

GOVERNMENT
No. 16-2005-ND-CP

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Hanoi, 7 February 2005

**DECREE
ON
MANAGEMENT OF INVESTMENT PROJECTS
FOR CONSTRUCTION OF WORKS**

The Government

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

Pursuant to the *Law on Construction* dated 26 November 2003;

On the proposal of the Minister of Construction;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree provides guidelines for implementation of the *Law on Construction* with respect to formulation and implementation of investment projects for construction of works; with respect to contracts in construction activities; and with respect to conditions applicable to capability of organizations and individuals for project formulation, for survey and design, and for execution and supervision of execution of building works.

Article 2 *Classification of projects and State management of investment projects for construction of works*

1. Investment projects for construction of works (hereinafter referred to as *projects*) shall be classified as follows:
 - (a) According to scale and nature: Important national projects means projects for which the National Assembly approves the policy and

grants permission for the investment. Remaining projects shall be classified into three Groups A, B and C in accordance with Appendix 1 to this Decree;

- (b) According to capital funding source:
- Projects funded by capital from the State Budget;
 - Projects funded by credit facilities guaranteed by the State and by State owned credit facilities for investment and development;
 - Projects funded by invested capital of State owned enterprises;
 - Projects funded by other capital sources, including private capital, or a combination of funding sources.

2. Investment in the construction of works must conform with the overall master plan for socio-economic development, with master planning for branches and with construction master plans; and must ensure security, social and environmental safety, and must comply with the law on land and other relevant laws.

3. In addition to the provisions in clause 2 of this article, the State shall manage projects according to their capital funding source as follows:

- (a) With respect to projects funded by capital from the State Budget, and also including component projects, the State shall assume management of the whole investment and construction process from formulation of the investment policy, formulation of the project, investment decision-making, preparation of design, preparation of total estimated budget, selection of contractor, and execution of building works up to the stage of check and acceptance, hand-over and commissioning of the works. The person making the investment decision shall be responsible for arranging sufficient capital for implementation of the project on schedule, not to exceed two years in the case of Group C projects and not to exceed four years in the case of Group B projects.

With respect to projects funded by capital from the State Budget, the competent State administrative body shall make decisions in accordance with delegated authority and the law on the State Budget.

- (b) With respect to projects of enterprises funded by credit facilities guaranteed by the State, by State owned credit facilities for investment and development, and by invested capital of State

owned enterprises, the State shall assume management of the investment policy and of the scale of the investment only. The enterprise which has the project shall bear self-responsibility for arranging project management and project implementation in accordance with this Decree and other relevant laws.

- (c) With respect to projects funded by other capital sources, including private capital, the investor shall decide the form and content of project management. With respect to projects funded by a combination of funding sources, the capital contributing parties shall reach agreement on the management method or the project shall be managed in accordance with the regulations applicable to the funding source with the highest percentage of the total invested capital.
4. With respect to projects for which the National Assembly approves the investment policy and Group A projects which are made up of component projects, if each component project is able to be managed and operated independently or implemented in investment stages as stipulated in the document approving the investment report, each component project shall be managed and implemented as if it were an independent project.

Article 3 *Investor in construction of works*

Investor in construction of works means a capital owner or a person assigned to manage and utilize capital for investment in construction of works, and shall be regulated as follows:

1. In the case of projects funded by capital from the State Budget, the person making the investment decision shall decide on the investor in construction of works prior to formulation of the investment project for construction of works and in accordance with the law on the State Budget.
2. In the case of projects funded by credit facilities, the investor shall be the borrower.
3. In the case of projects funded by other capital sources, the investor shall be the capital owner or the legal representative of the capital owner.
4. In the case of projects funded by a combination of funding sources, the investor shall be the entity agreed on by the capital contributing parties or the person with the highest percentage of capital.

CHAPTER II

**Formulation, Evaluation and Approval of Investment Projects
for Construction of Works**

Article 4 *Formulation of investment reports for construction of works and applications for permission for investment*

1. For important national investment projects, an investment report for construction of works must be formulated and submitted to the National Assembly to pass the investment policy and to grant permission for the investment. For Group A projects, irrespective of their capital funding source, an investment report for construction of works must be formulated and submitted to the Prime Minister of the Government to grant permission for the investment.
2. An investment report for construction of works shall contain the following particulars:
 - (a) Necessity for the investment in construction of the works; favourable and unfavourable conditions; regime for exploitation and use of national natural resources, if any;
 - (b) Estimate of scale of investment; output; construction area; items of works, including main, subsidiary and other works; proposed building site and requirement for land use;
 - (c) Preliminary analysis and selection of technology and technical matters; conditions for supply of materials, equipment, raw materials, energy, services and technical infrastructure; plan for site clearance and resettlement, if any; impact of project on environment and ecology; fire and explosion fighting and prevention, impact on national defence and security;
 - (d) Form of investment; preliminary determination of total investment; duration for implementation of project; plan to raise capital in accordance with the schedule, socio-economic effectiveness of project, and investment stages, if any.
3. Application for permission to invest in construction of works:
 - (a) The investor shall be responsible for forwarding the investment report for construction of works to the ministry managing the branch, which shall be the co-ordinating body assisting the Prime Minister of the Government to obtain opinions from relevant ministries, branches and localities and submitting proposals to the Prime Minister of the Government.

(b) Time-limit for obtaining opinions:

Within a time-limit of five working days from the date of receipt of an investment report for construction of works, the ministry managing the branch shall send a written request to relevant ministries, branches and localities for their opinions.

Within a time-limit of thirty (30) working days from the date of receipt of a request, any body being requested for its opinion shall send a written reply on items within the scope of management of such body and, within seven days from the date of receipt of such written replies, the ministry managing the branch shall prepare a report for submission to the Prime Minister of the Government.

(c) Reports submitted to the Prime Minister of the Government shall contain:

Summary of the contents of the investment report; summary of the opinions obtained from ministries and branches; and proposal on granting permission to invest in construction of the works, enclosing the original written replies received from the relevant ministries, branches and localities.

Article 5 *Formulation of investment projects for construction of works*

1. An investor in construction of works shall be responsible for arranging formulation of the project in order to clarify the necessity for the investment and its effectiveness, except in the following cases:
 - (a) Works which only require preparation of an eco-technical report on construction of works as stipulated in article 12.1 of this Decree;
 - (b) Construction of a separate dwelling-house for citizens as stipulated in article 35.5 of the *Law on Construction*.
2. The contents of a project shall include an explanatory section as stipulated in article 6 of this Decree and a preliminary designs section as stipulated in article 7 of this Decree.
3. With respect to Group B projects not yet included in a socio-economic master plan, in master planning for branches and in construction master plans, there must be written approval from the body authorized to approve master planning prior to formulation of the project.

Article 6 *Contents of explanatory section of project*

1. Necessity for and objectives of the investment; assessment of market demand and product consumption in the case of a manufacturing project; business form of the investment for construction of works; location of the building site and requirement for land use; conditions for supply of raw materials, energy and other input items.
2. Description of the scale and area of the building works and the items of works, including main, subsidiary and other works; analysis and selection of technological and technical plans and output.
3. Construction solutions, comprising:
 - (a) Plan for site clearance and resettlement, and plan for assistance with construction of technical infrastructure if any;
 - (b) Architectural design plans in the case of urban construction works and other works with architectural requirements;
 - (c) Plan for project operation and employment of labour;
 - (d) Stages of implementation, schedule for implementation, and form of project management.
4. Environmental impact assessment; solutions for fire and explosion fighting and prevention; any requirements regarding national defence and security.
5. Determination of the total investment, the ability to raise capital and funding sources and the ability for such capital to be issued on schedule; plan for recovery of capital in the case of a project which requires to recover its capital; other financial criteria and analysis and assessment of the economic and social effectiveness of the project.

Article 7 *Contents of preliminary designs section of project*

1. The contents of the preliminary designs section of a project must express the basic design solutions, ensuring satisfaction of conditions for determining total invested capital and for undertaking the subsequent design steps, including an explanatory statement and drawings.

2. Either there must be a separate explanatory statement of the preliminary designs or the drawings must contain an explanatory statement in order that there will be design solutions in relation to the following basic particulars:
- (a) Summary of design tasks; summarized introduction about the relationship between the works and construction master planning in the area; data on the natural conditions, load capacity and impact; list of applicable standards and specifications;
 - (b) Technological explanatory statement; summarized introduction about the technological plan and technological drawings; list of technological equipment with basic technical parameters relevant to construction design;
 - (c) Explanatory statement about construction:
 - General outline on total surface areas; summarized introduction about the special features of the horizontal surfaces, and on sectional planes and vertical planes; technical infrastructure system and interconnection points; area of land to be used; height of foundations and other essential items;
 - Construction works built along a route shall contain summarized introduction about the special features of the route, the building height and building co-ordinates; plan for dealing with the main physical obstructions along the route; safety corridors along the route and other special features of the works, if any;
 - Construction works with architectural requirements shall contain summarized introduction about the relationship between the works and construction master planning in the area and adjacent buildings; theory behind the plan on architectural design; colour of the works; and design solutions which conform with the climatic, environmental, cultural and social conditions of the area in which construction is to take place;
 - Technical section: summarized introduction about the special geological features of the works; plan for reinforcing foundations, main weight-bearing structures, technical system and technical infrastructure system of the works, of the horizontal surfaces and of excavated areas; list of software used in the design;

- Summarized introduction about the plans for fire and explosion fighting and prevention and for environmental protection;
 - Estimated volume of building work and equipment which provides sufficient material for preparing the total level of invested capital and the duration for construction of the works.
3. The contents of preliminary design drawings shall comprise:
- (a) Technological drawings, showing diagrams of technological lines with basic technical parameters;
 - (b) Construction drawings, showing solutions on total surface areas; and architecture, structure, technical system and technical infrastructure system of the works with the main measurements and volumes, boundary landmarks, and sectional and vertical planes;
 - (c) Preliminary drawings of the system for fire and explosion fighting and prevention.
4. In the case of an investment project for construction of works for production or business purposes, depending on the nature and contents of the project, a number of the items required for preliminary designs as stipulated in clause 2 of this article may be exempted, but there must be sufficient material to satisfy the requirements on master planning, on architecture, on fixing the total level of invested capital and for calculating the investment effectiveness of the project.
5. At least nine sets of the explanatory statements about the design and of preliminary design drawings must be prepared.

Article 8 *File for submission for approval of investment project for construction of works*

1. The investor shall be responsible for forwarding a file on the investment project for construction of works to the person making the investment decision for approval.
2. A file on an investment project for construction of works shall contain:
- (a) Submission for approval of the project in accordance with Appendix 2 to this Decree;
 - (b) Project including explanatory section and preliminary designs section; and written evaluation from relevant ministries and branches (if any);

- (c) Written permission for the investment from the competent level in the case of important national projects and Group A projects.

Article 9 *Authority to evaluate investment projects for construction of works*

1. Evaluation of investment projects for construction of works shall comprise evaluation of the explanatory section and evaluation of the preliminary designs section of the project.
2. The State Evaluation Council for Investment Projects is established in accordance with a decision of the Prime Minister of the Government for evaluation of investment projects for which the National Assembly approves the policy and for evaluation of other projects at the request of the Prime Minister of the Government.
3. Provincial people's committees shall organize the evaluation of projects funded by capital from the State Budget and within the scope of management of such people's committees. The person making the investment decision shall organize evaluation of other projects.
4. Evaluation of preliminary designs for Group A projects shall be regulated as follows:
 - (a) The Ministry of Industry shall evaluate the preliminary designs for investment projects for construction of works being mines, petroleum works, power plants, power transmission lines, transformer stations and other specialized industrial works;
 - (b) The Ministry of Agriculture and Rural Development shall evaluate the preliminary designs for investment projects for construction of irrigation works and dykes;
 - (c) The Ministry of Transport and Communications shall evaluate the preliminary designs for investment projects for construction of traffic works;
 - (d) The Ministry of Construction shall evaluate the preliminary designs for investment projects for civil construction works and for industrial works (apart from industrial works evaluated by the Ministry of Industry) and other projects for construction of works at the request of the Prime Minister of the Government;
 - (dd) With respect to investment projects for construction of works which concern a number of specialized industries, the ministry presiding over evaluation of preliminary designs shall be the ministry with the function of State administration of the industry with the decisive factor regarding the nature and objectives of the

project, and shall be responsible to obtain opinions from the relevant ministries and branches.

5. Evaluation of preliminary designs for Group B and C projects of ministries, branches, localities and other economic sectors for construction in localities shall be regulated as follows:
 - (a) The Department of Industry shall evaluate the preliminary designs for investment projects for construction of works being mines, petroleum works, power plants, power transmission lines, transformer stations and other specialized industrial works;
 - (b) The Department of Agriculture and Rural Development shall evaluate the preliminary designs for investment projects for construction of irrigation works and dykes;
 - (c) The Department of Transport and Communications shall evaluate the preliminary designs for investment projects for construction of traffic works;
 - (d) The Department of Construction shall evaluate the preliminary designs for investment projects for civil construction works and for industrial works (apart from industrial works evaluated by the Department of Industry) and other projects for construction of works at the request of the chairman of a provincial people's committee;
 - (dd) With respect to investment projects for construction of works which concern a number of specialized industries, the department presiding over evaluation of preliminary designs shall be the department with the function of State administration of the industry with the decisive factor regarding the nature and objectives of the project, and shall be responsible to obtain opinions from relevant departments.
6. The ministry stipulated in clause 4 of this article shall evaluate the preliminary designs for Group B and Group C projects for construction of works built along a route passing through a number of localities, and shall be responsible to obtain opinions from the relevant departments on construction master plans and environmental impact in the places where the works will be located.
7. The evaluation of investment projects for construction of works with an element of secrecy concerning national defence and security shall be implemented in accordance with regulations of the Government.
8. The investor shall be responsible to forward the project file to the competent State body stipulated in clauses 4, 5 or 6 of this article in order

to obtain an evaluating opinion on the preliminary designs. The time-limit for evaluation of preliminary designs shall not exceed thirty (30) working days from the date of receipt of a complete and valid file for Group A projects, not exceed fifteen (15) working days for Group B projects, and not exceed ten (10) working days for Group C projects.

9. The time-limit for evaluation of projects, including evaluation of preliminary designs, shall not exceed sixty (60) working days from the date of receipt of a complete and valid file for Group A projects, not exceed thirty (30) working days for Group B projects, and not exceed twenty (20) working days for Group C projects. In special cases, the time-limit for evaluation of projects may be extended with permission from the person making the investment decision.
10. The Ministry of Finance shall, after reaching agreement with the Ministry of Construction, provide for the scale of fees for evaluation of projects, including evaluation of preliminary designs.

Article 10 *Contents of evaluation of investment projects for construction of works*

1. Project compliance with the master plan for socio-economic development, with master planning for branches and with construction master plans; if there is no such master planning, there must be approval from the competent State administrative body for such sector.
2. Explanatory statements on a project, implemented in accordance with article 6 of this Decree.
3. Project compliance with the investment report for construction of works already approved by the National Assembly or the Prime Minister of the Government, in the case of a project requiring formulation of such a report.
4. Compliance of the preliminary designs with construction master plans, scale of construction, technology, design capacity and level of works; data used in design with applicable standards and specifications; eco-technical criteria with the project requirements.
5. Compliance of the preliminary designs with the selected architectural designs, in the case where a competition has been held to select the architectural designs.
6. Reasonableness of the design solutions in the preliminary designs.
7. Conditions on operating capability of any consultancy organization and on practising capability of any individual formulating the project and preliminary designs in accordance with regulations.

Article 11 *Authority to make decision on investment in construction of works*

1. The Prime Minister of the Government shall make investment decisions for projects for which the National Assembly has approved the policy and granted permission for the investment.
2. With respect to other projects funded by capital from the State Budget:
 - (a) Ministers, heads of ministerial equivalent bodies and Government bodies, the financial management body of the Central Party, central bodies of political organizations and socio-political organizations, and chairmen of provincial people's committees shall make investment decisions in relation to Group A, B and C projects;

Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of provincial people's committees may authorize or delegate authority to the body at the immediately lower level to make the investment decision in relation to Group B and C projects.
 - (b) Chairmen of people's committees of districts and communes shall make investment decisions in relation to projects within the scope of the local budget, after the people's council at the same level has approved.
 - (c) Depending on the specific conditions in each locality, the chairman of a provincial people's committee may make specific regulations permitting the chairman of the people's committee at the district level to make investment decisions for projects within the scope of the local budget with invested capital of up to five billion Vietnamese dong and permitting the chairman of the people's committee at the commune level to make investment decisions for projects with invested capital of up to three billion Vietnamese dong. Separate regulations of the Prime Minister of the Government shall apply to delegation of authority by people's committees of cities and provinces under central authority.
3. The investor shall make the investment decision for a project funded by other capital sources, including a combination of funding sources, and shall be responsible for such decision.
4. The person competent to make the investment decision shall do so only after he or she has the results of evaluation of the project. In the case of projects funded by credit facilities, organizations providing loans shall evaluate financial plans and schedules for repayment of loans in order to decide whether or not to make loans prior to any investment decision being made by the person competent to do so.

5. The contents of an investment decision for construction of works shall be in accordance with the form in Appendix 3 to this Decree.

Article 12 *Eco-technical report on construction of works*

1. The investor in the following construction works shall not be required to formulate a project but shall be required only to formulate an eco-technical report for submission to the person competent to make the decision approving the investment:
 - (a) Buildings used for religious purposes;
 - (b) Works being upgrade, repair, improvement or new construction of headquarters of a body with total invested capital below three billion Vietnamese dong;
 - (c) Social infrastructure projects with total invested capital below seven billion Vietnamese dong using State budget funds and for non-business purposes, in conformity with the master plan for socio-economic development and with construction master plans, either with an approved investment policy or already arranged within the annual investment master plan.
2. The contents of an eco-technical report on construction of works shall be as stipulated in clause 4 of article 35 of the *Law on Construction*.
3. The person competent to make the investment decision as stipulated in article 11 of this Decree shall arrange evaluation of the eco-technical report on construction of works in order to make the investment decision.
4. The department stipulated in article 9.5 of this Decree shall arrange evaluation of the design drawings for execution in the eco-technical report on construction of works in the case of projects funded by capital from the State Budget with total invested capital of five hundred (500) million Vietnamese dong or more. For the remaining projects, the investor shall arrange evaluation of the design drawings for execution in the eco-technical report on construction of works and shall report thereon to the person competent to make the investment decision prior to approval.

Article 13 *Revision of investment project for construction of works*

1. After an investment decision has been issued in respect of a project for construction of works, it may only be revised in one of the following cases:
 - (a) Upon occurrence of an event of *force majeure* or natural disaster, such as earthquake, flood, tidal wave or landslide, or in the event of war or danger of war;
 - (b) Upon irregular fluctuation in the price of raw materials or in the exchange rate of the foreign currency section of funding, or upon promulgation by the State of new regulations changing the level of investment costs in construction of works;
 - (c) When the person making the investment decision or the investor makes a change after identification of new factors which yield higher eco-technical efficiency for the project;
 - (d) When the construction master plan changes and thereby directly impacts on the project.
2. When a change to a project does not alter the approved scale, project objectives or total invested capital, the investor shall be permitted to revise the project. If a revision to the project alters the preliminary designs on architecture, the master planning, the initial scale, the project objectives or the approved total invested capital, the investor shall make a submission to the person making the investment decision for consideration and decision. The revised items must be re-evaluated.
3. The competent person issuing a decision revising an investment project for construction of works shall be responsible before the law for his or her decision.

CHAPTER III

Implementation of Investment Projects for Construction of Works

SECTION 1

Design and Estimated Budget for Construction of Works

Article 14 *Steps in design for construction of works*

1. Investment projects for construction of works may comprise one or a number of types of construction works with one or a number of different levels of works as stipulated in the Decree on quality control of construction works. Depending on the scale and nature of the particular construction works, the design for construction of works may be formulated in one, two or three steps as follows:
 - (a) One step design means formulation of the design drawings for execution of building works, applicable to those works for which only an eco-technical report is required to be prepared as stipulated in article 12.1 of this Decree;
 - (b) Two step design comprises formulation of preliminary designs and formulation of design drawings for execution of building works, applicable to those works for which a project must be prepared, except for the works stipulated in sub-clauses (a) and (c) of this clause;
 - (c) Three step design comprises formulation of preliminary designs, formulation of technical designs, and formulation of design drawings for execution of building works, applicable to those works for which a project must be prepared and the scale of the works is special level, level I and construction works level II with technical complexity as decided by the person making the investment decision.

Where two or three step design must be implemented, the subsequent design steps must be consistent with the prior approved design steps.
2. Sample or standard model designs issued by the competent State body may be used to undertake the design drawings for execution of building works in the case of simple construction works, such as fencing, school-rooms, schools and residential housing.
3. Construction designs must comply with construction standards and specifications issued by the competent State body and must be recorded in

drawings in accordance with regulations. The designs must express the basic volume of works to be executed in order to provide the basis for determining costs of construction of the works.

Article 15 *File on design and total estimated budget of construction works*

1. Data used as the basis for designs shall be:
 - (a) Data on construction survey, hydro-geology and relevant legal documents;
 - (b) Preliminary designs section;
 - (c) List of applicable construction standards and specifications;
 - (d) Regulations on architecture, construction master plans.
2. Design data shall be prepared for each works and shall comprise explanatory section, design drawings and estimated budget for construction works; minutes of checking and acceptance of design and survey; report on examination of design and on examination of estimated budget, if any.
3. The design organization or individual must hand over the file on design of the construction works in sufficient sets to ensure servicing of execution of building works, management requirements and archiving of at least seven sets in the case of technical designs and eight sets in the case of design drawings for execution of building works.
4. The file on design of construction works must be archived in accordance with the law on archiving. The Ministry of Construction shall provide specific regulations on archiving design files.

Article 16 *Evaluation and approval of design, estimated budget and total estimated budget of construction works*

1. Evaluation and approval:
 - (a) An investor shall itself arrange evaluation and approval of technical designs, design drawings for execution of building works, estimated budget and total estimated budget applicable to those construction works for which a project must be prepared;
 - (b) The design drawings for execution of building works and the estimated budget of items of works and construction works must be evaluated and approved prior to commencement of execution of building works.

2. The contents of evaluation of design:
 - (a) Consistency with prior approved design steps;
 - (b) Compliance with applicable construction standards;
 - (c) List of safety levels of the construction works;
 - (d) Reasonableness of selection of technological lines and equipment, if any;
 - (dd) Environmental protection; fire and explosion fighting and prevention.
3. The contents of evaluation of estimated budget and total estimated budget of construction works shall comprise:
 - (a) Consistency between design volume and the volumes in the estimated budget;
 - (b) Correctness of applicability of eco-technical norms, unit price and costing norms; whether norms, unit prices, relevant regimes and policies, and items of expenses have been used in the estimated budget in accordance with regulations;
 - (c) Determination of the value of the estimated budget and total estimated budget of the construction works.
4. If an investor does not satisfy the conditions on capability for evaluation, it shall be permitted to hire a consultancy organization or a consultant satisfying the conditions on capability to examine the design and estimated budget of construction works in order to provide the grounds for approval. Depending on the requirements of the investor, an examination of design, estimated budget and total estimated budget of construction works may be conducted for all or part of the items stipulated in clauses 2 and 3 of this article.
5. The Ministry of Construction shall provide guidelines on fees for evaluation and examination of design, estimated budget and total estimated budget of construction works, which fees shall be included in total invested capital and the total estimated budget of construction works.

SECTION 2

Construction Permits**Article 17** *Construction permits*

1. Prior to commencing construction work, an investor must have a construction permit, except in the case of the following works:
 - (a) Works in the category of State secrets, works to be constructed pursuant to an emergency order, and temporary works to service construction of main works;
 - (b) Construction works built along a route which does not pass through an urban area and which comply with the construction master plan, where the competent State body has already approved the investment project for construction of the works;
 - (c) Construction works within a project for an urban zone, industrial zone or residential housing zone where the detailed construction zoning is on a ratio of 1/500 as already approved by the competent State body;
 - (d) Works being repairs or improvements; interior installation of equipment which does not change the architecture, weight-bearing structure or safety of the works.
 - (dd) Small-scale technical infrastructure works in remote and distant communes;
 - (e) Separate dwelling-houses in remote and distant regions which are not in urban areas; or are in rural residential areas for which there is no approved construction master plan.
2. With respect to the construction of works and separate dwelling-houses in areas for which construction master plans have been approved and proclaimed but as yet not implemented, only provisional construction permits shall be issued with a term equal to the duration for implementation of the master plan.
3. Article 65 of the *Law on Construction* shall apply to conditions for issuance of construction permits in urban areas, and article 68 of the *Law on Construction* shall apply to rights and obligations of applicants for issuance of construction permits.
4. Construction permits shall be in accordance with the form in Appendix 6 to this Decree.

Article 18 *Application file for construction permit*

The contents of an application file for a construction permit shall comprise:

1. Application for issuance of a construction permit in accordance with the form in Appendix 4 to this Decree. An application for issuance of a provisional construction permit shall include an undertaking to dismantle the works when the State undertakes site clearance.
2. Notarized copy of one of the types of documentation of land use right in accordance with the laws on land.
3. Design drawings showing horizontal surfaces, sectional planes, vertical planes and foundations of the works; diagram of the position or route of the construction works; diagram of the technical system and connecting points for power supply, water supply and water discharge; and photos of the site (applicable to works being repairs or improvements which require a construction permit).

Article 19 *Application file for construction permit for rural residential housing*

The contents of an application file for a construction permit for rural residential housing shall comprise:

1. Application for issuance of a construction permit in accordance with the form in Appendix 5 to this Decree.
2. A copy of one of the types of documentation of land use right, notarized by the people's committee of the commune.
3. Diagram of the construction surface area within the parcel of land and adjacent construction works, if any, as prepared by the owner of such residential housing.

Article 20 *Receipt of application files for construction permits*

1. Construction permit-issuing bodies shall have the task of receiving application files for construction permits and checking that they are valid in accordance with the provisions in articles 18 and 19 of this Decree.
2. Upon receipt of a complete and valid application file, a construction permit-issuing body must provide a receipt appointing a date for issuance of the result. Receipts shall be prepared in two copies; one copy shall be delivered to the applicant and one copy shall be retained by the construction permit-issuing body.

3. If an application file is incomplete, the construction permit-issuing body shall provide an explanation and guide the applicant to supplement the file in order that it will conform with the regulations. The time required to amend the file shall not be included in the time-limit for issuance of a construction permit.

Article 21 *Authority to issue construction permits*

1. Provincial people's committees shall delegate authority to directors of Departments of Construction to issue construction permits for construction works of special level and construction work level I in the Decree on quality control of construction works; for religious works; for works on cultural or historical heritage sites; for works being statues, advertisements or imposing billboards within the respective administrative boundaries that such people's committees manage; and for construction works on and alongside main urban road routes as regulated by such provincial people's committees.
2. District people's committees shall issue construction permits for the remaining works and for separate dwelling-houses in urban areas within the respective administrative boundaries which such districts manage, except for the works stipulated in clause 1 of this article.
3. People's committees of communes shall issue construction permits for separate dwelling-houses in rural residential areas which have approved construction master plans within the respective administrative boundaries which such communes manage pursuant to regulations of the district people's committee.

Article 22 *Responsibilities of construction permit-issuing bodies*

1. To display publicly at the headquarters of such construction permit-issuing body the conditions, order and procedures for issuance of construction permits.
2. To provide written information about issuance of construction permits on request from applicants for a permit within a time-limit not to exceed seven working days from the date of receipt of a request.
3. When it is necessary to clarify information about another body in order to service issuance of a construction permit not within the responsibility of the applicant for a permit, the construction permit-issuing body shall be responsible to obtain opinions from relevant bodies in order to clarify the issue and deal with it.

Any organization being requested for its opinion shall be responsible to provide a written reply to the construction permit-issuing body within ten (10) working days from the date of receipt of a written request. If such

time-limit expires without a written reply, the organization being requested for its opinion shall be deemed to have agreed and shall be responsible before the law for all consequences caused by its failure to reply or by its late reply.

4. Construction permits shall be issued within a time-limit not to exceed twenty (20) working days, or fifteen (15) days in the case of separate dwelling-houses, from the date of receipt of a complete and valid application file.
5. Persons authorized to issue construction permits shall be responsible before the law for issuance of incorrect permits or for issuance of permits out of time, and must compensate for loss and damage caused. In the case of late issuance of a permit, where the applicant has already commenced construction, the person authorized to issue the construction permit must compensate such applicant for loss and damage when construction work is suspended, or when an administrative penalty is imposed, or when the works are compulsorily dismantled for failure to conform with construction master plans.
6. Construction permit-issuing bodies shall inspect that construction is carried out in accordance with the terms of the construction permit. Construction permit-issuing bodies shall suspend construction upon discovery of any breach. If there is a decision on suspension of construction but the permit-holder continues the breach, the construction permit shall be withdrawn and the matter transferred to the competent level to be dealt with.
7. Construction permit-issuing bodies shall notify the competent authorities not to supply power and water and to suspend business operations and other services to works constructed inconsistently with the master plan, constructed without a construction permit or constructed contrary to the terms of the issued construction permit.
8. Construction permit-issuing bodies shall resolve complaints and denunciations relating to issuance of construction permits in accordance with law.
9. Construction permit-issuing bodies shall receive fees for issuance of construction permits in accordance with law.
10. Construction permit-issuing bodies shall not appoint subsidiary design organizations and individuals or establish subsidiary design entities in order to carry out design for applicants for construction permits.

Article 23 *Extension of construction permits*

1. If construction of works has not commenced within twelve (12) months from the date of issuance of the construction permit, the applicant for the construction permit must apply for an extension of the construction permit.
2. The contents of an application file for extension of a construction permit shall comprise:
 - (a) Application for extension of construction permit;
 - (b) Copy of the issued construction permit.
3. The time-limit for consideration and issuance of an extension of a construction permit shall not exceed five working days from the date of receipt of a complete and valid application file.
4. The construction permit-issuing body which issued the original construction permit shall be the body which extends such construction permit.

SECTION 3

Selection of Contractors in Construction Activities**Article 24** *Principles for selection of contractors in construction activities*

1. The objective of selection of contractors in construction activities shall be to select contractors which have full capability to provide the appropriate construction products and services with a reasonable tender price and which satisfy the requirements of the investor and fulfil the project objectives.
2. The selection of contractors in construction activities shall be implemented in the following two phases:
 - (a) Preliminary selection phase:

Preliminary selection shall be aimed at selection of contractors which satisfy the conditions on capability appropriate for the requirements of the tender package in order to participate in the next phase of tendering.

Depending on the scale and nature of a tender package, an investor shall call for tenders via the mass media or send tender invitation letters. The investor shall be responsible to provide to participating tenderers the pre-tender participation invitation documents, including preliminary information about the tender package, a list

of questions in accordance with Appendix 7, and the main items of the pre-tender participation invitation documents as stipulated in article 25.1 of this Decree. Pre-tender participation invitation documents may be sold or provided to tenderers free of charge. Tenderers participating in preliminary selection must file their pre-tender together with a pre-tender guarantee aimed at ensuring that tenderers which pass the preliminary selection will participate in tendering. The investor shall decide the value of a pre-tender guarantee, which shall not exceed one per cent of the tender package price.

The investor shall consider and assess the capability of tenderers participating in preliminary selection in order to eliminate tenderers which fail to satisfy the conditions on capability as stipulated in the pre-tender participation invitation documents.

(b) Tendering phase:

The investor shall provide the tender participation invitation documents to tenderers selected for the tendering phase. Tender participation invitation documents may be sold or provided to tenderers free of charge. Tenderers participating in the tendering phase must file their tender together with a tender guarantee aimed at ensuring that the successful tenderer will negotiate and sign a contract. The investor shall decide the value of a tender guarantee, which shall not exceed three per cent of the tender package price.

3. Depending on the scale, nature and requirements of a tender package, the party calling for tenders may combine the above two phases or only implement the tendering phase for selection of contractors.
4. Principles for assessment and selection of contractors:
 - (a) In the preliminary selection phase, the party calling for tenders shall check whether a tenderer satisfies the requirements of the tender package and shall use the points method for assessing the capability of the tenderer regarding experience, technical matters and financial matters;
 - (b) In the tendering phase, the party calling for tenders shall consider the ability of the tenderer to provide products and services on the basis of a simultaneous assessment of criteria, namely, schedule of implementation, tender price, standards of products and services, contractual conditions and other conditions proposed by the tenderer aimed at achieving the project objectives and making the project effective. The tenderer which has a reasonable tender price and which will achieve the most effectiveness for the project shall be selected.

5. The selection of contractors in construction activities applicable to investment projects for construction of works funded by capital from the State Budget, funded by credit facilities guaranteed by the State and by State owned credit facilities for investment and development, and funded by invested capital of State owned enterprises shall be implemented in accordance with the provisions in this Decree and in other relevant legal instruments on tendering.

Article 25 *General requirements applicable to pre-tender participation invitation documents, tender participation invitation documents, pre-tenders and tenders*¹

1. Pre-tender participation invitation documents shall contain the following main particulars:
 - (a) Information about the tender package: scope of work; scale and nature of tender package; type and level of works; funding source; and site for construction of works;
 - (b) List of questions regarding capability and experience of the tenderer as stipulated in Appendix 7 to this Decree;
 - (c) Essential instructions to tenderers;
 - (d) Requirements on pre-tender guarantee.
2. Tender participation invitation documents shall contain the following main particulars:
 - (a) Information about design, including drawings and explanatory section, if any, schedule and conditions of the investor;
 - (b) General contractual conditions and specific contractual conditions provided by the party calling for tenders and applicable to the tender package;
 - (c) Requirements or instructions, if any, of the party calling for tenders and applicable to tenders;
 - (d) Requirements on tender guarantee.

1 *Phillips Fox Note: To reflect the four different expressions used in the Vietnamese text, the expressions "pre-tender participation invitation documents" and "pre-tenders" have been adopted in this English translation in order to distinguish the documents used in the preliminary selection phase from the documents used in the tendering phase. The Ministry of Planning and Investment adopts the same English translation "bidding documents" for the first two types of documents and "bids" for the last two types of document.*

If there is no preliminary selection phase, the tender participation invitation documents shall also contain the requirements on capability of tenderers.

3. A pre-tender shall contain the following main particulars:
 - (a) Pre-tender application on the stipulated form;
 - (b) Pre-tender guarantee;
 - (c) Data proving capability of the tenderer as required by the pre-tender participation invitation documents and presented on the stipulated forms.

4. A tender shall contain the following main particulars:
 - (a) Drawings, solutions for implementation, technical measures and schedule for implementation;
 - (b) List of calculation of wages and the tender price;
 - (c) Technical proposals, if any; and proposals on amendments of and additions to the general contractual conditions and specific contractual conditions applicable to the tender package which were provided by the party calling for tenders;
 - (d) Tender guarantee.

Article 26 *Competition to select architectural design for construction works*

1. A competition must be held to select an architectural design for the following works:
 - (a) Headquarters of State bodies from district level upwards;
 - (b) Large-scale buildings for cultural activities and sports and other large-scale public works being level I and special level works;
 - (c) Other works of special architecture in large urban areas, such as statues, river-crossing bridges, large-scale viaducts, radio or television centres, central railway stations, international airport terminals, and works which are expressions of cultural and historical traditions in localities.

2. The person making the investment decision shall issue a decision on holding a competition to select an architectural design. Depending on the scale of the construction works, the conditions on time-limits, the financial capability and other conditions, the investor may hold a domestic competition or an international competition. The method of selection shall be via a competition council or by seeking the opinions of citizens.
3. A competition to select an architectural design shall be conducted by the method of the investor preparing competition invitation documents which shall specify:
 - (a) Objectives and requirements of the competition; proposed building site; design tasks and architectural requirements of the works; and guidelines on the competition;
 - (b) Reward for, responsibilities of and benefits for contestants;
 - (c) Other relevant provisions.
4. The copyright of an author having its architectural design plan selected shall be guaranteed, and such author shall formulate the project and implement the subsequent design steps if the author satisfies the conditions on capability, and if the author does not satisfy such conditions, the author may so implement in partnership with a consultancy organization which satisfies the conditions on capability. If the selected author declines to implement the subsequent design steps, the investor shall select an appropriate designer to do so.
5. In addition to the works for which it is compulsory to hold a competition to select an architectural design as stipulated in clause 1 of this article, the holding of competitions for all works with architectural requirements is encouraged.
6. The Ministry of Construction shall provide guidelines on competitions to select architectural designs for construction works.

Article 27 *Selection of construction consultancy contractors for construction works*

1. Consultancy pre-tender participation invitation documents shall contain, in addition to the questions regarding capability and experience as stipulated in Appendix 7 to this Decree, a request for a list of experts and offered prices, a schedule and other proposals if any.

2. Consultancy tender participation invitation documents must satisfy all of the stipulated requirements for consultancy tender invitation documents² as provided by the party calling for tenders. A consultancy contractor shall not be required to provide a guarantee for contract performance but must have professional indemnity insurance in accordance with regulations.
3. Only the contractor with the tender which is awarded the highest points for capability in accordance with the regulations shall be permitted to negotiate a price and other conditions in order to sign a contract. If negotiations are unsuccessful, the party calling for tenders shall invite the contractor with the next highest points for capability to conduct negotiations to sign a contract.
4. The selection of a general design contractor for construction works to carry out the whole of the work of design of the building works shall be implemented as follows:
 - (a) Tender participation invitation documents shall contain, in addition to the items stipulated in clause 1 of this article, an item requiring the general design contractor to provide a list of sub-contractors and the type of work that the sub-contractors will undertake. In the case of a partnership in order to carry out the work of a general contractor, there must be a partnership agreement proposing the responsibilities and work of each partner and of the person heading the partnership;
 - (b) In addition to complying with clause 2 of this article, tender files shall comply with sub-clause (a) of this clause;
 - (c) The assessment and selection of a general design contractor shall be implemented in accordance with the provisions in clause 3 of this article.

Article 28 *Selection of contractor for execution of building works*

1. The selection of a contractor for execution of building works shall be implemented in accordance with the provisions in article 24 of this Decree.

2 *Phillips Fox Note: This is the same Vietnamese expression "ho so moi thau" which is used in both the Law on Construction dated 26 November 2003 and in Decree 88 on Tendering dated 1 September 1999 (as amended 5 May 2000 and 12 June 2003). It is different from and understood to encompass both the Vietnamese expressions translated as "pre-tender participation invitation documents" and "tender participation invitation documents" in this Decree.*

2. If less than five tenderers participate in the preliminary selection phase, the party calling for tenders may invite immediately such tenderers to participate in tendering and may combine the assessment of the phase of preliminary selection and the assessment of the tendering phase in order to reduce the duration of selection of a contractor.
3. When there are special requirements regarding the period for project implementation and the party calling for tenders clearly knows that there are only a number of tenderers with sufficient capability to undertake the tender package, the party calling for tenders may invite directly such tenderers to participate in the tendering phase immediately.

When the party calling for tenders directly invites a tenderer with sufficient capability to undertake the tender package, the party calling for tenders must provide the requirements for the tender package in order that the tenderer may submit its proposals on price, schedule and solutions for performing the tender package. If the proposals of the tenderer are accepted, the party calling for tenders may organize negotiations and sign a contract.

4. Assessment and selection of a successful contractor:

The successful contractor shall be the tenderer which is assessed as satisfying the technical requirements in accordance with regulations, which has a reasonable tender price and which will achieve the most effectiveness for the project.

5. If a tenderer is a partnership, the tender at the preliminary selection phase must include a declaration about the capability of each tenderer in the partnership regarding experience, financial matters and technical matters including staff and building execution equipment mobilized for the tender package; and also include sections of the partnership agreement dealing with distribution of work volumes, and responsibilities of each partner and of the tenderer heading the partnership.
6. Tendering shall be held for selection of a general contractor for execution of building works to carry out the whole of the building works. Pre-tender participation invitation documents shall contain, in addition to the items stipulated in article 25.1 of this Decree, an item requiring the general contractor to provide a list of sub-contractors and the capabilities of the proposed sub-contractors.

General contractors shall have total power to select sub-contractors which have the appropriate capabilities, which satisfy the requirements of the tender package and which are approved by the investor.

Article 29 *Selection of general contractor for design, procurement of materials and equipment and execution of building works (EPC general contractor)*

1. Depending on the nature and scale of a tender package, the selection of an EPC general contractor may be implemented in accordance with the provisions in clauses 1, 2 and 3 of article 28 of this Decree.
2. Tender participation invitation documents shall specify, in addition to the items stipulated in article 25.2 of this Decree, the requirements of and instructions from the party calling for tenders regarding the tender package on design, procurement of materials and equipment, organization of execution of building works, schedule for implementation, technology transfer and other requirements.
3. A tender from an EPC general contractor must satisfy the requirements stipulated in the tender participation invitation documents.
4. In the case of direct selection of a contractor to act as EPC general contractor, the investor shall not be required to prepare pre-tender participation invitation documents but may immediately prepare documents containing the requirements of the investor with the items stipulated in clause 2 of this article. An EPC general contractor shall have the right to select sub-contractors.
5. The selection of a general contractor for design and execution of building works and of a general turn-key contractor shall be implemented in accordance with the provisions applicable to selection of an EPC general contractor. In the case of a turn-key tender package, the general contractor must also formulate the project and, together with the party calling for tenders, conduct procedures for submission of the project for approval.

SECTION 4

Management of Execution of Building Works

Article 30 *Contents of management of execution of building works*

Management of execution of building works shall include management of construction quality, management of the building schedule, management of quantity of construction works being built, management of occupational safety on building sites, and management of construction environment. Management of construction quality shall be implemented in accordance with the Decree on quality control of construction works.

Article 31 *Management of building schedule for construction of works*

1. A building schedule for construction of works must be formulated prior to commencement of any building work. The building schedule for construction of works must conform with the overall project schedule as approved.
2. In the case of large-scale construction works with an extensive building period, a building schedule for construction of works must be formulated for each stage, month, quarter and year.
3. The contractor for execution of building works shall be responsible for formulating a detailed building schedule for construction of works and for arranging interposition and/or combination of the necessary work, and for ensuring compliance with the overall project schedule.
4. The investor, the contractor for execution of building works, the consultant supervisor and other related parties shall be responsible for monitoring and supervising the building schedule for construction of works and for revising the building schedule if it is extended during any one stage, but shall not change the overall project schedule.

When an investor becomes aware that the overall project schedule will be extended, the investor shall report to the person making the investment decision for the latter to make a decision revising the overall project schedule.

5. It is encouraged to accelerate the speed of building on the basis of ensuring construction quality.

If an acceleration in the speed of building results in greater effectiveness of the project, consideration shall be given to awarding a contractual bonus to the contractor for execution of building works. If a delay in the building schedule results in loss, the defaulting party must pay compensation for loss and shall be penalized for breach of contract.

Article 32 *Management of quantity of construction works being built*

1. The execution of building works shall be implemented in accordance with approved design volumes.
2. The volumes of executed works shall be calculated and confirmed as between the investor, the contractor for execution of building works and the consultant supervisor in accordance with the duration or stage of execution of works and shall be compared with the approved design volumes in order to provide the basis for check and acceptance, and also for contractual payments.

3. When extra volumes of executed works arise outside the approved design volumes and estimated volumes, the investor and the contractor for execution of building works shall consider and deal with such extra volumes. In the case of projects funded by capital from the State Budget, the investor shall report to the person making the investment decision for the its consideration and decision.

Payment and accounting finalization of the works shall be based on the extra volumes of executed works as approved by the investor and the person making the investment decision.

4. It shall be strictly prohibited to make a false declaration of volumes of executed works or for any parties involved to collude in making a false declaration of volumes of works for payment.

Article 33 *Management of occupational safety on building sites*

1. The contractor for execution of building works shall establish safety measures for persons and for equipment and works on building sites. If safety measures concern a number of parties, such parties must reach agreement thereon.
2. Safety measures and internal safety regulations must be posted publicly on building sites for the information of and for compliance by every person. There must be a person to provide guidance and warnings in order to avoid accidents at dangerous positions on building sites.
3. The contractor for execution of building works, the investor and other parties involved shall, on a regular basis, inspect and supervise occupational safety work on the building site, and they must suspend execution of building works upon discovery of a breach of the regulations on occupational safety. Any person allowing a breach of the regulations on occupational safety to occur within the scope of management of such person shall be responsible before the law for such breach.
4. The contractor for execution of building works shall be responsible for providing training and guidance on occupational safety regulations and for disseminating such regulations. In the case of items of work with strict requirements on occupational safety, the workers involved must have certificates of occupational safety training. It shall be strictly prohibited to employ workers who have not yet received training and guidance on occupational safety.
5. When employing workers on building sites, the contractor for execution of building works shall be responsible for providing sufficient equipment for the protection and occupational safety of employees in accordance with regulations.

6. If any occupational safety incident occurs, the contractor for execution of building works and other parties involved shall be responsible for dealing with it, for notifying the State authority for occupational safety in accordance with law, and for remedying the consequences. A contractor must pay compensation for loss caused by the failure of such contractor to ensure occupational safety.

Article 34 *Management of construction environment*

1. The contractor for execution of building works must take measures for protection of the environment for employees working on building sites and for protection of the surrounding environment, including measures to protect against dust and noise, to treat waste and to keep tidy the building site.
2. Protective measures must be taken for protection and safety of the hygienic environment during transportation of building materials and during treatment of waste.
3. The contractor for execution of building works and the investor shall be responsible to inspect and supervise implementation of protection of the construction environment, and shall also be subject to inspection and supervision by the State administrative body for the environment. If the contractor for execution of building works fails to comply with the regulations on protection of the environment, the investor and the State administrative body for the environment shall issue a decision on suspension of execution of construction and shall require the contractor to take the correct measures for protection of the environment.
4. Any person whose conduct harms the environment during the process of execution of construction works shall be responsible before the law for such conduct and must compensate for loss and damage caused by such conduct.

SECTION 5

Forms of Management of Investment Projects for Construction of Works

Article 35 *Forms of project management*

1. Depending on the conditions for capability of an organization or individual and depending on the project requirements, the person making the investment decision shall select one of the following forms of management of an investment project for construction of works:
 - (a) Hire of a project management consultancy organization when the investor does not satisfy the conditions on capability for project management;

- (b) Direct project management when the investor satisfies the conditions on capability for project management.
2. An investor which applies the form of direct project management may establish a project management board which shall be responsible before the law and before the investor for the duties and powers assigned to such board.
 3. Any organization or individual managing a project must satisfy the conditions on capability pursuant to this Decree.

Article 36 *Duties and powers of investors and of project management board when investor establishes project management board*

1. Investors shall have the following duties and powers:
 - (a) To organize evaluation and approval of design steps and of estimated budgets for construction of works after a project has been approved;
 - (b) To approve tendering plans, pre-tender participation invitation documents, tender participation invitation documents, and tendering results in the case of tender packages not using funds from the State Budget;
 - (c) To sign contracts with contractors;
 - (d) To make payments to contractors pursuant to the contractual schedule or minutes of check and acceptance;
 - (dd) To conduct check and acceptance in order to commission works into operation and use.

Depending on the particular characteristics of a project, an investor may authorize the project management board to perform some or all of the duties and powers of the investor.

2. Project management boards shall have the following duties and powers:
 - (a) To conduct procedures for receipt of hand-over of land and for issuance of construction permits, to prepare construction sites and to undertake other work servicing execution of building works;
 - (b) To prepare files on design, estimated budget and total estimated budget of construction works in order that the investor may organize evaluation and approval in accordance with regulations;

- (c) To formulate pre-tender participation invitation documents, to organize selection of contractors;
- (d) To negotiate and sign contracts with contractors in accordance with authority from investors;
- (dd) To undertake the task of supervision of execution of building works if the board satisfies the conditions on capability;
- (e) To conduct check and acceptance, payment and accounting finalization of the works in accordance with the signed contract;
- (g) To conduct quality control; and to manage volumes, schedule, and costs of construction; to manage the safety and hygiene of the construction environment;
- (h) To conduct check and acceptance, and hand-over of the works;
- (i) To prepare annual reports on implementation of invested capital, and an accounting finalization report when the project is completed and the works are commissioned into operation and use.

3. A project management board shall be permitted to manage concurrently a number of projects if the board satisfies the conditions on capability and if the investors so permit. A project management board shall not be permitted to establish subsidiary project management boards or to establish professional income-earning entities in order to manage projects.

A project management board shall be permitted to hire a consultancy organization to manage component projects in the case of investment projects for construction of works which are large-scale or complex or which run alongside routes.

4. A project management board shall be permitted to sign a contract for the hire of a foreign consultancy organization or individual with experience and capability in order to co-ordinate with such board to manage works using new construction technology which domestic consultants do not yet have sufficient capability to undertake or where there are other special requirements.

The person making the investment decision must provide permission prior to foreign consultants being hired for a project funded by capital from the State Budget.

5. In the case of projects implemented in the form of general contractors, in addition to the provisions in clause 2 of this article, project management boards shall undertake the following:
 - (a) Reach agreement with general contractors on pre-tender participation invitation documents and tender participation invitation documents for procurement of basic technological equipment and the costs of procurement of equipment within the total contractual price;
 - (b) Approve a list of sub-contractors in the case of appointment of general contractors.

Article 37 *Duties of investors and of project management consultants when investor hires project management consultants*

1. The person making the investment decision shall decide the form of selection of project management. The selected consultancy organization must satisfy the conditions on capability appropriate for the scale and nature of the project. Consultancy organizations must be independent organizations.
2. Investors which hire consultants to undertake project management shall be responsible:
 - (a) To select and sign a contract with a consultancy organization which satisfies the conditions on capability appropriate for the scale and nature of the project;
 - (b) To sign payments for contractors on request from the project management consultant;
 - (c) To facilitate the activities of the project management consultancy organization;
 - (d) To bear responsibility before the law and to pay compensation for loss in the case of collusion with a project management consultancy organization or a contractor resulting in loss of invested capital.
3. Project management consultancy organizations shall have the following duties:
 - (a) To check design files, estimated budgets and total estimated budgets of construction works in order to obtain the approval thereof of the investor;

- (b) To prepare tender invitation documents³ for provision of consultancy for selection of contractors;
- (c) To undertake the task of supervision of execution of building works if they satisfy the conditions on capability;
- (d) To conduct check and acceptance, payment and accounting finalization of the works in accordance with signed contracts; project management consultants shall be responsible before the law and before the investor for the accuracy and reasonableness of the value of payments;
- (dd) To conduct quality control; and to manage volumes, schedule, and costs of construction; to manage the safety and hygiene of the construction environment;
- (e) To conduct check and acceptance, and hand-over of the works;
- (g) To prepare annual reports on implementation of invested capital, and an accounting finalization report when the project is completed and the works are commissioned into operation and use.

Depending on the specific project conditions, investors may assign other duties to project management consultants provided that such duties are specifically recorded in the contract.

4. Project management consultancy organizations shall be responsible before the law and before the investor for contractual undertakings, and must pay compensation for any loss arising due to their fault during the process of project management. Project management consultants shall be responsible for project management activities on building sites.

SECTION 6

Control of Costs of Investment Projects for Construction of Works

Article 38 *Principles for control of costs of investment projects for construction of works*

1. The State shall promulgate, guide and inspect implementation of regimes, policies, principles and methods of establishing and revising unit prices, budgets and eco-technical norms for construction of works; and levels of costs in construction activities in order that total invested capital, estimated budget and total estimated budget may be formulated, evaluated

3 See Phillips Fox Note 2.

- and approved, and that payment may be made of invested capital in construction of works.
2. Costs of an investment project for construction of works shall be determined depending on the works in conformity with the steps of construction design and shall be expressed as total invested capital, estimated budget and total estimated budget of construction works.
 3. Costs of investment projects for construction of works funded by the State, funded by credit facilities guaranteed by the State, by State owned credit facilities for investment and development, and by invested capital of State owned enterprises must be formulated, based and managed on systems of eco-technical norms, levels of costs in construction activities, systems of construction costs and relevant regimes as promulgated by competent State bodies.
 4. Provincial people's committees shall, based on the principles stipulated in clauses 1, 2 and 3 of this article, instruct Departments of Construction to preside over co-operation with relevant departments to establish lists of prices of materials, of manpower costs, and of costs of using machinery for execution of building works which conform with the particular conditions of local markets in order to promulgate regulations applicable to construction of works within their respective provinces and also to guide implementation of such regulations.
 5. The Ministry of Construction shall provides guidelines on formulation and control of costs of investment projects for construction of works.

Article 39 *Total invested capital of investment project for construction of works*

1. Total invested capital of a project means a general estimate of the costs of the whole project as fixed during the stage of project formulation and includes costs of construction; costs of equipment; costs of site clearance and resettlement, if any; other costs, including working capital in the case of projects for production and business; loan interest during the period of construction; and a contingency sum.
2. The total invested capital of a project as recorded in the investment decision shall be the basis for formulating an invested capital plan, for managing invested capital and for determining the investment effectiveness of the project. In the case of projects funded by capital from the State Budget, the total invested capital shall be the maximum limit of costs which the investor is permitted to use for the investment in the construction of works.
3. The total invested capital of a project shall be fixed on the basis of volumes of necessary works, basic design, rate of invested capital, costs of

preparation for construction and costs of construction of other projects with similar eco-technical standards which have already been implemented.

4. The total invested capital of a project may only be revised when a project is revised in accordance with article 13 of this Decree.
5. The person making the investment decision must provide permission for any revision of total invested capital of a project funded by capital from the State Budget, and any part of a project for which approved total invested capital was revised must be re-evaluated. In the case of projects funded by other capital sources, the investor shall make its own decision on any revision.

Article 40 *Estimated budget and total estimated budget of construction works*

1. The estimated budget for construction shall be fixed depending on the construction works and shall comprise the estimated budget for construction of items of works and the estimated budget for work involved in all items of works of the construction works.

The estimated budget for construction of works shall be fixed on the basis of volumes which are determined on the basis of designs or necessary requirements of the works and of unit prices and levels of costs which are necessary to implement such volumes. The contents of estimated budgets for construction of works shall comprise costs of construction, costs of equipment, other costs and a contingency sum.

2. The approved estimated budget for construction shall provide the basis for signing contracts and for making payments as between the investor and contractor in cases of appointment of a contractor; and for a determination of the cost price of construction of works.
3. The total estimated budget for a construction works project shall be the total costs necessary for the investment in construction of the works, and shall be determined during the stage of technical designs in the case of three step design and of design drawings for execution of building works in the case of one and two step design, and shall provide the basis for controlling the cost of the construction works.

Total estimated budget shall comprise the totals of estimated budgets plus other project costs. Where a project has one construction work only, the estimated budget shall also be the total estimated budget.

4. In the case of projects funded by capital from the State Budget, funded by credit facilities guaranteed by the State and by State owned credit facilities for investment and development, there must be approved designs, estimated budgets and total estimated budgets prior to commencement of

building work. If it is necessary to commence building works or an item of works of an important national project or Group A project which does not yet have an approved total estimated budget, such project must have approved designs and an estimated budget. At latest, there must be an approved total estimated budget by the time of implementing thirty (30) per cent of the value of construction over total invested capital.

5. Revision of estimated budget and total estimated budget of construction works:
 - (a) The estimated budget and total estimated budget of construction works may only be revised upon occurrence of one of the circumstances stipulated in article 13.1 of this Decree.
 - (b) If the revised total estimated budget exceeds the approved total estimated budget of a project funded by capital from the State Budget, the investor must conduct re-evaluation and re-approval procedures and report to the person making the investment decision, and shall be responsible for approval. If the revised total estimated budget exceeds the approved total invested capital, the person making the investment decision must provide permission.

Article 41 *Advances of invested capital for construction of works*

Advances of capital shall be made immediately after a construction contract becomes effective, unless the parties agree otherwise, and shall be regulated as follows:

1. In the case of consultancy projects, the minimum advance of capital shall be twenty five (25) per cent of the contractual value arranged for work for which consultancy is necessary. In the case of consultancy contracts implemented by foreign consultancy organizations, advances of capital shall be made in accordance with international practice.
2. In the case of tender packages for construction of works:
 - (a) Where the value of a tender package is fifty (50) billion or more Vietnamese dong, advances shall be made equal to ten (10) per cent of the value of the contract;
 - (b) Where the value of a tender package is an amount of between ten (10) and less than fifty (50) billion Vietnamese dong, advances shall be made equal to fifteen (15) per cent of the value of the contract;
 - (c) Where the value of a tender package is less than ten (10) billion Vietnamese dong, advances shall be made equal to twenty (20) per cent of the value of the contract.

3. In the case of procurement of equipment, depending on the value of the tender package, the two parties shall reach agreement on the level of advances of capital which shall not be less than ten (10) per cent of the value of the tender package. Capital shall also be advanced for a number of high-value components and semi-finished products used for construction which must be pre-manufactured in order to ensure that the building is implemented on schedule and for special materials which must be stored on a seasonal basis. Capital shall be advanced as necessary for the manufacture, import or reservation of the above materials.
4. In the case of tender packages or contracts implemented in EPC contract form, advances of capital for procurement of equipment shall depend on the schedule for procurement stipulated in the contract. For other jobs, advances shall be made equal to fifteen (15) per cent of the value of such job stipulated in the contract.
5. Advances of capital for site clearance shall be made in accordance with the plan for site clearance.
6. In the case of tender packages funded by capital from the State Budget, advances of capital shall not exceed the annual capital plan of the tender package.
7. Recovery of advances of capital shall commence from the time when payments for completed works of the tender package are made, equal to a rate of between twenty (20) and thirty (30) per cent of the value of the contract. Advances shall be recovered gradually from each payment for volumes of completed works and recovered completely when payments for volumes of completed works of the tender package are made equal to eighty (80) per cent of the value of the contract. In the case of site clearance, recovery of advances of capital shall end when the work of site clearance has been completed.

Article 42 *Payments of invested capital for construction of works*

1. Payments of invested capital for an item of work, a group of items of work or the entire work of project formulation, survey, design, execution of building works, supervision of execution of building works and other construction activities must be based on the value of the volume actually completed and on the contents of the payment method stipulated in the signed contract.
2. In the case of foreign-funded investment projects for construction of works or tender packages for which international tendering is held, if a credit agreement signed with the Government of Vietnam stipulates other regulations on advances of capital or payments of capital, such signed agreement shall apply.

3. In the case of tender packages funded by capital from the State Budget, the investor must make full payment to the contractor of the value of completed works in the last year of construction or in the year in which the works are commissioned, except for a sum retained in accordance with regulations on warranty of works.
4. Within a time-limit of ten (10) working days from the date on which a contractor submits a payment claims file which is valid in accordance with regulations, the investor must make full payment to the contractor of the value of completed works. In the case of projects funded by capital from the State Budget, within a time-limit of three working days from the date of receipt of a complete payment claims file from a contractor, the investor must complete procedures and transfer the request for disbursement to the paying or lending body, which shall be responsible to make payment within a time-limit of seven working days from the date of receipt of a complete and valid file.

A paying or lending body shall be responsible to compensate for loss and damage caused by late payment due to the fault of such body.
5. If an investor delays payment for volumes of completed works during implementation of a project, the investor must pay loan interest to contractors in respect of those volumes at the bank interest rate agreed by the parties and stipulated in the contract.
6. The Ministry of Finance shall provide guidelines on advances of invested capital and on payments of invested capital for investment projects for construction of works funded by capital from the State Budget.

Article 43 *Finalization of invested capital for construction of works*

1. Contractors shall be responsible to conduct finalization of invested capital for construction of works immediately after commissioning of the completed building works on request from the person making the investment decision.
2. Invested capital as finalized means total lawful expenses incurred during the investment process in order to commission the project. Lawful expenses means expenses incurred correctly in accordance with designs and approved estimated budgets and in accordance with the correct levels of unit prices, the financial and accounting regimes, signed economic contracts, and other relevant regulations of the State. In the case of projects funded by capital from the State Budget, the invested capital as finalized must fall within the limit on maximum level of investment decided by the approval-issuing body.

3. The person making the investment decision shall be the person with authority to approve finalization of invested capital of a completed project. The Minister of Finance shall approve finalization of invested capital of projects for which the Prime Minister of the Government made the investment decision.
4. The person with authority to approve finalization of invested capital shall use a functional entity managed by such person to examine directly the finalization of invested capital of a completed project or to re-examine a project which hired auditors to provide finalization of invested capital prior to actual approval of such finalization, and shall be responsible before the law for his or her decision.
5. An investor shall be responsible to prepare a file on finalization of invested capital of a completed project for submission to the person with authority to grant approval within a time-limit not to exceed twelve (12) months from the date of hand-over and commissioning of the building works in the case of important national projects and Group A projects, and nine (9) months from such date in the case of Group B projects, and six (6) months from such date in the case of Group C projects.
6. The Ministry of Finance shall be responsible before the Government to carry out uniform State administration of finalization of invested capital, to provide detailed guidelines on finalization of completed projects, to inspect finalization work, and to conduct periodic and one-off inspections of finalization of invested capital of Group A projects funded by capital from the State Budget.
7. The Ministry of Construction shall provide guidelines on conversion of cost units for completed investment in construction of works at the date of hand-over and commissioning of the works as the basis for formulation of files on finalization of invested capital and for fixing the value of fixed assets and of working assets handed over for production and business.

CHAPTER IV

Contracts in Construction Activities

Article 44 *General principles for signing contracts in construction activities*

1. Contracts in construction activities (hereinafter referred to as *construction contracts*) shall be signed after the party awarding the contract has completed selection of a contractor in accordance with regulations.
2. Construction contracts shall be prepared in the form stipulated by the Ministry of Construction.

3. The signing and performance of construction contracts shall comply with the provisions of this Decree and other relevant laws on contract.

Article 45 *Construction contract files*

1. A construction contract file shall comprise the construction contract together with data enclosed with the construction contract. A construction contract shall contain the basic items stipulated in article 108 of the *Law on Construction*.
2. Data enclosed with a construction contract means sections which are not able to be detached from the contract. Depending on the scale and nature of the work, data enclosed with a construction contract shall comprise all or a number of the following items:
 - (a) Notice of successful tender or official letter of appointment of contractor;
 - (b) General contractual conditions and specific contractual conditions;
 - (c) Pre-tender participation invitation documents, tender participation invitation documents, pre-tenders and tenders;
 - (d) Proposals from the contractor;
 - (dd) Technical instructions;
 - (e) Design drawings;
 - (g) Written amendments and additions;
 - (h) Lists and tables;
 - (i) Guarantee for contract performance; guarantee for advance payments; any other types of guarantee;
 - (k) Other relevant data.
3. The contracting parties shall reach agreement on the order of priority applicable to the data enclosed with a construction contract stipulated in clause 2 of this article when different data contain different provisions.

The Ministry of Construction shall provide guidelines on contracts in construction activities.

Article 46 *Negotiating and signing construction contracts*

1. Depending on the scale and nature of a particular project and the stipulated period for implementation, an investor may sign a contract with one or more head contractors. A head contractor may sign a contract for performance of work with one or more sub-contractors. Sub-contractors shall not be permitted to implement more than thirty (30) per cent of the volume of works under the contract.
2. If an investor signs a contract with a number of head contractors, the contents of such contracts must ensure uniformity and integration during the process of implementation of works pursuant to such contracts.
3. In the case of a contractor which is a partnership, the contractors which are partners in the partnership must appoint a representative of the partnership in order to carry out negotiations. The contractor heading the partnership or all contractors which are partners in the partnership must sign the construction contract, depending on the requirement of the party awarding the contract. All contractors in a partnership must bear joint and several liability to the investor for the schedule and quality of construction of the works pursuant to the signed contract.
4. Negotiating and signing a contract must be based on the results of selection of a contractor, conditions for implementation of works, pre-tender participation invitation documents, tender participation invitation documents, proposals from the selected contractor and other relevant data.
5. The parties to a construction contract may, depending on their agreement, delegate the co-ordination, supervision or undertaking of the tasks of check and acceptance work pursuant to the contract.
6. A construction contract shall be of full force and effect as from the date of signing by the contracting parties, unless otherwise agreed by such parties.

Article 47 *Payment methods in construction contracts*

Depending on the period for implementation of the contract and the nature of the contract, the parties to a contract shall apply one or a combination of the following payment methods:

1. Payment according to package price (fixed price): the party awarding the contract shall pay the contractor the fixed price stipulated in the contract, which shall apply to tender packages which indicate clearly volumes, quality and duration. When extra volumes of works arise outside the contract not due to the contractor, the person making the investment decision shall consider and make a decision.

Payments may be made in stages, or for volumes of works completed, or by one lump sum payment upon completion of the entire project.

2. Payment according to fixed cost units: the party awarding the contract shall pay the contractor for completed works at pre-fixed cost units stipulated in the contract. The payment price shall be determined by multiplying the volume of works actually completed by the cost units stipulated in the contract. When extra volumes of works arise outside the contract which account for more than twenty (20) per cent of the initial contractual volumes, the cost units for such extra works may be re-negotiated.
3. Payment according to a revised price: this shall apply to tender packages for which there were insufficient conditions at the date of signing to fix accurately quantities and volumes, or when there are large fluctuations in prices changed by the State and the contract has a period for implementation of more than twelve (12) months.

CHAPTER V

Conditions Applicable to Capability of Organizations and Individuals to Engage in Construction Activities

Article 48 *General provisions on conditions applicable to capability of organizations and individuals*

1. Organizations and individuals participating in construction activities must satisfy fully the conditions on capability appropriate to the type of project and to the level and grade of construction works and work in accordance with the provisions of this Decree.
2. Individuals engaged in construction activities must have a degree or certificate issued by a legal training establishment on completion of training appropriate for the task that he or she accepts.
3. Individuals accepting the tasks of person in charge of design of construction master plans; person in charge of design of building works; manager of design drawings; person in charge of construction survey; person in charge of supervision of execution of building works and independent practitioners engaged in work of design of construction master plans, design of building works, or supervision of execution of building works must have a practising certificate in accordance with the provisions of this Decree.

4. Individuals accepting the tasks of director of consultancy for project formulation, head of a building site or supervisor of execution of building works may not accept two positions concurrently.

Individuals accepting the positions stipulated in clauses 3 and 4 of this article may only sign one long-term labour contract with one organization in accordance with law.

5. The capability for construction activities of an organization shall be determined in accordance with a ranking scale on the basis of the capability of the individuals in such organization to practise in construction activities, on the experience in construction activities of the organization, and on its financial capacity, equipment and managerial capability.
6. Consultancy organizations shall be permitted to undertake one, a number or all of the work being formulation of investment projects for construction of works, project management, construction survey, design of construction of works, and supervision of execution of building works if they satisfy fully the conditions on capability in accordance with this Decree. In the case of projects funded by capital from the State Budget, funded by credit facilities guaranteed by the State and by State owned credit facilities for investment and development, a contractor designing the building works shall not be permitted to sign a contract with an investor to act as consultant supervisor of the works that were designed by such contractor; and a contractor supervising execution of building works shall not be permitted to sign a contract with the builder to verify construction quality of the works that were supervised by such contractor.

Any consultancy organization which undertakes consultancy work shall be ranked for such consultancy work.

7. When an investor selects a contractor to undertake construction activities, the investor must rely on the provisions in this Decree on conditions applicable to capability, and shall be responsible before the law for loss caused by selection of a contractor which fails to satisfy the conditions on capability appropriate for the particular work.

Article 49 *Practising certificates*

1. Practising certificate means a certificate confirming practising capability which is issued to an engineer or architect with adequate qualifications and operational experience in the sectors of design of construction master plans, construction survey, design of construction of works, and supervision of execution of building works.

2. Practising certificates shall be issued on a unified form and shall be valid nationwide. Practising certificates must specify the permitted scope and sector of practice.
3. Practising certificates shall be issued by the Ministry of Construction. The Minister of Construction shall issue a decision on establishment of a Consultancy Council to assist the Minister to issue practising certificates.
4. The Ministry of Construction shall provide guidelines on issuance of practising certificates and regulations on the functions, duties and operational structure of the Consultancy Council.

Article 50 *Conditions applicable to issuance of practising certificates to architects*

To be issued with an architect practising certificate, an individual must have a university graduate or post-graduate degree in an architectural specialty or in construction master planning, and must have at least five years' design work experience and have participated in the architectural design of at least five building works or five approved construction master plans.

Article 51 *Conditions applicable to issuance of practising certificates to engineers*

To be issued with an engineer practising certificate, an individual must have a university graduate or post-graduate degree in a specialty appropriate for the sector in which he or she requests registration to practise, and must have at least five years' work experience in such sector and have participated in the design or survey of at least five building works.

Article 52 *Conditions applicable to issuance of practising certificates for supervision of execution of building works*

1. To be issued with a practising certificate for supervision of execution of building works, an individual must have a university graduate or post-graduate degree in a specialty appropriate for the sector in which he or she requests registration to practise, and must have participated directly in design or execution of building works or supervision of execution of building works for at least five years; and must have passed a professional training course on supervision of execution of building works.
2. In remote or distant areas, an individual must have qualifications from a college or vocational establishment in the appropriate construction specialty; and must have participated directly in design or execution of building works or supervision of execution of building works for at least five years; and must have passed a professional training course on supervision of execution of building works. In this case, the practising certificate shall only be valid for use to practise in remote or distant areas.

Article 53 *Conditions applicable to capability of person in charge of project formulation*

1. Two sets of conditions shall be applicable to capability to act as person in charge of project formulation, depending on the class of works. A person in charge of project formulation must have a university graduate degree in a specialty appropriate for the nature and requirements of the project, and must satisfy the following conditions applicable to the class of works:
 - (a) Class 1: Have worked in project formulation for a minimum of seven consecutive years, and have already acted as person in charge of project formulation of one Group A project or two Group B projects of the same type, and as person in charge of design of Class 1 construction works of the same project type;
 - (b) Class 2: Have worked in project formulation for a minimum of five consecutive years, and have already acted as person in charge of project formulation of one Group B project or two Group C projects of the same type, or as person in charge of design of Class 2 construction works of the same project type;
 - (c) In remote or distant areas, an individual having college or vocational establishment qualifications in the specialty appropriate for the project type and having worked in project formulation or design for a minimum of five consecutive years may act as person in charge of project formulation of a Class 2 project.
2. Scope of activity:
 - (a) Class 1: May act as person in charge of project formulation for important national projects and for projects in Groups A, B or C of the same type;
 - (b) Class 2: May act as person in charge of project formulation for projects in Groups B or C of the same type;
 - (c) An unranked individual may act as person in charge of project formulation of a project which only requires preparation of an eco-technical report on construction of works of the same type.

Article 54 *Conditions applicable to capability of consultancy organizations with respect to project formulation*

1. Two sets of conditions shall be applicable to consultancy organizations when they formulate a project, depending on the project type, as follows:
 - (a) Class 1: The organization must have at least twenty (20) architects, engineers or quantity surveyors appropriate to the requirements of the project, including one individual who satisfies the conditions on capability to act as person in charge of project formulation of a Class 1 project or as person in charge of design of a Class 1 project of the same type;
 - (b) Class 2: The organization must have at least ten (10) architects, engineers or quantity surveyors appropriate to the requirements of the project, including one individual who satisfies the conditions on capability to act as person in charge of project formulation of a Class 2 project or as person in charge of design of a Class 2 project of the same type.
2. Scope of activity:
 - (a) Class 1: May act on project formulation for important national projects and for projects in Groups A, B or C of the same type;
 - (b) Class 2: May act on project formulation for projects in Groups B or C of the same type;
 - (c) An organization not yet satisfying the conditions for ranking may only prepare an eco-technical report on construction of works of the same type.

Article 55 *Conditions applicable to capability of director of project management consultants*

1. Two sets of conditions shall be applicable to a director of project management consultants, depending on the project type. The director of project management consultants must have a university graduate degree in a construction specialty appropriate for the requirements of the project and must satisfy the conditions for each class as follows:
 - (a) Director of project management consultants for a Class 1 project: Have worked in design or execution of building works for a minimum of seven consecutive years, and have already acted as director or deputy director of project management consultants of one Group B project or two Group C projects of the same type, or as head of the building site of Class 2 construction works, or as person in charge of design of Class 1 construction works;

- (b) Director of project management consultants for a Class 2 project: Have worked in design or execution of building works for a minimum of five consecutive years, and have already acted as director or deputy director of project management consultants of one Group B project or two Group C projects of the same type, or as head of the building site of Class 2 construction works, or as person in charge of design of Class 2 construction works;
 - (c) In remote or distant areas, an individual having college or vocational establishment qualifications in the specialty appropriate for the type of construction works and having worked in project formulation, design or execution of building works for a minimum of five consecutive years may act as director of project management consultants for a Class 2 project.
2. If the investor establishes a project management board, the director of project management must have the same capability as a director of project management consultants stipulated in clause 1 of this article.
3. Scope of activity:
 - (a) Class 1: May manage important national projects and projects in Groups A, B or C;
 - (b) Class 2: May manage projects in Groups B or C.

Article 56 *Conditions applicable to capability of consultancy organizations with respect to provision of project management consultancy*

1. Two sets of conditions shall be applicable to organizations providing project management consultancy as follows:
 - (a) Class 1:
 - The organization has a director of project management consultancy for a Class 1 project appropriate to the type of project;
 - The organization has at least thirty (30) architects, engineers or quantity surveyors appropriate to the requirements of the project, including at least three quantity surveyors;
 - It has already managed one Group A project or two Group B projects of the same type;

- (b) Class 2:
- The organization has a director of project management consultancy for a Class 2 project appropriate to the type of project;
 - The organization has at least twenty (20) architects, engineers or quantity surveyors appropriate to the requirements of the project, including at least two quantity surveyors;
 - The organization has acted as manager of one Group B project or of two Group C projects of the same type.

2. Scope of activity:

- (a) Class 1: May manage important national projects and projects in Groups A, B or C;
- (b) Class 2: May manage projects in Groups B or C;
- (c) An organization not yet satisfying the conditions for ranking may only prepare an eco-technical report on construction of works of the same type.

Article 57 *Conditions applicable to capability of person in charge of construction survey*

1. Two sets of conditions shall be applicable to a person in charge of construction survey as follows:

- (a) Class I: Must have an engineer practising certificate and have acted as Class 2 person in charge of construction survey and have managed five survey jobs on level II works;
- (b) Class 2: Must have an engineer practising certificate and have participated in three survey jobs on level II works or four survey jobs on level III works after the date of issuance of the engineer practising certificate.

2. Scope of activity:

- (a) Class 1: May act as person in charge of construction survey for the same type of special level, level I, level II, level III and level IV works;
- (b) Class 2: May act as person in charge of construction survey for the same type of level II, level III and level IV works;

- (c) In the case of topographical survey, may act as person in charge of construction survey for all types and scales.

Article 58 *Conditions applicable to capability of consultancy organizations with respect to conducting construction survey*

1. Two sets of conditions shall be applicable to consultancy organizations when conducting construction survey as follows:

(a) Class 1:

- The organization has at least twenty (20) engineers appropriate to the requirements of the construction survey, including one individual capable of acting as person in charge of Class I construction survey;
- The organization has appropriate facilities for each type of survey and a laboratory which satisfies the standards;
- The organization has conducted at least one survey task of the same type of special level or level I works, or at least two survey tasks of the same type of level II works;

(b) Class 2:

- The organization has at least ten (10) engineers appropriate to the requirements of the construction survey, including one individual capable of acting as person in charge of Class 2 construction survey;
- The organization has appropriate facilities for each type of survey;
- The organization has conducted at least one survey task of the same type of level II works, or at least two survey tasks of the same type of level III works.

2. Scope of activity:

- (a) Class 1: May conduct construction survey for the same type of construction works being special level, level I, level II, level III and level IV;
- (b) Class 2: May conduct construction survey for the same type of level II, level III and level IV works;

- (c) In the case of topographical survey, only Class I and Class 2 survey organizations may conduct topographical survey for all types and scales.

Article 59 *Conditions applicable to capability of person in charge of design of construction works*

1. Two sets of conditions shall be applicable to a person in charge of design of construction works as follows:

(a) Class 1:

- Must have an architect practising certificate appropriate for the job that he or she undertakes;
- Must have already managed design of at least one construction works being special level works or level I at least two level II works of the same type, or already acted as chief designer of one main specialized sector on three construction works being special level or level I works of the same type;

(b) Class 2:

- Must have an architect practising certificate appropriate for the job that he or she undertakes;
- Must have already managed design of at least one construction works being level II works or two construction works being level III works of the same type, or already acted as chief designer of one main specialty on three construction works being level II works of the same type.

2. Scope of activity:

- (a) Class 1: May act as person in charge of design of construction works for the same type of special level, level I, level II, level III and level IV works; and act as person in charge of project formulation for Group A, B and C projects of the same type;
- (b) Class 2: May act as person in charge of design of construction works for the same type of level II, level III and level IV works; and may act as person in charge of project formulation for Group B and C projects of the same type.

Article 60 *Conditions applicable to capability of manager of design of construction works*

1. Two sets of conditions shall be applicable to a manager of design of construction works as follows:
 - (a) Class 1:
 - Must have an architect practising certificate appropriate for the job that he or she undertakes;
 - Must have already managed specialized design of at least one construction works being special level or level I works, or at least two level II works of the same type;
 - (b) Class 2:
 - Must have an architect practising certificate appropriate for the job that he or she undertakes;
 - Must have already managed specialized design of at least one construction works being level II works or at least two level III works, or participated in design of five construction works of the same type;
 - (c) In remote or distant areas, any individual having college or vocational establishment qualifications in the specialty appropriate for the relevant works and having worked in design for at least five consecutive years shall be permitted to manage design of construction works being level III or level IV works, except for the works stipulated in article 28 of the Decree on quality control of construction works.
2. Scope of activity:
 - (a) Class 1: May act as manager of specialized sector design of special level, level I, level II, level III and level IV works;
 - (b) Class 2: May act as manager of specialized sector design of level II, level III and level IV works.

Article 61 *Conditions applicable to capability of consultancy organizations with respect to design of construction works*

1. Two sets of conditions shall be applicable to consultancy organizations when they design construction works as follows:
 - (a) Class 1:
 - The organization has at least twenty (20) architects or engineers in the appropriate specialty, including one individual capable of acting as person in charge of design of Class I construction works;
 - The organization has appropriate design personnel for Class I works of the same type;
 - The organization has already designed at least one special level or level I works, or at least two level II works of the same type;
 - (b) Class 2:
 - The organization has at least ten (10) architects or engineers in the appropriate specialty, including one individual capable of acting as person in charge of design of Class 2 construction works;
 - The organization has appropriate design personnel for Class 2 works of the same type;
 - The organization has already designed at least one level II works, or at least two level III works of the same type.
2. Scope of activity:
 - (a) Class 1: May design construction works being special level, level I, level II, level III and level IV works of the same type; and may act on project formulation for important national projects and for projects in Groups A, B or C of the same type;
 - (b) Class 2: May design construction works being level II, level III and level IV works of the same type; and may act on project formulation for projects in Groups B or C of the same type;
 - (c) Any organization not yet satisfying the conditions for ranking may design level IV works of the same type; and may prepare an eco-technical report on construction of works of the same type.

Article 62 *Conditions applicable to capability of consultancy organizations with respect to supervision of execution of building works*

1. Two sets of conditions shall be applicable to consultancy organizations when they supervise execution of building works as follows:
 - (a) Class 1:
 - The organization has at least twenty (20) individuals with practising certificates for supervision of execution of building works in the appropriate specialty;
 - The organization has already supervised execution of at least one special level or level I works, or at least two level II works of the same type;
 - (b) Class 2:
 - The organization has at least ten (10) individuals with practising certificates for supervision of execution of building works in the appropriate specialty;
 - The organization has already supervised execution of at least one level II works, or at least two level III works of the same type.
2. Scope of activity:
 - (a) Class 1: May supervise execution of special level, level I, level II, level III and level IV works of the same type;
 - (b) Class 2: May supervise execution of level II, level III and level IV works of the same type;
 - (c) Any organization not yet satisfying the conditions for ranking may supervise execution of level IV works of the same type.

Article 63 *Conditions applicable to capability of head of building site*

1. Two sets of conditions shall be applicable to the head of a building site depending on the project type. The head of a building site must have a university graduate degree in a specialty appropriate for the type of works and must satisfy the conditions for a particular class as follows:
 - (a) Class 1: Have worked in execution of building works for a minimum of seven consecutive years, and have already acted as head of the building site on one special level or level I works, or on at least two level II works of the same type;

- (b) Class 2: Have worked in execution of building works for a minimum of five consecutive years, and have already acted as head of the building site on one level II works, or on at least two level III works of the same type;
 - (c) In remote or distant areas, an individual having college or vocational establishment qualifications in the construction specialty appropriate for the type of works and having worked in execution of building works for a minimum of five consecutive years may act as head of a building site for a Class 2 project.
2. Scope of activity:
- (a) Class 1: May act as head of a building site for construction of special level, level I, level II, level III and level IV works of the same type;
 - (b) Class 2: May act as head of a building site for construction of level II, level III and level IV works of the same type.

Article 64 *Conditions applicable to capability of construction organizations with respect to execution of building works*

1. Two sets of conditions shall be applicable to construction organizations when they execute building works as follows:
- (a) Class 1:
 - The organization has a head of building site for Class 1 works of the same type;
 - The organization has sufficient architects or engineers in the specialty appropriate for the type of works to be constructed;
 - The organization has sufficient technicians with certificates of training appropriate for the task accepted;
 - The organization has basic building equipment appropriate for the type of works to be constructed;
 - The organization has already built at least one special level or level I works, or at least two level II works of the same type;
 - (b) Class 2:
 - The organization has a head of building site for Class 2 works of the same type;

- The organization has sufficient architects or engineers in the specialty appropriate for the type of works to be constructed;
 - The organization has sufficient technicians with certificates of training appropriate for the task accepted;
 - The organization has basic building equipment appropriate for the type of works to be constructed;
 - The organization has already built at least one level II works, or at least two level III works of the same type.
2. Scope of activity:
- (a) Class 1: May execute special level, level I, level II, level III and level IV works of the same type;
 - (b) Class 2: May execute level II, level III and level IV works of the same type;
 - (c) A construction organization not yet satisfying the conditions for ranking may execute building works being improvements or repairs with a total invested capital of below three billion Vietnamese dong and separate dwelling houses.

Article 65 *Conditions applicable to independent practitioners engaged in design, survey or supervision of execution of building works*

1. The following conditions shall apply to independent practitioners engaged in design, survey or supervision of execution of building works:
- (a) Must have a practising certificate appropriate for the sector in which he or she practises;
 - (b) Must have business registration in accordance with law to practise design, survey or supervision of execution of building works.
2. Scope of activity:
- (a) An independent practitioner engaged in construction survey may only provide consultancy to an investor on formulating survey tasks and on evaluation and approval of results of each type of survey commensurate with his or her practising certificate;
 - (b) An independent practitioner engaged in construction design shall be permitted to design construction works being level IV works of the same type and separate dwelling houses;

- (c) An independent practitioner engaged in supervision of execution of building works shall be permitted to supervise execution of building works being level IV works of the same type and separate dwelling houses.
3. Independent practitioners engaged in construction activities must comply with all provisions of law.

Article 66 *Rights and obligations of individuals issued with practising certificates*

1. Individuals who are issued with practising certificates shall have the following rights:
- (a) To use the practising certificate to conduct work in accordance with law;
 - (b) To lodge a complaint or denunciation upon discovery of a breach of the regulations on issuance of practising certificates.
2. Individuals who are issued with practising certificates shall have the following obligations:
- (a) To attend training classes in their specialties relevant to issuance of practising certificates for design, survey or supervision of execution of building works;
 - (b) To engage only in design, survey or supervision of execution of building works within the scope permitted in their practising certificates;
 - (c) To be responsible before the law for items of work and quality of work performed by them and for files prepared by them;
 - (d) Not to alter or lend out their practising certificates.

Article 67 *Conditions applicable to capability of foreign individuals and organizations conducting project formulation, project management, construction survey, construction design, execution of building works and supervision of execution of building works*

Foreign individuals and organizations practising in project formulation, project management, construction survey, construction design, execution of building works and supervision of execution of building works in Vietnam must satisfy the conditions on capability in accordance with this Decree and guidelines of the Ministry of Construction on issuance of practising certificates.

CHAPTER VI

Implementing Provisions

Article 68 *Organization of implementation*

1. Ministers, heads of ministerial equivalent bodies and Government bodies, chairmen of people's committees of provinces and cities under central authority, heads of political organizations and socio-political organizations, and directors of enterprises and other organizations concerned shall be responsible for implementation of this Decree.

The Ministry of Construction shall provide guidelines on transitional implementation.

2. Projects which were approved prior to the date of effectiveness of this Decree shall not be required to make a submission for re-approval and subsequent items of work shall be implemented in accordance with this Decree.

Article 69 *Effectiveness*

This Decree shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette and shall replace the provisions on construction activities in the *Regulations on Management of Investment and Construction* issued with Decrees of the Government 52-1999-ND-CP dated 8 July 1999, 12-2000-ND-CP dated 5 May 2000 and 07-2003-ND-CP dated 30 January 2003; shall replace the provisions relating to construction tendering stipulated in the *Regulations on Tendering* issued with Decrees of the Government 88-1999-ND-CP dated 1 September 1999, 14-2000-ND-CP dated 5 May 2000 and 66-2003-ND-CP dated 12 June 2003 which are inconsistent with the provisions on selection of contractors in construction activities stipulated in this Decree.

On behalf of the Government
Prime Minister

PHAN VAN KHAI