

**DECREE
PROVIDING DETAILED PROVISIONS
AND GUIDELINES FOR IMPLEMENTATION
OF A NUMBER OF ARTICLES OF
LAW ON INVESTMENT**

The Government

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

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

Having considered the proposal of the Minister of Planning and Investment;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope and applicable entities*

1. Governing scope:
 - (a) This Decree provides detailed provisions and guidelines for the implementation of a number of articles of the *Law on Investment* dated 29 November 2005 concerning investment activities for business purposes; rights and obligations of investors; guarantees of lawful rights and interests of investors; encouragement of investment and investment incentives; and State administration of investment in Vietnam.
 - (b) Offshore investment; and investment activities in the form of build-operate-transfer contracts, build-transfer-operate contracts and build-transfer contracts shall be implemented in accordance with separate regulations of the Government.
 - (c) Indirect investment activities in the form of purchases of shareholding, shares, bonds and other valuable papers; and investment in securities and investment through other intermediary financial institutions without direct participation by the investors in the management and administration of an economic organization shall be implemented in accordance with the law on securities and other relevant laws.
 - (d) Any special investment activities stipulated in a specialized law shall be implemented in accordance with the provisions of such law.
2. The applicable entities of this Decree comprise the investors stipulated in clause 3 of article 4 of the *Law on Investment* and organizations and individuals related to investment activities.

Article 2 *Interpretation of terms*

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

1. *Invested capital* means Vietnamese dong, freely convertible foreign currency and other lawful assets for implementation of investment activities in the form of either direct or indirect investment. Lawful assets shall include:
 - (a) Shareholding, shares and other valuable papers;
 - (b) Bonds, debts and other forms of borrowing;
 - (c) Rights under contracts, including turn-key contracts, construction contracts, management contracts, and production or revenue sharing contracts;
 - (d) Rights to claim debts and rights having economic value under contracts;
 - (dd) Technology and intellectual property rights, including trademarks, industrial designs, inventions, trade names, or geographical indications;
 - (e) Concessional rights, including rights pertaining to exploration and exploitation of natural resources;
 - (g) Real property; rights with respect to real property, including the right to lease out, assign, contribute as capital, mortgage and use to provide guarantees;
 - (h) Amounts of revenue derived from investment activities, including profits and interest on shareholding, dividends, royalties and all types of fees;
 - (i) Other assets and rights having economic value in accordance with law and international treaties of which Vietnam is a member.
2. *New investment projects* means projects which are implemented for the first time or investment projects which are independent from the project currently being implemented.
3. *Investment project for expansion* means an investment project for the development of a project currently being implemented for the purpose of expansion of scale, increased output capacity or business capability, renovation of technology, improved product quality or reduced environmental pollution.
4. *Foreign investor investing in Vietnam for the first time* means a foreign investor having for the first time an investment project in Vietnam.

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

1. The application of investment laws, international treaties, foreign laws and international investment customs shall be as stipulated in article 5 of the *Law on Investment*.
2. In the case where a law of Vietnam being issued after Vietnam became a member of any international treaty contains provisions which are more favourable than such international treaty, investors shall be entitled to choose the application of the international treaty or the law of Vietnam.

Article 4 *Language to be used*

The files of an investment project and official correspondence with the State bodies of Vietnam shall be prepared in Vietnamese in the case of domestic investment projects; and in the case of foreign investment projects, they shall be prepared in Vietnamese or in Vietnamese and a commonly used foreign language. If there is any difference between the Vietnamese language

version of a document and the foreign language version, the Vietnamese version shall be applied.

CHAPTER II

Forms of Investment

Article 5 *Forms of investment*

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

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

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

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

1. Domestic investors and foreign investors shall be permitted to invest in the form of one hundred (100) per cent of capital to establish a limited liability company, shareholding company, partnership or private enterprise in accordance with the provisions of the *Law on Enterprises* and relevant laws.
2. Enterprises with one hundred (100) per cent foreign owned capital which have already been established in Vietnam shall be permitted to co-operate with each other and with foreign investors in order to invest in the establishment of a new enterprise with one hundred (100) per cent foreign owned capital.
3. An enterprise with one hundred (100) per cent foreign owned capital shall have legal entity status in accordance with the law of Vietnam and shall be established and operate as from the date of issuance of the investment certificate.

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

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

Article 9 *Investment in form of business co-operation contract*

1. In the case of investment in the form of a business co-operation contract signed between one or more foreign investors with one or more domestic investors (hereinafter referred to as *business co-operation parties*), the business co-operation contract must stipulate the interests and responsibilities of and the sharing of business results as between each investor.
2. A business co-operation contract in the sector of prospecting, exploration and exploitation of petroleum and a number of other natural resources in the form of a production sharing contract shall be performed in accordance with relevant laws and the *Law on Investment*.
3. A business co-operation contract signed between domestic investors to conduct investment and business shall be implemented in accordance with the law on economic contracts and relevant laws.
4. During the process of business, the business co-operation parties may agree to establish a co-ordination board to perform the business co-operation contract. The functions, duties and powers of the co-ordination board shall be as agreed by the business co-operation parties. The co-ordination board shall not be the leadership body of the business co-operation parties.
5. The foreign business co-operation party shall be permitted to establish an operating office in Vietnam to act as its representative during the performance of the business co-operation contract.

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

Article 10 *Investment in form of capital contribution to, purchase of shareholding in, merger with and acquisition of enterprises*

1. Investors have the right to contribute capital to, purchase shareholding in, merge with and acquire an enterprise in order to participate in management of investment activities in accordance with the provisions of the *Law on Enterprises* and relevant laws. The merged and acquiring enterprise shall assume the rights and obligations of the merging and acquired enterprise, unless otherwise agreed by the parties.
2. When an investor contributes capital to, purchases shareholding in, merges with or acquires an enterprise in Vietnam, such investor must implement the provisions in international treaties of which Vietnam is a member with respect to capital contribution

ratio, form of investment and schedule for opening the market; must comply with the provisions on conditions for economic concentration of the law on competition and the law on enterprises; and must satisfy the conditions for investment if the investment project is in a sector in which investment is conditional.

CHAPTER III

Rights and Obligations of Investors

Article 11 *Autonomy in investment and business*

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

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

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

Article 13 *Rights to recruit and employ labour and establish trade unions*

Investors have the rights:

1. To recruit domestic employees and foreign employees as managers, technicians and experts in accordance with the requirements of production and business. If an international treaty of which Vietnam is a member contains different provisions, the provisions of such international treaty shall apply.
2. To decide the salary and the minimum salary rate of employees in accordance with the law on labour.
3. To establish trade unions in enterprises in accordance with law.

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

Investors have the rights:

1. To export directly, or authorize dealers to export, and to import directly, or authorize dealers to import, machinery, equipment, raw materials and goods for investment activities; and to advertise, conduct marketing, and process and re-process goods relating to the investment activities in accordance with article 15 of the *Law on Investment* and the law on commerce.
2. To invest in the sectors of importation, exportation, distribution and other commercial services consistent with the law on investment, the law on commerce, and international treaties of which Vietnam is a member.

Article 15 *Right of purchase and sale of goods between export processing enterprises and domestic market*

1. Export processing enterprises shall be permitted to purchase goods from the domestic market in order to produce, process, re-process and assemble goods for export or in order to export, except for goods in the category of prohibited exports.

2. Export processing enterprises shall be permitted to sell the following goods into the domestic market:
 - (a) Products produced by the export processing enterprise and not in the category of prohibited imports;
 - (b) Products produced by the export processing enterprise for which there is a demand on the domestic market;
 - (c) Scrap and waste products which are collected from the production process and which are not prohibited imports or which are in the category of permitted import in accordance with the law on commerce and relevant laws.
3. The relationship of purchase and sale of goods between export processing enterprises and the domestic market shall be subject to the law on commerce.

Article 16 *Right to open bank accounts and purchase foreign currency*

1. Investors shall be permitted to open Vietnamese dong accounts and foreign currency accounts with credit institutions in Vietnam in accordance with the law on foreign exchange control. Investors may open bank accounts with banks in foreign countries with approval from the State Bank of Vietnam.

The conditions and procedures for opening, using and closing bank accounts with credit institutions in Vietnam and with banks in foreign countries shall be implemented in accordance with the law on foreign exchange control and relevant laws.

2. Investors shall be permitted to purchase foreign currency from credit institutions authorized to trade in foreign currency in order to meet requirements for current transactions, capital transactions and other permitted transactions in accordance with the law on foreign exchange control.
3. The Government shall support foreign exchange balancing in cases where authorized credit institutions are not able to satisfy the demand for foreign currency of investors with respect to a number of important investment projects in the following sectors:
 - (a) Energy;
 - (b) Waste treatment;
 - (c) Construction of traffic infrastructure.
4. The Prime Minister of the Government shall make decisions on guarantee of foreign currency balance for investors with investment projects in the sectors stipulated in clause 3 of this article. A guarantee of foreign currency balance shall be stipulated in the investment certificate.

Article 17 *Right to access land fund and right to mortgage land use rights and assets attached to land*

1. Provincial people's committees shall publish zoning and plans for land use approved by the competent body in order that investors may access the land fund for investment development.
2. Investors shall be permitted to mortgage land use rights and assets attached to land with credit institutions authorized to operate in Vietnam in order to borrow capital to implement investment projects in accordance with the law on land and relevant laws.

Article 18 *Other rights of investors*

1. To enjoy investment incentives in accordance with the provisions of the law on investment and relevant laws.
2. To access and use public services and utilities on the principle of non-discrimination amongst investors.
3. To select forms of investment, scale of investment and ratio of invested capital, and to determine their own investment and business activities. If an international treaty of which Vietnam is a member contains different provisions, the provisions of such international treaty shall apply.
4. To access legal instruments and policies relating to investment, data on the national economy and on each economic sector, and other socio-economic information relating to investment activities.
5. To provide recommendations on laws and policies relating to investment as early as from the drafting stage in accordance with law.
6. To lodge complaints and denunciations and to institute legal proceedings in accordance with law against any organization or individual in breach of the law on investment.
7. To exercise other rights in accordance with law.

Article 19 *Rights of investors investing in industrial zones, export processing zones, high-tech zones and economic zones*

1. In addition to the rights stipulated in articles 11 to 18 inclusive of this Decree, investors investing in production and business in industrial zones, export processing zones, high-tech zones and economic zones have the following rights:
 - (a) To lease or purchase factories, offices and warehouses which have been constructed in industrial zones, export processing zones, high-tech zones and economic zones in order to service production and business;
 - (b) To use, with payment of charges, technical infrastructure facilities and service works, including systems of roads, electricity supply, water supply, water drainage, communications, waste water treatment and waste treatment, and other public services and utilities in industrial zones, export processing zones, high-tech zones and economic zones;
 - (c) To assign and receive assignment of land use rights and to lease or sub-lease land on which technical infrastructure facilities have been constructed in industrial zones, export processing zones, high-tech zones and economic zones in order to construct factories, offices and other structures servicing production and business in accordance with the law on land and the law on real estate business.
2. Investors investing in and conducting commercial operation of¹ infrastructure facilities in industrial zones, export processing zones, high-tech zones and economic zones have the following rights:
 - (a) To construct factories, offices and warehouses in industrial zones, export processing zones, high-tech zones or economic zones for sale or for lease;
 - (b) To determine land leasing and sub-leasing prices where such land contains constructed technical infrastructure facilities; to determine the charges for use of

1 *Phillips Fox Note:* Alternative translation is "conducting business in".

technical infrastructure facilities and other service works in industrial zones, export processing zones, high-tech zones or economic zones; and to determine leasing and selling prices of factories, offices and warehouse and to determine service charges;

- (c) To collect charges for use of infrastructure facilities, public utilities and service works in industrial zones, export processing zones, high-tech zones or economic zones in accordance with regulations of the Ministry of Finance;
- (d) To assign to other investors land use rights, and to lease out and sub-lease out [*to other investors*]² land on which technical infrastructure facilities have been constructed in industrial zones, export processing zones, high-tech zones or economic zones in accordance with the law on land and the law on real estate business.

Article 20 *Right of investment guarantee in event of changes in law or policies*

- 1. If a newly promulgated law or policy affects adversely the lawful benefits to which an investor was entitled prior to the date of effectiveness of such new law or policy, the investor shall be guaranteed entitlement to the incentives stipulated in the investment certificate or shall be subject to one or more of the following measures:
 - (a) Continuation of entitlement to the existing benefits and incentives;
 - (b) Deduction of a part of the losses from taxable income;
 - (c) Entitlement to a change of the objectives of the project;
 - (d) Consideration for compensation in certain necessary circumstances.
- 2. With respect to the measure of compensation stipulated in clause 1(d) of this article, the investment certificate-issuing body shall recommend to the Prime Minister of the Government to issue a decision on guarantee of the investor's interests as a consequence of the change in law or policy affecting adversely the interests of such investor.

Article 21 *Obligations and responsibilities of investors*

- 1. Obligations of investors:
 - (a) To comply with the law on investment; to carry out investment activities correctly in accordance with the contents of investment registration documents and investment certificates;
 - (b) To perform fully financial obligations in accordance with law;
 - (c) To comply with the law on accounting, auditing and statistics;
 - (d) To perform obligations in accordance with the law on insurance and labour; to respect the honour and dignity of and to ensure the legitimate rights and interests of employees;
 - (dd) To respect, and create favourable conditions for employees to establish and participate in, political and socio-political organizations in accordance with law;
 - (e) To comply with the law on the environment;

2 *Phillips Fox Note:* Throughout this translation, words not appearing in the Vietnamese text have been inserted in italics in square parentheses to aid comprehension.

- (g) To perform other obligations in accordance with law.
2. Responsibilities of investors:
- (a) To be responsible for the accuracy and truthfulness of the contents of investment registration documents and investment project files, and for the lawfulness of documents in investment project files;
 - (b) To submit reports on their investment activities in accordance with the provisions of this Decree and relevant laws; and to be responsible for the accuracy and truthfulness of the contents of such reports;
 - (c) To provide documents, data and information relating to the contents of an examination, inspection or supervision of investment activities to authorized State bodies in accordance with law.

CHAPTER IV

Investment Incentive Sectors and Geographical Areas; Investment Support

SECTION I

Investment Incentives

Article 22 *Sectors and geographical areas of investment incentives*

1. The list of sectors entitled to investment incentives, comprising sectors entitled to special investment incentives and sectors entitled to investment incentives, shall be as stipulated in Appendix I issued with this Decree.
2. The list of geographical areas entitled to investment incentives, comprising geographical areas with specially difficult socio-economic conditions and geographical areas with difficult socio-economic conditions shall be as stipulated in Appendix II issued with this Decree.
3. Investment projects on the list of sectors entitled to special investment incentives as stipulated in Appendix I issued with this Decree shall be entitled to the same incentives as applicable to geographical areas with specially difficult socio-economic conditions as stipulated in Appendix II issued with this Decree.

Article 23 *Sectors in which investment is conditional and sectors in which investment is prohibited*

1. Sectors in which investment is conditional and sectors in which investment is prohibited shall be as stipulated in articles 29 and 30 respectively of the *Law on Investment*.
2. The list of sectors in which investment is conditional applicable to foreign investors shall be as stipulated in Appendix III issued with this Decree; and the list of sectors in which investment is prohibited shall be as stipulated in Appendix IV issued with this Decree.

Article 24 *Applicable entities for investment incentives*

Investors with investment projects, including investment projects for expansion, in the sectors and geographical areas entitled to investment incentives as stipulated in this Decree shall be entitled to investment incentives in accordance with the *Law on Investment* and relevant laws.

Article 25 *Incentives in relation to corporate income tax and import duty*

1. Investors with investment projects in the sectors and geographical areas entitled to investment incentives as stipulated in this Decree shall be entitled to incentives regarding corporate income tax in accordance with the law on corporate income tax.
2. Investors with investment projects in the sectors and geographical areas entitled to investment incentives as stipulated in this Decree shall be entitled to incentives regarding import duty with respect to imported goods in accordance with the law on import and export duties.

Article 26 *Incentives in relation to land use tax, land use fees, land rent and water surface rent*

Investors to which the State allocates land without collection of land use fees, allocates land with collection of land use fees, or leases land for an investment project in a sector or geographical area entitled to investment incentives as stipulated in this Decree shall be entitled to exemption from or reduction of land use tax, land use fees, land rent and water surface rent in accordance with the law on land and law on taxation.

Article 27 *Procedures for implementation of investment incentives*

Procedures for implementation of investment incentives shall be implemented in accordance with article 38 of the *Law on Investment*.

Article 28 *Amendment of and addition to investment incentives*

1. If during implementation of an investment project an investor has satisfied conditions for entitlement to further investment incentives, the investor shall be entitled to such investment incentives and has the right to request the investment certificate-issuing body to amend or add to the investment incentives stipulated in the issued investment certificate.
2. If during implementation of an investment project an investor fails to satisfy the conditions for entitlement to investment incentives, such investor shall not be entitled to the investment incentives.
3. The State administrative body implementing investment incentives shall be responsible for notifying in writing the investment certificate-issuing body of the failure of the investor to satisfy the conditions for entitlement to investment incentives.

Article 29 *Application of investment incentives*

1. An investor which is currently entitled to incentives pursuant to the provisions of the *Law on Promotion of Domestic Investment*, the *Law on Foreign Investment in Vietnam*, the *Law on Co-operatives* and the law on taxes shall continue to be entitled to such investment incentives.
2. An investor with an investment project which is currently being implemented and falls within the category stipulated in article 24 of this Decree shall be entitled to the investment incentives for the remaining incentive duration as from the date of effectiveness of this Decree.
3. If a newly promulgated law or policy contains greater benefits and incentives than those to which the investor was previously entitled, the investor shall be entitled to the new benefits and incentives for the remaining duration (if any) of incentives as from the date of effectiveness of the new law or policy.

4. If an international treaty of which Vietnam is a member contains different provisions from those stipulated in clauses 1, 2 or 3 of this article, the provisions of article 3 of this Decree shall apply.

SECTION II

Investment Support

Article 30 *Technology transfer support*

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

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

2. The Government shall encourage the transfer into Vietnam of modern technology, source technology and other technologies in order to create new products; to improve production, competitive capacity and product quality; to conserve and use effectively raw materials, fuel, energy and natural resources; to encourage investment in the renovation of technology and improvement of the management and use of technology.
3. Based on the objectives of socio-economic development, the Government shall have a policy of providing support to small and medium sized enterprises and co-operatives to invest in research, development and transfer of technology.
4. The rights and obligations of technology transfer parties and the order and procedures for technology transfer shall be implemented in accordance with the law on technology transfer.

Article 31 *Training support*

1. The Government shall encourage and support investors in the establishment of training support funds from capital contributions and aid from domestic and foreign organizations and individuals as follows:
 - (a) Training support funds shall be established for non-profit purposes; and shall be entitled to tax exemptions and reductions in accordance with the law on taxes;
 - (b) Training expenses of economic organizations shall be accounted for as reasonable expenses as the basis for determining taxable corporate income.
2. The Government shall provide budget support for the training of employees in economic organizations via the manpower training support program.
3. The Government shall have a plan and program to help train manpower for small and medium sized enterprises.

Article 32 *Support for development investment and investment services*

1. The Government shall provide support for development investment to projects which satisfy the following criteria:
 - (a) Projects in important industries and sectors in major economic programs which affect directly economic restructuring and accelerate sustainable economic growth but where the State Budget does not grant and commercial banks do not provide loans on normal conditions due to the risks;

- (b) Conformity with the provisions of law;
 - (c) Conformity with provisions in international treaties of which Vietnam is a member.
2. Credit support for investment shall be implemented in accordance with the law on State credit support for development investment.
 3. The Government shall encourage and support organizations and individuals without discrimination between different economic sectors to carry out the following investment support services:
 - (a) Investment consultancy, management consultancy;
 - (b) Intellectual property consultancy, technology transfer consultancy;
 - (c) Vocational training, technical and management skills training;
 - (d) Provision of market information, technical scientific information, information on technology and other economic and social information required by investors;
 - (dd) Marketing, trade and investment promotion;
 - (e) Establishment of and participation in social and socio-professional organizations in accordance with law;
 - (g) Establishment of design centres and testing centres to support the development of small and medium sized enterprises.

Article 33 *Investment support for construction of infrastructure facilities outside fences of industrial zones, export processing zones and high-tech zones*

1. The Government shall encourage and have incentive policies for all economic sectors to invest in construction of technical and social infrastructure facilities outside the fence of industrial zones, export processing zones and high-tech zones.
2. Based on the master plan for development of industrial zones, export processing zones, high-tech zones and economic zones approved by the Prime Minister of the Government, ministries, branches and people's committees in provinces and cities under central authority (hereinafter referred to as *provincial people's committees*) shall develop investment plans and organize construction of technical and social infrastructure systems outside the fences of industrial zones, export processing zones, high-tech zones and economic zones.
3. Provincial people's committees shall balance their local budgets to support investment in construction of technical and social infrastructure facilities outside the fences of industrial zones, export processing zones, high-tech zones and economic zones.

Article 34 *Investment support for infrastructure systems inside fences of industrial zones and export processing zones*

1. The Prime Minister of the Government shall regulate the conditions, principles, limits and items of works for construction works entitled to central budget support for certain localities with difficult socio-economic conditions and specially difficult socio-economic conditions in order to join investors in investing in developing technical infrastructure systems inside the fences of industrial zones and export processing zones.
2. Provincial people's committees shall balance their local budgets to support investors investing in developing technical infrastructure systems inside the fences of industrial zones and export processing zones.

Article 35 *Methods of investment in technical infrastructure systems in industrial zones and export processing zones*

1. Investment and commercial operation of technical infrastructure systems in industrial zones and export processing zones may be implemented by one or more investors, which must ensure consistency and conformity with the approved detailed master plan for construction of such zone as approved by the competent authority, and they must stipulate clearly the rights and obligations of each investor.
2. With respect to geographical areas with specially difficult socio-economic conditions and based on the specific conditions of each province, provincial people's committees shall make a submission to the Prime Minister of the Government for his decision on permission to establish an income-earning administrative unit to be the investor of an investment project for construction and commercial operation of technical infrastructure facilities of an industrial zone or export processing zone.

Article 36 *Support for investment in development of infrastructure systems of economic zones and high-tech zones*

1. The Government shall reserve investment capital from the Budget to support the following cases:
 - (a) Investment in development of technical and social infrastructure systems outside functional areas and important public services works in economic zones;
 - (b) Compensation for site clearance within functional areas and resettlement areas, including re-settled agricultural areas for households having their land recovered;
 - (c) Investment in facilities for waste water treatment and concentrated waste treatment of functional areas.
2. The Government shall encourage and have incentive policies applicable to investors in all economic sectors to invest in development of technical and social infrastructure facility systems of economic zones.
3. The Prime Minister of the Government shall decide methods of mobilization of other capital sources for investment in development of technical and social infrastructure facility systems of economic zones.
4. Support for investment in development of infrastructure systems of high-tech zones shall be implemented in accordance with the regulations on high-tech zones.

CHAPTER V

Direct Investment Procedures

SECTION I

Authority to Approve and Issue Investment Certificates

Article 37 *Projects for which Prime Minister of Government approves investment policy*

1. Investment projects in the following sectors, irrespective of the source of invested capital and scale of investment:
 - (a) Construction and commercial operation of airports; air transportation;
 - (b) Construction and commercial operation of national sea ports;
 - (c) Exploration, production³ and processing of petroleum; exploration and mining⁴ of minerals;
 - (d) Radio and television broadcasting;
 - (dd) Commercial operation of casinos;
 - (e) Production of cigarettes;
 - (g) Establishment of university training establishments;
 - (h) Establishment of industrial zones, export processing zones, high-tech zones and economic zones.
2. Investment projects not covered by clause 1 of this article, irrespective of the source of capital, with an invested capital of VND fifteen hundred (1,500) billion or more in the following sectors:
 - (a) Commercial operation of electricity [*facilities*]; processing of minerals; metallurgy;
 - (b) Construction of railway, road and internal waterway infrastructure facilities;
 - (c) Production and business of alcohol [*and/or*] beer.
3. Foreign investment projects in the following sectors:
 - (a) Commercial operation of [*means of*] sea transportation;
 - (b) Establishment of networks for and supply of postal and delivery, telecommunications and internet services; establishment of wave broadcasting [*and*] transmission networks;
 - (c) Printing and distributing newspapers; publishing;
 - (d) Establishment of independent scientific research establishments.
4. In cases where investment projects stipulated in clauses 1, 2 and 3 of this article are included in the master plan approved by the Prime Minister of the Government or by an entity authorized by him and satisfy conditions in accordance with law and international

3 *Phillips Fox Note:* The literal translation is "exploitation".

4 *Phillips Fox Note:* The literal translation is "exploitation".

treaties of which Vietnam is a member, the investment certificate-issuing body shall issue the investment certificate without making a submission to the Prime Minister of the Government for a decision on investment policy.

5. In cases where investment projects stipulated in clauses 1, 2 and 3 of this article are not included in the master plan approved by the Prime Minister of the Government or by an entity authorized by him or projects do not satisfy conditions for opening the market in international treaties of which Vietnam is a member, the investment certificate-issuing body shall co-ordinate the collection of opinions from the ministry managing the technical – economic branch, the Ministry of Planning and Investment and other relevant bodies and shall collate the opinions and make a submission to the Prime Minister of the Government to make a decision on investment policy.
6. In cases where investment projects stipulated in clauses 1, 2 and 3 of this article are in a sector for which there is as yet no master plan, the investment certificate-issuing body shall obtain opinions from the ministry managing the technical – economic branch, the Ministry of Planning and Investment and other relevant bodies and shall collate the opinions and make a submission to the Prime Minister of the Government to make a decision on investment policy.

Article 38 *Projects for which provincial people's committees issue investment certificates*

Provincial people's committees shall carry out investment registration and issuance of investment certificates for the following projects:

1. Investment projects outside industrial zones, export processing zones, high-tech zones and economic zones, including investment projects stipulated in article 37 of this Decree for which the Prime Minister of the Government has approved the investment policy.
2. Investment projects for development of infrastructure facilities in industrial zones, export processing zones and high-tech zones in localities which have not yet established a management committee for industrial zones, export processing zones or high-tech zones.

Article 39 *Projects for which management committees of industrial zones, export processing zones, high-tech zones and economic zones issue investment certificates*

Management committees of industrial zones, export processing zones, high-tech zones and economic zones (hereinafter referred to as *management committees*) shall carry out investment registration and issuance of investment certificates for the following projects:

1. Investment projects in industrial zones, export processing zones, high-tech zones and economic zones, including investment projects stipulated in article 37 of this Decree for which the Prime Minister of the Government has approved the investment policy.
2. Investment projects for development of infrastructure in industrial zones, export processing zones and high-tech zones.

Article 40 *Bodies receiving investment project files*

1. The Department of Planning and Investment shall receive files for the investment projects which are to be implemented within its locality as stipulated in article 38 of this Decree.
2. The management committee shall receive files for the investment projects which are to be implemented within its locality as stipulated in article 39 of this Decree .
3. With respect to investment projects to be implemented in a locality not yet covered by the administrative management of a city or province under central authority or to be implemented within an area of more than one city and province under central authority, the file shall be lodged with the Department of Planning and Investment in the place

where the investor has established or proposes to establish its head office, branch or operating office in order to implement such project.

4. Bodies receiving investment project files shall be responsible to provide guidance, to examine the validity of such files and to carry out investment procedures in accordance with this Decree.

Article 41 *Contents of investment certificates*

1. The form of an investment certificate shall be provided by the Ministry of Planning and Investment for uniform application throughout the country.
2. An investment certificate shall contain the following main items:
 - (a) Name and address of the investor;
 - (b) Location in which the investment project will be implemented and land use area requirements;
 - (c) Objectives and scale of the investment project;
 - (d) Total invested capital;
 - (dd) Duration of implementation of the project;
 - (e) Schedule for implementation of the investment project;
 - (g) Confirmation of investment incentives and support (if any).
3. In the case of a foreign investor with an investment project associated with the establishment of an economic organization, the investment certificate shall contain the items stipulated in clause 2 of this article and the items of a business registration certificate as stipulated in the *Law on Enterprises*. The investment certificate shall serve concurrently as the business registration certificate.
4. The provisions on the investment certificate in clause 3 of this article shall apply to domestic investors which fall within the category stipulated in clause 1 of article 6 of this Decree and request that investment procedures be carried out at the same time as procedures for establishment of the economic organization.

SECTION II

Investment Certification

Article 42 *Domestic investment projects not required to carry out investment registration*

1. Investors shall not be required to carry out procedures for investment registration of domestic investment projects which have invested capital of below VND fifteen (15) billion and are not in sectors in which investment is conditional.
2. Where an investor in the case stipulated in clause 1 of this article has a requirement for certification of investment incentives or issuance of an investment certificate, the investor must carry out the procedures for investment registration in order to be issued with an investment certificate as stipulated in article 43 of this Decree.

Article 43 *Investment registration applicable to domestic investment projects*

1. Domestic investors must carry out procedures for investment registration in the case of domestic investment projects which have invested capital of between VND fifteen (15) billion and less than VND three hundred (300) billion in the following cases:
 - (a) Projects not in the sectors in which investment is conditional as stipulated in article 29 of the *Law on Investment*;
 - (b) Projects not covered by clause 1 of article 37 of this Decree.
2. The investor shall carry out investment registration with the body receiving investment project files as stipulated in article 40 of this Decree.
3. The body receiving the investment project file shall provide a receipt immediately after it receives the written request for investment registration.
4. Where an investor requests issuance of an investment certificate or certification of investment incentives, the investment certificate-issuing body shall rely on the contents of the written request for investment registration to issue an investment certificate within a time-limit of fifteen (15) working days from the date of receipt of a valid written request for investment registration.
5. Within a time-limit of seven working days from the date of issuance of an investment certificate, the investment certificate-issuing body shall copy the investment certificate and send copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the ministry managing the branch and other relevant bodies.

Article 44 *Investment registration applicable to foreign investment projects*

The procedures for investment registration of foreign investment projects stipulated in article 46 of the *Law on Investment* shall be implemented as follows:

1. An investment project file shall comprise:
 - (a) Investment registration request on the stipulated form;
 - (b) Business co-operation contract in the case of the investment form of a business co-operation contract;
 - (c) Report on financial capability of the investor (which the investor shall prepare and for which the investor shall be liable).

2. With respect to investment projects associated with the establishment of economic organizations, in addition to the documents referred to clause 1 of this article, the investor shall also submit:
 - (a) File for business registration corresponding to each form of enterprise as stipulated in the law on enterprises and relevant laws;
 - (b) A joint venture contract in the case of establishment of a joint venture economic organization between a domestic investor and a foreign investor.
3. Within a time-limit of fifteen (15) working days from the date of receipt of a valid file for investment registration and a valid file for business registration, the investment certificate-issuing body shall check the validity of the files for investment registration and business registration (with respect to establishment of an economic organization associated with the investment project) and issue an investment certificate without requesting any additional documents.
4. Within a time-limit of seven working days from the date of issuance of an investment certificate, the investment certificate-issuing body shall copy the investment certificate and send copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the ministry managing the branch and other relevant bodies.

Article 45 *Evaluation in respect of investment projects having invested capital of VND three hundred (300) billion or more and not being in sectors in which investment is conditional*

1. The file for investment evaluation shall contain:
 - (a) Written request for issuance of investment certificate on the stipulated form;
 - (b) Written certification of the legal status of the investor: an investor being an organization shall submit a copy of the establishment decision or business registration certificate or other equivalent document; and an investor being an individual shall submit a copy of his or her passport or identity card;
 - (c) Report on financial capability of the investor (which the investor shall prepare and for which the investor shall be liable);
 - (d) Economic-technical explanatory statement, comprising the following main items: objectives, scale, location of investment, invested capital, schedule for implementation of the project, land use requirements, and technological and environmental solutions;
 - (dd) Business co-operation contract in the case of the investment form of business co-operation contract.
2. With respect to cases where investment procedures are conducted at the same time as business registration procedures, in addition to the documents referred to clause 1 of this article, the investor shall also submit:
 - (a) File for business registration corresponding to each form of economic organization as stipulated in the law on enterprises and relevant laws;
 - (b) Joint venture contract in the case of establishment of a joint venture economic organization between a domestic investor and a foreign investor.

3. Contents of evaluation:

- (a) Conformity with the master plan for technical infrastructure, land use zoning, construction master plan and master plan for exploration, exploitation and processing of minerals and other natural resources;

With respect to investment projects in a sector for which there is as yet no master plan or which have not yet been included in the abovementioned master plans, the investment certificate-issuing body shall be responsible for collecting opinions from the State administrative bodies responsible for master planning;

- (b) Land use requirements: area of land, category of land, schedule for land use;
- (c) Schedule for implementation of the project: schedule for implementation of invested capital, schedule for construction and schedule for implementation of objectives of the project;
- (d) Environmental solutions: assessment of factors impacting on the environment and solutions for resolution in accordance with the law on the environment.

Article 46 *Evaluation of investment projects having invested capital of below VND three hundred (300) billion and being in sectors in which investment is conditional*

1. The file for investment evaluation shall contain:

- (a) File as stipulated in clauses 1 and 2 of article 44 of this Decree;
- (b) Explanatory statement on ability to satisfy conditions which the investment project must satisfy in the case of projects in sectors in which investment is conditional as stipulated in article 29 of the *Law on Investment* and in Appendix III issued with this Decree.

2. Contents of evaluation:

- (a) Evaluation of ability to satisfy conditions stipulated in the *Law on Investment* and relevant laws;

Relevant ministries and branches shall be responsible for evaluation of ability to satisfy conditions which the investment project must satisfy in the case of projects in sectors in which investment is conditional as stipulated in article 29 of the *Law on Investment* and in Appendix III issued with this Decree.

In cases where investment conditions are stipulated specifically in the law or in an international treaty of which Vietnam is a member, the investment certificate-issuing body shall make a decision on the issuance of an investment certificate without obtaining opinions from relevant ministries and branches;

- (b) With respect to domestic investment projects, if a project satisfies the investment conditions in accordance with law, the investment certificate-issuing body shall issue an investment certificate in accordance with the procedures for investment registration stipulated in article 43 of this Decree.

Article 47 *Evaluation in respect of investment projects having invested capital of VND three hundred (300) billion or more and being in sectors in which investment is conditional*

1. The file for investment evaluation shall contain:
 - (a) File as stipulated in clauses 1 and 2 of article 45 of this Decree;
 - (b) Explanatory statement on ability to satisfy conditions to enter the market stipulated for investment projects in sectors in which investment is conditional as stipulated in article 29 of the *Law on Investment* and in Appendix III issued with this Decree.
2. Contents of evaluation shall be in accordance with clause 3 of article 45 and clause 2 of article 46 of this Decree.

Article 48 *Procedures for evaluation of investment projects falling within approval authority of Prime Minister of Government*

1. An investor shall submit ten (10) sets of the investment project file, including at least one set of original copies.
2. Within a time-limit of three working days from the date of receipt of the investment project file, the body receiving the investment project file shall check the validity of the file and forward it to relevant ministries and branches for their evaluation opinion.

Where a project file is invalid, it shall notify the investor in writing in order for the latter to prepare amendments of or additions to the file.

3. Within a time-limit of fifteen (15) working days from the date of receipt of the investment project file, bodies from which opinions are sought shall provide written evaluation opinions and they shall be liable for project issues under their administration.
4. Within a time-limit of twenty five (25) working days from the date of receipt of a complete and valid file, the investment certificate-issuing body shall prepare an evaluation report and submit same to the Prime Minister of the Government for a decision on the investment policy.
5. Within a time-limit of seven working days from the date of receipt of an evaluation report for submission to the Prime Minister of the Government from a provincial people's committee or a management committee, the Government Office shall provide written notice of the opinion of the Prime Minister of the Government about the investment project.
6. Within a time-limit of five working days from the date of receipt of approval from the Prime Minister of the Government, the provincial people's committee or the management committee shall issue an investment certificate.
7. When an investment project is not approved, the body receiving the investment project file shall notify the investor in writing, stating clearly the reasons therefor.
8. Within a time-limit of seven working days from the date of issuance of an investment certificate, the body receiving the investment project file shall copy the investment certificate and send copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the ministry managing the branch and other relevant bodies.

Article 49 *Procedures for evaluation of investment projects subject to evaluation for issuance of investment certificate*

1. An investor shall submit eight sets of the investment project file, including one set of original copies to the Department of Planning and Investment (in respect of projects for which the provincial people's committee issues investment certificate); or four sets of the investment project file, including one set of original copies to the management committee (in respect of projects for which the management committee issues investment certificate).
2. Within a time-limit of three working days from the date of receipt of the investment project file, the body receiving the investment project file shall check the validity of the file and forward it to the relevant departments and branches for their evaluation opinion, and in necessary cases shall seek opinions from relevant ministries and branches.

Where a project file is invalid, the body receiving the investment project file shall notify the investor in writing in order for the latter to prepare amendments of or additions to the file.

3. Within a time-limit of fifteen (15) working days from the date of receipt of the investment project file, bodies from which opinions are sought shall provide a written evaluation opinion and they shall be liable for project issues under their administration.
4. Within a time-limit of twenty (20) working days from the date of receipt of a complete and valid file, the Department of Planning and Investment shall prepare an evaluation report and submit it to the provincial people's committee for its decision. Within a time-limit of five working days from the date of receipt of the evaluation report, the provincial people's committee shall issue an investment certificate.

With respect to projects for which the management committee issues investment certificate, within a time-limit of twenty (20) working days from the date of receipt of a complete and valid file, the management committee shall collate the opinions of bodies from which opinions were sought in order to make a decision on issuance of an investment certificate.

When an investment project is not approved, the body receiving the investment project file shall notify the investor in writing, stating clearly the reasons therefor.

5. Within a time-limit of seven working days from the date of issuance of an investment certificate, the body receiving the investment project file shall copy the investment certificate and send copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the ministry managing the branch and other relevant bodies.

Article 50 *Authority of ministries managing technical - economic branches for evaluation for issuance of investment certificates*

1. Ministries managing technical – economic branches shall evaluate satisfaction of investment conditions and [*compliance with*] master plans by investment projects in sectors in which investment is conditional as stipulated in article 29 of the *Law on Investment*, Appendix III issued with this Decree and article 82 of the *Law on Investment*.
2. Based on articles 29 and 82 of the *Law on Investment*, ministries managing technical – economic branches shall draft investment conditions and submit them to the Government for promulgation; and shall formulate master plans and approve them or submit them to the competent body for approval.

After investment conditions and master plans have been promulgated by the competent body, they must be announced publicly on the mass media and displayed at the headquarters of bodies receiving investment project files.

SECTION III

Amendment of Investment Projects

Article 51 *Amendment of investment projects*

1. When investors amend investment projects relating to the objectives, scale, location, form, capital and duration of implementation of the project, they must carry out procedures to amend the investment certificate.
2. The amendment of an investment project shall be carried out in one of the following forms:
 - (a) Without carrying out procedures for registration of amendment or for evaluation of amendment;
 - (b) Registration of amendment of the investment project;
 - (c) Evaluation of amendment of the investment project.
3. Investment projects not required to carry out procedures for registration of amendment or for evaluation of amendment shall comprise:
 - (a) Projects not changing their objectives, scale, location, form, capital or duration;
 - (b) Domestic investment projects which, after amendment, have an invested capital of below VND fifteen (15) billion and are not in sectors in which investment is conditional;
 - (c) Domestic investment projects which, after amendment, have an invested capital of below VND three hundred (300) billion and do not change their objectives [or] location of investment.

Article 52 *Registration of amendment and evaluation of amendment of investment projects*

1. Registration of amendment of investment projects:
 - (a) Projects requiring registration of amendments shall comprise those which, after amendment of objectives, scale, location, capital, form [or] duration, fall into the following categories:⁵
 - foreign investment projects which, after amendment, have an invested capital of below VND three hundred (300) billion and are not in sectors in which investment is conditional;
 - domestic investment projects which, after amendment, are not in sectors in which investment is conditional, except for the cases stipulated in clause 3 of article 51 of this Decree;
 - domestic investment projects in sectors in which investment is conditional but which, after amendment, have not changed the objectives and still satisfy the investment conditions stipulated for such project, except for the cases stipulated in clause 3 of article 51 of this Decree;

5 *Phillips Fox Note:* The formatting of article 52.1(a) and 52.2(a) has been modified from the Vietnamese text in order to distinguish the categories of projects subject to registration of amendments and the categories of projects subject to evaluation respectively, and thereby aid comprehension.

- (b) A file for registration of amendment of an investment project shall comprise: request for registration of amendment of the investment project; a copy of the investment certificate; the joint venture contract or business co-operation contract or charter of the enterprise as amended or added to (with respect to foreign investment projects);
 - (c) Within a time-limit of fifteen (15) working days from the date of receipt of a complete and valid file, the investment certificate-issuing body shall issue a new investment certificate (if an investment certificate has not yet been issued) or shall amend the investment certificate.
2. Evaluation of amendment of investment projects:
- (a) Projects requiring evaluation of amendment shall comprise those which, after amendment of objectives, scale, location, capital, form [or] duration, fall into the following categories:
 - foreign investment projects which, after amendment, fall into the category of evaluation for issuance of an investment certificate;
 - domestic investment projects which, after amendment, are in sectors in which investment is conditional, except for the cases stipulated in clause 1(a) of this article;
 - (b) A file for evaluation of amendment of an investment project shall comprise: request for amendment of the investment project; explanation of the reason for amendment; changes compared with the project currently being implemented; report on status of implementation of the project at the time of amendment of the project; copy of the investment certificate; and joint venture contract or business co-operation contract or charter of the enterprise as amended or added to (with respect to foreign investment projects);
 - (c) The investment certificate-issuing body shall evaluate amendments and shall issue a new investment certificate (if an investment certificate has not yet been issued) or shall amend the investment certificate within a time-limit of thirty (30) working days from the date of receipt of a complete and valid file;
 - (d) In cases where investment projects, after amendment, fall within the approval authority of the Prime Minister of the Government but are not yet included in a master plan or are in sectors subject to conditions but for which investment conditions have not yet been stipulated by law, the investment certificate-issuing body shall obtain evaluation opinions from relevant ministries and branches and make a submission to the Prime Minister of the Government for his decision prior to issuing a new investment certificate or amending the investment certificate;
 - (dd) In cases where amended items relate to sectors in which investment is conditional, the investment certificate-issuing body shall obtain evaluation opinions from relevant ministries and branches prior to issuing a new investment certificate or amending the investment certificate.
3. Within a time-limit of seven working days from the date of issuance of an amended investment certificate, the investment certificate-issuing body shall copy the amended investment certificate and send copies to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Trade, the Ministry of Natural Resources and Environment, the State Bank of Vietnam, the ministry managing the branch and other relevant bodies.

SECTION IV

Other Provisions Applicable to Foreign Investment Projects

Article 53 *Relevant items in files for foreign investment projects*

Foreign investment projects implemented in the form of a joint venture or business co-operation contract shall, in addition to the documents stipulated in articles 44 to 47 inclusive of this Decree, have a joint venture contract or a business co-operation contract with the items stipulated in articles 54 and 55 respectively of this Decree.

Article 54 *Contents of joint venture contract*

A joint venture contract must contain the following main items:

1. Names and addresses of the organizations and individuals investing in participation in the joint venture and of the legal representatives of the joint venture parties; name and address of the joint venture enterprise.
2. Form of enterprise.
3. Sector, line and scope of business.
4. Legal capital, capital contribution share of each party, method and schedule for charter capital contributions.
5. Project implementation schedule.
6. Duration of operation of the project.
7. Location where the project is to be implemented.
8. Rights and obligations of the joint venture parties.
9. Principles of financial management; [*principles*] of distribution of profits and dealing with losses during business.
10. Procedures for amendment and termination of the contract, conditions for assignment, conditions for termination of operation and dissolution of the enterprise.
11. Liability for breach of contract and method of dispute resolution.

In addition to the above items, joint venture parties have the right to agree on other items in the joint venture contract which are not contrary to law.

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

Article 55 *Contents of business co-operation contract*

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

1. Names, addresses, and authorized representatives of the business co-operation parties; and the transaction address or address of the location in which the project is to be implemented.
2. Objectives and scope of business.

3. Contributions by the business co-operation parties, sharing of investment and business results, and contract performance schedule.
4. Project implementation schedule.
5. Duration of the contract.
6. Rights and obligations of the business co-operation parties.
7. Financial principles.
8. Procedures for amendment and termination of the contract and conditions for assignment.
9. Liability for breach of contract and method of dispute resolution.

In addition to the above items, the business co-operation parties have the right to agree on other items in the business co-operation contract which are not contrary to law.

A business co-operation contract must be initialed by the authorized representatives of the business co-operation parties on each page and signed by them at the end of the contract. A business co-operation contract between a Vietnamese party and a foreign party shall become effective as from the date of issuance of the investment certificate.

Article 56 *Procedures for direct investment in form of capital contribution to, purchase of shareholding in, merger with or acquisition of enterprise*

An investor which contributes capital to, purchases shareholding in, merges with or acquires an enterprise in Vietnam as stipulated in article 10 of this Decree shall carry out the following procedures:

1. Where the foreign investor purchases shareholding in a Vietnamese enterprise, such enterprise shall carry out business registration procedures in accordance with the law on enterprises.
2. Where the investor purchases shareholding in an enterprise with foreign owned capital operating in Vietnam, it shall carry out procedures for amendment of an investment project in accordance with articles 51 and 52 of this Decree.
3. Where the investor contributes capital in order to make an investment, it shall carry out investment procedures in accordance with the law on investment .
4. Where the foreign investor merges with or acquires an enterprise operating in Vietnam, it shall conduct investment procedures stipulated in this Decree in order to be issued with an investment certificate. A file for merger with or acquisition of an enterprise shall comprise:
 - (a) Request for merger with or acquisition of an enterprise, containing name and address and representative⁶ of the foreign investor merging with or acquiring the enterprise; and name and address and representative, charter capital and operational sector of the merged or acquired enterprise; summarized information on the merger or acquisition; and proposals (if any);
 - (b) Decision of the members' council or of the owner of the enterprise or of the general meeting of shareholders on the sale of the enterprise;

6 *Phillips Fox Note:* There is no qualification of "representative" in the Vietnamese text.

- (c) Contract for merger with or acquisition of the enterprise, which must contain the following main items: name and address and head office of the merged or acquired enterprise; procedures and conditions for merger or acquisition of the enterprise; plan for employment of employees; procedures, conditions and period for transfer of assets, capital, shares or bonds of the merged or acquired company; period for implementation of the merger or acquisition; and responsibilities of the parties;
- (d) Charter of the merged or acquired enterprise;
- (dd) Draft charter of the enterprise after permission is granted for the merger or acquisition (if there are changes);
- (e) Written certification of the legal status of the foreign investor: an economic organization shall submit a copy of its establishment decision or other equivalent document; and an individual shall submit a copy of his or her passport.

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

1. An investor with a project which has been issued with an investment certificate or which has been issued with an investment licence pursuant to the *Law on Foreign Investment in Vietnam* has the right to convert the form of investment to another form of investment in accordance with article 21 of the *Law on Investment*.
2. An investor which has been issued with an investment licence in accordance with the *Law on Foreign Investment in Vietnam* may convert its form of investment in accordance with separate regulations of the Government on re-registration and conversion of enterprises with foreign owned capital.
3. Procedures for conversion of the investment form of a foreign investment project shall be carried out as follows:
 - (a) The conversion of the investment form associated with conversion of the form of enterprise must comply with the provisions of the law on enterprises;
 - (b) An enterprise with foreign owned capital or business co-operation parties shall submit a file for conversion of the investment form to the investment certificate-issuing body, comprising: request for conversion of the investment form; decision of the members' council or of the owner of the enterprise or of the general meeting of shareholders, or the agreement of the business co-operation parties (in the case of an investment project in the form of a business co-operation contract) on conversion of the investment form; draft charter of the converted enterprise; and business co-operation contract (in the case of an investment project in the form of a business co-operation contract);
 - (c) The decision of the members' council of the joint venture enterprise or the decision of the investor (in the case of enterprises with one hundred (100) per cent foreign owned capital) or the agreement of business co-operation parties (in the case of business co-operation contracts) on conversion of the investment form shall be notified to creditors and employees within a period of fifteen (15) working days from the date of the decision;
 - (d) The investment certificate-issuing body shall amend the investment certificate and notify the investor within a period of thirty (30) working days from the date of receipt of a complete and valid file as stipulated in clause 3(b) of this article.

SECTION V

A Number of Provisions on Procedures for Use of State Owned Capital for Investment and Business

Article 58 *Investment and business using State owned capital*

1. Investment projects using the following sources of State owned capital must be evaluated and approved by the authorized State body prior to use of State owned capital:
 - (a) Capital from the State Budget;
 - (b) Investment and development credit of the State;
 - (c) Credit guaranteed by the State;
 - (d) Investment and development capital of State owned enterprises;
 - (dd) Investment capital of the State Capital Investment Corporation.
2. After the authorized State body evaluates and approves the use of State owned capital for investment, the investor shall carry out investment procedures in accordance with this Decree to be issued with an investment certificate. Written approval of the use of State owned capital for investment is a compulsory document in the investment registration file and investment evaluation file.

Article 59 *Bodies evaluating and approving use of State owned capital for investment*

1. The body authorized to issue decisions on use of capital from the State Budget shall evaluate and approve the use of State owned capital for investment with respect to investment projects funded by capital from the State Budget.
2. The Vietnam Development Bank shall evaluate and decide projects entitled to State owned credit facilities for investment and development.
3. The Ministry of Finance shall evaluate and decide on State guarantees with respect to investment projects funded by credit facilities and on the list guaranteed by the State.
4. The board of management of an economic group, State corporations and other State owned enterprises or the general director or director of a State owned enterprise without a board of management shall organize evaluation and make a decision with respect to the use of development and investment capital of the State owned enterprises for investment.
5. The authority to evaluate and approve the use of State owned capital for investment by the State Capital Investment Corporation shall be implemented in accordance with a decision of the Prime Minister of the Government.
6. The evaluating body shall be responsible for organizing evaluation and providing written notification to the investor of the decision on approval or non-approval for the use of State owned capital for investment.

Article 60 *File for evaluation of investment projects using State owned capital*

A file for evaluation of the investment project shall comprise:

1. Application for using State owned investment capital from the investor to the evaluation body corresponding to the particular source of capital as stipulated in article 59 of this Decree.

2. Explanatory statement on the proposed use of State owned capital for investment, comprising the following main items:
 - (a) Name of the project;
 - (b) Objectives and scale of the project;
 - (c) Location in which the project is to be implemented;
 - (d) Invested capital; source of invested capital; State capital share invested in the project;
 - (dd) Explanatory statement on the conformity of the project with the strategy, master plan and plans for socio-economic development approved by the authorized State body; explanatory statement on the appropriateness of the use of invested capital;
 - (e) Investment efficiency, comprising financial efficiency and socio-economic efficiency;
 - (g) Explanatory statement on ability to repay investment capital, ability to repay loans and plan for repayment of loans (if any);
 - (h) Duration of implementation of the project;
 - (i) Schedule for implementation of the investment project.

Article 61 *Contents of evaluation of investment projects using State owned capital*

Contents of evaluation shall comprise:

1. Conformity of the investment project with the strategies, master plans and plans for socio-economic development for each period (of the country or region or territory) approved by the authorized State bodies.
2. Appropriateness of the investment and business using State capital; investment objectives, efficiency of the investment; management method appropriate to each source of capital and each type of investment project.
3. Conformity with policies on investment support (if any).
4. Schedule for implementation of the investment project and duration of implementation of the investment project.
5. Ability to repay invested capital; ability to repay loans and plan for repayment of loans (if any).
6. Investment efficiency, including financial efficiency and socio-economic efficiency.

CHAPTER VI

Provisions on Commencement of Implementation of Investment Projects and Organization of Business

Article 62 *Commencement of investment projects*

The investor shall be responsible for commencing implementation of the investment project in accordance with the objectives, contents and schedule undertaken and the provisions in the investment certificate; and for complying with the provisions of the laws on land, the environment, labour, business registration, investment registration and other relevant laws during implementation of the investment project.

Article 63 *Commencement of investment projects associated with construction*

Upon commencement of an investment project with construction works, the investor shall comply with the provisions of the law on management of construction.

Article 64 *Hiring management*

1. An investor shall be permitted to hire a management organization(s) or individual(s) to manage its investments and to manage its business operations in accordance with the operational needs of the investor.
2. The hiring of a management organization or individual must be carried out pursuant to a management contract between the investor and the organization or individual.

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

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

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

Article 65 *Assignment of capital*

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

Upon assignment of capital in an enterprise with foreign owned capital, the enterprise must notify the investment certificate-issuing body of such assignment in order to amend the investment certificate.

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

Article 66 *Assignment of projects*

1. An investor shall be entitled to assign all or a part of the project implemented by it to other investors. The conditions for assignment of a project shall be implemented in accordance with clause 2 of article 65 of this Decree.
2. In the case of assignment of a project of an economic organization not associated with the termination of operation of the assigning economic organization, the assignment of the project shall comply with the conditions and procedures for assignment of capital stipulated in article 65 of this Decree.
3. In the case of assignment of a project of an economic organization associated with the termination of operation of the assigning economic organization, the assignment of the project shall comply with the conditions and procedures for merger with or acquisition of an enterprise stipulated in article 56 of this Decree.
4. In the case of assignment of an investment project associated with the termination of operation of the assigning organization and the assignee establishing an economic organization to continue implementation of the project, the investment procedures stipulated in this Decree must be carried out.
5. The file for assignment of an investment project shall comprise: application for registration of assignment of the project; project assignment contract; document on legal status of the assignee; and report on the operational status of the project.
6. The investment certificate-issuing body shall issue a new investment certificate (if an investment certificate has not yet been issued) or shall amend the investment certificate within ten (10) working days from the date of receipt of a complete and valid file.

Article 67 *Temporary suspension or extension of implementation schedule of investment projects*

1. An investor requiring a temporary suspension or extension of implementation schedule of the investment project which changes the project implementation schedule as undertaken must notify the State administrative body for investment in writing of the reason for and duration of such temporary suspension or extension of implementation schedule of the project at least fifteen (15) working days prior to the date of such temporary suspension or extension.
2. If the investment certificate-issuing body does not accept the temporary suspension or extension of implementation schedule of the project, it shall notify the investor in writing within a time-limit of fifteen (15) working days from the date of receipt of the notice from the investor.

Upon resumption of operation, the investor must give notice in writing to the State administrative body for investment.

Article 68 *Termination of operation of investment projects*

1. The termination of operation of an investment project shall be implemented in accordance with article 65 of the *Law on Investment*.
2. The investment certificate-issuing body has the right to make a decision on termination of operation of a project in the following circumstances:
 - (a) The investor fails to commence [*the investment project*] within twelve (12) months from the date of issuance of the investment certificate or the project is more than twelve (12) months behind the schedule stipulated in the investment certificate,

except where a temporary suspension or extension of the implementation schedule has been permitted in accordance with article 67 of this Decree;

- (b) Upon serious breach of the provisions of the law for which the law requires that operations must be terminated.
3. In the case of termination of operation of a project pursuant to the judgement or decision of a court or arbitration body as a result of a serious breach of law, the investment certificate-issuing body shall issue a decision on termination of operation on the basis of such decision or judgement of the court or arbitration body.
4. A decision on termination of operation of an investment project shall be sent to the investor and archived at the investment certificate-issuing body.

Based on the decision on termination of operation of an investment project, the investment certificate-issuing body shall revoke the investment certificate and notify relevant bodies.

Article 69 *Liquidation of investment projects*

1. If, during the process of investment activities, an investment project is terminated in accordance with the conditions⁷ stipulated in clauses 1, 2 or 3 of article 65 of the *Law on Investment*, the investor shall notify the investment certificate-issuing body, conduct procedures for liquidation of the investment project, and return the investment certificate.
2. Procedures for liquidation of an investment project shall be as follows:
 - (a) In the case of liquidation of an investment project not associated with dissolution of the economic organization, liquidation shall be carried out in accordance with the law on liquidation of assets and liquidation of contracts;
 - (b) In the case of liquidation of a project associated with dissolution of the economic organization, the investor shall carry out procedures for dissolution of the economic organization in accordance with the provisions of the *Law on Enterprises* and relevant laws.
3. The time-limit for liquidation of an investment project shall not exceed six months from the date of the decision on termination of operation of the investment project. The time-limit for liquidation of an investment project may be extended with approval of the authorized State body but shall not exceed twelve (12) months.

After liquidation is completed, the investor shall inform the investment certificate-issuing body and return the issued investment certificate.

4. Where the investors in an economic organization are in a dispute making it impossible for the liquidation of the investment project to be carried out within the time-limit stipulated in clause 3 of this article, the dispute shall be referred to a court or arbitration body for resolution in accordance with law.
5. If, during the process of liquidation of an investment project, the economic organization is not able to pay debts, the liquidation shall terminate and [*the matter*] shall be resolved in accordance with the law on bankruptcy.

Article 70 *Bonded warehouses*

1. With respect to export processing zones and industrial zones, economic organizations producing goods for export shall be permitted to establish a bonded warehouse in order

⁷ *Phillips Fox Note*: This is the literal translation.

to serve import and export activities. Goods delivered into a bonded warehouse shall fall into the category not yet subject to import duty.

Permission and conditions for establishment of a bonded warehouse shall be subject to Decree 154-2005-ND-CP of the Government dated 15 December 2005 making detailed provisions on a number of articles of the *Law on Customs* with respect to customs procedures, customs inspection and control.

2. Goods delivered into a bonded warehouse must not be sold on the Vietnamese market. Where such goods are not prohibited imports or goods temporarily not permitted to be imported and are sold on the Vietnamese market, the investor must conduct import procedures at the customs office, pay import duties and perform other financial obligations in accordance with law.
3. Where goods delivered into a bonded warehouse are damaged or reduced in quality and are not able to satisfy production requirements, they must be re-exported or destroyed. The destruction [of such goods] must be implemented in accordance with the laws on customs, taxes and the environment.

CHAPTER VII

State Administration of Investment

Article 71 *Contents, powers and responsibilities of State administration of investment*

1. Contents of State administration of investment shall include:
 - (a) Formulation and direction of the implementation of strategies, master plans, plans and policies for development investment for the purpose of mobilization and regulation of resources for development investment;
 - (b) Promulgation, dissemination, provision of guidelines and organization of the implementation of policies and laws concerning investment activities; formulation of technical standards and norms relating to investment activities; supervision of the promulgation of legal instruments concerning investment; collation of, making recommendations on and revocation of legal instruments which are no longer appropriate or which are promulgated not in accordance with authority or having inappropriate content;
 - (c) Implementation of State administration of international co-operation and negotiation and signing of international treaties relating to investment activities in accordance with the law on international treaties;
 - (d) State administration of investment promotion activities; building of a national information system serving investment activities;
 - (dd) Issuance, amendment and revocation of investment certificates; uniform State administration of investment registration and issuance of investment certificates;
 - (e) Examination, inspection and supervision of compliance with the law on investment with respect to State administration of investment and activities of investors;
 - (g) Provision of guidance and support to investors in implementation of investment projects and resolution of problems and requests of investors during investment activities;
 - (h) Assessment of impact and macro-economic efficiency of investment activities;

- (i) Co-ordination between State administrative bodies at all levels in administration of investment activities;
 - (k) Professional training, retraining and improvement of investment administration capacity for the State administrative bodies for investment at all levels;
 - (l) Resolution of complaints and denunciations of organizations and individuals concerning investment activities in accordance with authority; granting rewards to organizations and individuals with achievements in investment activities and dealing with breaches of law by organizations and individuals.
2. Powers and responsibilities for State administration of investment:
- (a) The Government shall exercise uniform State administration of investment throughout the whole country; direct the formulation and implementation of strategies, master plans and plans for development investment in branches, sectors and economic zones; promulgate policies and legal instruments on investment; and delegate powers to ministries, branches and localities to undertake State administration of investment;
 - (b) The Prime Minister of the Government shall direct ministries, branches and localities to implement the law and policies on investment; approve or delegate power to approve master plans; decide on the policy for investment with respect to projects under his authority; decide on or permit the establishment of industrial zones, export processing zones, high-tech zones and economic zones; and direct resolution of difficulties during administration and management of investment activities beyond the authority of ministries, branches and localities;
 - (c) The Prime Minister of the Government, ministries, branches and provincial people's committees and management committees of industrial zones, export processing zones, high-tech zones and economic zones shall schedule talks with the community of enterprises and investors;
 - (d) Ministries, branches, provincial people's committees and management committees shall be responsible for providing guidelines on investment in sectors and localities within their authority, ensuring that the investment procedures are simple, transparent and comply with time-limits;
 - (dd) Ministries, ministerial equivalent bodies and provincial people's committees shall not be permitted to issue regulations specifying sectors in which investment is prohibited and sectors in which investment is conditional or specifying investment incentives which are inconsistent with law.

Article 72 *Powers and responsibilities of Ministry of Planning and Investment*

1. Presiding over and co-ordinating with ministries, branches and provincial people's committees in formulation and review of legal instruments and policies on investment; guiding, disseminating, monitoring and inspecting implementation of legal instruments on investment; and promulgating sample forms relating to investment procedures for application nationwide.
2. Organizing and co-ordinating with ministries, branches and local authorities in formulation and submission to the Government of master plans and plans for development investment, and a national master plan for development of industrial zones, export processing zones and economic zones.
3. Presiding over and co-ordinating with ministries, branches and provincial people's committees in preparation of and submission to the Prime Minister of the Government for approval of the list of national projects calling for investment capital; advising on addition to master plans in respect of investment projects falling within the approval authority of

the Prime Minister of the Government but not currently being in such master plans; providing its opinion to the investment certificate-issuing body on the necessity for an investment project in a sector for which there is as yet no master plan in respect of projects falling within the approval authority of the Prime Minister of the Government for the purpose of submission to the Prime Minister of the Government for approval.

4. Evaluating important national investment projects and other investment projects pursuant to decisions of the Prime Minister of the Government.
5. Carrying out State administration of investment promotion; preparing programs and plans on promotion and encouragement of investment promotion and organizing their implementation; co-ordinating with ministries, branches and provincial people's committees in the organization of investment promotion activities; establishing overseas representative organizations on investment promotion; managing the National Investment Promotion Fund.
6. Presiding over and co-ordinating with ministries and branches in negotiating international treaties relating to investment activities and submitting them to the Government for accession; implementing international co-operation on investment.
7. Organizing professional training and improvement of investment administration capacity for the system of State administration of investment at all levels.
8. Co-ordinating with the General Department of Statistics in organizing activities regarding statistics on investment in accordance with the law on statistics; organizing and building a national information system serving investment activities.
9. Co-ordinating with ministries, branches and localities in dealing with matters arising from the formulation, commencement and implementation of investment projects.
10. Assessing the macro-economic efficiency of investment activities.
11. Checking, monitoring and inspecting investment activities in accordance with its authority; building a program and plans for inter-ministerial checks and supervision of investment activities; checking the issuance, amendment and revocation of investment certificates by investment certificate-issuing bodies pursuant to the *Law on Investment* and this Decree; inspecting and supervising compliance with master plans approved by the competent authority during the process of investment.
12. Collating the status of investment activities for report to the Prime Minister of the Government on a half-yearly and annual basis.

Article 73 *Powers and responsibilities of Ministry of Finance*

1. Presiding over co-ordination with relevant ministries and branches in formulation of laws and policies on investment support and investment incentives; providing guidelines on order and procedures for support and entitlement to investment incentives within its authority.
2. Issuing operational licences for projects in sectors falling within its authority; examining, inspecting and supervising activities of projects which have been licensed.
3. Evaluating and giving its opinion in writing on issues relating to financing or Government financial guarantees in respect of investment projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional.
4. Carrying out examination, inspection and supervision of the implementation of the law on finance and accounting, tax and customs relating to investment activities.

5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investors relating to taxes, charges and fees, customs formalities, management of finance and other financial activities.

Article 74 *Powers and responsibilities of Ministry of Trade for State administration of investment*

1. Presiding over and co-ordinating with ministries and branches in formulation of laws and policies on trade relating to investment activities.
2. Issuing operational licences for projects in sectors falling within its authority; examining, inspecting and supervising activities of projects which have been licensed.
3. Evaluating and giving its opinion in writing on issues relating to trade activities in respect of investment projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional; announcing conditions [and] undertakings concerning investment in international treaties of which Vietnam is a member.
4. Carrying out examination, inspection and supervision of trade activities relating to investment activities.
5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems relating to trade activities of investment projects.

Article 75 *Powers and responsibilities of Ministry of Natural Resources and Environment for State administration of investment*

1. Presiding over and co-ordinating with relevant ministries and branches in formulation of laws and policies and providing guidelines for implementation of the regulations on land management, site clearance and compensation, management of natural resources and of the environment relating to investment activities.
2. Evaluating and giving its opinions in writing on issues relating to land, site clearance and compensation, management of natural resources and of the environment in respect of investment projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional.
3. Carrying out examination, inspection and supervision of the implementation of regimes and policies relating to land, site clearance and compensation, management of natural resources and of the environment relating to investment activities.
4. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investors relating to land management, site clearance and compensation, mining and use of natural resources, and protection of the environment.

Article 76 *Powers and responsibilities of Ministry of Science and Technology for State administration of investment*

1. Presiding over and co-ordinating with ministries and branches in formulation of laws and policies and providing guidelines for implementation of regulations on science and technology relating to investment activities; submitting to the Prime Minister of the Government an overall master plan for development of high-tech zones.
2. Evaluating and giving its opinion in writing on issues relating to science and technology in respect of investment projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional.

3. Carrying out examination, inspection and supervision of the implementation of regimes and policies relating to science and technology relating to investment activities.
4. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems relating to science and technology of investment projects.

Article 77 *Powers and responsibilities of Ministry of Construction for State administration of investment*

1. Presiding over and co-ordinating with relevant ministries and branches in formulation of laws and policies and providing guidelines for implementation of regulations on construction.
2. Evaluating and giving its opinion in writing on issues relating to construction in respect of investment projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional.
3. Carrying out examination, inspection and supervision of the implementation of regimes, policies, standards and norms relating to construction relating to investment activities.
4. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems in construction relating to investment projects.

Article 78 *Powers and responsibilities of State Bank of Vietnam for State administration of investment*

1. Presiding over and co-ordinating with ministries and branches in formulation of laws and policies and providing guidelines for implementation of regulations on credit and foreign exchange control relating to investment activities.
2. Issuing operational licences for projects in sectors falling within its authority; examining, inspecting and supervising activities of projects which have been licensed.
3. Evaluating and giving its opinion in writing on issues relating to credit and foreign exchange control in respect of investment projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional.
4. Carrying out examination, inspection and supervision of the implementation of regimes and policies relating to credit and foreign exchange control relating to investment activities.
5. Presiding over and co-ordinating with relevant ministries, branches and provincial people's committees to deal with difficulties and problems relating to credit and foreign exchange control of investment projects.

Article 79 *Powers and responsibilities of ministries managing branches for State administration of investment*

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

1. Co-ordinating with the Ministry of Planning and Investment and relevant ministries and branches in the formulation of laws and policies relating to investment activities.

2. Presiding over co-ordination with relevant ministries and branches in formulation and promulgation of laws, policies, standards and technical regulations and providing guidelines for their implementation.
3. Submitting to the Government for promulgation conditions for investment in sectors in which investment is conditional within the technological – economical branch.
4. Preparing master plans, plans and lists of projects calling for capital within branches; organization of encouragement and promotion of investment in their specialized branches.
5. Announcing publicly the master plan, plans, technical criteria, investment conditions and list of projects calling for capital within the branch.
6. Evaluating and giving their opinions in writing on the ability to satisfy conditions which projects must satisfy in respect of projects falling within the approval authority of the Prime Minister of the Government and projects in sectors in which investment is conditional.
7. Carrying out specialized examination, inspection and supervision of the satisfaction of conditions for investment and State administration in respect of investment projects falling within their authority.
8. Presiding over co-ordination with relevant ministries, branches and provincial people's committees to deal with difficulties and problems of investment projects relating to fields falling within their specialized administration.

Article 80 *Powers and responsibilities of provincial people's committees for State administration of investment*

1. On the basis of the master plan for socio-economic development, co-ordinating with relevant ministries and branches in preparation and promulgation of lists of projects calling for investment within their localities; organization of encouragement and promotion of investment.
2. Presiding over organization of investment registration, evaluation and issuance of investment certificates, and amendment and revocation of investment certificates; making decisions on termination of operation of investment projects prior to expiry of duration in respect of investment projects falling within their authority.
3. Exercising responsibility for State administration of investment projects outside industrial zones, export processing zones, high-tech zones or economic zones with respect to the following items:
 - (a) Monitoring, supervising and checking implementation of objectives provided for in investment certificates, schedule of capital contribution and commencement of investment projects; supervising and checking performance of financial obligations, labour relations and wages, protection of legitimate interests of employees and of employers, operation of socio-political organizations and protection of the ecological environment; presiding over or participating with ministries and branches in inspections of investment projects within their localities;
 - (b) Organizing implementation of site clearance; issuing certificates of land use rights and supervising land use;
 - (c) Dealing with difficulties and problems of investors; making proposals to the Prime Minister of the Government or relevant ministries or branches to deal with matters beyond their authority;
 - (d) Assessing the efficiency of investment activities within their localities.

4. Directing formulation of detailed master plans for construction of industrial zones and export processing zones and approving such detailed master plans in accordance with the law on construction.
5. Presiding over and co-ordinating with management committees in preparation of an overall report on investment activities within their localities and submitting it to the Ministry of Planning and Investment on a quarterly, half-yearly and annual basis.

Article 81 *Powers and responsibilities of management committees of industrial zones, export processing zones, high-tech zones and economic zones for administration of investment*

1. Contributing their opinions together with ministries, branches and localities in formulation of legal instruments, policies and master plans concerning investment activities and development of industrial zones, export processing zones, high-tech zones or economic zones.
2. Carrying out investment registration, evaluation and issuance, and amendment and revocation of investment certificates in respect of investment projects falling within their authority.
3. Examining, inspecting and supervising the realization of objectives provided for in investment certificates, the schedule of capital contribution and commencement of investment projects; collaborating in examining and inspecting compliance with the law on labour and wages, protection of legitimate interests of employees and of employers, operation of socio-political organizations and protection of the ecological environment in respect of projects in industrial zones, export processing zones, high-tech zones or economic zones.
4. Dealing with difficulties and problems of investors in industrial zones, export processing zones, high-tech zones and economic zones; and making proposals to the Prime Minister of the Government, relevant ministries and branches or provincial people's committees to deal with matters beyond their authority.
5. Assessing the investment efficiency in industrial zones, export processing zones, high-tech zones and economic zones.
6. Submitting reports on investment activities in industrial zones, export processing zones, high-tech zones and economic zones on a quarterly, half-yearly and annual basis to provincial people's committees and to the Ministry of Planning and Investment.

Article 82 *Organization of apparatus of management committees*

1. *Management committee* means the body in charge of management of an industrial zone, export processing zone, high-tech zone or economic zone within the locality of a province or city under central authority. A management committee shall be established by a decision of the Prime Minister of the Government upon the proposal of the chairman of the provincial people's committee and the Minister of Interior, and shall be subject to direction and management with respect to its organization, permanent staff, working plan and operational budget by the provincial people's committee (unless otherwise provided by the Prime Minister of the Government).
2. Specialized commercial, financial, customs and other necessary bodies may have a representative in an industrial zone, export processing zone, high-tech zone and economic zone in order to deal with matters relating to the respective sectors that they manage.

3. The specific functions, duties, powers, organizational structure and regulations for operation of management committees shall be stipulated by the Prime Minister of the Government.

Article 83 *State administration of investment promotion*

1. Investment promotion activities shall comprise:
 - (a) Formulating strategies, plans and policies in order to attract domestic and foreign investment capital, and creating conditions for mobilization of investment capital from all economic sectors;
 - (b) Disseminating, broadcasting, introducing and providing information on the investment environment, investment potential and opportunities;
 - (c) Establishing investment promotion bodies inside and outside Vietnam in order to mobilize, support and guide investors to understand policies and provisions of the law on investment, and to select sectors and localities for implementation of investment projects;
 - (d) Preparing a list of national projects calling for investment and a list of projects calling for investment capital of branches and localities in accordance with the master plan and strategies for socio-economic development in each period.
2. Based on the objectives and strategies for attracting investment, State administrative bodies for investment shall prepare annual plans for investment promotion and shall submit them to the Ministry of Planning and Investment to co-ordinate performance thereof.
3. Funds for investment promotion activities by State bodies shall be granted from the Budget and subject to the regulations and guidelines of the Ministry of Finance.

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

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

Article 84 *Inspection of investment activities and dealing with breaches in relation to investment*

1. The scope for inspection of investment and the organization and operation of investment inspection shall be subject to the *Law on Investment* and the provisions of the law on inspection with respect to State administration of investment and investment projects.
2. Breaches of the law on investment and how to deal with breaches in investment shall be as provided by law.

Article 85 *Dispute resolution*

Disputes relating to investment activities shall be resolved in accordance with article 12 of the *Law on Investment*.

CHAPTER VIII

Implementing Provisions

Article 86 *Application of law to projects carrying out investment prior to date of effectiveness of Law on Investment*

1. Domestic investment projects implemented prior to the date of effectiveness of the *Law on Investment* shall not be required to carry out procedures for investment registration or evaluation; where an investor has a requirement for issuance of an investment certificate, the investor shall conduct registration procedures in accordance with this Decree.
2. Foreign investment projects issued with an investment licence prior to the date of effectiveness of the *Law on Investment* shall be implemented in accordance with article 88 of the *Law on Investment*, article 170 of the *Law on Enterprises* and regulations of the Government on re-registration and conversion of enterprises with foreign owned capital.

Article 87 *Application investment⁸ with respect to foreign investors establishing private enterprises; investing in education and training, health care and other sectors affecting the public*

Based on the provisions of the *Law on Investment*, this Decree and the law on enterprises, the Prime Minister of the Government shall provide regulations on investment to establish private enterprises by foreign investors; and regulations on deposits and insurance for customers with respect to investment in education and training, health care and other sectors affecting the public.

Article 88 *Implementing provisions*

1. This Decree shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette.
2. This Decree hereby repeals:
 - (a) Decree 24-2000-ND-CP dated 31 July 2000 providing detailed regulations on implementation of the *Law on Foreign Investment in Vietnam*; and Decree 27-2003-ND-CP dated 19 March 2003 on amendment of and addition to Decree 24-2000-ND-CP dated 31 July 2000 providing detailed regulations on implementation of the *Law on Foreign Investment in Vietnam*; Decree 36-CP dated 24 April 1997 issuing regulations on industrial zones, export processing zones and hi-tech zones;
 - (b) Decree 51-1999-ND-CP dated 8 July 1999 providing detailed regulations on implementation of the *Law on Promotion of Domestic Investment (Amended)*; and Decree 35-2002-ND-CP dated 29 March 2002 on amendment of and addition to Lists A, B and C issued with Decree 51-1999-ND-CP dated 8 July 1999 (amended) providing detailed regulations on implementation of the *Law on Promotion of Domestic Investment (Amended)*;
 - (c) Lists of sectors and geographical areas entitled to investment incentives issued with Decree 164-2003-ND-CP dated 22 December 2003 providing detailed regulations on implementation of the *Law on Corporate Income Tax*; and Decree 152-2004-ND-CP dated 6 August 2004 on amendment of and addition to Decree 164-2003-ND-CP dated 22 December 2003 providing detailed regulations on implementation of the *Law on Corporate Income Tax*;

8 *Phillips Fox Note:* This is the literal translation.

- (d) Lists of sectors and geographical areas entitled to investment incentives issued with Decree 149-2005-ND-CP dated 8 December 2005 providing detailed regulations on implementation of the *Law on Export and Income Duties*;
 - (dd) Other provisions on investment which are inconsistent with this Decree.
3. Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority shall, within their respective authority, be responsible for providing guidelines for implementation of this Decree.

On behalf of the Government
Prime Minister

NGUYEN TAN DUNG

APPENDIX III⁹

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

(Issued with Decree 108-2006-ND-CP of the Government dated 22 September 2006)

1. Radio and television broadcasting.
2. Production, publishing and distribution of cultural products.
3. Mining¹⁰ and processing of minerals.
4. Establishment of infrastructure for telecommunications network, wave transmission and broadcasting and provision of internet and telecommunications services.
5. Establishment of public postal networks and provision of postal services and delivery services.
6. Construction and operation of river ports, sea ports, air terminals and airports.
7. Transportation of goods and passengers by railway, air¹¹, road, sea and inland waterways.
8. Catching of sea products.
9. Production of tobacco.
10. Real estate business.
11. Investment in the field of import, export and distribution.
12. Education and training.
13. Hospitals and clinics.
14. Other investment sectors in international treaties of which Vietnam is a member and which restrict the opening of the market to foreign investors.

Investment conditions applicable to foreign investors with investment projects in the sectors stipulated in this Appendix must conform with the provisions in international treaties of which Vietnam is a member.

9 *Phillips Fox Note:* Of 4 appendices issued with Decree 108, only Appendix III has been translated to date; others are in progress.

10 *Phillips Fox Note:* The literal translation is "exploitation".

11 *Phillips Fox Note:* The literal translation is "airway".