THE GOVERNMENT --------	SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom – Happiness ---------------
No.: 04/2017/ND-CP	*Hanoi, January 16, 2017*

DECREE

PROVISION AND MANAGEMENT OF GOVERNMENT GUARANTEE

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

Pursuant to the Law on state budget dated December 16, 2002;

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

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

Pursuant to the Law on credit institutions dated June 16, 2010;

Pursuant to the Law on management of public debts dated June 17, 2009;

At the request of Minister of Finance, the Government promulgates a Decree on provision and management of government guarantee.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Decree deals with regulations on appraisal, approval and provision of government guarantee; the management of government guarantee; responsibilities and obligations of agencies, organizations and individuals regarding the provision and management of government guarantee for domestic and foreign loans, domestic and international bond issues.

2. The provision and management of government guarantee for domestic bond issues by the bank for social policies shall comply with the competent agency’s annual plan elaborated in a separate document.

Article 2. Regulated entities

This Decree shall apply to:

1. The obligor.

2. The guarantor.

3. The obligee.

4. Agencies, organizations and individuals involved in course of provision and management of government guarantee.

Article 3. Interpretation of terms

In this document, these terms, in addition to terms interpreted in the Law on management of public debts, shall be construed as below:

1. Government's dedicated credit programs refer to loan programs provided by credit institutions to national important projects upon the approval given by competent agencies.

2. Recipient of procedural dossiers refers to an overseas Vietnamese representative mission or an institution authorized to receive and certify the receipt of procedural dossiers related to government guarantee and forward all those dossiers to the Ministry of Finance.

3. The government guarantee limit includes guarantee limits for domestic and foreign loans or bonds issued. The government guarantee limit of a year is the ceiling of estimated net borrowing of loans or bond issues guaranteed by the Government in that year (the difference between the amount of loans to be granted in year and the amount of principals repaid in that year) approved by the Prime Minister.

4. Syndicated loan refers to a loan offered by two or more financial or credits institutions. A syndicated loan offered by a syndicate of domestic and foreign financial or credit institutions shall be considered as a foreign loan if the total amount of money lent by foreign institutions is accounted for 51% of that loan or more. In this case, regulations on provision and management of government guarantee for government-guaranteed foreign loans shall be applied.

5. Serving Bank refers to the bank where the obligor opens a Project Account and performs obligations related to the withdrawal of funds, repayment and collateral of the project with using government-guaranteed loan.

6. Payment obligations refer to payable amounts including the principal, interests under contract, late payment interests, fees and charges, and compensations for damage (if any) as prescribed in the loan agreement or the bond issue agreement and approved in the Letter of guarantee.

7. Guarantor refers to the Government officially represented by the Ministry of Finance which is also called as the giver of guarantee in accordance with regulations in Clause 6 Article 10 and Clause 1 Article 36 of the Law on management of public debts.

8. The obligee refers to the entity that owns a portion or the entire loan or bond issues under the government guarantee. The obligee may be the lender, the bond buyer or their assignee or transferee, and is called as the Lender in the loan agreement or the bond issue agreement.

9. Assignee or transferee of the obligor refers to the entity that receives the entire or a portion of rights and obligations of the obligor through the transfer of the government-guaranteed loan or issued bonds with the approval by the guarantor.

10. Project Account means the account which is opened by the obligor at the Serving Bank and registered in writing with the State Bank of Vietnam and/or Ministry of Finance. The Project Account is used to conduct transactions related to loan capital or funds raised from bond issue under the government guarantee, receive funds, revenues and other receipts, and repay debts under program or project as from the issued date of Letter of guarantee by the Government.

Article 4. Forms of guarantee documents

1. The government guarantee may be provided in the form of letter of guarantee, guarantee contract or guarantee agreement (hereinafter referred to as the “Letter of guarantee”).

2. The Government shall only grant the Letter of guarantee and not grant the Letter of re-guarantee.

Article 5. Subjects, programs and projects eligible for government guarantee

1. Subjects of the government guarantee are prescribed in Article 32 of the Law on management of public debts and must satisfy requirements specified in this Decree.

2. The Prime Minister shall promulgate specific regulations on programs or projects eligible for government guarantee in each period in conformity with regulations in Article 33 of the Law on management of public debts.

Article 6. Formulation of plan to apply for medium-term government guarantee

1. The subjects mentioned in Clause 1 Article 5 of this Decree shall, based on demand for loan or funding for bond issue, prepare a plan to apply for medium-term government guarantee for a period of 03 years, including the planning year and for 02 subsequent years, according to the successive method, and send it to Ministry of Finance within January of the planning year.

2. A plan to apply for a medium-term government guarantee prepared by subjects mentioned in Clause 1 of this Article includes the main contents as below:

a) Name of the project or program.

b) Loan for each project.

c) Type of borrowing (domestic or foreign loan or bond issue).

d) Estimated loan term and execution period.

3. Ministry of Finance shall, on the basis of subjects mentioned in Clauses 1, 2 of this Article and the national system of indicators for management of public debts and foreign debts, formulate the plan for provision of medium-term government guarantee and put it into the Government's program for management of medium-term debts.

Article 7. Formulation of plan to apply for annual government guarantee

1. If any of the subjects of which the preliminary proposals for government guarantee have been approved by competent agencies in accordance with regulations in Article 12 hereof wants to request for provision of government guarantee in the planning year, it must send a written request to Ministry of Finance (a copy thereof shall be sent to the State Bank of Vietnam if it concerns foreign loan or bond issue) by October of the year preceding the planning year.

2. A plan to apply for annual government guarantee includes the main contents as below:

a) Name of the program or investment project.

b) The value of loan or to-be-issued bonds for which the application for government guarantee is submitted.

c) Reference number and date of the written approval for the preliminary proposal for government guarantee.

d) The estimated withdrawn amount of funds in the planning year if the government guarantee is provided.

3. If it needs to modify the submitted plan to apply for government guarantee or subjects thereof, a written request indicating reasons of modification must be sent to Ministry of Finance within the planning year.

Article 8. Government guarantee limit

1. The guarantee limit for loans and bond issues is within the government's loan a debt repayment limit. Ministry of Finance shall, based on plans submitted to apply for medium-term government guarantee, preliminary proposals for government guarantee given approval by competent agencies and plans submitted to apply for annual government guarantee, formulate and submit the plan to provide annual government guarantee to the Prime Minister for approval in accordance with the Law on management of public debts.

2. Ministry of Finance shall, within the approved annual government guarantee limit, provide the government guarantee upon decision by the Prime Minister for each loan or each bond issue.

3. When a government guarantee limit approved for a year has been fully provided but there is a request for government guarantee for an urgent project or work of special significance to the national socio-economic development in which the investment proposal has been decided by the National Assembly or the Government, the Ministry of Finance shall report such case to the Prime Minister for adjustment of the government guarantee limit for that year provided that the requirements related to the security of public debts must be satisfied.

Article 9. Conditions for getting government guarantee

In addition to conditions prescribed in Article 34 of the Law on management of public debts, the following are conditions for specific cases:

1. Conditions for investment projects or programs for getting government guarantee:

a) Conditions to be satisfied by borrowers or bond issuers:

- A borrower or a bond issuer must be an enterprise which is established under the law of Vietnam, has legal status and operating duration of at least 03 years.

- The enterprise executing an investment project with loan funding guaranteed by the Government must contribute at least 20% of total investment of the project. The equity is contributed according to the project progress.

With respect to cases eligible for exempted from the compliance with conditions herein upon the approval by the Prime Minister as regulated in Point e Clause 2 Article 34 of the Law on management of public debts, the investor must ensure that at least 15% of total investment of the project is the equity.

- The enterprise executing the investment project or program must have a good financial health without accumulated losses (except for losses incurred by the Government policies), and ensure that the debt/equity ratio shall not exceed 03 times according to its audited financial statement of the year preceding the year when an application for government guarantee is verified.

- A written commitment must be made by the parent company (in the parent-subsidiary company structure), the group of shareholders or the organization or individual holding 65% of the company's trading capital or above to undertake that they shall pay debts in case the guaranteed enterprise defaults.

b) Conditions for investment projects or programs:

- The investment project or program must have its preliminary proposal for government guarantee approved by competent agency.

- A plan to apply for government guarantee for loans or bond issues has been submitted in the planning year in conformity with regulations in Article 7 of this Decree and the guarantee limit approved by the Prime Minister in accordance with regulations in Article 8 of this Decree.

- The project's financial plan must be feasible; the DSCR (Debt-Service Coverage Ratio) within a period of 05 first years of a project with an available off-take agreement must not less than 0.9, and that of other projects must not less than 1.

- With respect to projects specified in Point c Clause 2 Article 10 hereof, the investor must purchase insurance to insure repayment of 100% of debts in case the income from project's operations is not enough to service the enterprise's debts.

2. Conditions for provision of government guarantee to government's dedicated credit programs:

a) The borrower or the bond issuer must be a credit institution which is established under the law of Vietnam and has legal status in accordance with regulations of Vietnam laws.

b) Guaranteed loans or bond issues must be used to implement the Government's dedicated credit programs and conform to the charter of that credit institution.

c) It must obtain the approval by competent agency for its preliminary proposal for government guarantee.

d) Loans or bond issues for which the application for government guarantee is submitted must be included in the plan to apply for government guarantee in the planning year in conformity with regulations in Article 7 of this Decree and the guarantee limit approved by the Prime Minister in accordance with regulations in Article 8 of this Decree.

dd) Credit institutions must comply with requirements for capital adequacy ratio in their operations in accordance with regulations of the State Bank of Vietnam, and must not subject to special control.

Article 10. Government guarantee limit

1. The government guarantee limit for the principals of loans or bond issues for an investment project or program must not exceed 70% of total investment of that project or program.

2. The government guarantee limit shall be granted to each specific program or project in accordance with regulations of the Law on investment No. 67/2014/QH13 dated November 26, 2014 and the Law on public investment No. 49/2014/QH13 dated June 18, 2014. To be specific:

a) With respect to projects of which investment policies are approved by the National Assembly or the Government, or urgent projects, the guaranteed amount shall be the principal of loan or bond issue provided that it shall not exceed 70% of total investment of that project as defined in the investment decision.

b) With respect to a group-A project with total investment worth VND 2,300 billion or above and having the investment preliminary proposal approved by the Government, the guaranteed amount shall be the principal of loan or bond issue provided that it shall not exceed 60% of total investment of that project as defined in the investment decision.

c) With respect to a project of other kinds, the guaranteed amount shall be the principal of loan or bond issue provided that it shall not exceed 50% of total investment of that project as defined in the investment decision.

Article 11. Letter of guarantee

1. Ministry of Finance shall assume responsibility to grant and manage letters of guarantee.

2. The only one letter of guarantee is granted to each loan or bond issue of the project or program. The guaranteed amount specified in the letter of guarantee shall not exceed the guarantee limit estimated for each loan or bond issue of that project or program upon the approval by the Prime Minister.

3. A letter of guarantee must include the following contents:

a) The guarantor.

b) The obligor.

c) Reference contents about commercial contracts and/or loan agreements.

d) Borrowed amount and currency of the guaranteed loan.

dd) Commitment by Ministry of Finance to the obligee to fulfilling obligations of the obligor and those of Ministry of Finance.

e) Rights, benefits and responsibilities of the obligee.

g) Effect and revocation of letter of guarantee.

h) Governing laws and competent agency, location and language used in handling disputes.

i) Place and date of signing the letter of guarantee.

4. Other contents of the letter of guarantee shall be subject to the agreement by concerned parties in conformity with regulations of Vietnam law.

5. The letter of guarantee shall come into force as from the issued date until the obligor or the guarantor fulfills all of payment obligations under the guarantee towards the obligee according to conditions specified in the loan agreement or provisions or requirements with respect to the bonds guaranteed by the government.

Chapter II

APPRAISAL, APPROVAL AND PROVISION OF GOVERNMENT GUARANTEE

Section 1. CONSIDERING APPROVAL FOR PRELIMINARY PROPOSALS FOR GOVERNMENT GUARANTEE

Article 12. Approval for preliminary proposals for government guarantee

1. The Government grants approval for preliminary proposal for government guarantee for:

a) An investment project or program of which investment preliminary proposal is approved by the National Assembly or the Government in accordance with regulations of the Law on public investment.

b) A project without use of funding from state budget with total amount of loan or bond issue applying for government guarantee worth USD 300 million or above.

c) A project which is executed by an enterprise with funding contributed by foreign investors or an economic organization whose 30% of charter capital is foreign investment.

2. Preliminary proposals for government guarantee for programs or projects other than those specified in Clause 1 of this Article shall be subject to the approval by the Prime Minister.

3. Holder of an approved preliminary proposal for government guarantee must, within 03 years as from the date of granting approval, submit completed application for government guarantee to Ministry of Finance. Over the said time limit, the approved preliminary proposal for government guarantee shall obtain no validity for considering provision of government guarantee.

4. Enterprise or credit institution may use an approved preliminary proposal for government guarantee as the basis for conducting negotiation with lenders but such approved preliminary proposal for government guarantee may not ensure the provision of government guarantee if that enterprise or credit institution fails to meet all of requirements mentioned in Articles 9, 15 and 20 hereof when the provision of government guarantee is under consideration.

Article 13. Application for approval for preliminary proposal for government guarantee

An enterprise or credit institution applying for approval for preliminary proposal for government guarantee shall, by hand or by post, submit the following documents to Ministry of Finance:

1. The application form for approval for preliminary proposal for government guarantee made by the enterprise or credit institution (the original).

2. The establishment decision of the enterprise or credit institution, or business registration certificate of enterprise that is program or project owner (certified copy).

3. Relevant investment documents (certified copies):

a) Decision on investment proposal enclosed with the pre-feasibility study report or Decision on investment enclosed with the feasibility study report of the project given approval by a competent agency; or

b) Certificate of investment registration (if any); or

c) Decision on approval for the government's dedicated credit program if the applicant is a credit institution.

4. The report made by the enterprise or credit institution that applies for approval for the preliminary proposal for government guarantee on its operating situation and the program or project for which a loan is applied (the original) with the following contents:

a) The general operating situation of the enterprise (including the list of shareholders or individuals whose contributed capital is accounted for 5% of the enterprise's capital or above) or the credit institution, and the enterprise or credit institution's activities in the sector of the program or project for which the application for government guarantee is submitted.

b) The statement about the program or project’s sources of funding (specify amount of each source of funding such as equity, loan capital or funds raised from bond issue, and proportion thereof); progress of contribution by owners.

c) Purposes of loan or bond issue (the loan is used to directly serve business activities of the borrower or transferred to its subsidiary, affiliate or associate company).

d) Estimated term of loan or bond issue (time for commencing the repayment of principal & interest), time for withdrawal of funds and project execution.

dd) The plan for use and management of loan or bond issue.

e) The plan for allocating funding to the payment of principal, interests and other fees due, including funding from the project's operating cash flow and alternative repayment sources (if any).

g) The plan for collateral for loan or bond issue guaranteed by the government.

5. The plan for allocating the equity to the project's total investment, the plan for allocating the equity annually in the period of development, and evidences of equity allocation.

6. The audited financial statements of 03 years preceding the year in which the application for appraisal of the preliminary proposal for government guarantee is submitted (certified copies) of:

a) The enterprise or credit institution that applies for approval for preliminary proposal for government guarantee.

b) The parent company of the enterprise that applies for government guarantee or of shareholders or contributing members (exclusive of individual shareholders or contributing members) whose contributed capital is accounted for at least 5% of the equity of a newly established enterprise (operating duration is under 03 years) or of an enterprise getting no revenue from its business activities. If the application is submitted in the second half of fiscal year, the financial statements of the first six months are required.

Article 14. Procedures for considering approval for preliminary proposal for government guarantee

1. Ministry of Finance shall take the enterprise's application for approval for the preliminary proposal for government guarantee which includes all of required documents as mentioned in Article 13 hereof into consideration before the enterprise negotiates the loan agreement for which the government guarantee is applied for.

2. Within 30 days as from the receipt of the application deemed sufficient submitted by the borrower or the bond issuer in conformity with regulations hereof, Ministry of Finance shall verify the received application with respect of the following contents:

a) The validity of documents included in the application.

b) The satisfaction of conditions for subject, program or project as prescribed in Articles 32, 33 of the Law on management of public debts and conditions for each type of borrowing as mentioned hereof.

c) The satisfaction of requirements for government guarantee by the borrower or the bond issuer in accordance with regulations in Clause 2 Article 32 and requirements for loans or bond issues laid down in Clause 3 Article 34 of the Law on management of public debts.

The Ministry of Finance shall give a notice to the borrower or the bond issuer if the application fails to meet the requirements mentioned in this Clause.

3. If case of need to collect further information in course of appraisal of the application, Ministry of Finance may take opinions from ministries, ministerial-level agencies and/or regulatory bodies in sectors in connection with the program or project with borrowing funding requiring the government guarantee.

4. Ministry of Finance shall report to the Government or the Prime Minister (depending on the power to make decision on investment proposal) on the result of appraising the preliminary proposal for government guarantee, and propose granting or refusing to approve such the preliminary proposal.

5. The Government or the Prime Minister shall prepare an official dispatch granting approval or refusing to approve the preliminary proposal for government guarantee within their competence as defined in Clauses 1, 2 Article 12 hereof, and send it to relevant agencies.

Section 2. PROVISION OF GOVERNMENT GUARANTEE TO DOMESTIC AND FOREIGN LOANS

Article 15. Application for approval for government guarantee for a loan

Other than the documents required in Article 13 hereof, the borrower that applies for government guarantee for his loan must, by hand or by post, submit an application including the following documents to Ministry of Finance:

1. The letter sent by the lender to the borrower to require the government guarantee for loan (the original).

2. The application form for government guarantee made by the enterprise or the credit institution enclosed with the proposal made by the Serving Bank for the government-guaranteed loan (the original).

3. Documents mentioned in Article 13 if the submitted ones need to be modified.

4. The feasibility study report given approval by a competent agency (in case where only the pre-feasibility study report is submitted to Ministry of Finance in course of appraisal of the preliminary proposal for government guarantee) (certified copy).

5. The written approval for the preliminary proposal for government guarantee given by competent agency (certified copy).

6. The borrowing plan (the original) which must be updated within 06 months before applying for the government guarantee and include the contents prescribed in Clause 4 Article 13 hereof and the following contents:

a) Summarized requirements for the loan requiring the government guarantee and other loans (if any).

b) The master plan for quarterly withdrawal of funds from the loan.

7. The written approval for the government-guaranteed borrowing plan of the representative agency of owner of state funding at the enterprise, the credit institution or the bank for social policies whose 50% or above of capital is owned by the state (the original).

8. The final draft of loan agreement initialed by the parties or the signed loan agreement, including the provision on government guarantee (certified copy).

9. The audited financial statements of 03 years preceding the year in which the application for government guarantee is submitted as prescribed in Clause 5 Article 13 hereof (certified copies). If the application is submitted in the second half of fiscal year, the financial statements of the first six months are required.

10. The detailed report made by the National Credit Information Center of Vietnam affiliated to the State Bank of Vietnam on the borrower's credit rating (the original).

11. The written commitment prepared according to regulations in the Appendix II enclosed to this Decree (the original) with the certification of authorized person of the parent company or organizational or individual entity that holds 65% of the charter capital or above that they shall fulfill repayment obligations if the obligor defaults.

12. The written commitment made by shareholders or contributing members each of which holds 5% of charter capital or above on their joint holding of at least 65% of charter capital during the validity of government guarantee, enclosed with the list of said shareholders or contributing members (applicable to joint-stock companies).

13. The documents supplemented during the appraisal of application for government guarantee for the project's loan (approved fundamental design, off-take agreement and/or statement of technologies/equipment of investment project).

14. The plan for annual allocation of equity according to evidences of equity allocation capacity (if any).

The borrower must submit an application including all of documents mentioned in Article 13 and documents mentioned in this Article to Ministry of Finance before conducting assessment of application for government guarantee.

Article 16. Assessment of application for government guarantee for a loan

1. Within 30 days as from the receipt of the application for government guarantee deemed sufficient submitted by the borrower in conformity with regulations hereof, Ministry of Finance shall assess the received application and report assessment results to the Prime Minister with respect of the following contents:

a) The validity of documents included in the application.

b) The assessment of enterprise, credit institution, program or project and loan requiring the guarantee according to criteria and conditions mentioned in Articles 32, 33 and 34 of the Law on management of public debts and requirements for loan.

c) The assessment of the financial health of the enterprise or the credit institution that wants to borrow money with the government guarantee.

d) The assessment of the financial plan of the program or project with use of loan capital and the enterprise's solvency, except for the case where the re-assessment of financial plan is not required upon the permission of a competent agency and the assessment results of program or project's financial plan already approved by competent agency shall be used. Assessment methods are elaborated in the Appendix I enclosed to this Decree.

dd) The assessment of the suitability (type, nature, value, etc.) of collateral for loan or bond issue guaranteed by the government.

e) The assessment of risks of program or project in connection with the government-guaranteed loan.

g) Total amount of loans and the number of government-guaranteed projects executed by the enterprise or credit institution up to the date when the application for government guarantee is assessed; the enterprise or credit institution's outstanding debt of government-guaranteed loans at the time of assessment of application.

h) The proposed guarantee fee.

i) Suggestions/ proposals.

2. The Ministry of Finance shall, within 05 working days as from the completion of assessment process, give a notice to the borrower if the application fails to meet all of the requirements mentioned in Clause 1 of this Article.

3. If case of need to collect further information in course of assessment of the application, Ministry of Finance may take opinions from ministries, ministerial-level agencies and/or regulatory bodies in sectors in connection with the program or project with borrowing funding requiring the government guarantee.

Article 17. Decision on provision of government guarantee for a loan

1. The Ministry of Finance shall submit contents of the letter of guarantee enclosed with report on assessment results of the application for government guarantee to the Prime Minister.

2. A decision on provision of government guarantee for a loan made by the Prime Minister includes the following contents:

a) Approving contents of the letter of guarantee and assigning the Ministry of Finance to issue the letter of guarantee.

b) Approving the guarantee fee charged by the government for loans.

c) Assigning the Ministry of Justice to provide legal opinions in accordance with law regulations (if any).

d) Assigning the Ministry of Foreign Affairs to coordinate with Ministry of Finance in appointing a qualified overseas Vietnamese representative mission to receive procedural dossiers as regulated in the letter of guarantee.

dd) Approving of other organization acting as the recipient of procedural dossiers as regulated in letters of guarantee.

e) Other contents.

Article 18. Issuance of letter of guarantee for a loan

1. Ministry of Finance shall, based on the Prime Minister's decision on provision of government guarantee for a loan, issue a letter of guarantee after the obligor has completed the following procedures:

a) Enter into a mortgage agreement for the government-guaranteed loan with the Ministry of Finance.

b) Open a Project Account at the Serving Bank; inform the Ministry of Finance in writing of the Project Account number and all existing deposit accounts opened at credit institutions, enclosed with certification of the credit institution where the account is opened (the original) or the Project Account opening contract.

c) Submit the loan agreement dully signed by the parties to Ministry of Finance (certified copy).

2. The letter of guarantee shall be issued within 07 working days as from the completion of procedures mentioned in Clause 1 of this Article. To be specific:

a) With respect to a foreign loan, the letter of guarantee is made in 04 originals, among which each of Ministry of Finance, the obligor and Ministry of Justice shall keep one and the other is delivered to the lender or its representative.

b) With respect to a domestic loan, the letter of guarantee is made in 06 originals, among which 02 originals are kept by Ministry of Finance, 01 is kept by the obligor, 01 is delivered to the lender and 02 are sent to relevant agencies.

3. Ministry of Finance shall decide the number of originals of the letter of guarantee additionally provided to relevant agencies other than those mentioned in Clause 2 of this Article in each specific case.

Article 19. Procedures relating to the validity of a government-guaranteed foreign loan

1. The obligor assumes responsibility to conduct procedures specified in the loan agreement to validate the letter of guarantee and the loan agreement.

2. The obligor assumes responsibility to work with the Ministry of Justice to obtain legal opinions about the letter of guarantee for government-guaranteed foreign loans.

3. The obligor shall, after obtaining the letter of guarantee, assume responsibility to register the foreign loan with the State Bank of Vietnam in accordance with regulations in Clause 1 Article 35 of the Law on management of public debts and provisions on management of foreign loans announced by the State Bank of Vietnam.

4. If legal procedures specified in the foreign loan agreement and the letter of guarantee require a recipient of procedural dossiers, then:

a) The obligor shall suggest an organization to Ministry of Finance for acting as the recipient of procedural dossiers for the borrower and the guarantor as requested in the loan agreement, and consult the Ministry of Finance and the Ministry of Foreign Affairs during the negotiation.

b) After entering into the loan agreement and getting the government guarantee, the obligor shall send letters of authorization of the borrower and the guarantor (if any) to the organization which is appointed to act as the recipient of procedural dossiers for certification by signing and returning to the obligor for transferring to the obligee and making the copy thereof to send to the Ministry of Finance.

Section 3. PROVISION OF GOVERNMENT GUARANTEE TO ENTERPRISE'S DOMESTIC AND INTERNATIONAL BOND ISSUES

Article 20. Application for government guarantee for a bond issue

In addition to the documents required in Article 13 hereof, the bond issuer that applies for government guarantee must submit an application including the following documents to Ministry of Finance:

1. Documents mentioned in Article 13 if the submitted ones need to be modified.

2. The application form for government guarantee made by the bond issuer enclosed with the proposal made by the Serving Bank for the government-guaranteed bond issue (the original).

3. The project's feasibility study report given approval by a competent agency (in case where only the pre-feasibility study report is submitted to Ministry of Finance in course of appraisal of the preliminary proposal for government guarantee) (certified copy) (if any).

4. The written approval for the preliminary proposal for government guarantee given by competent agency (certified copy).

5. The bond issue plan (the original) which must be updated within 06 months before applying for the government guarantee and include the contents prescribed in Clause 4 Article 13 hereof and the following contents:

a) The plan and time for bond issue and the project or program's plan for development or disbursement (the original or certified copies).

b) Total volume of issued bonds classified according to bond duration and issue date on the basis of the progress of development and disbursement of the program or project.

c) The currency in which the bonds will be issued and issue market, interest and bond issue methods (if any).

d) Methods of selecting guarantor or group of guarantors for the bond issue, domestic legal consultant, international legal consultant and relevant agents (if any).

If the bond issue is intended to divide into several tranches in some years, the detailed plan for each year must be prepared.

6. The written approval for the plan for government-guaranteed bond issue of the representative agency of owner of state funding at the enterprise, the credit institution or the bank for social policies whose 100% of capital is owned by the state (the original); or the written opinions of the representative agency of owner of state funding if the state funding contributed to the enterprise or the credit institution is less than 100%.

7. The audited financial statements of 03 years preceding the year in which the application for government guarantee is submitted as prescribed in Clause 5 Article 13 hereof (certified copies). If the application for government-guaranteed bond issue is submitted before April 01st annually, the financial statements must be submitted in conformity with regulations in Point b Clause 1 Article 13 of the Decree No. 90/2011/ND-CP on issue of corporate bonds and relevant amendment or replacement documents.

8. The detailed report made by the National Credit Information Center of Vietnam affiliated to the State Bank of Vietnam on credit rating of the bond issuer (the original).

9. The written commitment prepared according to regulations in the Appendix II enclosed to this Decree (the original) with the certification of authorized person of the parent company or organizational or individual entity that owns 65% of the charter capital or above that they shall fulfill repayment obligations if the obligor defaults.

10. The written commitment made by shareholders or contributing members each of which holds 5% of charter capital or above on their joint holding of at least 65% of charter capital during the validity of government guarantee, enclosed with the list of said shareholders or contributing members (applicable to joint-stock companies).

11. The documents supplemented during the appraisal of application for government guarantee for the project's loan (approved fundamental design, off-take agreement and/or statement of technologies/equipment of investment project).

12. The plan for annual allocation of equity to the investment project enclosed with the evidences of equity allocation capacity (if any).

The bond issuer must submit an application including all of documents mentioned in Article 13 and documents mentioned in this Article to Ministry of Finance before conducting assessment of application for government guarantee.

Article 21. Assessment of application and provision of government guarantee

1. Ministry of Finance shall conduct the assessment of applications for government guarantee for domestic and international bond issues in compliance with contents and process applied to the assessment of applications for government guarantee for domestic and foreign loans specified in Article 16 hereof. The Ministry of Finance shall submit contents of the letter of guarantee enclosed with report on assessment results of the application for government guarantee to the Prime Minister.

2. After the Prime Minister makes a decision on provision of the government guarantee with contents mentioned in Article 17 hereof and gives approval for the guarantee limit, Ministry of Finance shall give a written notice to the bond issuer to conduct the issue of bonds under the plan given approval by competent agency.

3. The enterprise shall organize the bond issue in accordance with regulations of the law on issue of corporate bonds. If the enterprise conducts the public offering of bonds, it must comply with regulations of the law on securities.

4. Ending each bond issue, the bond issuer must submit a report to the Ministry of Finance on bond issue results for carrying out procedures for certification of actually guaranteed obligations in accordance with regulations on provision and management of government guarantee.

Article 22. Issuance of letters of guarantee for domestic and international bond issues

1. Ministry of Finance shall, based on the Prime Minister's decision on provision of government guarantee for a bond issue, issue a letter of guarantee after the obligor has completed the following procedures:

a) Enter into a mortgage agreement for the government-guaranteed bond issue with the Ministry of Finance in accordance with regulations in Article 32 hereof.

b) Open a Project Account at the Serving Bank, inform the Ministry of Finance of the Project Account number and all existing deposit accounts opened at credit institutions, enclosed with certification of the credit institution where the account is opened (if there is a specific project with use of borrowing funding).

c) Submit the bond purchase agreement dully signed by the parties to Ministry of Finance (certified copy) (if any).

2. The letter of guarantee shall be issued within 05 working days as from the completion of procedures mentioned in Clause 1 of this Article. To be specific:

a) With respect to an international bond issue, the letter of guarantee is made in 04 originals, among which each of Ministry of Finance, the obligor and Ministry of Justice shall keep one and the other is delivered to the financial agent.

b) With respect to a domestic bond issue, the letter of guarantee is made in 06 originals, among which 02 originals are kept by Ministry of Finance, 01 is kept by the obligor, 01 is delivered to the bond issuer and 02 are sent to relevant agencies.

3. Ministry of Finance shall decide the number of originals of the letter of guarantee additionally provided to relevant agencies other than those mentioned in Clause 2 of this Article in each specific case.

Article 23. Procedures relating to the validity of the international bond issue guaranteed by the government

1. The obligor assumes responsibility to conduct procedures specified in the international bond issue agreement to validate the letter of guarantee and the international bond issue agreement.

2. The obligor assumes responsibility to work with the Ministry of Justice to obtain legal opinions about the letter of guarantee the international bond issue guaranteed by the government.

3. The obligor shall, after obtaining the letter of guarantee, assume responsibility to register the international bond issue with the State Bank of Vietnam in accordance with regulations in Clause 1 Article 35 of the Law on management of public debts and provisions on management of enterprises' foreign loans announced by the State Bank of Vietnam.

4. If legal procedures specified in the international bond issue agreement and the letter of guarantee require a recipient of procedural dossiers, then:

a) The obligor shall suggest an organization to Ministry of Finance for acting as the recipient of procedural dossiers for the borrower and the guarantor as requested in the bond issue agreement, and consult the Ministry of Finance and the Ministry of Foreign Affairs during the negotiation.

b) After entering into the bond issue agreement and obtaining the letter of guarantee, the obligor shall send letters of authorization of the borrower and the guarantor (if any) to the organization which is appointed to act as the recipient of procedural dossiers for certification by signing and returning to the obligor for transferring to the obligee and making the copy thereof to send to the Ministry of Finance.

Chapter III

MANAGEMENT OF GOVERNMENT GUARANTEE

Section 1. MANAGEMENT OF GOVERNMENT-GUARANTEED LOANS

Article 24. Serving Bank

1. The Serving Bank which is a mandatory requirement for the investment project is selected and suggested through the application for government guarantee by the obligor.

2. The Serving Bank must be a commercial bank which is established and operates under the Law on credit institutions of Vietnam, and must satisfy all of the following requirements:

a) It must be in the list of commercial banks qualified to act as Serving Banks for projects with funding from ODA or concessional loans of the State Bank of Vietnam; or

b) It has a credit rating equal to or one level lower than the sovereign credit rating as assigned by any of the following three international credit rating agencies (Moody's, Standard and Poor's, Fitch).

3. Responsibilities of Serving Bank:

a) Fulfill duties relating to payment, supervision of Project Account, withdrawal of borrowing funds, repayment, collateral of the government-guaranteed loan or bond issue, and assume responsibility for the accuracy of certification reports provided by the Serving Bank.

b) Check the suitability of money withdrawal documents of the obligor for the signed commercial contract and loan agreement; send written certification of suitability to the obligor and Ministry of Finance within 05 days as from the receipt of the obligor's application for disbursement before the obligor sends the withdrawal of funds request to the lender.

c) Send reports to the Ministry of Finance on reasons and solutions in case money withdrawal documents are not suitable.

d) Oversee the Project Account's balance and send report to Ministry of Finance on the obligor's performance of commitment on a basis of every 06 months or irregular reports if the obligor fails to comply with the commitment; withdraw money from the Project Account to pay debts if the obligor fails to perform repayment obligations.

dd) Collect service fee from the obligor in accordance with regulations of the Serving Bank and agreements between the two parties.

4. Procedures for approving a Serving Bank:

a) After getting the approval for government guarantee from competent agency, the obligor shall submit the application for registration of Serving Bank to the Ministry of Finance.

The application includes:

- The application form for appointment of Serving Bank of the obligor (the original);

- The contract signed by and between the obligor and the Serving Bank, which indicates responsibilities and obligations of concerning parties (in conformity with regulations on responsibilities of the obligor and those of the Serving Bank mentioned in this Decree) (the original or certified copy);

- Evidence of the Serving Bank's eligibility as prescribed in Article 2 of this Article (officially announced documents or certified copies).

b) Ministry of Finance shall give a written response to approve or refuse to approve (with reasons specified) the Serving Bank suggested by the obligor within 07 working days.

If the application is refused, the obligor must select another Serving Bank which satisfies all of requirements mentioned in Clause 2 of this Article and suggest it to the Ministry of Finance for consideration.

c) If the obligor fails to select a qualified Serving Bank, Ministry of Finance shall appoint a Serving Bank after consulting the obligor.

Article 25. Project Account

1. The obligor that executes the investment project with funding from government-guaranteed loans shall open a Project Account at the Serving Bank, except for credit institutions executing the government's dedicated credit programs with funding from government-guaranteed loans.

2. A Project Account reflects borrowing and repayment (principal, interest and fees); receipts and expenditures related to the project and other sources of funding of the obligor for ensuring the payment of debts.

3. The obligor must send a written report in change or re-registration of the Project Account to Ministry of Finance.

Article 26. Regulations on withdrawal of funds from government-guaranteed loans or bond issue

1. The obligor shall assume responsibility to issue bonds or withdraw and use funds from government-guaranteed loans, and contribute or allocate equity in conformity with the loan plan or the bond issue plan given approval by the representative agency of owners of state funding (if it is a state-owned enterprise) and a competent agency, the development progress and the plan registered with Ministry of Finance as well as provisions in the loan agreement and the commercial contract.

2. The lender shall assume responsibility to check the suitability of money withdrawal documents for the loan purposes before giving approval for the disbursement of government-guaranteed loan and making remittance upon the request of the borrower (the obligor).

3. The Serving Bank shall assume responsibility to check the suitability of money withdrawal documents for the loan purposes, the signed loan agreement and commercial contract before the obligor makes withdrawal of money from the lender's account or the Serving Bank approves the obligor's request for money withdrawal or transfer of money from the Project Account.

Article 27. Regulations on management of loan capital, funds raised from bond issue and other received funds

1. The obligor shall assume responsibility to:

a) Improperly manage and use loan capital, contributed capital and equity in conformity with the purposes defined in the loan plan or bond issue plan.

b) Input figures about government-guaranteed loans or bond issues into accounting records in a timely and sufficiently manner in accordance with law regulations.

c) Prioritize the use of money in the Project Account to repay government-guaranteed loans and loans from the Debt Repayment Accumulation Fund for pay relevant debts of the project (if any).

d) Commit to immediately transfer revenues and other legal income generated from the project's activities to the Project Account in order to ensure the funding for repaying debts in full and on schedule.

dd) Commit to maintain the Project Account's balance (in original currency or in VND according to the exchange rate announced by the Serving Bank) as from the first year when repayment obligations occur for the purpose of paying debts on schedule.

The minimum balance shall be calculated by adopting the formula stated in the Appendix IV enclosed herewith and maintained equal to the amount payable in the following repayment period 15 days prior to the repayment deadline.

e) Unconditionally and irrevocably authorize the Serving Bank to request credit institutions where the obligor opens deposit accounts to transfer money from such deposit accounts to the Project Account for ensuring the required minimum balance or collect debts; concurrently, authorize the credit institutions where the obligor opens deposit accounts to transfer money from such deposit accounts to the Serving Bank.

g) Check debt figures with the Ministry of Finance on a periodical basis of every 06 months and on annual basis or send copies of written certifications of debt figures checked with the lending bank on a periodical basis of every 06 months and on annual basis in connection with government-guaranteed loans or bond issues to the Ministry of Finance.

2. Ministry of Finance shall assume responsibility to:

a) Monitor the obligor’s withdrawal of money and repayment of debts related to the government-guaranteed loans and update information thereof on the debt management system of the Ministry of Finance.

b) Check outstanding debts of guaranteed loans on a periodical basis of every 06 months and on annual basis with the obligor, and on an annual basis with the obligee.

3. The Serving Bank shall assume responsibility to:

a) Fulfill duties of the Serving Bank during the withdrawal of loan capital and repayment of debts of the project.

b) Every 06 months, report Ministry of Finance on the balance and changes in receipts and payments through the Project Account or other accounts of the obligor relating to the withdrawal of money and debt repayment (if any).

c) If the balance of the Project Account is lower than the committed limit, the Serving Bank shall have the right to request the obligor to transfer money to the Project Account and must submit reports thereof to the Ministry of Finance.

Article 28. Modification of letter of guarantee

1. Ministry of Finance shall modify the letter of guarantee according to the signed loan agreement upon the request of the obligor after sufficiently receiving the following documents:

a) The obligor’s written request which indicates reasons of modification, contents to be modified in the letter of guarantee, and effects of the modification of the letter of guarantee on the obligor's performance of obligations as defined in the loan agreement.

b) Documents modifying the loan agreements.

c) The draft of modified letter of guarantee prepared by the obligee (if any).

2. In case the modified contents of the letter of guarantee for the signed loan agreement does not result in the increase of total principal amount of the government-guaranteed loan and particulars about the obligor are kept unchanged, the Prime Minister shall authorize the Minister of Finance to decide and grant document or appendix to modify the letter of guarantee within 15

days as from the receipt of sufficient and valid documents submitted by the obligee as prescribed in Clause 1 of this Article.

3. In case the modified contents of the letter of guarantee for the signed loan agreement causes the increase of total principal amount of the government-guaranteed loan or change of the obligor, Ministry of Finance shall report to the Prime Minister for making decision before granting document or appendix to modify the letter of guarantee.

Section 2. COLLECTION AND USE OF GURANTEE FEE

Article 29. Government guarantee fee

1. Ministry of Finance shall, based on the assessment of the program or project's financial plan and the financial health of the enterprise or the credit institution, determine the government guarantee fee depending on the level of risks provided that the guarantee fee shall not exceed 2% per year of total outstanding debts of guaranteed loan.

2. The government guarantee fee is determined according to the sum of the following fees:

a) The fee determined according to the Debt-Service Coverage Ratio within the first 05 years of the project and the financial health rate of the enterprise requesting for the government guarantee at the time of appraising the application for government guarantee for loan or bond issue for investment project.

b) The fee determined according to the capital adequacy ratio of the credit institution requesting for the government guarantee for its loan or bond issue.

3. The government guarantee fees are stipulated in the Schedule of government guarantee fees stated in the Appendix III enclosed herewith.

4. The minimum fee calculated according to the Debt-Service Coverage Ratio within the first 05 years of the project and the corresponding fee calculated according to the enterprise's financial health rate specified in the Schedule of government guarantee fees are applied to determine the guarantee fee in case the re-assessment of the financial plan is not required as regulated in Point d Clause 1 Article 16 hereof.

5. The Government shall not collect guarantee fee of loans or bond issues guaranteed by the government for executing specialized programs or projects whose investment proposals are given approval by the National Assembly, the Government or the Prime Minister.

Article 30. Collection and transfer of government guarantee fee

1. The government guarantee fee is calculated based on the outstanding principal amount of the government-guaranteed loan or bond issue according to the applicable rate of government guarantee fee approved by the Prime Minister as from the date of the first withdrawal of loan capital or the date of payment of bond buying amount.

2. The government guarantee fee is calculated in currency type of guaranteed loan and exchanged into VND according to the selling rate officially announced by the Joint Stock Commercial Bank for Foreign Trade of Vietnam (Vietcombank) at the time of paying guarantee fee, and then paid to the Debt Repayment Accumulation Fund on the date of paying interests of government-guaranteed loan or bond issue.

3. Within 10 days as from the due date as prescribed in Clause 2 of this Article, if the Ministry of Finance does not yet receive the payment of guarantee fee, the obligor must incur the penalty interest charged on the unpaid guarantee fee. To be specific:

a) The penalty interest is charged on total days of delayed payment as from the due date to the date on which the guarantee fee is actually paid.

b) The interest rate charged on the late payment of government guarantee fee shall be equal to the interest rate charged on the loan or bond issue guaranteed by the government.

c) If the floating interest rate is charged on the loan or bond issue, Ministry of Finance shall base on the reference rate of the interest payment period of the government-guaranteed loan or bond issue to determine the penalty interest.

Article 31. Use of government guarantee fee

1. Government guarantee fees are revenues of the Debt Repayment Accumulation Fund. Thus, guarantee fees shall be managed and used by the Debt Repayment Accumulation Fund to finance the Debt Repayment Accumulation Fund, including the fulfillment of the guarantor's obligations.

2. Ministry of Finance may use 1.5% of total amount of actually collected guarantee fees to cover expenditures for the provision and management of government guarantee upon the approval of the Prime Minister.

In case an independent expert or organization must be consulted during the processing of an application for government guarantee, administrative expenditures for such expert or organization shall be decided by the Minister of Finance in each specific case upon the approval by the Prime Minister.

Section 3. COLLATERAL

Article 32. Collateral for loan or bond issue

1. Except for government-guaranteed loans or bond issues of banks for social policies, enterprises, organizations or individuals concerning projects with using government-guaranteed loan capital must pledge property to the agency providing the government guarantee (Ministry of Finance) in accordance with prevailing laws and guidance by Ministry of Finance.

2. The collateral offered to ensure the performance of the obligor’s obligations to Ministry of Finance may be the property formed from the government-guarantee borrowed capital, other property from the equity or other legal sources of capital of the obligor or the property of other organizations/individuals involved in the project with using government-guaranteed loan capital. The collateral value must be equal to at least 120% of the principal amount of the loan or bond issue guaranteed by the government.

3. The obligor shall manage and use the collateral in proper manner. The sale or exchange of the collateral is not permitted unless the Ministry of Finance grants approval. The obligor must offer additional collateral for ensuring the payment of the remaining outstanding debt of the government-guaranteed loan or bond issue before performing the release of collateral previously pledged.

4. The Government shall make decision on the pledge of property as collateral for the government-guaranteed loan or bond issue in cases where regulations of applicable laws may

not applied, or governing regulations of law are not available, or the collateral becomes the state-owned property before the government-guaranteed loan expires or the guarantee is conducted according to the direction of a competent agency.

Article 33. Management of collateral

1. The entering into the mortgage agreement and registration of secured transaction must be performed before the Ministry of Finance issues the letter of guarantee.

2. The obligor carries out the registration of secured transaction for the government-guarantee loan or bond issue in accordance with regulations on secured transactions when the mortgage agreement is dully signed by the obligor and Ministry of Finance or the agency which is authorized by the Ministry of Finance.

3. Ministry of Finance may hire an independent organization to conduct valuation and inspection of the collateral in case the collateral must be processed in accordance with prevailing laws. The obligor shall pay costs of the said service.

4. The parties relating to the collateral shall assume responsibility to comply with regulations of the law on collaterals.

5. The mortgage agreement is no longer valid only when the obligor has completed all obligations to the lender as provided for in the letter of guarantee and to the Ministry of Finance according to the signed documents relating to the letter of guarantee.

Article 34. Handling of collateral

1. In case the Ministry of Finance has completed all of debt repayment obligations for the obligor because the obligor fails to do such but the obligor is incapable of paying debts to Ministry of Finance, the collateral shall be liquidated to serve the debt recovery of the Ministry of Finance.

2. Methods of handling collateral are defined in the mortgage agreement and conform to regulations of the law on secured transactions.

3. Proceeds from the liquidation of collateral shall be transferred to the Debt Repayment Accumulation Fund to finance the payment of the government-guaranteed loan.

Article 35. Mortgage cancellation and termination

1. Cancelling and terminating the mortgage which is made to ensure the fulfillment of payment obligations for the government-guaranteed loan or bond issue shall comply with prevailing laws.

2. The Government shall decide the cancellation or termination of the pledge of collateral of the government-guaranteed loan or bond issue in case the pledge of collateral is no longer valid as regulated by the law on secured transactions or the pledged property for the government-guaranteed loan becomes the state-owned property.

Section 4. TRANSFER OR ASSIGNMENT

Article 36. Transfer or assignment of loan or bond issue

1. The transfer or assignment of a government-guaranteed loan or bond issue made by the obligee requires the approval by the Ministry of Finance. The Ministry of Finance shall only consider approving an application for transfer or assignment of a government-guaranteed loan or

bond issue if such transfer or assignment does not result in an increase in obligations of the guarantor.

Within 30 days as from the receipt of a valid application for transfer or assignment submitted by the obligee, Ministry of Finance shall give a written response to approve or refuse such application. An application for transfer or assignment includes:

a) The application form for approval for the transfer or assignment made by the obligee which includes the following contents: reasons for transfer or assignment and the transferee or assignee, and certification that the transfer or assignment shall not result in an increase in obligations of the guarantor (the original).

b) The written approval for the transfer or assignment made by the obligor (the original).

c) The draft agreement on the transfer or assignment of the loan or bond issue (if any) which has been discussed and agreed upon by the parties and includes a provision that the transferee or assignee of the loan or bond issue shall inherit all obligations and responsibilities of the obligee previously defined in the loan agreement or bond issue agreement.

2. The transfer or assignment of a government-guaranteed loan made by the obligor requires the approval by the Prime Minister. The transferee or assignee must meet all of requirements which must be satisfied by the obligor in accordance with prevailing laws and regulations hereof.

Within 30 days as from the receipt of a valid application for transfer or assignment submitted by the obligor, Ministry of Finance shall report to the Prime Minister to give approval or refusal to such application. An application (the original) includes:

a) The plan for transfer or assignment of the government-guaranteed loan which indicates name of the transferee or assignee, reasons of the transfer or assignment, capacity of the transferee or assignee, plan for project's operations made by the transferee or assignee, evidence of the transferee or assignee's solvency to pay remaining outstanding debt of the loan (the original).

b) The financial statements of the latest 03 years of the transferee or the assignee which have been audited by the state audit office or independent auditor (certified copies).

c) The commitment made by the transferee or assignee of the obligor's loan or bond issue to inherit obligations and responsibilities to such government-guaranteed loan or bond issue in proportion to the scope of transfer or assignment received from the obligor (the original).

d) The written approval for the loan transfer or assignment made by the obligee (certified copy).

Ministry of Finance shall, within 05 working days as from the receipt of the Prime Minister's opinions, give a written response to the obligor.

Article 37. Transfer or assignment of shares or contributed capital

1. The parent company or organizations and/or individuals in the list of shareholders whose holdings total 65% of the obligor's actual charter capital as committed and registered with Ministry of Finance prior to the provision of government guarantee may not conduct the transfer or assignment of their contributed capital to other shareholders who are not in the list of shareholders whose holdings total 65% of the obligor's actual charter capital as committed and registered with Ministry of Finance prior to the provision of government guarantee unless such transfer or assignment is given approval by the Ministry of Finance.

2. If the parent company or any of organizations and/or individuals in the list of shareholders whose holdings total 65% of the obligor's actual charter capital as committed and registered with the Ministry of Finance prior to the provision of government guarantee applies for transfer or assignment of their contributed capital to another shareholder who is not the registered list of shareholders, Ministry of Finance shall consider and report to the Prime Minister to give approval for the transfer or assignment of shares or contributed capital of the obligor within 15 working days provided that the transferee or assignee of shares or contributed capital (who is not the registered list of shareholders) meets the minimum requirements concerning financial capacity equivalent to those applied to the transferring or assigning shareholder of the obligor after receiving an application which includes the following documents:

a) The application form for the transfer or assignment made by the obligor which includes the following contents: name of the transferor or assignor, name of the transferee or assignee, and reasons for transfer or assignment (the original).

b) The documents providing the financial capacity of the transferee or assignee (certified copies).

c) The financial statements of the latest 03 years of the transferee or the assignee which have been audited by the state audit office or independent auditor (certified copies).

d) The written commitment made by the transferee or assignee on the inheritance of all responsibilities and obligations of the transferor or assignor in proportion with the transferred or assigned shares or contributed capital (the original).

3. The obligor that is a state-owned enterprise or credit institution conducting the equitization must report and obtain opinions from the Ministry of Finance about the plan for equitization and handling of government-guaranteed loans before the equitization plan is submitted to a competent agency for approval.

4. Before transferring a portion or the entire shares of a company owned by Vietnamese organizations and/or individuals to foreign strategic shareholders, the obligor must obtain a written approval from Ministry of Finance.

5. Before listing securities on stock market and conducting shares-related transactions in accordance with prevailing laws, the obligor must report to the Ministry of Finance on estimated time and place of listing.

6. In all cases where the transfer or assignment of shares or contributed capital of the obligor arises, the obligor shall still discharge responsibilities towards the government-guaranteed loan in conformity with the commitments specified in the loan agreement, the letter of guarantee and other commitments made with the Ministry of Finance.

Article 38. Post-investment transfer or assignment of project or assets

1. The obligor must obtain the approval from the Ministry of Finance before conducting the post-investment transfer or assignment of project or assets.

2. If the post-investment transfer or assignment of project or assets result in change of the obligor's rights over the pledged property, the obligor shall assume responsibility to pledge other property to ensure his/her performance of obligations before conducting such transfer or assignment.

3. If the post-investment assignment of assets does not result in change in relevant obligations of the obligor to the lender and Ministry of Finance.

4. The parties involved in the transfer or assignment of project or assets shall adjust the mortgage agreement or the contract for mortgage of off-the-plan property and its appendixes before conducting such transfer or assignment and carry out procedures for registration of secured transactions after conducting such transfer or assignment.

Section 5. MANAGEMENT OF RISKS OF GOVERNMENT-GUARANTEED LOANS OR BOND ISSUES

Article 39. Risk management rules

1. Debts of government-guaranteed loans or bond issues are periodically classified and aggregated in the debt classification table of the program for management of public debt risks according to the obligor's current performance of repayment obligations:

a) Group 1: Loans or bond issues on which the debts are paid in full and on schedule.

b) Group 2: Loan or bond issue on which the repayment (of interest or of principal or of both principal and interest) is made with money borrowed from the Debt Repayment Accumulation Fund in 01-03 repayment terms, and there is no outstanding debt owed to the Debt Repayment Accumulation Fund.

c) Group 3: Loan or bond issue on which the debts are repaid with money borrowed from the Debt Repayment Accumulation Fund in 01-03 repayment terms, and there is an undue outstanding debt owed to the Debt Repayment Accumulation Fund.

d) Group 4: Loan or bond issue on which the debts are repaid with money borrowed from the Debt Repayment Accumulation Fund in 03 repayment terms or more and there is an overdue debt owed to the Debt Repayment Accumulation Fund.

dd) Group 5: Loan or bond issue on which the debts to the Debt Repayment Accumulation Fund are not repayable or unlikely recoverable.

2. An obligor whose debt is classified in group 3, group 4 or group 5 must bear the financial supervision of the Ministry of Finance with respect of the enterprise's monthly cash flow to manage risks through the Serving Bank.

Article 40. Methods of handling risks

1. Ministry of Finance shall classify debts during the supervision of government-guaranteed loans or bond issues according to the rules mentioned in Article 39 hereof.

2. Ministry of Finance applies the following risk management operations:

a) Not considering granting guarantee to an obligor who has debts remain outstanding to the Debt Repayment Accumulation Fund or a parent company whose subsidiary has debts classified in group 4 or group 5 as prescribed in Article 39 hereof until the repayment of debts to the Debt Repayment Accumulation Fund and government-guaranteed loans is made in full.

b) Supervising the obligor’s cash flow through the Serving Bank in accordance with regulations hereof.

c) Exercising rights to collect debts from the obligor in accordance with regulations hereof.

3. The following risk management methods shall be applied to obligors having debts classified in group 4 or group 5:

a) Group-4 debts: The obligor must submit monthly report to the Ministry of Finance and the host body (if any) on the enterprise's cash flows.

b) Group-5 debts: The obligor shall comply with methods of handling debts upon the approval by the Prime Minister, including the handling of collateral (if any) for debt recovery.

4. The Debt Repayment Accumulation Fund shall annually make plan for and establish provisions from collected guarantee fees for repayment of government-guaranteed loans classified in group 4 or group 5 in the principle of ensuring that the minimum balance of the Debt Repayment Accumulation Fund is maintained equal to at least the total amount payable during the year. Ministry of Finance must report to the Prime Minister on handling plans in case the Debt Repayment Accumulation Fund fails to maintain the required balance.

Section 6. REPORT, INSPECTION AND SUPERVISION

Article 41. Reporting policies complied by obligors

1. The obligor shall send financial reports to the Ministry of Finance on a periodical basis of 6 months and on an annual basis. Annual financial statements must be certified by the State Audit Office of Vietnam or independent auditors. Ministry of Finance may, where necessary, request the obligor to summit reports on relevant contents.

2. Reports on money withdrawal, debt repayment, and outstanding debt of guaranteed loan, status of project or program, the project's accumulation for debt repayment and on other content shall be submitted in each period:

a) In construction period.

a) At the end of construction period.

c) Project assessment reports upon the completion of project.

Contents and template of each type of report shall conform to the specific guidance by the Ministry of Finance.

Article 42. Inspection and supervision

1. Ministry of Finance has the right to conduct periodical supervision of performance of obligations by the obligor:

a) The progress of money withdrawal under the registered plan.

b) The payment of debts.

c) The allocation of equity as regulated.

d) The pledge of property as collateral of loan.

dd) The obligor's performance of additional commitments as requested by the Government or the Prime Minister in each specific period.

2. In case the obligor denotes financial difficulties, or there is violation against regulations on the obligor's obligations, or the outstanding debt of the loan or bond issue or the outstanding debt to the Debt Repayment Accumulation Fund is classified in group 4 or group 5 in

accordance with debt classification regulations mentioned in Article 39 hereof, Ministry of Finance has the right to inspect the project’s finance or request the representative agency of owners (if any) or the sector supervisory body to inspect the project's financial status, determine reasons thereof and report to the Prime Minister for handling.

3. The obligee shall share information about supervision or inspection reports (if any) within the permitted scope with the guarantor for the purpose of risk management.

Section 7. MEASURES TO ENSURE REPAYMENT OF LOANS OR BOND DEBTS BY OBLIGORS

Article 43. Guarantee of repayment of loan debts or bond debts by obligors

1. The obligor shall assume responsibility to allocate funding to repay loan debts or bond debts in full and on schedule.

2. If the obligor is not willing to repay debts, the guarantor (Ministry of Finance) has the rights to:

a) Request the Serving Bank to transfer money from the obligor's Project Account to pay debts to the obligee.

b) Request the Serving Bank to request credit institutions where the obligor’s deposit accounts are opened to transfer money from these deposit accounts to pay debts in case the balance of the Project Account is not enough to pay debts.

c) In case the obligor must buy insurance to insure the debt repayment as regulated by law, the obligor shall contact with the insurance agency to make debt payments as prescribed in the signed insurance policy.

3. Guarantee of debt repayment by the parent company (if any) or group of majority shareholders:

a) If the obligor is insolvent, the obligor must send report to the parent company (if any) or the group of shareholders whose holdings total 65% of shares as registered with the Ministry of Finance 06 months prior to the debt repayment term; concurrently, send copied reports to the Ministry of Finance and representative agency of owners (if it is a state-owned enterprise or credit institution, or an enterprise or credit institution of which more than 50% of charter capital is held by the state).

b) If the parent company or the group of shareholders whose holdings total 65% of shares as registered with the Ministry of Finance cannot repay debts for the obligor, the obligor is forced to ask for loans from the Debt Repayment Accumulation Fund to pay debts to the obligee under conditions mentioned in Article 44 and Article 45 hereof, and shall bear the supervision of the Ministry of Finance in conformity with regulations in Clause 2 Article 39 and Clauses 2, 3 Article 40 hereof.

Ministry of Finance shall coordinate with relevant agencies in submitting consolidated report on handling methods to the Prime Minister. The obligor must abide by the handling plan given approval by the Prime Minister.

4. If the obligor is entirely insolvent (its production cannot be restored as from the time when the debt handling plan is approved by the Prime Minister), Ministry of Finance shall report to the Prime Minister for making decision on handling collateral as regulated in Article 34 hereof.

If the proceeds from handling of collateral are not enough to pay loan debts, the obligor or the parent company or the group of shareholders whose holdings total 65% of shares as registered with the Ministry of Finance shall assume responsibility to receive the remaining debts. In the obligor is declared bankrupt, regulations of relevant laws shall be applied.

5. In all cases where the debts are unpayable because of subjective reasons, Ministry of Finance shall request the Prime Minister to designate the representative agency of owners (if it is a state-owned enterprise or credit institution, or an enterprise or credit institution of which more than 50% of charter capital is held by the state) or competent agencies to handle organizations and/or individuals that commit violations resulting in the insolvency under the loan agreement or forced loan agreement in accordance with regulations of laws.

6. If the obligor fails to report Ministry of Finance in advance of his/her difficulties in fulfilling repayment obligations resulting in causing of damage to the Debt Repayment Accumulation Fund with respect of the amount of money mobilized to pay debts for the obligor, the obligor shall assume responsibility to compensate for all physical damage caused to the Debt Repayment Accumulation Fund.

7. The application for government guarantee for new loans or the application for approval for the project on re-lending of foreign government loans submitted by an enterprise that has outstanding debts to the Debt Repayment Accumulation Fund on the government-guaranteed loan or has the government-guaranteed loan on-lent shall not be considered.

Article 44. Forced loans from the Debt Repayment Accumulation Fund

1. The obligor that faces temporary or long-term financial difficulties and is incapable to pay due debts of the government-guaranteed loan or bond issue must apply for a forced loan from the Debt Repayment Accumulation Fund with respect of the amount provided by the Debt Repayment Accumulation Fund in advance to repay debts of the obligor in the event mentioned in Point b Clause 3 Article 43 hereof:

a) With respect of advance for 01 debt repayment term (principal and/or interest), Minister of Finance shall decide the lending of advanced funding from the Debt Repayment Accumulation Fund.

b) With respect of advance for 02 debt repayment terms or more (principal and/or interest), Minister of Finance shall report to the Prime Minister for consideration.

2. When getting a forced loan from the Debt Repayment Accumulation Fund, the obligor and the parent company (if any) shall enter into a forced loan agreement with the Ministry of Finance with respect of the amount paid by the Debt Repayment Accumulation Fund to the obligee. The parent company is obliged to share debt repayment obligations with the Debt Repayment Accumulation Fund if the obligor fails to pay all or some liabilities as defined in the signed forced loan agreement.

3. During the term of loan granted by the Debt Repayment Accumulation Fund:

a) The obligor shall accept the Ministry of Finance's management and transfer of money from the Project Account and other deposit accounts of the obligor to pay debts due to the Debt Repayment Accumulation Fund.

b) The obligor must submit reports to Ministry of Finance on revenues, expenditures, cash balance, deposits, financial and business situations of the project on a quarterly basis if loans are granted to pay debts in 02 repayment terms or on a monthly basis if loans are granted to pay debts in more than 02 repayment terms, and other irregular reports as requested by the Ministry of Finance since the obligor gets forced loans from the Debt Repayment Accumulation Fund.

c) Ministry of Finance has the right to conduct inspection of the obligor's financial capacity on an annual basis until debts to the Debt Repayment Accumulation Fund are paid off. Ministry of Finance has the right to make decisions on inspection in accordance with regulations of the Law on inspection, where necessary.

4. An application for a forced loan from the Debt Repayment Accumulation Fund includes:

The obligor's evidences of his/her temporary or absolute insolvency or the documents of the parent company (if any) proving that it is incapable to pay debts for the obligor, enclosed with the following documents:

a) Documents proving that the balance of the Project Account and other accounts of the obligor is not enough to pay a portion or entire debts due of the government-guaranteed loan or bond issue with certification of the Serving Bank and banks where the obligor's account is opened.

b) Documents proving that the obligor or the parent company (if any) generates no profit and may not mobilize enough money for debt repayment, enclosed with the financial statements of the previous financial year and of the first six month of the obligor or the parent company (if any).

c) The letters of refusal to grant loans to the obligor or the parent company (if any) of at least 03 commercial banks.

d) The application form for loans from the Debt Repayment Accumulation Fund made by the obligor, in which the borrowed amounts (divided into principal, interests and fees), the loan term, repayment schedule and estimated sources of funding for debt repayment, and opinions of the parent company (if any) and the representative agency of owners (if it is a state-owned enterprise or credit institution, or an enterprise or credit institution of which more than 50% of charter capital is held by the state). The application must be submitted to the Ministry of Finance 03 months prior to the due date of debts.

5. Payment of debts under the forced loan agreement:

a) The obligor shall pay debts to the Debt Repayment Accumulation Fund according to the signed forced loan agreement.

b) In case there is a positive balance in the Project Account or other deposit accounts of the obligor at commercial banks according to the obligor's quarterly or monthly reports, the Ministry of Finance shall have the right to request the Serving Bank or commercial banks where the obligor's deposit account is opened to transfer money from the Project Account or other deposit accounts of the obligor with a notice given to the obligor in order to pay overdue debts and debts due (if any) if the obligor incurs no loss in the previous financial year, or to make advance payment of debts to the Debt Repayment Accumulation Fund (if any) if the obligor incurs no loss in the last two financial years.

Article 45. Conditions for a forced loan from the Debt Repayment Accumulation Fund

1. The obligor must enter into a forced loan agreement with the Ministry of Finance (the Debt Repayment Accumulation Fund) for each forced loan upon the occurrence of events mentioned in Article 43 hereof under the following conditions:

a) The amount of the forced loan granted by the Debt Repayment Accumulation Fund to pay debts due of the government-guaranteed loan shall be automatically transferred to the lender by the Debt Repayment Accumulation Fund under an irrevocable authorization of the obligor, and shall be considered as the principal owed by the obligor to the Debt Repayment Accumulation Fund.

b) Currency of loan and repayment: the original currency used in the loan agreement or bond issue agreement. Debts shall be paid in the loan currency or in VND according to the selling rate officially announced by the Joint Stock Commercial Bank for Foreign Trade of Vietnam (Vietcombank) at the time of debt repayment.

c) Loan interest rate: the interest rate on the loan or bond issue guaranteed by the government in conformity with provisions in the loan agreement or the bond issue agreement. The adjustment of the interest rate on the loan granted by the Debt Repayment Accumulation Fund shall be subject to the adjustment of the interest rate on the guaranteed loan or bond issue during the loan term.

d) The interest on loan granted by the Debt Repayment Accumulation Fund shall be charged on the outstanding debts over the actual days of loan which shall be calculated from the date on which the Ministry of Finance transfers money to pay debts for the obligor to the lender to the date on which the obligor pays the loan in full to the Ministry of Finance on a an annual basis of 360 days.

dd) Loan term: Minister of Finance shall, depending on the solvency of each project, consider deciding the term of the forced loan which is granted to pay interests over a period not exceeding 02 repayment terms, or to pay the principal (and interest, if any) over the period of not exceeding 02 years. In case the term of a forced loan exceeds the prescribed periods, Ministry of Finance shall report to the Prime Minister for consideration.

g) The principal and interest on the loan get from the Debt Repayment Accumulation Fund shall be paid on an annual basis.

g) Sources of funding of the Debt Repayment Accumulation Fund to grant loans shall comply with regulations in Point d Clause 1 Article 36 of the Law on management of public debts.

h) The obligor shall incur all expenses actually arisen in connection with the transfer of money to pay debts for the obligor.

2. The forced loan agreement on the loan granted by the Debt Repayment Accumulation Fund must be signed before the Ministry of Finance transfers money to pay debts for the obligor.

Article 46. Fulfillment of obligations by the guarantor

1. Upon the receipt of the request for debt repayment from the obligee, the guarantor (Ministry of Finance) shall use money from the Debt Repayment Accumulation Fund to pay debts to the obligee in conformity with regulations in Point d Clause 1 Article 36 of the Law on management of public debts.

2. Before making payment to the obligee, Ministry of Finance shall give forced loans to the obligor after the obligor has satisfied all of requirements mentioned in Article 44 hereof.

Article 47. Handling sources of funding of the Debt Repayment Accumulation Fund for fulfilling the guarantor’s obligations

1. In case the Debt Repayment Accumulation Fund does not maintain enough money to provide loans to the obligor to pay debts to the obligee, Ministry of Finance shall report to the Prime Minister on handling plans.

2. In case the obligor is insolvent to pay debts and proceeds from the sale of collateral are not enough to pay dents to the Debt Repayment Accumulation Fund, Ministry of Finance shall report to the Prime Minister for making-up.

Article 48. Actions against violations committed by the obligor

1. The obligor shall be considered to have acts of violation when failing to perform relevant responsibilities mentioned hereof.

2. Within 60 days as from the receipt of notice from the Ministry of Finance, if the obligor fails to remedy his/her violations, Ministry of Finance shall supervise sources of finances of the obligor and request the Prime Minister not to grant approval for the obligor's application for the government guarantee for a new loan or a foreign loan on-lent or an amount allocated from state budget.

3. Ministry of Finance shall impose specific sanctions on the obligor in the cases of violation. To be specific:

a) Request the lender to suspend the obligor's withdrawal of money if the application of money withdrawal has mistakes, and then request the obligor to modify the application for money withdrawal.

b) Add an increasing amount as 10% of the government guarantee fee approved by the Prime Minister on the project to the fee charged on the government-guaranteed loan or bond issue in the following three years provided that total fee shall not exceed 2% per year if the obligor fails to allocate the equity registered in the planning year or as regulated by law; or if the obligor fails to carry out the mortgage procedures, fails to comply with reporting policies, fails to maintain required balance in the Project Account or fails to comply with other regulations hereof.

Chapter IV

RESPONSIBILITIES AND OBLIGATIONS OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS

Section 1. RESPONSIBILITIES OF STATE AGENCIES

Article 49. Ministry of Finance

1. Fulfill duties of the giver of guarantee as defined in Clause 1 Article 36 of the Law on management of public debts. To be specific:

a) Participate in negotiation and give opinions about conditions or agreements on a loan for which an application for government guarantee is submitted on the basis of documents provided by enterprise and/or credit institutions as regulated in Articles 15 and 20 hereof.

b) Adopt measures specified in this Decree to collect debts and fees relating to the repayment of debt on behalf of the obligor, including the sending of request to the Serving Bank or other bank where the obligor opens account to keep and transfer the deposited amount of the obligor to the Debt Repayment Accumulation Fund without obtaining the approval by the obligor (also the account owner).

c) Report to the Prime Minister on the status and funding provided to obligors for fulfilling their payment obligations as regulated in Article 47 hereof.

d) Submit periodical report to the Prime Minister within the second quarter of the following year on the aggregation of guaranteed loans or bond issues in accordance with regulations in Point g Clause 1 Article 36 of the Law on management of public debts. To be specific:

- The status and specific figures of loans or bond issues guaranteed in the previous year;

- Accumulated amount, up to the end of previous year, of loans or issued bonds guaranteed by the government;

- General assessment on the allocation of guarantee limit in the previous year;

- General assessment on the fulfillment of obligations by obligors;

- Results, limitations, queries concerning the provision and management of government guarantee, and other proposals.

2. Monitor the withdrawal of borrowed capital and repayment of debts by obligors with respect to loans guaranteed by the government.

3. Instruct and inspect collaterals for foreign loans or international bond issues guaranteed by the government.

4. Verify or give opinions to the owner's representative agency, the sector supervisory agency and the obligor before submitting proposals for government guaranty for approval in cases prescribed in Clauses 1, 2 Article 12 hereof; give opinions to the owner's representative agency, the sector supervisory agency and the obligor about issues concerning loans or bond issues guaranteed by the government.

5. Consult the owner's representative agency, the sector supervisory agency and people's committee of province/city about enterprises, programs or projects with loan funding in course of appraisal to provide government guarantee.

6. Report to the Prime Minister of unforeseen difficulties that arise during the management of loans or bond issues under the government guarantee.

7. Provide instructions on some contents as mentioned in Clause 1 Article 32 and Clause 2 Article 41 of this Decree.

Article 50. Ministry of Justice

1. Participate in negotiation and give opinions about legal matters mentioned in the drafts of foreign loan agreements or international bond issue agreements with request for government guarantee, and draft letters of guarantee.

2. Take charge of discussing and providing legal opinions to the lenders in accordance with applicable laws.

3. Coordinate with Ministry of Finance in handling legal disputes about the performance of letters of guarantee.

Article 51. Ministry of Foreign Affairs

Coordinate with Ministry of Finance in appointing qualified overseas Vietnamese representative missions to receive procedural dossiers as regulated in letters of guarantee.

Article 52. State Bank of Vietnam

1. Provide opinions to Ministry of Finance about interests of domestic loans applicable to enterprises applying for government guarantee.

2. Consider approval for domestic and foreign loan or bond issue plans prepared by state credit institutions; or provide opinions concerning domestic and foreign loan or bond issue plans prepared by credit institutions that apply for government guarantee to execute the government's dedicated credit programs.

3. Grant certification of registration or registration of change of foreign loans or international bond issues guaranteed by the government to the obligor upon the issuance of letters of guarantee by Ministry of Finance.

4. Provide opinions to Ministry of Finance about the capital adequacy ratio abided by credit institutions that apply for approval for their proposals for government guarantee or apply for provision of government guarantee.

5. Coordinate with Ministry of Finance in reporting to the Ministry of Finance of the balancing of foreign currency in accordance with the law regulations on foreign loans or international bond issues guaranteed by the government in necessary cases so that the guarantor can perform payment obligations under the letter of guarantee as requested by Ministry of Finance.

6. Post updated information on the credit information system of the State Bank of Vietnam about the status of loans granted to the obligors by credit institutions and/or foreign bank branches.

Article 53. Ministries, ministerial-level agencies, sector regulatory bodies

1. Consider approval for domestic and foreign loan or bond issue plans prepared by enterprises of which 100% charter capital is held by the State, or give opinions to the domestic and foreign loan or bond issue plans prepared by enterprises or in sectors under the state management about the following primary contents:

a) Grant approval for loans applied for by enterprises of which 100% of charter capital is held by the State to invest in programs or projects.

b) Give opinions about the reasonableness of enterprise's calculation parameters (estimated selling price or sources of revenues; operating capacity and frequency of machine/equipment, depreciation, etc.) for formulating a financial plan and cash flow for debt repayment.

c) Evaluate the efficiency and solvency of the project's investor and financial plan.

d) Evaluate the feasibility of the enterprise's commitments specified in the loan agreement.

2. Expedite the obligors that are enterprises under their management to strictly fulfill obligations to the lenders and Ministry of Finance.

3. Take charge of inspecting and handling enterprises or credit institutions that get loans under the government guarantee and fail to perform their obligations intra vires.

4. Inform the Ministry of Finance in writing of decisions, policies or events that may cause adverse influence on the project execution and the performance of payment obligations as mentioned in the loan agreement, and propose plans for handling enterprises under their management.

5. Give opinions in the capacity of the representative agency of owners in case the enterprise or credit institution of which less than 100% of capital is held by the state applies for government guarantee for loan.

6. Give opinions about matters under their management in connection with the program or project with loan for which the government guarantee is applied for as requested by the Ministry of Finance in course of appraising the preliminary proposal for government guarantee or the application for provision of government guarantee to the enterprise.

7. Coordinate with Ministry of Finance in handling disputes about the performance of letters of guarantee.

Article 54. People's Committees of provinces or cities

1. Give opinions about business activities of the enterprise that applies for the government guarantee in province (if any); about the investor's compliance with procedures concerning the investment project in province as requested by the Ministry of Finance.

2. Coordinate in handling the collateral under the management of the People's Committee of province or city.

3. Supervise the compliance with regulations of relevant laws by the enterprise executing the program or project in the province.

Section 2. RESPONSIBILITIES AND OBLIGATIONS OF PARTIES INVOLVED IN THE GOVERNMENT GUARANTEE

Article 55. Responsibilities of enterprise or credit institution applying for government guarantee

1. Provide sufficient documents and assume responsibility for the accuracy of figures and documents provided to the Ministry of Finance to apply for approval for the preliminary proposal for government guarantee or apply for the provision of government guarantee in conformity with regulations hereof and relevant instructional documents.

2. Consult the Ministry of Finance before granting powers to allocate capital if the application for government guarantee for a loan requires specific financial conditions after the preliminary proposal for the government guarantee has been approved.

3. Take charge of negotiating domestic or foreign loan agreements or international bond issue agreements.

4. Provide relevant agencies with drafts of loan agreement, letter of guarantee and legal opinions (if any) of a domestic or foreign loan or international bond issue within 07 days prior to the negotiation.

5. Provide the duly signed domestic or foreign loan agreement or international bond issue agreement to the Ministry of Finance.

Article 56. Obligations of the obligor

1. Organize the domestic or international bond issue which is guaranteed by the government after obtaining an approval from a competent agency.

2. Recommend a bank to the Ministry of Finance to act as the Serving Bank of the project; open and register the Project Account opened at the Serving Bank to the Ministry of Finance, and

submit report to the Ministry of Finance on all existing deposit accounts with certification of credit institutions where the deposit account is opened. In case of change of the Serving Bank, the obligor must explain reasons thereof in writing to the Ministry of Finance to give a written approval within 05 working days as from the receipt of the obligor's request.

3. Perform obligations of the borrower or bond issuer in full and on schedule as provided for in the signed loan agreement or bond issue agreement with the government guarantee.

4. Carry out procedures for registration or registration of change of a foreign loan or an international bond issue guaranteed by the government with the State Bank of Vietnam in accordance with current regulations of relevant laws.

5. Allocate the equity in full and on time according to the project’s execution progress; maintain sufficient equity according to the project's execution progress to cover expenditures of project items requiring funding from the equity; ensure the proportion of equity as registered in the application for government guarantee when making finalization of finished project.

6. Transfer revenues of the program or project immediately when they arise to the Project Account according to the percentage in corresponding with the loan amount guaranteed by the government to total amount of borrowed capital of that program or project.

Commit to maintain the Project Account's balance (in original currency or in VND according to the exchange rate announced by the Serving Bank) as from the first year when repayment obligations occur for the purpose of ensuring the payment of debts on schedule.

7. Regularly assess potential risks of the enterprise or the project and do research on the implementation of measures to prevent risks of the loan within the obligor’s competence to ensure the enterprise’s solvency.

8. Fulfill obligations of the obligor to the Ministry of Finance, consisting of:

a) Pledge property for the government-guaranteed loan or bond issue; make declaration and registration of secured transactions concerning the collateral, and offer additional collateral to the Ministry of Finance in accordance with regulations of the Law on secured transactions.

b) Pay guarantee fee in full and on schedule according to the notice given by the Ministry of Finance.

c) Inform the Ministry of Finance of any changes relating to the loan agreement, the borrower (the obligee), structure of shareholders or capital contributing members of the enterprise executing the program or project under the government guarantee.

d) Strictly comply with reporting policies as regulated by Ministry of Finance.

dd) Give a written report to the Ministry of Finance at least 03 months prior to the due date of debts to explain reasons if the obligor is insolvent or intends to pay only a portion of debts.

e) Get forced loans from the Ministry of Finance in case the Ministry of Finance approves loans from the Debt Repayment Accumulation Fund to repay debts of the government-guaranteed loan, and pay relevant expenses incurred from the transfer of money for debt repayment.

g) Accept and comply with other necessary sanctions in course of management of government guarantee as requested by Ministry of Finance.

h) Closely cooperate with the Ministry of Finance in inspecting the execution of program or project, where necessary.

9. Provide sufficient money withdrawal documents to the Serving Bank to check the suitability of such documents for the signed commercial contract and loan agreement before sending such money withdrawal documents to the lender.

10. Pay service charges to the Serving Bank and other expenses (if any) to relevant parties in accordance with regulations hereof.

11. Conduct annual audit of the project in course of construction and annual audit of enterprise upon the completion of the project, and send copies of audit reports to the Ministry of Finance.

12. Comply with other relevant regulations in this Decree.

Article 57. Responsibilities of parent company

1. If the obligor is an associate company under the form of parent company – subsidiary, the parent company shall assume responsibility to:

a) Discharge obligations of the parent company according to the written commitment sent to the Ministry of Finance before the processing of the application for government guarantee.

b) Give financial assistance to the obligor to execute the project on schedule and pay debts due to the lender when the obligor defaults.

2. The parent company shall supervise and instruct the obligor to fulfill all obligations to the lender and Ministry of Finance according to the signed documents.

Article 58. Responsibilities of lender and the obligee

1. The lender shall closely cooperate with the Ministry of Finance in course of negotiation on the letter of guarantee.

2. The obligee shall assume responsibility to cooperate with the Ministry of Finance during the term of the government-guaranteed loan and the validity of the letter of guarantee:

a) Send copies of detailed notices of each money withdrawal, adjusted interest rate (if any) and request for debt repayment to the Ministry of Finance at the same time when such notices are sent to the borrower.

b) Send notice of the money withdrawal, the debt repayment and the project to the Ministry of Finance if any irregular events occur.

c) Send other notices to the Ministry of Finance as regulated in the government-guaranteed loan agreement.

3. The obligee shall share necessary information to the Ministry of Finance about the lender, the project and the loan guaranteed by the government, and inspection reports within permitted scope to ensure the proper use of borrowed amount and the borrower's fulfillment of obligations as regulated in the loan agreement.

Article 59. Responsibilities of Serving Bank

The Serving Bank shall assume responsibility to:

1. Fulfill its duties and coordinate with Ministry of Finance and relevant agencies in managing program or project, loans or bond issues guaranteed by the government in accordance with regulations hereof.

2. Provide the Ministry of Finance with the detailed report made by the National Credit Information Center of Vietnam affiliated to the State Bank of Vietnam on credit rating of the obligor at the end of each financial year.

3. Impose necessary sanctions as requested by Ministry of Finance in conformity with prevailing laws and regulations hereof to collect debts of government-guaranteed loans, loans provided by the Debt Repayment Accumulation Fund to the obligor to pay debts, and fees incurred from the payment of debts for the obligor.

4. Impartially manage loans, collect and pay debts, and apply measures to insure government-guaranteed loans as well as other loans of the obligor at the Serving Bank.

Chapter V

IMPLEMENTATION

Article 60. Effect

1. This Decree shall come into force as from March 01, 2017.

2. This Decree shall supersede the Government’s Decree No. 15/2011/ND-CP dated February 16, 2011 on provision and management of government guarantee.

Article 61. Transitional clause

1. Loans or bond issues which have been guaranteed by the government with the remaining term for debt repayment of less than 03 years up to the entry into force of this Decree shall not be governed by regulations in Article 24 - 27 (except for Points a, b, g Clause 1 Article 27) and Clause 2 Article 32 of this Decree.

2. Loans or bond issues of which the withdrawal of funds is in progress shall not be governed by regulations in Article 26 and Clause 9 Article 56 of this Decree.

3. Loans, bond issues, programs or projects of which special policies on government guarantee have been approved before the entry into force of this Decree shall be performed in accordance with the approved policies.

4. Projects of which proposals for government guarantee have been approved by the Government are exempted from conducting of procedures for approval for proposals for government guarantee as regulated in this Decree.

5. The programs or projects for which the preliminary proposal for government guarantee shall apply regulations on guarantee limits prescribed in Article 8 of the Government’s Decree No. 15/2011/ND-CP dated February 16, 2011 on provision and management of government guarantee within 01 year as from the entry into force of this Decree or within the period approved by the Government or the Prime Minister. When this period expires, the provision of government guarantee shall follow regulations hereof.

6. The government guarantee granted to two banks for social policies for their bond issues made according to the plans annually assigned by competent agencies shall maintain effect in accordance with regulations in the Government's Decree No. 01/2011/ND-CP dated January 05,

2011 on issue of government bonds, government-guaranteed bonds and local government bonds and the Government's Decree No. 15/2011/ND-CP dated February 16, 2011 on provision and management of government guarantee until the Decree No. 01/2011/ND-CP is superseded.

7. The mortgage of property for projects for which the government guarantee has been provided before the entry into force of this Decree shall be performed in accordance with regulations of the Law on collaterals of government-guaranteed loans or bond issues promulgated at the time of provision of the government guarantee.

Article 62. Implementation

1. Ministers, heads of ministerial-level agencies, heads of the government's affiliates, chairpersons of people's committees of provinces/central-affiliated cities, enterprises, organizations and individuals concerned shall be responsible for implementing this Decree.

2. Ministry of Finance shall, if necessary, provide guidance on the implementation of contents hereof to serve the state management./.

ON BEHALF OF THE GOVERNMENT
PRIME MINISTER

Nguyen Xuan Phuc
