collection and treatment of wastewater, waste gas and solid waste; recycling or reuse of waste.

17. Research, development and nursery of high technology.

## **IV. Labor intensive industries**

18. Projects employing 5,000 or more employees on a regular basis.

## **V. Construction and development of infrastructures and important projects**

19. Investment in the construction and commercial operation of infrastructures of industrial parks, export processing zones, hi-tech parks and economic zones or important projects falling within the deciding competence of the Prime Minister.

## **VI. Development of education, training, health care, physical training and sports**

20. Investment in the construction of facilities for treatment of tobacco or drug addiction.

21. Investment in the establishment of facilities for epidemic prevention and control.

22. Investment in the establishment of geriatric centers or centers for relief and care of the disabled and orphans.

23. Investment in the construction of centers of training for high-achievement sports, sport training for the disabled; the construction of sport facilities with training and competition equipment satisfying requirements for organization of international tournaments.

## **VII. Other manufacturing and service sectors**

24. Investment in research and development (R & D) accounting for 25% or more of the revenue.

25. Salvage operations at sea.

26. Investment in the construction of apartment buildings for workers working in industrial parks, export processing zones, hi-tech parks and economic zones; investment in the construction of dormitories for students and of residential houses for social policy beneficiaries.

### **B. LIST OF DOMAINS ENTITLED TO INVESTMENT PREFERENCES**

#### **I. Manufacture of new materials and production of new energy; manufacture of products of high-technology, of bio-technology or of information technology; mechanical manufacturing**

1. Production of soundproof, electricity insulated or high heat-insulated materials; synthetic materials used as a substitute for wood; fire-proof materials; construction plastics; glass fiber; special-use cement.

2. Production of non-ferrous metals and refining of cast iron.

3. Production of molds and prototypes for metal and non-metal products.

4. Investment in the construction of new power plants, in power distribution and transmission.

5. Production of medical supplies and equipment, construction of warehouses for preservation of pharmaceutical products, reserves of medicines for human use in case of natural disasters and dangerous epidemics.

6. Production of equipment used for testing toxic substances in foodstuffs.

7. Development of the petrochemical industry.

8. Production of coke and active coal.

9. Production of plant protection drugs, pesticides, preventive and curative drugs for animals and aquatic creatures; veterinary drugs.

10. Materials for production of medicines or medicines for prevention or treatment of social diseases; vaccines; biological products; medicines produced from pharmaceutical materials; eastern medicines.

11. Investment in the construction of facilities for biological experiment, assessment of the availability of medicines; pharmaceutical establishments satisfying GMP standards in producing, preserving, testing, and carrying out clinical tests of medicines, planting, rearing or harvesting and processing of pharmaceutical materials.

12. Development of sources of pharmaceutical materials and production of medicines from pharmaceutical materials; projects for research or substantiation of scientific

grounds for prescriptions for eastern medicines and formulation of standards for testing of prescriptions for eastern medicines; survey and statistics of types of pharmaceutical materials used for production of medicines; collection, inheritance and application of prescriptions for eastern medicines, finding, exploitation and use of new pharmaceutical materials.

13. Production of electronic appliances.

14. Production of machines, equipment and detail assemblies for the following sectors: oil and gas exploitation, mining, energy and cement; production of large-sized lifting equipment; production of machine tools for metal processing and metallurgy equipment.

15. Investment in the manufacture of high and medium voltage electric devices or generators of large capacity.

16. Investment in the production of diesel engines; investment in the repair or building of ships; equipment and spare parts for transportation ships and fishing ships; production of dynamic and hydraulic machinery and spare parts and compressing machines.

17. Production of equipment, vehicles and machinery for construction; technical equipment for the transportation sector; locomotives and carriages;

18. Investment in the manufacture of machine tools, machinery, equipment and components for agricultural and forest production; machinery for food processing; irrigation equipment.

19. Investment in the production of equipment, machinery for textiles, garments and leather industries.

## **II. Breeding, rearing, growing and processing of agricultural, forest and aquaculture products; salt making; production of artificial strains, new plant varieties and livestock breeds**

20. Growing of plants for pharmaceutical purposes.

21. Investment in post-harvest preservation of agricultural products, preservation of agricultural and aquaculture products and foodstuffs.

22. Production of bottled or canned fruit juices.

23. Production and refining of feed for cattle, poultry and aquatic resources.

24. Technical services for planting industrial and forest trees, husbandry, aquaculture, protection of plants and livestock.

25. Production, multiplication or crossbreeding for new plant varieties or livestock breeds.

## **III. Use of high technology and modern techniques; protection of the ecological environment; research, development and nursery of high technology**

26. Manufacture of equipment for responding to and dealing with oil spills.

27. Manufacture of equipment for waste treatment.

28. Investment in the construction of technical facilities and works: laboratories and experimental stations to apply new technology to production; investment in the establishment of research institutes.

#### **IV. Labor intensive industries**

29. Projects regularly employing between 500 and 5,000 employees.

#### **V. Construction and development of infrastructures**

30. Construction of infrastructures serving production and business of cooperatives and life of communities in rural areas.

31. Investment in and commercial operation of infrastructures and investment in the production in industrial complexes, industrial spots, complexes of rural trade villages.

32. Construction of water plants and water supply systems for civil and industrial use; investment in the construction of water drainage systems.

33. Construction and upgrading of bridges, roads, terminals, airports, seaports, railway stations, bus stations and parking lots; establishment of new railway routes.

34. Construction of technical infrastructures of concentrated population areas in the geographical areas in Appendix II to this Decree.

#### **VI. Development of education, training, health care, physical training, sports and national culture**

35. Investment in the construction of infrastructures for education and training establishments; investment in the construction of people-founded and private schools and education and training establishments at the levels of pre-school education; general education, vocational high-school education and tertiary education.

36. Establishment of people-founded and private hospitals.

37. Construction: physical training or sport centers, training facilities and physical training and sports clubs; establishments for production, manufacture and repair of equipment, supplies and equipment for physical training and sports.

38. Establishment of national cultural houses; national dance, music and song troupes; theaters, film studios, cinemas; establishments for production, manufacture and repair of national musical instruments; maintenance and preservation of museums, national cultural houses and culture and arts schools.

39. Investment in the construction of national tourist sites, ecological tourist sites and cultural parks for sports, entertainment and recreation activities.

#### **VII. Development of traditional trades and occupations**

40. Building up and development of traditional trades and occupations for production of fine-art and handicraft goods, processing of agricultural products and foodstuffs and cultural products.

#### **VIII. Other manufacturing and service sectors**

41. Provision of Internet connection, access and application services and points for accessing public telephones in areas in Appendix II to this Decree.



42. Development of mass transit including: transportation by ships, aircraft; railway transportation; road transportation of passengers by cars with 24 seats or more; transportation of passengers by modern and high-speed vehicles by inland waterway; container transportation.
43. Investment in the relocation of production establishments to non-urban areas.
44. Investment in the construction of class-I marketplaces and exhibition centers.
45. Production of children's toys.
46. Activities in mobilizing capital and lending capital of people's credit funds.
47. Legal consultancy, services of consultancy on intellectual property and technology transfer.
48. Production of various types of materials for production of pesticides.
49. Production of base chemicals, purified chemicals, special-use chemicals and dyes.
50. Production of materials for production of detergents and additives for the chemical industry.
51. Production of paper, cartons, artificial planks from domestic agricultural and forest materials; production of pulp.
52. Weaving and fashioning of textile products; production of silk and fibers of all types; tanning and processing of leather.
53. Investment projects on production activities in industrial parks established under decisions of the Prime Minister.

## APPENDIX II

### LIST OF GEOGRAPHICAL AREAS ENTITLED TO INVESTMENT PREFERENCES

*(Promulgated together with the Government's Decree No. 108/2006/ND-CP of September 22, 2006)*

Ordinal number	Province	Areas with extremely difficult socio-economic conditions	Areas with difficult socio-economic conditions
1	Bac Kan	All districts and towns	
2	Cao Bang	All districts and towns	
3	Ha Giang	All districts and towns	
4	Lai Chau	All districts and towns	
5	Son La	All districts and towns	
6	Dien Bien	All districts and Dien Bien city	
7	Lao Cai	All districts	Lao Cai City

8	Tuyen Quang	Na Hang and Chiem Hoa districts	Ham Yen, Son Duong and Yen Son districts and Tuyen Quang town
9	Bac Giang	Son Dong district	Luc Ngan, Luc Nam, Yen The and Hiep Hoa districts
10	Hoa Binh	Da Bac and Mai Chau districts	Kim Boi, Ky Son, Luong Son, Lac Thuy, Tan Lac, Cao Phong, Lac Son and Yen Thuy districts
11	Lang Son	Binh Gia, Dinh Lap, Cao Loc, Loc Binh, Trang Dinh, Van Lang and Van Quan districts	Bac Son, Chi Lang and Huu Lung districts
12	Phu Tho	Thanh Son and Yen Lap districts	Doan Hung, Ha Hoa, Phu Ninh, Song Thao, Thanh Ba, Tam Nong and Thanh Thuy districts
13	Thai Nguyen	Vo Nhai anh Dinh Hoa districts	Dai Tu, Pho Yen, Phu Luong, Phu Binh and Dong Hy districts
14	Yen Bai	Luc Yen, Mu Cang Chai and Tram Tau districts	Tran Yen, Van Chan, Van Yen and Yen Binh districts and Nghia Lo town
15	Quang Ninh	Ba Che and Binh Lieu districts, Co To island district, islands and offshore islands under provincial authority	Van Don district
16	Hal Phong	Bach Long Vy and Cat Hal island districts	
17	Ha Nam		Ly Nhan and Thanh Liem districts
18	Nam Dinh		Giao Thuy, Xuan Truong, Hai Hau and Nghia Hung districts
19	Thai Binh		Thai Thuy and Tien Hai districts
20	Ninh Binh		Nho Quan, Gia Vien, Kim Son, Tam Diep and Yen Mo districts
21	Thanh Hoa	Muong Lat, Quan Hoa, Ba Thuoc, Lang Chanh, Thuong	Thach Thanh and Nong Cong districts

		Xuan, Cam Thuy, Ngoc Lac, Nhu Thanh and Nhu Xuan districts	
22	Nghe An	Ky Son, Tuong Duong, Con Cuong, Que Phong, Quy Hop, Quy Chau and Anh Son districts	Tan Ky, Nghia Dan and Thanh Chuong districts
23	Ha Tinh	Huong Khe, Huong Son and Vu Quang districts	Duc Tho, Ky Anh, Nghi Xuan, Thach Ha, Cam Xuyen and Can Loc districts
24	Quang Binh	Tuyen Hoa, Minh Hoa and Bo Trach districts	Other districts
25	Quang Tri	Huong Hoa and Dac Krong districts	Other districts
26	Thua Thien Hue	A Luoi and Nam Dong districts	Phong Dien, Quang Dien, Huong Tra, Phu Loc and Phu Vang districts
27	Da Nang	Hoang Sa island district	
28	Quang Nam	Dong Giang, Tay Giang, Nam Giang, Phuoc Son, Bac Tra My, Nam Tra My, Hiep Duc, Tien Phuoc and Nui Thanh districts and Cu Lao Cham island	Dai Loc and Duy Xuyen districts
29	Quang Ngai	Ba To, Tra Bong, Son Tay, Son Ha, Minh Long, Binh Son and Tay Tra districts and Ly Son island district	Nghia Hanh and Son Tinh districts
30	Binh Dinh	An Lao, Vinh Thanh, Van Canh, Phu Cat and Tay Son districts	Hoai An and Phu My districts
31	Phu Yen	Song Hinh, Dong Xuan, Son Hoa and Phu Hoa districts	Song Cau, Tuy Hoa and Tuy An districts
32	Khanh Hoa	Khanh Vinh and Khanh Son districts, Truong Sa island district and islands under provincial management	Van Ninh, Dien Khanh and Ninh Hoa districts and Cam Ranh town
33	Ninh Thuan	All districts	

34	Binh Thuan	Phu Quy island district	Bac Binh, Tuy Phong, Duc Linh, Tanh Linh, Ham Thuan Bac and Ham Thuan Nam districts
35	Dak Lak	All districts	
36	Gia Lai	All districts and towns	
37	Kon Tum	All districts and towns	
38	Dak Nong	All districts	
39	Lam Dong	All districts	Bao Loc town
40	Ba Ria - Vung Tau	Con Dao island district	Tan Thanh district
41	Tay Ninh	Tan Bien, Tan Chau, Chau Thanh and Ben Cau districts	Other districts
42	Binh Phuoc	Loc Ninh, Bu Dang and Bu Dop districts	Dong Phu, Binh Long, Phuoc Long and Chon Thanh districts
43	Long An		Duc Hue, Moc Hoa, Tan Thanh, Duc Hoa, Vinh Hung and Tan Hung districts
44	Tien Giang	Tan Phuoc district	Go Cong Dong and Go Cong Tay districts
45	Ben Tre	Thanh Phu, Ba Chi and Binh Dai districts	Other districts
46	Tra Vinh	Chau Thanh and Tra Cu districts	Cau Ngang, Cau Ke and Tieu Can districts
47	Dong Thap	Hong Ngu, Tan Hong, Tam Nong and Thap Muoi districts	Other districts
48	Vinh Long		Tra On district
49	Soc Trang	All districts	Soc Trang town
50	Hau Giang	All districts	Vi Thanh town
51	An Giang	An Phu, Tn Ton, Thoai Son, Tan Chau and Tinh Bien districts	Other districts
52	Bac Lieu	All districts	Bac Lieu town
53	Ca Mau	All districts	Ca Mau city
54	Kien Giang	All districts, islands and offshore islands under provincial management	Ha Tien and Rach Gia towns

	Other localities	Hi-tech parks and economic zones entitled to preferences under establishment decisions of the Prime Minister	Industrial parks established under decisions of the Prime Minister
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### **APPENDIX III**

#### **LIST OF CONDITIONAL INVESTMENT DOMAINS APPLICABLE TO FOREIGN INVESTORS**

*(Promulgated together with the Government's Decree No. 108/2006/ND-CP of September 22, 2006)*

1. Broadcasting and television.
2. Production, publishing and distribution of cultural products.
3. Exploitation and processing of minerals.
4. Establishment of infrastructures for telecommunications networks, transmission and provision of Internet and telecommunications services.
5. Establishment of public postal networks and provision of postal services and delivery services.
6. Construction and operation of river ports, seaports, airports and airfields.
7. Transportation of goods and passengers by rail, air, land and sea and inland waterways.
8. Catching of marine resources.
9. Production of cigarettes.
10. Real estate business.
11. Investment in import, export and distribution.
12. Education and training.
13. Hospitals and clinics.
14. Other investment domains in treaties to which Vietnam is a contracting party and which restrict the opening of the market to foreign investors.

Investment conditions applicable to foreign investors with investment projects in the domains specified in this Appendix must conform with the provisions of treaties to which Vietnam is a contracting party.

### **APPENDIX IV**

#### **LIST OF DOMAINS BANNED FROM INVESTMENT**

*(Promulgated together with the Government's Decree No. 108/2006/ND-CP of September 22, 2006)*

**I. Projects which are detrimental to national defense and security and public interests**

1. Production and processing of narcotics.
2. Investment in and commercial operation of secret investigation services infringing upon state interests, legitimate rights and interests of organizations and individuals.
3. Investment in the field of private detective and investigation.

**II. Projects which are harmful to historical and cultural relics, morality and Vietnamese fine customs**

4. Projects on construction of works within the premises of national historical or cultural relics; projects adversely affecting the architecture and landscape of national historical cultural relics.
5. Production of depraved cultural or superstitious products.
6. Production of dangerous toys or toys which are harmful to personality education and health of children or security, social order and safety.
7. Prostitution business; trafficking of women and children.
8. Experiments of human cloning.

**III. Projects which are harmful to the people's health, or which destroy natural resources and the environment.**

9. Production of schedule 1 chemicals (in accordance with the International Convention).
10. Production of veterinary drugs, plant protection drugs which are banned from use or are not permitted for use in Vietnam.
11. Production of medicines for human use, vaccines, medical biological products, cosmetics, chemicals and preparations used for killing insects or bacteria which are not permitted for use in Vietnam.

**IV. Projects on treatment of hazardous waste brought from overseas into Vietnam; projects on manufacture of toxic chemicals or on use of toxic agents prohibited under treaties**

12. Projects on treatment of hazardous waste brought from overseas into Vietnam; projects on manufacture of toxic chemicals or on use of toxic agents prohibited under treaties to which Vietnam is a contracting party.

**V. Other projects banned from investment in accordance with law.-**

THE END