

**DECREE**

AMENDMENT TO DECREE No. 16/2016/ND-CP DATED MARCH 16, 2016 ON MANAGEMENT AND USE OF OFFICIAL DEVELOPMENT ASSISTANCE AND CONCESSIONAL LOANS GRANTED BY FOREIGN SPONSORS

*Pursuant to the Law on Government organization dated June 19, 2015;*

*Pursuant to the Law on Government Budget dated June 25, 2015;*

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

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

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

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

*Pursuant to the Law on International treaties dated April 09, 2016;*

*Pursuant to the Law on Public debt management dated November 23, 2017;*

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

*The Government promulgates a Decree on amendments to the Government's Decree No. 16/2016/ND-CP dated March 16, 2016 on management and use of official development assistance and concessional loans granted by foreign sponsors.*

**Article 1. Amendment to Decree No. 16/2016/ND-CP**

1. Clause 4a below is added to Article 3:

“4a. “feasibility study report” means a document about study into the necessity, feasibility and efficiency of the program/project funded by ODA or concessional loan, which is a basis for competent authorities to decide investment therein.”

2. Clause 15 of Article 3 is amended as follows:

”15. “technical assistance project” means a project aimed to assist in study into policies, institutions, professions, improvement of human capacity, or for preparation for another program/project through activities such as provision of domestic and foreign experts, training, provision of equipment and materials, survey, conventions in Vietnam and overseas. Technical assistance projects comprise technical assistance projects funded by ODA grant and technical assistance projects funded by ODA loans or concessional loans as preparations for the project.”

3. Clause 15a below is added to Article 3:

“15a. “program/project proposal” means documents describing the setting, necessity, objectives, scope, estimated duration, capital investment and structure thereof, preliminary assessment of economic, social and environmental impacts, proposed domestic financial mechanism, debt repayment plan and impacts on the mid-term investment plan of the governing body; this is the basis for competent authorities to permit preparation of a report on proposal of investment guidelines or pre-feasibility study report.”

4. Clause 16 of Article 3 is amended as follows:

“a) “framework treaty on ODA or concessional loan” means an international treaty on framework conditions and principles related to the strategy, policies, cooperation scope, prioritized fields; standards to be complied with in provision and use of ODA or concessional loans; commitment on ODA or concessional loans for one or several years and other contents

agreed by its signatories;”

5. Clause 18 of Article 3 is amended as follows:

“18. “serving bank” means a bank selected by the project owner for the project on the basis of the criteria established by the State bank.”

6. Clause 20 of Article 3 is amended as follows:

“20. “decision on investment guidelines” means a decision issued by a competent authority on investment guidelines of the program/project. Its main content includes: name of the program/project, the foreign sponsor or co-sponsor; name of the governing body, main targets; time and location; capital limit; domestic financial mechanism and on-lending method; prior activities (if any) as the basis for the governing body to cooperate with the foreign sponsor in compiling the feasibility study report.”

7. Clause 20a below is added to Article 3:

“20a. “implementation guidelines” means a Prime Minister’s document about guidelines for execution of a technical assistance project or non-project grant aid. Such a document shall contain: name of the project/non-project grant aid, the foreign sponsor or co-sponsor; name of the governing body and capital limit as the basis for the governing body to cooperate with the foreign sponsor in approving the project document.”

8. Clause 21 of Article 3 is amended as follows:  
“21. “agreement on ODA or concessional loans” means a written agreement on ODA or concessional loans concluded in the name of the Government of Socialist Republic of Vietnam and is not an international treaty.”

9. Clause 22 of Article 3 is amended as follows:

“22. “project document” of a technical assistance project or non-project grant aid means the document that presents its context, necessity, targets, contents, primary activities, economic, social and environmental effects, total capital, capital sources and structure thereof, other resources, sponsoring method, the foreign sponsor’s conditions (if any), management by the governing body that are the basis for execution.”

10. Point b and Point c Clause 23 of Article 3 are amended as follows:

“b) “ODA loan” means a foreign loan with at least 35% grant element if the loan is tied to mandatory procurement of goods or services as required by the foreign sponsor, or at least 25% grant element if it is an untied aid. The calculation of grant element is specified in Appendix I hereof;

c) “concessional loan” means a foreign loan that is more favorable than a commercial loan but the grant element of which is lower than that of ODA loans as specified in Point b hereof.”

11. Clause 25 of Article 3 is amended as follows:

“25. “tied aid” means ODA or concessional loan that is tied to mandatory procurement of goods or services from the sponsoring country(ies) specified by the foreign sponsor or OECD.

12. Article 5 is amended as follows:

**“Article 5. Priority of ODA and concessional loan provision**

1. Socio-economic infrastructure, especially traffic infrastructure and social infrastructure (healthcare, education, vocational training), smart city development, irrigation.
2. Study and implementation of institutional and administrative reform.
3. Development of human resources, technology transfer and development.
4. Environmental remediation and improvement, natural disaster recovery and preparedness, climate change adaptation and green growth.
5. Use as state investment in PPP projects
6. Other prioritized fields decided by the Prime Minister.”

13. Article 6 is amended as follows:

**“Article 6. Prioritized fields sorted by funding sources and rules for using ODA, concessional loans and reciprocal capital**

1. Grant ODA should be used for execution of institutional and administrative reform; natural disaster recovery and preparedness, climate change adaptation, social security, preparation for projects having complicated infrastructure or technology, PPP projects, sponsoring projects funded by concessional loans to increase their grant element.

2. ODA loans should be used for projects for healthcare, education vocational training, climate change adaptation, environmental protection, essential traffic infrastructure investment in which cannot be directly recovered.

3. Concessional loans should be used for large-scale infrastructure projects that are able to generate revenue for debt repayment; on-lending projects.

4. Grant of loans on conditions that suppliers or contractors be appointed by the foreign sponsor shall be applied to: Loans for solving emergency issues related to natural disasters, national defense, energy security; cases in which the project owner can prove that foreign sponsor’s goods or equipment are more advantageous in terms of technology or prices; other cases decided by the Prime Minister.

5. ODA loans and concessional loans shall only be used for development investment instead of regular spending.

6. The use of ODA and concessional loans in other cases shall be decided by the Prime Minister.

7. Reciprocal capital should be provided for programs and projects funded by ODA and concessional loans that are fully disbursed by state budget from 5-year public investment plans and annual public investment plans on schedule under international treaties or agreements on ODA or concessional loans, and such capital are actually disbursed during the execution.”

14. Article 8 is amended as follows:

**“Article 8. Rules for applying domestic financial mechanism to programs and projects**

1. The central government budget shall disburse the entire funds for program/projects investment in which cannot be directly recovered if they are within the spending plan of central government budget.

2. For programs and projects funded by local government budgets: Part or all of the ODA loan or concessional loan shall be disbursed or on-lent by the central government budget in accordance with regulations of law on on-lending foreign loans by the Government to the People’s Committees of provinces.

3. For programs and projects investment in which is partially or entirely recoverable: On-lend part or all of the ODA loan or concessional loan from the central government budget in accordance with regulations of law on on-lending foreign loans by the Government to the People’s Committees of provinces.

15. Article 10 is amended as follows:

**“Article 10. Procedures for management and use of ODA and concessional loans**

Procedures for management and use of ODA and concessional loans

1. Regarding a program/project funded by ODA grant, ODA loan or concessional loan:

- a) Drafting, selecting, proposing a program/project (unless it is funded by ODA grant);
- b) Drafting, appraising, issuing the decision on investment guidelines of the program/project;
- c) Drafting, appraising, issuing the investment decision;
- d) Concluding the international treaty or agreement on ODA or concessional loan;

- dd) Managing the execution of the program/project;
  - e) Completing, transferring the result of the program/project.
2. Regarding a technical assistance project or non-project grant aid:
- a) Prepare project documents; appraise and issue the implementation guidelines (for projects and non-project grant aids) and approve the project documents;
  - b) Conclude the international treaty or agreement on provision of ODA grant for the technical assistance project or non-project grant aid;
  - c) Manage execution of the technical assistance project or non-project grant aid;
  - e) Completing, transferring the result of the technical assistance project or non-project grant aid.
3. Procedures for management and use of budget assistance:
- a) Drafting, appraising and issuing the decision to receive the budget assistance;
  - b) Concluding the international treaty or agreement on budget assistance;
  - c) Management;
  - d) Completing and transferring.”

16. Clause 1 of Article 11 is amended as follows:

“1. ODA or concessional loan shall be raised through negotiation of development policies with foreign sponsors according to the orientation of attraction of ODA and concessional loans; 10-year and 5-year socio-economic development strategies; nationwide, industrial and local development plans; mid-term public investment plan; 5-year national financial plan; long-term strategy for public debt and mid-term public debt management program; annual and 5-year limits on ODA loans and concessional loans; 5-year financial plans of provinces; 3-year national and provincial financial plans; annual plans for taking and repaying foreign loans approved by competent authorities.”

17. The title of Chapter II is amended as follows:

## **“Chapter II**

### **PREPARATION, APPRAISAL, APPROVAL AND ISSUANCE OF INVESTMENT GUIDELINES FOR PROGRAMS AND PROJECTS FUNDED BY ODA LOANS CONCESSIONAL LOANS AND ODA GRANTS**

18. Clause 3 and Clause 4 of Article 12 are amended as follows:

“3. The Prime Minister shall consider issuing the decision on investment guidelines in the cases other than those specified in Clause 1 and Clause 2 of this Article, including:

- a) Programs and projects funded by ODA loans or concessional loans;
- b) Programs and projects funded by ODA grants in the following cases: Group A and Group B investment programs and projects; programs and projects associated with a policy framework; national defense, security, religion programs and projects; sectoral access programs; purchase of goods subject to permission by the Prime Minister; Vietnam’s participation in regional programs and projects;
- c) Technical assistance projects funded by ODA loans or concessional loans for project preparation.

4. The head of the governing body shall issue the decision on investment guidelines in the cases other than those specified in Clause 1 through 3 of this Article.”

19. Article 13 is amended as follows:

### **Article 13. Procedures for preparing, selecting and approving programs and projects**

1. Power to approve proposed programs and projects:

a) The Prime Minister is entitled to approve programs and projects funded by ODA loans and concessional loans;

b) The governing body of the program/project funded by ODA grant shall prepare a report on proposal of investment guidelines instead of a project proposal.

2. The governing body shall prepare the project proposal in accordance with Clause 1 and Clause 2 Article 24 of the Law on Public Investment; Clause 1 and Clause 2 Article 29 of the Law on Public debt management. The specimen of such proposal is provided in Appendix II hereof.

3. In order to be selected, a program/project must:

a) be suitable for socio-economic development strategies or master plans, public debt safety and solvency; policies on attraction of ODA and concessional loan; policies on provision of ODA and concessional loans by foreign sponsors;

b) ensure effectiveness, socio-economic and environmental sustainability;

c) be able to balance ODA, concessional loans and reciprocal capital;

d) not coincide with another program/project approved by a competent authority.

4. Selection and approval of programs and projects by the Prime Minister:

a) The governing body shall send a written proposal to the Ministry of Planning and Investment;

b) The Ministry of Planning and Investment shall take charge and cooperate with relevant authorities in assessing the necessity, feasibility socio-economic effect and environmental impacts (if any) of the program/project with account taken of the mid-term public investment plan, and submit the program/project to the Prime Minister for approval; The Ministry of Finance shall determine the grant element and impact of the ODA loan or concessional loan to public debt safety, determine the domestic financial mechanism and submit a report to the Prime Minister;

c) The Prime Minister shall consider approving the proposed program/project.”

20. The title of Article 16 is amended as follows:

**“Article 16. Procedures for issuing a decision on investment guidelines of a program/project funded by ODA or concessional loan within the competence of the Prime Minister other than Group A projects”**

21. Article 16a below is added after Article 16:

**“Article 16a. Procedures for issuing a decision on guidelines for budget assistance receiptelois added after A**

1. In addition to documents about the budget assistance, the governing body shall send the Ministry of Planning and Investment a document specifying the context, necessity, targets, contents, primary activities, economic, social and environmental effects, total capital, capital sources and structure thereof, other resources, conditions for receiving budget assistance, interests and duties, sponsoring method and management method.

2. The Ministry of Planning and Investment shall receive comments from relevant authorities and submit a report to the Prime Minister for decision.

3. If the budget assistance is used for specific programs and projects, procedures for such programs and projects shall comply with regulations of law on public investment, state budget, public debt management and relevant regulations of law.”

22. Point b Clause 2 of Article 19 is amended as follows:

“b) The goods purchase, construction and installation, and consultancy contracts mentioned in Point a of this Clause may only be signed after the international treaty on ODA or concessional loan for the program/project takes effect. For loans granted by bilateral sponsors, the conclusion date of the commercial contract shall be decided by the sponsors.”

23. The introductory text of Point b Clause 1, Point a and Point b Clause 2 of Article 21 are amended as follows:

“If the extension of a program/project does not exceed 6 months, revision of the decision on investment guidelines is not required. If the extension exceeds 6 months and leads to extension of the corresponding international treaty, the Ministry of Finance shall discuss with the Ministry of Planning and Investment and relevant authorities and propose revisions to the decision on investment guidelines, extension of the program/project and international treaty. Revision of the decision on investment guidelines in other cases:

1. a) For decision on investment guidelines of a national target program, project of national importance, target program, or Group A project:

b) The Ministry of Planning and Investment shall discuss with the foreign sponsor about increase in ODA or concessional loan (if any);

2. For decision on investment guidelines of a program/project within the competence of the Prime Minister other than Group A projects:

a) The governing body shall send a report to the Ministry of Planning and Investment about revisions to the decision on investment guidelines;

b) In consideration of the report sent by the governing body and comments of relevant authorities specified in Point a of this Clause, the Ministry of Planning and Investment shall take charge and cooperate with the Ministry of Finance in discussing and reaching a consensus with the foreign sponsor on increase in ODA or concessional loan (if any), and then submit them to the Prime Minister (or a competent authority if the revisions are beyond the competence of the Prime Minister) for decision.”

24. The title of Chapter III is amended as follows:

### **“Chapter III**

#### **PREPARATION, APPRAISAL AND ISSUANCE DECISION ON INVESTMENT IN PROGRAMS AND PROJECTS FUNDED BY ODA LOANS CONCESSIONAL LOANS AND ODA GRANTS”**

25. The introductory text of Clause 1 Article 24 are amended as follows:

“1. Capital for program/project preparation includes:”

26. Article 27 is amended as follows:

#### **“Article 27. Content of the feasibility study report**

1. The specimen of the feasibility study report are enclosed with this Decree, including: feasibility study report for a non-construction project in Appendix V; feasibility study report for a construction project in Appendix VI; feasibility study report for a program in Appendix VIII. 2. When preparing a feasibility study report according to the specimens in Appendix V, VI and VIII, the project owner shall ensure conformity with both foreign sponsor’s model reports, the decision on investment guidelines and harmony between Vietnam’s and the foreign sponsor’s procedures.”

27. Chapter IIIa below is added after Chapter III:

### **“Chapter IIIa**

#### **PREPARATION, APPRAISAL AND ISSUANCE OF INVESTMENT GUIDELINES FOR TECHNICAL ASSISTANCE PROJECTS AND NON-PROJECT GRANT AID**

#### **Article 30a. Procedures for approving guidelines for execution of projects, non-project grant aid and project documents**

1. The Prime Minister is entitled to approve guidelines for execution of projects and non-project grant aids in the following cases: programs and projects associated with a policy framework; projects and non-project grant aids relevant to national defense, security, religion where value of ODA grant is at least USD 03 million; procurement of goods subject to

permission by the Prime Minister; Vietnam's participation in regional programs and projects.

2. The head of the governing body is entitled to:

- a) Approve the project document on the basis of the Prime Minister's implementation guidelines in the cases specified in Clause 1 of this Article;
- b) Approve the project document without execution guidelines in the cases other than those specified in Clause 1 of this Article.

**Article 30b. Preparation of project document**

The governing body shall cooperate with the foreign donor in preparing the project document according to the specimen in Appendix VII hereof.

**Article 30c. Procedures for issuance of implementation guidelines for projects and non-project grant aids within the competence of the Prime Minister**

1. The governing body shall send the project document and a written proposal to the Ministry of Planning and Investment;
2. The Ministry of Planning and Investment shall discuss with relevant authorities about the necessity, targets, funding sources, financial capacity and conditions of the foreign donor (if any) and the capacity of the Vietnamese party.
3. The Ministry of Planning and Investment shall submit a consolidated report to the Prime Minister.
4. The Prime Minister shall consider issuing the implementation guidelines.

**Article 30c. Mandatory content of implementation guidelines:**

- a) Name of the project or non-project grant aid;
- b) Name of the governing body;
- c) Name of the foreign donor or co-donor;
- d) Objectives;
- e) Capital limit (ODA grant and reciprocal capital).

**Article 30dd. Procedures for appraising and issuing project document**

1. Appraisal of the projects and non-project grant aids mentioned in Clause 1 Article 30a by their governing bodies is not required. The heads of governing bodies shall approve the project documents according to the implementation guidelines.
2. Governing bodies of the projects and non-project grant aids other than those mentioned in Clause 1 Article 30a shall appraise their project documents by establishing an appraisal council or requesting comments from the Ministry of Planning and Investment, the Ministry of Finance and relevant authorities.
  - a) The project or non-project grant aid shall be appraised according to its suitability for development objectives of the industry, the area or the beneficiary; suitability of the implementation method; capital and financial capacity; rationality of ratio of funding for primary tasks; commitments, prerequisites and other conditions of the foreign donor and participants (if any); effectiveness, practicality and sustainability; consensus or disagreements among parties;
  - b) Appraisal documents include the written request for approval of the project document; the donor's consensus about the project or non-project grant aid or aid commitment; the draft project document; comments from relevant authorities, memorandums with the donor, the appraisers' report requested by the donor (if any);
  - c) The head of the governing body shall consider approving the project document according to the appraisal result;
  - d) A project document shall be appraised within 20 days from the day on which adequate

documents are submitted;

dd) If the value of the non-project grant aid does not exceed USD 200.000, comments from relevant authorities are not required.

3. The governing body shall be responsible for the project document appraisal result.

4. After the project document is approved, the governing body shall a notification to the Ministry of Planning and Investment, the Ministry of Finance and relevant authorities together with the project document which bears the seal of the governing body.

**Article 30c. Revisions to the implementation guidelines and the decision on project document approval**

1. Revisions to the implementation guidelines:

a) The governing body shall a document about the revisions to the Ministry of Planning and Investment;

b) The Ministry of Planning and Investment shall request comments from relevant authorities, discuss with the foreign donor about change in value of ODA grant (if any) and submit a report to the Prime Minister;

c) The Prime Minister shall consider approving the revisions.

2. Revisions to the decision on project document approval:

a) The governing body shall send the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies a document about the revisions;

b) The Ministry of Planning and Investment shall discuss with the foreign donor about change in value of ODA grant (if any);

c) On the basis of comments of the Ministry of Planning and Investment, the Ministry of Finance and relevant authorities, the head of the governing body shall decide whether to approve the revisions. If the revisions exceed the competence of the governing body, instructions in Article 30c shall be followed.”

28. Article 31 is amended as follows:

“1. The basis for proposing the conclusion of framework treaties on ODA and concessional loans is the result of mobilization, strategy and policies on cooperation in development, the sector and program/project given priority to use ODA or concessional loan agreed between Vietnam’s competent authorities and the foreign donor.

2. Basis for proposing conclusion of a specific international treaty on provision of ODA or concessional loan:

a)For programs and projects funded by ODA, concessional loans and ODA grants: the approved feasibility study report and the decision on investment;

b) For technical assistance projects and non-project aids: the project document and the decision on project document approval.” and non-projects ) and approve the project/non-project instruments;

29. Clause 2, Clause 3 and Clause 4 of Article 32 are amended as follows:

“2. The Ministry of Finance may propose to the Government conclusion of framework and specific international treaties on ODA grant, ODA loans and concessional loans, except for the ODA grants specified in Clause 3 and Clause 4 of this Article.

3. The State bank of Vietnam may propose to the Government conclusion of specific international treaties on ODA grants that are not tied to loans granted by international banks and financial institutions represented by the State bank of Vietnam.

4. The Ministry of Planning and Investment may propose to the Prime Minister conclusion of framework and specific international treaties on ODA grant that are not tied to the loans other than those mentioned in Clause 1, Clause 2 and Clause 3 of this Article.”



30. Clause 2, Clause 3 and Clause 4 of Article 35 are amended as follows:

“2. The Ministry of Finance may propose to the Prime Minister conclusion of agreements on ODA grant, ODA loans and concessional loans, except for the ODA grants specified in Clause 3 and Clause 4 of this Article.

3. The State bank of Vietnam may propose to the Prime Minister conclusion of agreements on ODA grants that are not tied to loans granted by international banks and financial institutions represented by the State bank of Vietnam.

4. The Ministry of Planning and Investment may propose to the Prime Minister conclusion of agreements on ODA grant that are not tied to the loans other than those mentioned in Clause 1, Clause 2 and Clause 3 of this Article.”

31. Clause 3 of Article 36 is amended as follows:

“3. Procedures for concluding, revising and extending agreements on ODA grant in the name of the Government:

a) The proposing authority shall discuss and reach consensus with the foreign party on the draft agreement;

b) On the basis of comments from other authorities and consensus with the foreign party, the proposing authority shall send an enquiry to the Ministry of Foreign Affairs and the Ministry of Justice for appraisal. The enquired authorities shall respond in writing within 15 days from the day on which the enquiry is received;

c) The proposing authority shall discuss with the foreign party on completion of the draft agreement and request the Prime Minister to consider approving the conclusion of such agreement;

d) After the Prime Minister approves the agreement, the head of an authority authorized by the Prime Minister shall initiate the conclusion process;

dd) If the content of the draft agreement is similar to the model agreement or framework agreement approved by the Prime Minister, the proposing authority shall request the Prime Minister to decide the conclusion thereof after negotiating and reaching a consensus with the foreign party. Regarding contents that differ from the model agreement or framework agreement approved by the Prime Minister, specific financial conditions, financial mechanism that are not mentioned in the model agreement or framework agreement, the proposing authority shall request the Prime Minister to consider approving them before concluding the agreement;

e) Regarding revisions to the agreement that change the commitment on ODA grant, the proposing authority shall request the Prime Minister to decide. In other cases, the Prime Minister shall authorize the proposing authority to negotiate and conclude the agreement with the foreign party.”

32. Clause 3a, Clause 3b and Clause 3c below are added to Article 36:

“3a. Procedures for concluding, revising and extending agreements on ODA loans and concessional loans in the name of the Government:

a) The Ministry of Finance shall discuss and reach consensus with the foreign party on the draft agreement;

b) On the basis of comments from other authorities and consensus with the foreign party, the Ministry of Finance shall send an enquiry to the Ministry of Foreign Affairs and the Ministry of Justice. Then enquired authorities shall respond in writing within 15 days from the day on which the enquiry is received;

c) The Ministry of Finance shall discuss with the foreign party on completion of the draft agreement and request the Prime Minister to consider approving the conclusion of such agreement;

d) After the Prime Minister approves the agreement, the Minister of Finance shall initiate the

conclusion process;

dd) If the content of the draft agreement is similar to the model agreement or framework agreement approved by the Prime Minister, the Minister of Finance shall request the Prime Minister to decide the conclusion thereof after negotiating and reaching a consensus with the foreign party. Regarding contents that differ from the model agreement or framework agreement approved by the Prime Minister, specific financial conditions, financial mechanism that are not mentioned in the model agreement or framework agreement, the proposing authority shall request the Prime Minister to consider approving them before concluding the agreement;

e) Regarding revisions to the agreement that change the FINANCIAL commitment, the Ministry of Finance shall request the Prime Minister to decide. In other cases, the Prime Minister shall authorize the Ministry of Finance to negotiate and conclude the agreement with the foreign party.

3b.If the foreign donor requires a model agreement or framework agreement on ODA or concessional loan, the proposing authority shall follow these procedures:

a) The proposing authority shall discuss and reach a consensus with the foreign party on the draft model agreement or framework agreement;

b) On the basis of comments from relevant authorities and consensus with the foreign party, the proposing authority shall send an enquiry to the Ministry of Foreign Affairs and the Ministry of Justice. Then enquired authorities shall respond in writing within 15 days from the day on which the enquiry is received;

c) The proposing authority shall discuss with the foreign party on completion of the model agreement or framework agreement and request the Prime Minister to consider approving.

3c. If the international treaty or agreement on ODA loan or concessional loan requires legal opinions from the Ministry of Justice, the Ministry of Justice shall provide in accordance with applicable regulations of law on provision of legal opinions after adequate documents are provided by the Ministry of Finance.”

33. The introductory text of Clause 1, Clause 2 and Clause 5 of Article 37 are amended as follows:

**“Article 37. Methods for program/project management**

Program/project management shall be carried out according to the project document and the feasibility study report approved by a competent authority or a specific international treaty or agreement on ODA or concessional loan signed with the foreign donor. According to the scope, nature and conditions of the program/project, capacity of program/project management, the investment shall decide on either of the following methods:

1. For a construction program/project: apply a management method that is conformable with regulations of law on construction project management.

2. For other programs and projects:

a) Establishment of a new project management board;

b) Employment of the existing project management board to manage the new program/project;

c) Management by the project owner;

d) Full management of the program/project by the foreign donor;

dd) Partial management of the program/project by the foreign donor.

5. Partial or full management of the program/project by a third party.”

34. Article 39 is amended as follows:

**“Article 39. Establishment of project management board**

1. Within 30 working days from the issuance date of the decision on investment, the head of the governing body shall issue a decision to establish the project management board. If the project owner has a legal status, the head of the governing body may authorize the project owner to issue the decision to establish a project management board (except for those that have to be established in accordance with regulations of law on construction project management).

2. In case of establishment of a new project management board as specified in Point a Clause 2 Article 37 of this Decree, the decision to establish a project management board shall be enclosed with documents about organizational structure, functions, tasks, and entitlements of key persons of the project management boards.

3. In case of employment of an existing project management board as specified in Point b Clause 2 Article 37 of this Decree, the head of the governing body or the project owner shall adjust the functions, tasks, and entitlements of the existing project management board to the new program/project.

4. In case of program/project management by the project owner as specified in Point c Clause 2 Article 37 of this Decree, the head of the governing body shall issue a decision to authorize the project owner to take charge of the project management within 30 days from the issuance date of the decision on investment; The project owner shall appoint personnel of the project management board in accordance with law. The key persons in charge of management and finance may work full-time or part-time and shall have qualifications suitable for their positions.

5. In case of partial management of the program/project by the foreign donor mentioned in Point dd Clause 2 Article 37 of this Decree, the head of the governing body shall decide on one of the methods specified in Clause 2 Article 37 of this Decree for the Vietnamese party's management of certain tasks in accordance with applicable regulations of Vietnam and commitment to the foreign donor.

6. In case of full management of the program/project by the foreign donor mentioned in Point d Clause 2 Article 37 of this Decree, the head of the governing body shall appoint a unit to cooperate with the foreign donor in supervising the progress, quality and use of the results of the program/project.

7. Within 15 working days from the issuance date of the decision to establish the project management board, the head of the governing body or the project owner that has a legal status authorized by the governing body shall issue the Regulation on organization and operation of the project management board. In the cases where the international treaty or agreement on ODA or concessional loan already specifies the organizational structure, duties and entitlements of the project management board, they must be fully presented in the Regulation on organization and operation of the project management board.”

35. Articles 45a, 45b and 45c below are added to the Decree:

**“Article 45a. Preparing, appraising, approving and assigning mid-term plans for investment of ODA and concessional loans**

1. Rules and basis for preparation of a mid-term plan for investment of ODA or concessional loan:

- a) Articles 50, 51 and 70 of the Law on Public Investment;
- b) Resolutions, decisions and guidelines issued by competent authorities;
- c) Capacity of corresponding budget.

2. Conditions for a program/project to receive capital under a mid-term plan for investment of ODA or concessional loan:

- a) The program/project is conformable with of Article 55 of the Law on Public Investment;
- b) Reciprocal capital is adequate according to disbursement rate of ODA or concessional loan.

3. Procedures for preparing, appraising, approving and assigning mid-term plans for investment of ODA and concessional loans:

- a) For ODA and concessional loans within state budget: Follow instructions in Articles 58, 65 and 71 of the Law on Public Investment;
- b) For ODA and concessional loans on-lent to local governments: Follow instructions in Articles 58 and 67 of the Law on Public Investment;
- c) For ODA grant in programs and projects governed by local governments: Follow instructions in Articles 58 and 67 of the Law on Public Investment;
- d) For ODA grant in programs and projects governed by Ministries, central authorities, central governing bodies of Vietnamese Fatherland Front and socio-political organizations, other organizations: Follow instructions in Articles 58, 65 and 71 of the Law on Public Investment.

**Article 45b. Preparing, appraising, approving and assigning annual plans for investment of ODA and concessional loans**

1. Rules and basis for preparation of an annual plan for investment of ODA or concessional loan:

- a) Articles 50, 51 and 70 of the Law on Public Investment;
- b) Resolutions, decisions and guidelines issued by competent authorities;
- c) Capacity of corresponding budget.

2. Conditions for a program/project to receive capital under an annual plan for investment of ODA or concessional loan:

- a) The program/project is conformable with of Article 56 of the Law on Public Investment;
- b) Investment in the program/project is specified in the mid-term plan for investment of ODA or concessional loan;
- c) There ODA or concessional loan is adequate according to the annual investment plan;
- d) Reciprocal capital is adequate according to disbursement rate of ODA or concessional loan.

3. Procedures for preparing, appraising, approving and assigning annual plans for investment of ODA and concessional loans:

- a) For ODA and concessional loans within state budget: Follow instructions in Articles 59, 66 and 71 of the Law on Public Investment;
- b) For ODA and concessional loans on-lent to local governments: Follow instructions in Articles 59 and 68 of the Law on Public Investment;
- c) For ODA grant in programs and projects governed by local governments: Follow instructions in Articles 59 and 68 of the Law on Public Investment;
- d) For ODA grant in programs and projects governed by Ministries, central authorities, central governing bodies of Vietnamese Fatherland Front and socio-political organizations, other organizations: Follow instructions in Articles 59, 66 and 71 of the Law on Public Investment.

**Article 45c. Implementation and revision of plans for investment of ODA and concessional loans**

1. Disbursement of ODA and concessional loans:

- a) For ODA loans and concessional loans: comply with the limits imposed by competent authorities;
- b) For ODA grants: follow the disbursement schedule of the foreign donor. Actual disbursed capital shall be recorded and reported as per regulations.

2. Reciprocal capital of a program/project must be suitable for the schedule for implementation and revision of plans for investment of ODA and concessional loans.

3. Revisions to mid-term and annual plans for investment of ODA and concessional loans

shall comply with Article 75 of the Law on Public Investment.”

36. Clause 1 of Article 47 is amended as follows:

“1. On the basis of the overall program/project implementation plan approved by the governing body, disbursed capital and disbursement schedule under the specific international treaty or agreement on ODA or concessional loan, the project owner shall prepare and submit the annual program/project implementation to the governing body for approval. The annual program/project implementation plan is part of the annual investment plan of the governing body.”

37. Article 53 is amended as follows:

“1. Revisions to a program/project contents during its implementation:

a) If revisions to the decision on investment guidelines or implementation guidelines do not lead to revisions or extension of the international treaty or agreement on ODA or concessional loan, the project owner shall request the governing body to consider in accordance with Article 21 or Article 30e of this Decree;

b) If revisions to the decision on investment or decision on project document approval do not lead to revisions or extension of the international treaty or agreement on ODA or concessional loan, the project owner shall request the governing body or another competent authority to decide whether to revise the decision on investment or decision on project document approval.

2. In case revisions to the program/project contents lead to revision or extension of the international treaty or agreement on ODA or concessional loan:

a) In case revisions to the program/project lead to changes to the content of the decision on investment guidelines or implementation guidelines, follow instructions in Point a Clause 1 of this Article. After revisions to the decision on investment guidelines and the decision on investment or implementation guidelines and the decision on project document approval are approved by competent authorities, the governing body shall send the authority that proposed conclusion of the international treaty or agreement on ODA or concessional loan a document requesting revisions to such treaty or agreement;

b) In case revisions to the program/project lead to changes to the content of the decision on investment or decision on project document approval, follow instructions in Point b Clause 1 of this Article. After revisions to the decision on investment or decision on project document approval are approved by competent authorities, the governing body shall send the authority that proposed conclusion of the international treaty or agreement on ODA or concessional loan a document requesting revisions to such treaty or agreement.

3. Redundant capital (ODA or concessional loan) after the program/project is completed (including redundant capital after bidding, redundant capital due to changes in exchange rates, interest rates, unallocated reserved capital and other redundant capital) shall be used as follows, unless they are necessary for ensuring the effectiveness of the current program/project:

a) If redundant capital is used within the framework of the program/project as determined in the decision on investment or the decision on project document approval and is conformable with the decision on approval of investment guidelines or implementation guidelines issued by a competent authority, after reaching a consensus with the Ministry of Planning and Investment and the Ministry of Finance, the governing body shall discuss with the foreign donor on the use of redundant capital in accordance with applicable regulations;

b) If redundant capital is used to execute a new program/project towards improving the effectiveness of the current program/project: the governing body shall send the Ministry of Planning and Investment and the Ministry of Finance an official dispatch enclosed with a report on proposal of investment guidelines for the new program/project or the new project document. The Ministry of Planning and Investment shall take charge and cooperate with relevant authorities in reaching an agreement with the foreign sponsor on how to use the

redundant capital. The next steps related to submission, assessment, and issuance of the decision on investment guidelines or implementation guidelines are specified in Articles 14, 15, 16, 17, 18 or Article 30c of this Decree.”

38. Chapter Va below is added after Chapter V:

## **“Chapter Va**

### **FINANCIAL MANAGEMENT**

#### **Section 1**

#### **OPENING AND MANAGEMENT OF CHECKING ACCOUNTS**

##### **Article 56a. Opening checking accounts of programs and projects at State Treasury and serving banks**

1. Receiving account:

- a) The loans and aids from state budget shall be managed and monitored on the accounts of corresponding level of state budget;
- b) The project owner shall open an account at the State Treasury or serving bank to receive the ODA or concessional loan.

2. Reciprocal capital account: The project owner shall open an account at the State Treasury to monitor and disburse reciprocal capital.

3. State Treasury shall organize the management of such receiving accounts and reciprocal capital accounts.

##### **Article 56b. Criteria for selecting a serving bank**

1. The serving bank shall have certain credit rating in Vietnam, experience in management of ODA and concessional loan, satisfy banking requirements and prudential ratios.
2. The branches of the serving bank are suitable for the program/project.
3. The bank agrees to the responsibilities of a serving bank specified in this Decree.

##### **Article 56c. Responsibilities of the serving bank**

1. Assist the Ministry of Finance or project owners in following procedures for opening ODA or concessional loan accounts serving their programs and projects in accordance with this Decree.
2. Monitor the accounts and transactions thereof; collect fees as per regulations; submit reports on the accounts in accordance with this Decree.

##### **Article 56d. Rules for opening and managing an account to receive advances of ODA or concessional loan (hereinafter referred to as “advance account”)**

1. The State Treasury or serving bank shall open advance account for the project owner or the Ministry of Finance to serve the project’s payments, ensure the direct flow of aid to the project without any intermediate account.

If a project has more than one sources of aid, each of them shall have a separate account to facilitate monitoring of capital disbursement.

2. If a project is executed by multiple units appointed by the governing body, the project owner shall open sub-accounts at the branches of the serving bank or State Treasury.

3. The currency of the accounts shall be the currency of the loan (unless a VND account is accepted by the Ministry of Finance).

4. Management of interest on the advance account:

- a) Interest generated by the advance account shall be separately monitored and used for payment of banking fees as prescribed. The banking fees are considered expenses of the project. If the interest is not adequate to cover the banking fees, the project owner shall prepare an estimate and pay them with the reciprocal capital;

b) If the project is entirely funded by state budget, the unused interest on the advance account shall be transferred in full to state budget. If the project is entirely funded by on-lent capital, the unused interest is considered a revenue of the project owner. If the project is partially funded by on-lent capital, the unused interest shall be distributed according to the on-lending ratio.

#### **Article 56dd. Responsibilities of the account-opening authorities**

1. At the request of the project owner that is also the account holder, the State Treasury or serving bank shall provide instructions on necessary documents and procedures for opening the checking account, carry out payment, disbursement transactions and other tasks as per applicable regulations.
2. The State Treasury or serving bank shall provide instructions and adequate information for payment through the system of the State Treasury or serving bank.
3. Every month as agreed by the account-opening authority and the account holder and upon request by the account holder, the account-opening authority shall send account statements to the account holder which specify the amounts in the original currency, beneficiaries, transaction date, exchange rate, opening balance, withdrawals and closing balance.
4. Every month as agreed by the account-opening authority and the account holder and upon request by the account holder, the account-opening authority shall send notifications of interest generated by the advance account (if any), the banking fees collected, the difference between the interest and total fee, the opening balance and closing balance.
5. Within 2 working days from the receipt of the notice of disbursement from the foreign donor, the account-opening authority shall credit it to the advance account and inform the account holder.
6. Before the 10<sup>th</sup> of every month, the State Treasury or serving bank shall send a consolidated report to the Ministry of Finance on the previous month's activities of the advance accounts in its entire system. The report shall have specific names of the projects, project owners, accounts, subaccounts (for each source of funding); ODA grant and loans shall be presented in separate parts of the report; The report shall specify the opening balances, total disbursements from the foreign donors, withdrawals, closing balances and returns of funds to the foreign donor (if any); interests generated by the advance accounts in the month; amount of interests used as payment for banking fees; remaining interest at the end of the month.

## **Section 2**

### **FINANCIAL PLAN PREPARATION**

#### **Article 56e. Preparation of annual financial plans for programs and projects**

1. On the basis of the original or revised mid-term plan approved by a competent authority, the governing body shall prepare annual financial plans for the program/project.
2. Each program/project, international treaty or agreement on ODA or concessional loan shall have a separate financial plans. The expenditure on development expenses, regular expenses, on-lent capital and reciprocal capital shall be separated in the plan. If the project is partially funded by on-lent capital, the ratio of provided and on-lent capital shall comply with the financial mechanism approved by a competent authority.
3. The disbursement of ODA, concessional loan and reciprocal capital in the annual budget estimate must be conformable with concluded international treaties or agreements on ODA and concessional loans, suitable for disbursement capacity of the programs and projects.
4. The annual financial plans shall be prepared in accordance with procedures for preparation of annual state budget estimates specified in the Law on State budget and its instructional documents.

#### **Article 56f. Integration of financial plans for ODA and concessional loans in annual state budget estimates**

1. Regarding development projects funded by state budget, the Ministry of Planning and Investment shall send the consolidated plan for disbursement of ODA and concessional loans and provision of reciprocal capital to the Ministry of Finance, which will integrate it into the annual state budget estimate.
2. For regular expenses, the Ministry of Finance shall consolidate and integrate the plans for disbursement of ODA and concessional loans in the annual state budget estimates.
3. The People's Committees of provinces shall prepare and submit plans for disbursement of on-lent capital to the Ministry of Finance, which will integrate them in annual state budget estimates.
4. Regarding on-lent projects of enterprises and public service agencies, the project owners shall submit the annual plans for disbursement of on-lent capital to the Ministry of Finance and the on-lending bodies. The Ministry of Finance shall submit a consolidated report to the Government, which will decide the annual limit on on-lending of ODA and concessional loans.
5. The Ministry of Finance shall provide set forms and model descriptions of the annual financial plans.

### **Section 3**

#### **EXPENDITURE CONTROL**

##### **Article 56g. Rules for expenditure control**

The control and spending of ODA and concessional loan (hereinafter referred to as "expenditure control") shall comply with applicable regulations on state funding sources.

##### **Article 56h. Expenditure control authorities**

1. The State Treasury shall control payment documents of projects or components of projects that are fully funded by state budget, projects of the People's Committees of provinces that are partially funded by state budget and on-lent capital.
2. The on-lending bodies authorized by the Ministry of Finance shall control payment documents of the projects of components of the projects that are entirely funded by on-lent capital.
3. The Ministry of Finance shall appoint expenditure control authorities for the programs and projects other than those mentioned in Clause 1 and Clause 2 of this Article; ensure that a single spending is not controlled by more than one authority.

##### **Article 56i. Expenditure control methods**

1. Inspection before spending means the expenditure control body's inspection and certification of the legitimacy and validity of an expenditure before the project owner withdraws money to pay the contractor or beneficiary. Inspection before spending shall apply to the expenditures other than those mentioned in Clause 2 of this Article.
2. Inspection after spending means the expenditure control body's inspection and certification of the legitimacy and validity of an expenditure after the project owner has withdrawn money to pay the contractor or beneficiary. Inspection after spending shall apply to the following cases:
  - a) Payment from the advance account to the contractor or supplier, except for advance accounts held by the Ministry of Finance that are subject to inspection before spending. Wire transfer from the advance account to another account for control of independent audit costs after the advance account is closed;
  - b) Transfer of advances from the advance account to secondary accounts if for projects that have multiple level of management;
  - c) Expenditures from the secondary accounts on project management specified in the budget estimate approved by a competent authority.



3. Within 30 days from the withdrawal day, the project owner shall complete and send the payment document to the expenditure control body, which is the basis for subsequent payments. Where necessary, the project owner may reach a consensus with the contractor on inspection before spending of the expenditures mentioned in Clause 2 of this Article, and then inform the expenditure control body for cooperation.

#### **Section 4**

### **ODA AND CONCESSIONAL LOAN DISBURSEMENT AND MANAGEMENT THEREOF**

#### **Article 56k. Disbursement methods**

Disbursement methods include:

1. Disbursement to state budget: ODA or concessional loan is transferred to state budget for direct budget assistance or result-based aid.
2. Program/project-based aid

One of the following disbursement methods shall apply to program/project-based aid: direct payment, wire transfer, payment under letter of credit, reimbursement, advancing.

#### **Article 56l. Time limit for processing of disbursement**

An application for disbursement shall be processed within 04 days from the day on which the satisfactory application is received.

#### **Article 56m. Disbursement procedures**

1. Disbursement procedures in the form of budget assistance:

a) The project owner or governing body shall take charge or cooperate with the Ministry of Finance and relevant authorities in fulfilling their commitment to the foreign lender in order to fulfill prerequisites specified in the concluded international treaty or agreement on ODA or concessional loan;

b) The project owner or governing body shall take charge or cooperate with relevant authorities in preparing the application for disbursement and send it to the Ministry of Finance as required by the foreign lender;

c) In case of general budget assistance, the Ministry of Finance shall process the application, inform the foreign lender and transfer the capital to state budget under the concluded agreement;

- d) In case of field-specific budget assistance:

The governing body shall reach a consensus with the Ministry of Finance about the disbursement time, disbursed amount; ensure that the disbursed amount has been included in the annual financial plans of component projects.

Disbursed ODA or concessional loan shall be transferred to state budget and distributed to component projects in accordance with applicable state budget management procedures.

2. Disbursement procedures in the form of result-based aid:

a) The project owner or governing body shall take charge and cooperate with relevant authorities in fulfilling the disbursement conditions under the agreement with the foreign lender. The project owner may receive an advance under the agreement with the foreign lender to perform certain tasks to fulfill the disbursement conditions;

b) The project owner or governing body shall take charge or cooperate with relevant authorities in preparing reports or providing documents proving fulfillment of disbursement conditions and send them to the foreign lender. The project owner shall prepare and submit the application for disbursement to the Ministry of Finance;

c) Disbursed ODA and concessional loan shall be transferred to the account of the unit executing the program/project opened at the State Treasury as agreed with the donor.

Spending of the disbursed amount shall comply with applicable state budget management procedures. At the end of the fiscal year, unused funds shall be handled in accordance with applicable regulations on state budget management; unused funds on the advance account shall continue to be used for operations of the program/project in the subsequent fiscal year.

3. Disbursement procedures in the form of project-based aid:

a) Disbursement methods:

Direct payment: money will be directly paid to the contractors and suppliers of the project.

Transfer: one of the following methods of payment in VND:

Payment under commitment letter: The foreign donor issues a commitment in the form of a letter of credit (LC) to return the amounts that are paid to contractors and suppliers to the commercial bank at the request of the borrower through the commercial bank system (lending bank, serving bank).

Reimbursement: The foreign donor reimburse the project owner for the legitimate expenses of the project. The legitimate expenses may occur before or after conclusion of the international treaty or agreement on ODA or concessional loan and must be conformable with provisions therein.

Advancing: The foreign donor transfers an advance to an account opened at the serving bank for the project owner to pay for legitimate regular expenses in order to reduce the frequency of withdrawals. The spending from the advance account shall be strictly controlled by the Ministry of Finance and foreign donor.

a) After the foreign donor issues a notice of fulfillment of the prerequisites for disbursement, the project owner or project management board shall prepare and submit the application for disbursement to the Ministry of Finance according to the set form provided by the foreign lender.

In the cases where the foreign lender requests additional documents or only accepts part of the application, the Ministry of Finance or the foreign lender shall send a notice to the project owner.

c) Sending the application for disbursement to the Ministry of Finance:

The project owner or an authorized unit shall prepare and send 01 application for disbursement to the Ministry of Finance according to the disbursement method. The Ministry of Finance shall provide specific guidance on disbursement applications.

**Article 56n. Rules for statement of ODA and concessional loan spending**

1. ODA and concessional loan used for covering state budget deficits shall be fully and accurately stated and integrated into state budget.

2. For programs and projects that are fully or partially or funded by state budget whose expenditures are controlled by State Treasury, the transacting State Treasury shall prepare statements of ODA and concessional loan proportionally according to the funding mechanism

3. on the basis of disbursement documents sent by the foreign donor to the funds users. The project owner shall prepare and send statements of payments from the advance account to the State Treasury. In other cases of disbursement, the project owner shall send statements to the State Treasury within 03 days from the day on which disbursement documents is received from the foreign donor and send them to the Ministry of Finance for monitoring.

4. Time limit for preparing statements:

a) The expenditures derived from ODA or concessional loan that are certified by January 31 shall be stated at the State Treasury before the March 01 of the same year;

b) The expenditures that are eligible for inspection after spending and occur not later than January shall be stated at the State Treasury by March 01 of the same year;

c) The State Treasury shall process the statements of expenditures derived from ODA and

concessional loan that occur in the year before March 31 of the next year.

5. Statements of ODA and concessional loans shall be prepared in accordance with the Government's regulations on administrative procedures of State Treasury.

## **Section 5**

### **REPORTING, ACCOUNTING, AUDIT, STATEMENT, INSPECTION**

#### **Article 56o. Reporting**

1. Within 15 days from the end of the quarter, the project owner shall send a report to the governing body and the finance authority at the same level on disbursement of ODA or concessional loan in the quarter together with the state budget revenue and expenditure statement certified by the transacting State Treasury.

Enterprises and public service agencies that receive on-lent capital shall submit disbursement reports in accordance with instructions in on-lending decrees.

2. Within 30 days from the day on which the ODA or concessional loan is closed, the project owner shall submit a terminal report to the Ministry of Finance and the governing body, which is the basis for preparing the terminal statement of the project.

3. The project owner shall prepare and send financial statements prepared in accordance with the project document, the concluded international treaty or agreement on ODA or concessional loan to the foreign donor the governing body and finance authority at the same level.

4. Within 60 days from the end of the fiscal year, the governing body shall submit a report on disbursement of ODA or concessional loan and statement thereof to the Ministry of Finance and State Treasury.

5. The Ministry of Finance shall provide the reporting forms.

#### **Article 56p. Accounting, audit, statement, inspection**

Accounting, audit, statement, inspection of programs and projects funded by ODA or concessional loan shall comply with applicable regulations on state funding, instructions of the Ministry of Finance and other requirements of the ODA or concessional loan sources.

#### **Article 56q. Taxes, fees and asset management**

1. Taxes, fees and asset management of a program/project shall comply with regulations of law, the international treaty on ODA or concessional loan and instructions of the Ministry of Finance.

2. Revenues generated by public property invested in by the State from ODA or concessional loan shall be used firstly for debt repayment in accordance with regulations of law on management and use of public property. The project owner or appointed operator of the project shall send periodic reports on fluctuation in value of the property derived from ODA or concessional loan and the cash flow generated from such property in accordance with instructions of the Ministry of Finance.”

39. Clauses 4, 6, 7, 8 of Article 58 are amended as follows:

“4. Take charge and cooperate with relevant authorities in appraising the ODA, concessional loan and reciprocal capital sources.

6. Take charge and cooperate with relevant authorities in proposing conclusion of framework treaties and specific treaties on ODA and concessional loans that are not tied to the loans mentioned in Clause 4 Article 32; propose conclusion of agreements on ODA grant to the Prime Minister in accordance with Clause 4 Article 35 of this Decree.

7. Take charge and cooperate with relevant authorities in:

a) Submit consolidated mid-term and annual plans for investment of ODA, concessional loan and reciprocal capital in accordance with Article 45a and 45b of this Decree;

b) Revise or propose revisions of mid-term and annual investment plans mentioned in Article 45c of this Decree.

8. Cooperate with the Ministry of Finance and relevant authorities in determining grant element, assessing the impacts of the loan to public debt safety indicators, domestic financial mechanism applied to the program/project in accordance with law.”

40. Clause 6a and Clause 6b below are added to Article 58:

“6a. Consolidate and submit implementation guidelines for technical assistance projects and non-project grant aid to the Prime Minister for approval; Send official requests to foreign donors for provision of aid for technical assistance projects and non-project grant aid after they are approved by the Prime Minister.

6b. Cooperate with the Ministry of Finance in development of framework and specific international treaties or agreements on ODA loans and concessional loans.”

41. Clauses 4, 5, 6 and Point i Clause 7 of Article 59 are amended as follows:

“4. Take charge and cooperate with relevant authorities in proposing conclusion of framework and specific treaties on ODA loans, ODA grants and concessional loans for the programs and projects specified in Clause 2 Article 32 of this Decree to the Prime Minister; propose conclusion of international agreements on ODA loans, ODA grants and concessional loan for the programs and projects specified in Clause 2 Article 35 of this Decree.

5. Cooperate with the Ministry of Planning and Investment in appraising the sources of ODA, concessional loans, reciprocal capital and their capacity.

6. Represent the “borrowers” of the ODA loans and concessional loans taken in the name of the State or the Government.

7. Carry out financial management of programs and projects:

i) Cooperate with the Ministry of Planning and Investment in preparing and submitting consolidated mid-term and annual plans for investment of ODA, concessional loan and reciprocal capital specified in Article 45a and 45b of this Decree to the Government; revise or propose revisions of the mid-term and annual investment plans specified in Article 45c of this Decree;”

42. Clause 3a below is added to Article 59:

“3a. The Ministry of Finance shall determine the grant element and impacts of the ODA loan or concessional loan to public debt safety, determine the domestic financial mechanism for the proposed programs and projects.”

43. Clause 3, Clause 4 and Clause 6 of Article 60 are amended as follows:

“3. Take charge and cooperate with relevant authorities in proposing conclusion of international treaties and specific treaties on ODA grants that are not tied to the loans granted by international credit institutions mentioned in Clause 3 Article 32 and Clause 3 Article 35 of this Decree.

4. Cooperate with the Ministry of Finance in proposing conclusion of international treaties and agreements on ODA loans and concessional loans granted by international credit institutions and banks represented by the State bank of Vietnam.

6. Compile a list of eligible serving banks of the programs and projects.”

44. Clause 4 of Article 61 is amended as follows:

“4. Appraise the project documents regarding competence of the Prime Minister in accordance with regulations of law on legal international cooperation; comment on the programs, projects and non-project grant aid within the competence of governing bodies.”

45. Clause 2 and Clause 3 of Article 64 are amended as follows:

“2. Prepare proposal of programs and projects, report on proposal of investment guidelines or pre-feasibility study report, project documents and submit them to competent authorities for

approval in accordance with Clause 4 Article 12 and Clause 2 Article 30a of this Decree.

3. Cooperate with proposing authorities in proposing conclusion of specific international treaties and agreements on ODA and concessional loans for the programs and projects under their management in accordance with Clause 2 and Clause 3 Article 32 and Clause 2 and Clause 3 Article 35 of this Decree; implement such international treaties or agreements in accordance with regulations of law.”

46. Clause 2 and Clause 3 of Article 65 are amended as follows:

“2. Prepare proposal of programs and projects, report on proposal of investment guidelines or pre-feasibility study report, project documents and submit them to competent authorities for approval in accordance with Clause 4 Article 12 and Clause 2 Article 30a of this Decree.

3. Cooperate with proposing authorities in proposing conclusion of specific international treaties and agreements on ODA and concessional loans for the programs and projects under their management in accordance with Clauses 2, 3, 4 of Article 32 and Clauses 2, 3, 4 of Article 35 of this Decree; implement such international treaties or agreements in accordance with regulations of law.”

47. Appendix I is replaced with this:

## “Appendix I

### Calculation Of Grant Element

1. Grant element is calculated according to the currency, duration, extended duration, interest rate of the loan, other costs, the additional aid that increase the grant element (if any) and discount rate at the calculation time. Aid for technical assistance, hiring consultants or development of the feasibility study report, etc. is not included.

2. Grant element is calculated as follows:

$$GE = \left( 1 - \frac{r}{d} \right) \left( 1 - \frac{\frac{1}{(1+d)^{aG}} - \frac{1}{(1+d)^{aM}}}{d^{(aM-aG)}} \right)$$

Where:

GE: Grant element (%)

G: Extension (year)

M: Loan duration (year).

r: Interest rate (%), which is accumulation of nominal interest rate and loaning costs as agreed with the foreign lender, including the grant aid that increase the grant element (if any), calculated according to the rate of return of disbursed amounts and repayments in each year throughout the project duration.

a: number of instalments in a year (specified by the donor)

d: Discount rate of each period:  $d = (1 + d')^{1/a} - 1$  (%)

d': Discount rate (%) corresponding to market loan interest rate imposed by Vietnam's Government at the time.

3. Market loan interest rate imposed by Vietnam's Government is determined as follows:

a) If the Vietnam's Government have issued international bonds at the time, the discount rate shall be the lower interest rate between the interest rate of the international bonds and the discount rate mentioned in Clause 2 of this Article.

b) If the Vietnam's Government have issued international bonds at the time, the discount rate shall be the differentiated discounted rate (DDR) published by OECD in the year if the foreign loan duration is shorter than 15 years, or the average commercial interest reference rates (CIRR) over the last 10 years published by OECD applied to primary loan currencies

(USD, EUR, JPY and WON) plus a margin also published by OECD. Other currencies shall apply the discounted rates applied to USD published by OECD.”

48. Appendix II is replaced with this:

## **“Appendix II**

### **MODEL PROPOSAL OF A PROGRAM/PROJECT FUNDED BY ODA OR CONCESSIONAL LOAN**

I. Name of the program/project

II. Basis for proposal

- Importance, necessity and feasibility of the program/project in terms of economic, social, environmental technological impacts, etc.

- Attempts at resolving the raised issues.

- Ongoing programs and projects in the same field (if any).

- Intended foreign donors.

III. Proposal contents:

1. Overall objectives, specific objectives and scope of the program/project.

2. Brief description of expected outcomes of the program/project.

3. Estimated duration of the program/project (including construction and operation).

4. Estimated total capital and structure thereof; proposed financial mechanism:

a) Total capital: foreign loan; reciprocal capital.

b) Financial mechanism and disbursement schedule (according to estimated duration of the program/project).

c) Debt repayment plan.

5. Impact assessment:

- Preliminary assessment of economic, social and environmental effect (if any).

- Preliminary assessment of the impacts on the mid-term public investment plan of the proposing authority.”

### **Article 2. Annulments and replacements**

1. Annulments: Clause 7 Article 3; Article 17; Point b, c Clause 5 Article 26; Point b, c Clause 6 Article 26; Clause 7, 8 Article 26; Clause 4, 5 and 6 Article 29; Article 38; Article 40; Article 45; Clause 3 Article 46; Article 50; Point e Clause 7 Article 59; Clause 5 Article 60; the phrase “Chương trình, dự án ô” (“joint program/project”) in Clause 4 Article 46; the phrase “phi dự án” (“non-project grant aid”) in the Articles 4 of Chapter II, III; Appendix IV and IX; Section XI in Appendix VII; Section X in Appendix X.

2. The phrase “Văn kiện” (“project document”) is replaced with “Báo cáo nghiên cứu khả thi” (“feasibility study report”) in Articles 22, 23, 24, 25, 26, 27, 28, 29, 30; Appendix V, VI, VIII.

### **Article 3. Implementation**

1. This Decree comes into force from the day on which it is signed.

2. Transition:

a) Programs and projects whose proposals or decisions on investment guidelines have been approved before the effective date of this Decree may be implemented according to the approved proposals or decisions on investment guidelines without having them re-approved under this Decree;

Technical assistance projects and non-project grant aids whose decisions on investment guidelines have been approved before the effective date of this Decree may be implemented

according to the approved decisions on investment guidelines without having them re-approved under this Decree;

c) If the revisions to a technical assistance project or non-project grant aid does not lead to a change in the approval authority specified in Clause 1 Article 30a, the governing body shall follow the revision procedures in Clause 2 Article 30e. Otherwise, the governing body shall follow the procedures in Article 30c, Clause 1 and Clause 2 Article 30e;

d) Provisions of this Decree shall apply to revisions or extension of any framework or specific international treaty or international agreement on ODA or concessional loan that occur after the effective date of this Decree.

dd) Payments under L/Cs opened before the effective date of this Decree shall be controlled in accordance with instructions of the Ministry of Finance.

3. The Ministry of Planning and Investment shall provide instructions on preparation of annual public investment plans for ongoing joint projects. Governing bodies of the joint projects shall not coordinate and assign capital for component projects.

4. Ministers, Heads of ministerial agencies, Heads of Governmental agencies, Presidents of the People's Committees of provinces are responsible for implementation of this Decree./.

**ON BEHALF OF THE GOVERNMENT  
THE PRIME MINISTER**

**Nguyen Xuan Phuc**