

THE GOVERNMENT

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THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

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Hanoi, May 25, 2020

## DECREE

### On management and use of official development assistance (ODA) and concessional loans of foreign donors

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

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

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

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

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

*Pursuant to the Law on Environmental Protection dated June 23, 2014;*

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

*Pursuant to the Law on Public Debt Management dated November 23, 2017;*

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

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

*The Government hereby promulgates the Decree on management and use of official development assistance (ODA) and concessional loans of foreign donors.*

## Chapter I GENERAL PROVISIONS

### Article 1. Scope of regulation

This Decree prescribes the management and use of official development assistance (ODA) and concessional loans provided by foreign governments, international organizations and inter-governmental or inter-state organizations or governmental organizations authorized by foreign governments (hereinafter collectively referred to as foreign donors) to the State or the Government of the Socialist Republic of Vietnam.

## **Article 2. Subjects of application**

This Decree applies to agencies, organizations and individuals engaged or involved in the management and use of ODA and concessional loans of foreign donors and counterpart fund of Vietnam.

## **Article 3. Interpretation of terms**

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

1. Steering Committee of an ODA or concessional loan-funded program or project (below referred to as the “Steering Committee”) means an organization established by the managing agency of an ODA or concessional loan-funded program or project (hereinafter referred to as “a program or project”) and composed of competent representatives of related agencies to direct, coordinate and supervise the program or project implementation. In some necessary cases, on the basis of agreements with the foreign donor, the Steering Committee may include a representative of the foreign donor.

2. The management unit of an ODA or concessional loan-funded program or project (hereinafter referred to as "the project management unit") means an organization established to assist the managing agency and the project owner in managing the implementation of one or more than one program or project.

3. Program means a combination of ODA or concessional loan-funded interrelated activities or projects which may be related to one or many different sectors or fields, different geographical areas and different stakeholders and aim to achieve one or several specified objectives and are performed through one or more than one stage.

4. The program associated with a policy framework means a program subject to the foreign donor's conditions on ODA or concessional loan disbursement associated with the Vietnamese Government’s commitment on formulation and implementations of policies, institutions and solutions for socio-economic development on a given scale and according to a given roadmap agreed upon between the parties.

5. Global or regional program or project (hereinafter referred to as “regional program or project”) means a program or project financed on a global scale or for a group of countries in one or more than one region in order to carry out cooperation activities aiming to achieve certain targets for the benefit of all parties and for the common benefit of the region or the world. Vietnam’s participation in this program or project may be in either of the following forms:

a) Participation in carrying out one or more than one activity predesigned by the foreign donor in a regional program or project;

b) Carrying out activities financed for Vietnam to build and implement a program or project within the framework of a regional program or project.

6. Sector-wide approach program means an ODA or concessional loan-funded program whereby the foreign donor relies on the development program of a sector or field to provide comprehensive assistance to ensure sustainable and effective development of such sector or field.

7. Managing agency of an ODA or concessional loan-funded program or project (hereinafter referred to as “the managing agency”) means the central body of a political organization, the Supreme People’s Procuracy, the Supreme People’s Court, a National Assembly agency, the State Audit Office of Vietnam, the Office of the President, a ministry, a ministerial-level agency, a government-attached agency, a People’s Committee of a province or centrally run city (hereinafter collectively referred to as “provincial-level People’s Committee”), the central body of the Vietnam Fatherland Front, a socio-political organization, socio-politico-professional organization, social organization or socio-professional organization performing the tasks assigned by competent state agencies; other organization or agency assigned public investment plan having an ODA or concessional loan-funded program or project.

8. The owner of an ODA or concessional loan-funded program or project means a unit assigned by the managing agency to directly manage or co-implement the program or project.

9. Domestic financial mechanism applicable to ODA or concessional loan-funded programs and projects (below referred to as the domestic financial mechanism) means regulations on the use of ODA or concessional loans from the state budget for programs and projects, including:

- a) Whole allocation;
- b) Partial on-lending with a specific on-lending rate;
- c) Whole on-lending.
- d) Method of on-lending: Not taking credit risk or taking credit risk.

10. Technical assistance project means a project targeting at supporting policy, institutional and professional research and capacity building through such activities as supplying domestic and international experts, providing training, data and documents, and organizing field visits, surveys and seminars at home and abroad; providing some equipment and building demonstration models. Technical assistance projects include independent technical assistance projects and technical assistance projects for preparing the investment project.

11. Investment program or project proposal means a document presenting the background, necessity, objectives, scope, primary outputs, estimated implementation duration, estimated investment fund and structure thereof, preliminary assessment of economic and social benefits and environmental impacts (if any), proposed domestic financial mechanism, debt repayment plan and impacts on the medium-term public investment plan of the managing agency,

serving as a basis for competent authorities to permit the formulation of an investment policy proposal report or pre-feasibility study report.

12. International treaty on ODA or concessional loan means a treaty as prescribed in the Law on Treaties, relating to the receipt, management and use of ODA or concessional loan. These international treaties include:

a) Framework treaty on ODA or concessional loans, which is a treaty related to cooperation strategy, policy and framework and priority fields; principles and conditions to be complied with in the ODA or concessional loan provision and use; ODA and concessional loan commitments for one year or several years, and other contents agreed upon by its signatories;

b) Specific treaty on ODA or concessional loan, which is a treaty with specific contents on objectives, activities, implementation period, and outcomes to be achieved; financing conditions, loans, loan structure, financial conditions of the loans and loan repayment schedule; mode of management; obligations, responsibilities and powers of each party in the management and implementation of ODA or concessional loan-funded programs and project, and other contents as agreed upon by the signatories.

13. Agreement on ODA or concessional loans means a written agreement on ODA or concessional loans concluded in the name of the Government of the Socialist Republic of Vietnam, which is not a treaty. These agreements include:

a) A framework agreement is an agreement related to cooperation strategy, policy and framework and priority fields; principles and conditions to be complied with in the ODA or concessional loan provision and use; ODA and concessional loan commitments for one year or several years, and other contents agreed upon by its signatories;

b) The specific agreement is an agreement on ODA or concessional loan, relating to objectives, activities, implementation period, and outcomes to be achieved; financing conditions, loans, loan structure, financial conditions of the loans and loan repayment schedule; mode of management; obligations, responsibilities and powers of each party in the management and implementation of ODA or concessional loan-funded programs and project, and other contents as agreed upon by the signatories.

14. Budget support means a method of ODA or concessional loan provision by which the support amounts are directly transferred into the state budget, managed and used in accordance with state budget regulations and procedures in order to achieve set objectives on the basis of agreements with the foreign donor, including general budget support and targeted budget support.

15. Serving bank means a bank selected by the user (the project owner) to conduct transactions for ODA or concessional loan-funded projects, based on opinions on banks eligible to be banks serving the State Bank of Vietnam's

project.

16. Non-project means a method of providing non-refundable ODA in the form of a separate aid not constituting a specific project. This aid may be provided in cash, in-kind, in commodity, expertise to carry out one of the following activities: Conference, seminar, workshop, research, survey and training.

17. Decision on policy on the implementation of a non-refundable ODA-funded technical assistance project or non-project aid (hereinafter referred to as "implementation policy decision") means a Prime Minister's written decision on policy on the implementation of a technical assistance project or non-project aid (excluding non-refundable ODA-funded technical assistance projects for preparing investment projects). Such decision has the following principal details: Names of the project or non-project aid and foreign donor or co-donors; the name of the managing agency; objectives; and total funding, serving as a basis for the managing agency to work with the foreign donor in approving the project or non-project aid document.

18. Document of a non-refundable ODA-funded technical assistance project or non-project aid (hereinafter referred to as project document) means a document presenting the background, necessity, objectives, contents, major activities, results, implementation duration, economic, social and environmental outcomes and benefits, total fund, funding sources and structure, other sources, financing method, the foreign donor's conditions (if any), organizational form of management of implementation approved by the managing agency, serving as a basis for the implementation of the project or non-project aid.

19. ODA or concessional loan means a fund provided by a foreign donor to the State or the Government of the Socialist Republic of Vietnam to support the development and ensure social welfare and social security, including:

a) Non-refundable ODA, which is ODA amount not to be refunded to the foreign donor;

b) ODA loan, which is a foreign loan with the grant element accounting for at least 35% of the loan which is bound to the procurement of goods or services as required by the foreign donor, or with the grant element accounting for at least 25% of the loan which is a non-binding one. The method of calculating the grant element is provided in Appendix I attached to this Decree;

c) Concessional loan, which is a foreign loan under more concessional conditions compared to a commercial loan but the grant element of which is not up to the standard of ODA loans prescribed at Point b of this Clause.

20. Counterpart fund means a fund contributed by the Vietnamese party (in kind or cash) to an ODA or concessional loan-funded program or project for preparing and implementing the program or project, and allocated from the central budget or local budget, arranged by the project owner itself, or contributed

by beneficiaries or from other lawful sources.

21. Fund under the mixing mechanism means a fund that is combined from various sources of ODA and concessional loans with different preferential levels to increase the priority of the loan for the program or project.

#### **Article 4. Methods of ODA and concessional loan provision**

Methods of ODA and concessional loan provision include:

1. Program.
2. Project.
3. Non-project aid.
4. Budget support.

#### **Article 5. Priority for ODA and concessional loan use**

1. Non-refundable ODA loans shall be prioritized for implementation of programs and projects on socio-economic infrastructure development; capacity building; support in the formulation of policies, institutions and reforms; natural disaster prevention, control and risk reduction and climate change adaptation; social security; preparation of investment projects or co-financing projects funded by concessional loans to increase their grant element.

2. ODA loans shall be prioritized for programs and projects on healthcare, education, vocational training, climate change adaptation, environmental protection, and essential economic infrastructure in which invested funds cannot be directly recovered.

3. Concessional loans shall be prioritized for borrowed projects and programs for on-lending according to the Government's legal regulations on on-lending ODA and foreign concessional loans; programs and projects funded by the state budget in the field of socio-economic infrastructure development.

4. Other priority cases as decided by the Prime Minister on the orientation of attracting, managing and using ODA and concessional loans funded by foreign donors according to each period.

#### **Article 6. Basic contents and principles of state management of ODA and concessional loans**

1. Contents of state management of ODA and concessional loans:

a) Formulating, promulgating, and organizing the implementation of, legal documents on ODA and concessional loan management and use;

b) Formulating, and organizing the implementation of, schemes on ODA and concessional loan attraction, management and use for each period to support the implementation of 5-year socio-economic development plans; solutions and policies for management and efficient use of these funding sources;

c) Monitoring and providing information on ODA and concessional loan management and use;

d) Supervising, evaluating, examining and inspecting the management and use of ODA and concessional loans and its results in accordance with law provisions.

2. Basic principles of state management of ODA and concessional loans:

a) ODA and concessional loans may be used for development investment but not regular spending. It is not allowed to use foreign loans to pay tax, fees and charges, loan interest, purchase cars (except for specialized cars as decided by competent authorities), supplies, equipment for operating processes after the project is completed; ground clearance expenses, operating expenses of the project management unit;

b) The Government shall perform the uniform state management of ODA and concessional loans on the basis of ensuring their efficient use and repayment; decentralization combined with responsibilities, powers and capability of ministries, central bodies and localities, ensuring coordinated management, supervision and evaluation by related agencies under current regulations;

c) Assurance of publicity and transparency and enhancement of accountability for policies on, the order and procedures for ODA and concessional loan mobilization, management and use of sectors, fields and localities, and the implementation and use of these loans;

d) Disclosure of information on cooperation policies, priority fields of foreign donors on the Government's electronic information system ([chinhphu.vn](http://chinhphu.vn); [mpi.gov.vn](http://mpi.gov.vn); [mof.gov.vn](http://mof.gov.vn); [mofa.gov.vn](http://mofa.gov.vn));

dd) Prevention and combat of corruption, loss and waste in ODA and concessional loan management and use, and preclusion and handling of these acts in accordance with law provisions;

e) Method for determining development investment expenditure items belonging to the state budget: The determination of development investment expenditure items shall comply with the Law on Public Investment, the Law on State Budget, the Construction Law and relevant legal documents.

**Article 7. Principles of application of the domestic financial mechanism to ODA or concessional loans**

1. For programs and projects funded by the central budget: To allocate all ODA loans and foreign preferential loans from the central budget.

2. For investment programs and projects funded by the local budget: To re-borrow a part or the whole of ODA or foreign concessional loans from central budget in accordance with legal regulations on the on-lending of ODA or foreign concessional loans by the Government.

For programs and projects funded by the local budget funded by ODA or foreign concessional loans as State funds in the project of public-private partnership (PPP): To re-borrow the whole of ODA or foreign concessional loans from central budget in accordance with legal regulations on the on-lending of ODA or foreign concessional loans.

3. For programs and projects which are capable of recovering the whole or part of invested funds: To on-lend a part or the whole of ODA or foreign concessional loans from central budget in accordance with legal regulations on the on-lending of foreign loans of the Government.

### **Article 8. Order and procedures for the management and use of ODA and concessional loans**

1. For an ODA or concessional loan-funded program or project; a non-refundable ODA-funded investment program or project; a technical assistance project funded by non-refundable ODA aid to prepare for investment projects:

- a) To formulate, select and approve program and project proposals;
- b) To officially notify the foreign donors on the approved program and project proposals;
- c) To formulate, appraise, and decide on investment policy on, a program or project;
- d) To officially notify the foreign donors on the program or project investment policy decision and request for consideration of funding;
- dd) To formulate, appraise, and decide on investment in, a program or project;
- e) Depending on the donor's regulations, to carry out one of the following procedures: To conclude an international treaty, conclude an agreement on ODA or concessional loans; conclude a document on discussing investment projects to be funded by non-refundable ODA loans;
- g) Implementation management and financial management;
- h) To complete and hand over the outcome.

Investment programs and projects funded by non-refundable ODA loans and technical assistance projects funded by non-refundable ODA loans to prepare for investment projects must not comply with Points a and b of this Clause.

2. For non-refundable ODA-funded technical assistance projects and non-project aid:

- a) To formulate project or non-project aid documents;
- b) To decide on policy on implementation for projects and non-projects as prescribed in Clause 1, Article 23 of this Decree;



- c) To appraise and approve the project or non-project aid documents;
  - d) To officially notify the foreign donors on the approval of the project or non-project aid documents and request for consideration of funding;
  - dd) Depending on the foreign donor's regulations, to carry out one of the following procedures: Concluding a treaty or an agreement on non-refundable ODA loans; concluding a document on discussing the technical assistance project or non-project aid;
  - e) Implementation management and financial management;
  - g) To complete and hand over the outcome.
3. For budget support:
- a) To formulate, and decide on the policy on receipt, of budget support;
  - b) To conclude a treaty or an agreement on ODA or concessional loans for the budget support;
  - c) Implementation management and financial management;
  - d) Completing and handing over the outcome.

4. For programs and projects using funds under the mixing mechanism: The managing agency shall carry out order and procedures for programs and projects funded by ODA and concessional loans as prescribed in Clause 1 of this Article.

### **Article 9. The policy on receipt of a budget support**

1. Order and procedures for decision on policy on receipt of general budget support are prescribed as follows:

a) In case the general budget support is managed by ministries, government-attached agencies and provincial People's Committee: The managing agency shall send a written document to the Ministry of Planning and Investment and the Ministry of Finance, enclosed with documents on the budget support. Such documents must clearly state the context, necessity, targets, contents, principal activities, result, economic - social efficiency; total fund, funding sources and structure, other sources; conditions for receiving the budget support, rights and obligations; methods of support and management organization form; local budget balance, plan on the use of loans, loan payment capacity of local budget and commitment of loan payment (for the general budget support that is wholly re-borrowed by the provincial People's Committee);

b) In case the general budget support for the state budget managed by the Ministry of Finance: The Ministry of Finance shall send documents on the budget support to the Ministry of Planning and Investment. Such documents must clearly state the central budget balance and plans for offsetting budget deficits;

c) Based on documents as prescribed in Point a of this Clause, the Ministry of Finance shall assess the state budget balance; conditions for receiving state budget support; central budget and local budget shall send proposals on loan amounts, plan on using loans, loan mechanism on on-lending (for general budget support that is wholly re-borrowed by the provincial People's Committee) to the Ministry of Planning and Investment;

d) Based on the summarization of the Ministry of Finance's opinions as prescribed in Points b and c of this Clause and relevant agencies' opinions, the Ministry of Planning and Investment shall assume the prime responsibility for, and report the Prime Minister about the necessity, objectives, contents, principal activities, result, economic - social efficiency; total fund, funding sources and structure, other sources; conditions for receiving budget support, methods of support and management organization form;

dd) The Prime Minister shall consider and decide on the policy on receipt of budget support serving the negotiation, signing and receipt of general budget support in accordance with regulations.

2. Order and procedures for a decision on policy on receipt of targeted budget support are prescribed as follows:

The managing agency shall send a written document to the Ministry of Planning and Investment and the Ministry of Finance, enclosed with documents on the budget support as prescribed in Point a, Clause 1 of this Article. Such documents must clearly state the budget of branches, sectors and plans on using loans for targets;

b) The Ministry of Finance shall assess the budget of branches and sectors; ability to receive budget support to achieve targets; conditions for receiving budget support and the implementation of commitments and send it to the Ministry of Planning and Investment;

c) Based on the summarization of the Ministry of Finance's opinions as prescribed in Point b of this Clause and relevant agencies' opinions, the Ministry of Planning and Investment shall assume the prime responsibility for, and report to the Prime Minister for approving the policy on receipt of targeted budget support, at the same time, to clarify the List of programs and projects using targeted budget support, plans on allocating funds for ministries and branches;

d) The Prime Minister shall consider and approve the policy on receipt of targeted budget support and the List of specific programs and projects. The implementation of order and procedures for formulation and appraisal of investment decision for a specific program or project using targeted budget support shall comply with regulations of relevant laws;

dd) If the List of specific programs and projects using targeted budget support has not yet been identified, the Ministry of Planning and Investment shall

assume the prime responsibility for, and coordinate with the Ministry of Finance and relevant agencies in reporting to the Prime Minister on the appropriate plan of reception.

### **Article 10. Participation in regional programs or projects**

1. In cases where a managing agency of a regional program or project has not yet been identified: Based on the foreign donor's proposal for participation in a regional program or project, the Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with related agencies in proposing Vietnam's policy on participation in a regional program or project and the managing agency for such program or project to the Prime Minister for consideration and decision.

2. If the managing agency of a regional program or project is identified: The managing agency shall send a document to the Ministry of Planning and Investment, enclosed with the foreign donor's regional program or project documents which clearly state the benefits and obligations of Vietnam when participating. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with related agencies in submitting the policy on participation in the regional program or project to the Prime Minister for consideration and decision.

3. In case the foreign donor provides ODA or concessional loans to formulate and implement a program or project of a regional program or project: Based on the Prime Minister's decision on Vietnam's policy on participation in a regional program or project according to Clauses 1 and 2 of this Article, and based on the type of program or project, the managing agency shall formulate, appraise and decide on the investment policy and decide on investment or formulate, appraise and decide on the implementation policy and approve the project document in accordance with Chapter II or Chapter III of this Decree.

### **Article 11. The private sector's access to ODA and concessional loans**

1. The private sector may access to ODA and concessional loans in accordance with foreign donors' policies on provision of ODA and concessional loans.

2. Forms of access to and use of ODA and concessional loans by the private sector include:

a) Accessing to ODA and concessional loans which are used by ministries, central bodies and provincial People's Committee as funds for preparing projects and supporting the investor selection in bidding or used as an investment of the state in the PPP project in accordance with current regulations of the law on PPP and specific international treaties, specific agreement on ODA and concessional loans;

b) Accessing and use of ODA and concessional loans through participation

in the implementation of the managing agencies' programs and projects in support of the private sector.

## **Chapter II**

### **FORMULATION, APPRAISAL OF, AND DECISION ON THE INVESTMENT POLICY AND DECISION ON INVESTMENT ON AN ODA OR CONCESSIONAL LOAN-FUNDED PROGRAM OR PROJECT; A NON-REFUNDABLE ODA-FUNDED INVESTMENT PROGRAM OR PROJECT AND A TECHNICAL ASSISTANCE PROJECT FUNDED BY NON-REFUNDABLE ODA AID TO PREPARE FOR INVESTMENT PROJECTS**

#### **Section 1**

### **FORMULATION, APPRAISAL OF, AND DECISION ON INVESTMENT POLICY ON PROGRAMS AND PROJECTS**

#### **Article 12. Competence to decide on investment policy on ODA or concessional loan-funded program or project**

1. The competence to decide on investment policy on ODA or concessional loan-funded national target programs, national important projects and public investment programs must comply with Clauses 1 and 2, Article 17 of the Law on Public Investment.

2. The Prime Minister shall decide on investment policy on the following programs and projects:

a) Programs and projects funded by ODA and concessional loans, other than those as prescribed in Clause 1 of this Article;

b) Non-refundable ODA-funded investment programs and projects in the following cases: Group-A and group-B programs and projects; programs and projects accompanied by policy frameworks; national defense, security and religion programs and projects; sector-wide approach programs; procurement of goods subject to permission of the Prime Minister; and Vietnam's participation in regional programs and projects;

c) Technical assistance projects funded by foreign donors' ODA or concessional loans to prepare for investment projects.

3. The head of the managing agency shall decide on investment policy for non-refundable ODA-funded investment programs and projects of group-C.

#### **Article 13. Proposal for an ODA or concessional loan-funded program or project**

1. Order and procedures for approving program and project proposals:

a) Ministries, central and local bodies shall formulate proposals of ODA and concessional loan-funded programs or projects and send them to the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies in accordance with law provisions;

b) The Ministry of Finance shall assume the prime responsibility for determining the grant element and assessing the impact of the new loan on public debt safety indicators, determining the applicable domestic financial mechanism and submit reports to the Prime Minister and the Ministry of Planning and Investment at the same time in accordance with the Law on Public Debt Management;

c) The Ministry of Planning and Investment shall send a written request for opinions to relevant agencies about the program or project proposal. Based on the summarization of the Ministry of Finance's opinions as prescribed in Point b of this Clause and relevant agencies' opinions, the Ministry of Planning and Investment shall assess the necessity of the program or project, preliminarily assess the feasibility and socio-economic effectiveness and preliminarily environmental impacts (if any) of the program or project and its impacts on the medium-term public investment plan; and select and submit an appropriate program or project proposal to the Prime Minister for consideration and decision;

d) The Prime Minister shall consider and approve program or project proposals with the following contents: Name of the project or program; name of the foreign donors and co-donors (if any); name of the managing agency; objectives, expected scale; estimated implementation duration; total expected investment and capital structure; expected domestic financial mechanism and other relevant contents.

2. Dossier and time for consideration of the program or project proposal:

a) Dossier: The program or project proposal made according to the form specified in Appendix II attached to this Decree; a managing agency's written request submitted to competent authorities for approving the program or project proposal; and other relevant documents (if any);

b) The number of dossiers submitted to the Ministry of Planning and Investment is 08 sets;

c) The number of dossiers submitted to the Ministry of Finance is 03 sets;

d) Time for considering and submitting to the Prime Minister about the program or project proposal is a maximum of 45 days from the date on which the Ministry of Planning and Investment and the Ministry of Finance receive sufficient and valid dossiers.

In case the dossier is invalid or the content of the program or project

proposal is incompatible with Clause 3 of this Article, the Ministry of Planning and Investment and the Ministry of Finance shall send written requests to the managing agency for completing the content of the program or project proposal.

3. Criteria for selection of a program or project proposal:

a) Conforming to the socio-economic development strategy, master plans and plans; public debt safety indicators and debt repayment capacity; ODA and concessional loan attraction orientation; and foreign donors' policies and priorities for provision of ODA and concessional loans;

b) Ensuring socio-economic and environmental effectiveness and sustainability;

c) Conforming to the ability to balance ODA and concessional loans and counterpart funds;

d) Not overlapping other programs and projects on which the proposals, investment policy or investment decisions have been approved by competent authorities.

4. For many projects that use the same ODA or concessional loans of a foreign donor: If the managing agencies of such projects agree and authorize in writing, the authorized agency shall carry out procedures for formulating, selecting and approving the general program or project proposal for the ODA or concessional loans as prescribed in Clauses 1, 2 and 3 of this Article. Based on the program or project proposal approved by the Prime Minister, the managing agencies of such projects shall carry out orders and procedures for deciding the investment policy for each project in accordance with Articles 14, 15, 16, 17, 18 and 19 of this Decree.

5. Investment programs and projects funded by non-refundable ODA loans and technical assistance projects funded by non-refundable ODA loans to prepare for investment projects must not comply with this Article.

**Article 14. Order and procedures for deciding on investment policy on ODA or concessional loan-funded program or project**

1. The order and procedures for decision on investment policy on ODA or concessional loan-funded national target programs and nationally important projects must comply with Articles 19, 20 and 21, and Clause 5, Article 25 of the Law on Public Investment.

2. The order and procedures for decision on investment policy on ODA or concessional loan-funded public investment programs under the Government's competence must comply with Article 22 and Clause 6, Article 25 of the Law on Public Investment.

3. The order and procedures for decision on investment policy on ODA or concessional loan-funded projects of group-A must comply with Article 23 and

Clause 7, Article 25 of the Law on Public Investment.

4. The order and procedures for decision on investment policy on ODA or concessional loan-funded programs and projects under the Government's competence (except for ODA or concessional loan-funded projects of group-A) must comply with Clause 8, Article 25 of the Law on Public Investment. To be specific:

a) The managing agency shall send a report on the proposal of investment policy to the Ministry of Planning and Investment;

b) The Ministry of Planning and Investment shall assume the prime responsibility for appraising the report on proposal of investment policy, funding resource and the ability to balance capital and submit to the Prime Minister;

c) The Prime Minister shall consider and decide on investment policy.

5. The order and procedures for decision on investment policy on programs and projects under the competence of the head of the managing agency must comply with Clause 9, Article 25 of the Law on Public Investment. To be specific:

a) The managing agency shall organize to get opinions from the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies about the report on proposal of investment policy;

b) Based on agencies' opinions, the managing agency shall organize to appraise and decide on investment policy.

6. The Ministry of Planning and Investment shall officially notify the foreign donors on the decision on approving the program or project investment policy and request for consideration of funding.

7. In case where there are changes in contents of the pre-feasibility study report, report on proposing the investment policy compared to the contents of the approved program or project proposal: The managing agency shall send an additional report to specify changed contents compared to the approved program or project proposal in the written request for appraisal of the pre-feasibility study report and the report on proposing the investment policy of a program or project in accordance with Point b, Clause 1, Article 15 of this Decree.

8. The preliminary assessment of environmental impacts is one of the contents stipulated in the pre-feasibility study report or the report on proposing the investment policy. The competent authority shall base on the preliminary assessment of environmental impacts to decide on the investment policy in accordance with Article 99 of the Law on Public Investment. The preliminary assessment contents of environmental impacts shall comply with the Government's regulations on detailing the implementation of a number of articles of the Law on Public Investment.

#### **Article 15. Dossiers, contents and time for appraisal of a pre-feasibility**

**study report, report on proposing the investment policy of an ODA or concessional loan-funded program or project**

1. A dossier for appraisal of a pre-feasibility study report, report on proposing the investment policy of an ODA or concessional loan-funded program or project comprises:

a) A written request to the competent authority for deciding on investment policy on programs and projects which is made according to the form specified in Appendix IVa attached to this Decree;

b) A written request for appraisal of a pre-feasibility study report, report on proposing the investment policy of a program or project which is made according to the form specified in Appendix IVb attached to this Decree;

c) A written approval of the program or project proposal of the competent authority;

d) A report on the internal appraisal of the managing agency about the investment policy of a program or project funded by ODA or concessional loans;

dd) A pre-feasibility study report or a report on proposing the investment policy of a program or project which is made according to the form specified in Appendix III attached to this Decree;

e) A report of the assessment of the project or program implementation in the previous period (for projects and programs have been implemented in the previous period and continue to be implemented in the new period);

g) Opinions of the provincial People's Council on the ODA or concessional loan-funded project of group-A whose pre-feasibility study report is prepared by the provincial People's Committee in accordance with Point c, Clause 1, Article 23 of the Law on Public Investment;

h) Other relevant documents (if any);

2. The minimum number of appraisal dossiers to be sent to the Appraisal Council or the agency in charge of appraisal shall be 10 sets.

3. The appraisal contents of the investment policy on an ODA or concessional loan-funded public investment program must comprise:

a) The conformity with criteria for determining public investment program;

b) The compliance with law provisions in the content of the dossier submitted for the appraisal;

c) The conformity with strategic targets; socio-economic development plans of regions and territory; master plans on development of sectors and fields and related master plans in accordance with law provisions on planning;

d) Provisions specified in Article 29 of the Law on Public Investment,



including a detailed appraisal of the program's key contents comprise: Objectives; scope, scale, subjects of investment, implementation progress and estimated fund allocation; funding sources and the ability to balance funds; mobilization of funds and other sources;

dd) Socio-economic efficiency, environmental protection and sustainable development.

4. The appraisal contents of the investment policy on an ODA or concessional loan-funded program or project must comprise:

a) The necessity of the investment;

b) The compliance with law provisions in the content of the dossier submitted for appraisal;

c) The conformity with strategic targets; relevant plans and master plans in accordance with law provisions on planning;

d) The conformity with criteria for classifying a project according to the Law on Public Investment;

dd) Provisions as prescribed in Articles 30 and 31 of the Law on Public Investment, including a detailed appraisal of the project's main contents, such as objectives, scale, investment form, scope, location, land area to be used, schedule and implementation progress, key technology selection method, environmental protection solutions, funding sources and the ability to balance funds; ability to recover capital and repay debts in case of using loans; expected fund allocation;

e) Socio-economic efficiency, environmental protection and sustainable development.

5. The agency in charge of appraising the pre-feasibility study report or the report on proposing the investment policy of a program or project shall be responsible for getting opinions from the agency assigned to appraise the funding sources and the ability to balance funds of a program or project under Article 33 of the Law on Public Investment in the course of appraisal of such pre-feasibility study report or the report on proposing the program or project investment policy.

6. The time for appraisal of the report on proposing the investment policy or the pre-feasibility study report of a program or project shall be calculated from the date on which the valid dossier is received by the Appraisal Council or the agency in charge of appraisal as follows:

a) For a national targeted program: Not exceeding 60 days;

b) For a public investment program (excluding national targeted programs): Not exceeding 45 days;

c) For a project of group-A: Not exceeding 45 days;

d) For other projects other than those as prescribed in Points a, b and c of

this Clause: Not exceeding 30 days;

In case the dossier is invalid or the content in the pre-feasibility study report or the report on proposing the investment policy of a program or project is incompatible with provisions stipulated in Articles 29, 30 and 31 of the Law on Public Investment, within 10 days from the date on which the dossier is received, the Appraisal Council or the agency in charge of appraisal shall submit a written opinion to the agency requesting for appraisal to supplement or complete contents of the pre-feasibility study report or the report on proposing the investment policy of a program or project.

7. In case of necessity to extend the time for appraisal of a pre-feasibility study report or report on proposing the investment policy of a program or project, the Appraisal Council or the agency in charge of appraisal must:

a) To report the Prime Minister for permit extending the time for appraisal of a pre-feasibility study report or report on proposing the investment policy for a program or project under the competence to decide on investment policy of the National Assembly, the Government and the Prime Minister;

b) To report the head of the managing agency for permit extending the time for appraisal of a report on proposing the investment policy for a program or project under the competence to decide on investment policy of the managing agency;

c) The extended period shall not exceed the corresponding appraisal time as prescribed in Clause 6 of this Article.

8. The Appraisal Council or the agency in charge of appraising a pre-feasibility study report of a group-A project or a report on proposing a program or project investment policy shall send the appraisal report as follows:

a) For a public investment program: To send the managing agency and the authority competent to decide on investment policy;

b) For the group-A project under the competence of the Prime Minister: To comply with Clause 4, Article 23 of the Law on Public Investment to submit the Prime Minister;

c) For other projects other than those as prescribed in Points a and b of this Clause: To send the proposing agency and the authority competent to decide on investment policy.

#### **Article 16. Dossiers submitted to the competent authority and time for deciding on investment policy on ODA or concessional loan-funded programs or projects**

1. A dossier submitted to the authority competent to decide on investment policy on an ODA or concessional loan-funded program or project must comprise:

a) Documents as prescribed in Clause 1, Article 15 of this Decree; within that, contents of the written request and the pre-feasibility study report or the report on proposing the investment policy specified in Points a and b, Clause 1, Article 15 of this Decree have been completed according to the appraisal report of the Appraisal Council or the agency in charge of appraisal;

b) An appraisal report of the Appraisal Council or the agency in charge of appraisal on the program or project investment policy which is made according to the form specified in Appendix IVc attached to this Decree;

2. The number of dossiers to be submitted to the authority competent to decide on investment policy of a program or project as prescribed in Clause 1 of this Article shall be 05 sets.

3. The time for deciding the investment policy of a program or project shall be calculated from the date on which the valid and sufficient dossiers are received by the authority competent to decide on the investment policy as follows:

a) For a public investment program (excluding national targeted programs): Not exceeding 20 days;

b) For a project of group-A: Not exceeding 15 days;

c) For other projects other than those as prescribed in Points a and b of this Clause: Not exceeding 10 days;

4. Within 15 days from the date on which the program or project investment policy is decided by the competent authority, the managing agency shall send a decision on investment policy on program or project approved by the competent authority to the Ministry of Planning and Investment.

#### **Article 17. Activities to be carried out in advance**

Managing agencies may carry out in advance the following activities in the stage of program or project implementation preparation:

1. After the investment policy is decided by a competent authority, the managing agency shall:

a) Design and submit a resettlement policy framework to competent authorities for approval in the course of appraisal of the program or project document and investment decision;

b) Prepare a contractor selection plan; dossier of an invitation of interests, dossier for prequalification, bidding dossier and dossier of requirements.

2. Funds for carrying out activities in advance shall be allocated by the project owner from funding sources for project preparation.

#### **Article 18. Main contents of the decision on investment policy on ODA or concessional loan-funded program or project**

1. Name of the program or project.
2. Name(s) of the foreign donor or co-donors.
3. Name of the managing agency.
4. Objectives and scale.
5. Place and period of the implementation.
6. Total investment and the capital structure, including:
  - a) Non-refundable ODA, ODA loans, concessional loans (in the donor's original currency);
  - b) Counterpart fund.
7. Domestic financial mechanism and on-lending method for the program or project.

**Article 19. Adjustment of investment policy on ODA or concessional loan-funded program or project**

1. The competence to decide on adjustment of investment policy of a program or project shall comply with Clause 1, Article 34 of the Law on Public Investment.

2. In case an adjusted program or project leads to a change in the main contents of an investment policy decision as prescribed in Article 18 of this Decree, the order and procedures for deciding on investment policy adjustment shall be carried out as follows:

a) For public investment programs, national important projects and group-A projects: Must comply with Points a, b and c, Clause 2, Article 34 of the Law on Public Investment;

b) For programs or projects falling within the investment policy-deciding competence of the Prime Minister, excluding group-A projects: Must comply with Clause 4, Article 14 of this Decree;

c) For programs or projects falling within the investment policy-deciding competence of the head of the managing agency: Must comply with Clause 5, Article 14 of this Decree;

d) Dossiers to be submitted to the competent authorities and the time for deciding a program or project investment policy adjustment shall comply with Articles 15 and 16 of this Decree. Such dossiers must clearly state reasons and changed contents compared to the investment policy decision.

3. In case the program or project had the total investment adjusted due to exchange rate changes; reduction of ODA and concessional loans and such adjustment does not lead to changes in the remaining contents of the decision on investment policy as prescribed in Article 18 of this Decree, the managing agency

shall not be required to follow the order and procedures for deciding on adjustments to investment policy according to Clause 2 of this Article.

## **Section 2**

### **FORMULATION AND APPRAISAL OF, AND DECISION ON INVESTMENT IN, PROGRAMS AND PROJECTS**

#### **Article 20. Competence to decide to invest an ODA or concessional loan-funded program or project**

1. The Prime Minister shall decide to invest the following ODA or concessional loan-funded programs or projects:

- a) National target programs and important national projects on which investment policy has been decided by the National Assembly;
- b) Public investment programs on which investment policy has been decided by the Government;
- c) Programs and projects funded by ODA and concessional loans from foreign donors in national defense, security and religion sectors.

2. The head of the managing agency shall decide to invest ODA or concessional loan-funded programs or projects that are not mentioned in Clause 1 of this Article and shall take responsibility for the investment efficiency of programs and projects.

#### **Article 21. Order for formulation and appraisal of, and decision on investment in ODA or concessional loan-funded programs or projects**

1. To comply with Article 41 of the Law on Public Investment.

2. A feasibility study report of a program or project shall be formulated in accordance with Article 44 of the Law on Public Investment and other relevant regulations, taking into account the contents of the form provided by the foreign donor, ensuring agree with the prescribed contents of the investment policy decision and harmony between Vietnam's and the foreign donor's procedures.

3. Dossiers, contents, appraisal time and investment policy decision of a program or project shall comply with Article 45 of the Law on Public Investment and the Government's regulations on detailing a number of articles of the Law on Public Investment, in which:

- a) For programs or projects wholly or partially funded by loans on-lent from the state budget, the project owner shall enclose documents proving the financial capacity, debt payment plan and other documents as guided by the law on public debt management;

b) Documents in a foreign language related to the program or project enclosed with their Vietnamese translations;

c) Within 15 days after competent authority issues the program or project investment decision, the managing agency shall notify the foreign donor and project owner of the decision and concurrently send the decision (original or notarized copy) enclosed with the approved program or project feasibility study report bearing the managing agency's seals on the edges of every two adjoining pages to the Ministry of Planning and Investment, the Ministry of Finance and related agencies for supervision and coordinated implementation.

### **Article 22. Adjustment of an ODA or concessional loan-funded program or project**

1. The competence to decide on adjustment of a program or project shall comply with Clause 3, Article 43 of the Law on Public Investment.

2. The adjustment of a program or project shall be carried out for cases as prescribed in Clauses 1 and 2, Article 43 of the Law on Public Investment.

3. Contents, order, procedures for formulation and appraisal a program or project adjustment shall comply with Article 43 of the Law on Public Investment and the Government's regulations on detailing a number of articles of the Law on Public Investment.

4. In case that the adjustment of program or project contents in the course of implementation changes the main content of the investment policy decision: The managing agency shall adjust the investment policy according to Article 19 of this Decree before carry out order and procedures for adjusting the project or program.

5. In case the adjustment of program or project contents in the course of implementation leads to revisions, supplements to or extension of the specific international treaty or specific agreement on ODA or concessional loans: Based on the investment policy decision, the program or project investment decision adjusted by the authority competent to approving, the managing agency shall coordinate with the agency proposing to sign in adjusting and supplementing the specific international treaty or specific agreement on ODA or concessional loans.

## **Chapter III**

### **FORMULATION, APPRAISAL AND DECISION ON IMPLEMENTATION POLICY AND APPROVAL OF DOCUMENTS OF NON-REFUNDABLE ODA-FUNDED TECHNICAL ASSISTANCE PROJECTS AND NON-PROJECT AID**

**Article 23. Competence to approve policy on implementation of technical assistance projects or non-project aid and approve documents of technical assistance projects or non-project aid**

1. The Prime Minister shall approve policy on implementation of non-refundable ODA-funded technical assistance projects and non-project aid in the following cases: Projects accompanied by policy frameworks; national defense, security and religion projects and non-project aid; procurement of goods subject to permission of the Prime Minister; and Vietnam's participation in regional programs and projects.

2. Heads of managing agencies shall:

a) Approve technical assistance project or non-project aid documents on the basis of the Prime Minister's implementation policy decisions in the cases specified in Clause 1 of this Article;

b) Approve technical assistance project or non-project aid documents other than those specified in Clause 1 of this Article which is not required to undergo the procedures for decision on implementation policy.

**Article 24. Formulation of technical assistance projects and non-project aid documents**

Managing agencies shall coordinate with foreign donors in formulating project or non-project aid documents according to the forms provided in Appendix V and Appendix VI attached to this Decree.

**Article 25. Order and procedures for decision on implementation policy for technical assistance projects and non-project aid falling within the competence of the Prime Minister**

1. Managing agencies shall send a written request for the approval of implementation policies of the competent authorities, enclosed with the project or non-project aid document to the Ministry of Planning and Investment.

2. Within 05 working days from the date on which the valid dossier as prescribed in Clause 1 of this Article is received, the Ministry of Planning and Investment shall send a written document to get opinions from relevant agencies. Within 10 days from the date on which the Ministry of Planning and Investment's document is received, consulted agencies shall send their opinions in writing to the Ministry of Planning and Investment.

3. Within 05 working days from the date on which the written comments from relevant agencies are received, the Ministry of Planning and Investment shall summarize and submit them to the Prime Minister for consideration and decision.

4. The Prime Minister shall consider and decide on implementation policy for projects or non-project aid, including the following contents:

- a) Name of the project or non-project aid;
- b) The foreign donor and co-donors (if any);
- c) Objectives;
- d) Total fund and capital structure (non-refundable ODA loan and counterpart fund).

5. After summarizing opinions from relevant agencies, if the contents of the project or non-project aid document are not complete, the Ministry of Planning and Investment shall send a written request to the managing agency for completing the contents of the project or non-project aid document.

#### **Article 26. Order and procedures for appraising and approving technical assistance project or non-project aid documents**

1. For projects and non-project aid as prescribed in Clause 1, Article 23 of this Decree: The managing agency shall not organize appraisal. Based on the decision on implementation policy, the heads of managing agencies shall approve the project or non-project aid documents.

2. For projects and non-project aid other than those specified in Clause 1, Article 23 of this Decree:

a) The managing agency shall assume the prime responsibility for appraisal; send a written document to get opinions from the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies, enclosed with the project and non-project aid documents and related documents (if any);

b) Within 10 days from the date on which the valid dossier is received, consulted agencies shall send their written comments on the contents of project and non-project aid documents and related necessary matters, in which note content on the necessity and objectives; main outcomes; funding sources, ability to balance funds, financial mechanism; conditions (if any) set by the foreign donor and the capacity of the Vietnamese party to satisfy these conditions;

c) Contents of appraisal of a project or non-project aid comprise: The conformity with the specific development objectives of the ministry, sector or locality, implementing and beneficiary units; suitability of the implementation method; funds and ability to balance funds, financial mechanism; rationality of the ratio of funding for major tasks; commitments, prerequisites and other conditions set by the foreign donor and participants (if any); effectiveness, practicality and sustainability after the termination of the project or non-project aid; and agreements or disagreements among involved parties;

d) An appraisal dossier for a project or non-project aid must comprise: A written request of the project owner for approval of the project or non-project aid document; the draft project or non-project aid document; written opinions of related agencies and other relevant documents (if any) such as: the donor's



written consent to the content of the project or non-project aid, funding notification or commitment; memorandums with the donor, and the appraisers' report as requested by the donor;

dd) On the basis of the appraisal result, the head of the managing agency shall decide to approve the project or non-project aid document;

e) The time limit for appraising a project or non-project aid document is 20 days counting from the date of receipt of a complete and valid dossier;

g) If the value of the non-refundable project or non-project ODA aid does not exceed USD 200,000, the head of the managing agency shall approve the project or non-project aid document and appraisal opinions from related agencies shall not be required.

3. After the project or non-project aid document is approved, the managing agency shall send a notice thereof together with the approved project or non-project aid document, which bears the managing agency's seal on adjoining pages and relevant documents, to the Ministry of Planning and Investment, Ministry of Finance and related agencies for monitoring and coordinated implementation.

4. The main contents of the decision on approving technical assistance project or non-project aid documents:

a) Name of the project or non-project aid;

b) Name(s) of the foreign donor and co-donors (if any);

c) Name(s) of the managing agency and project owner;

d) Period and place of implementation;

dd) Objectives, operation and results;

e) Management organization;

g) Total investment and the capital structure, including: Non-refundable ODA (original currency and converted into Vietnam dong) and counterpart fund (Vietnam dong);

h) Other contents.

5. The Ministry of Planning and Investment shall officially notify the foreign donors and request for consideration of funding.

### **Article 27. Adjustment of implementation policy decisions and decisions on approving technical assistance project or non-project aid documents**

1. For implementation policy decisions:

a) The managing agency shall send a document about the changes compared to the contents of the implementation policy decision as prescribed in Clause 4, Article 25 of this Decree, enclosed with the adjusted project or non-

project aid documents;

b) The Ministry of Planning and Investment shall assume the prime responsibility for collecting opinions from related agencies about the changes, discuss with the foreign donor about the change (if any) in the value of non-refundable ODA loan and summarize these opinions and submit a report thereon to the Prime Minister;

c) The Prime Minister shall consider and decide on adjustment of the project or non-project aid implementation policy.

2. For decisions on approving project or non-project aid documents:

a) The managing agency shall send a document about the changes compared to the contents of the decision on approving the project or non-project aid documents enclosed with the adjusted project or non-project aid documents to the Ministry of Planning and Investment, Ministry of Finance and related agencies;

b) On the basis of opinions of the Ministry of Planning and Investment, Ministry of Finance and related agencies, the head of the managing agency shall decide whether to approve the adjustment of the project or non-project aid document;

c) If the value of the non-refundable project or non-project ODA aid does not exceed USD 200,000, the head of the managing agency shall adjust the decision on approving the project or non-project aid document and appraisal opinions from related agencies shall not be required;

d) In case there is a change in the contents of the project or non-project aid document that leads to beyond the approval competence as prescribed in Article 23 of this Decree, the managing agency shall follow the order and procedures for deciding the implementation policy in accordance with Article 25 of this Decree;

dd) For projects and non-project aid as prescribed in Clause 1, Article 23 of this Decree: The head of the managing agency shall base on the decision on adjustment of implementation policy in accordance with Clause 1 of this Article to decide to approve the project or non-project aid document adjustment and appraisal opinions from related agencies shall not be required.

## **Chapter IV**

### **CONCLUSION OF INTERNATIONAL TREATIES AND AGREEMENTS ON ODA OR CONCESSIONAL LOANS**

#### **Section 1**

### **CONCLUSION OF INTERNATIONAL TREATIES ON ODA OR CONCESSIONAL LOANS**

## **Article 28. Grounds for proposing the conclusion of international treaties on ODA or concessional loans**

1. Grounds for proposing the conclusion of framework international treaties on ODA or concessional loans include the outcome of mobilization, strategy and policy on development cooperation, and the fields prioritized for use of ODA or concessional loans of Vietnam and the foreign donors or a decision on approval of investment policy of such program or project if it attached to a specific program or project.

2. Grounds for proposing the conclusion of a specific treaty on ODA or concessional loans:

a) For ODA or concessional loan-funded programs and projects and non-refundable ODA-funded investment programs and projects: The approved feasibility study report and the investment policy decision of such program or project;

b) For non-refundable ODA-funded technical assistance projects and non-project aid: Decisions on approval of project or non-project aid documents and a project or non-project aid documents.

## **Article 29. Agencies proposing the conclusion of international treaties on ODA or concessional loans**

1. The Supreme People's Court, the Supreme People's Procuracy, the State Audit Office of Vietnam, ministries, ministerial-level agencies, and government-attached agencies are agencies proposing to the Government the conclusion of specific international treaties on non-refundable ODA for programs or projects of their respective agencies, except for cases specified in Clause 3 of this Article.

2. The Ministry of Finance is the agency proposing to the Government the conclusion of framework and specific international treaties on ODA or concessional loans and non-refundable ODA loans for programs and projects to be funded by such loans, except non-refundable ODA loans specified in Clauses 3 and 4 of this Article.

3. The State Bank of Vietnam is the agency proposing to the Government the conclusion of specific international treaties on non-refundable ODA loans not linked with loans of international financial-monetary institutions and international banks represented by the State Bank of Vietnam.

4. The Ministry of Planning and Investment is the agency proposing to the Government the conclusion of framework and specific international treaties on non-refundable ODA loans not linked with the loans for programs and projects other than those prescribed in Clauses 1, 2 and 3 of this Article.

## **Article 30. Order and procedures for conclusion, amendment,**

## **supplementation and extension of international treaties on ODA or concessional loans**

1. The order and procedures for conclusion, amendment, supplementation and extension of international treaties on ODA or concessional loans must comply with the laws on treaties and public debt management.

2. For programs and projects funded by ODA or concessional loans which are signed into many international treaties according to the projects phasing progress:

a) For an international treaty which is signed for the first loans: Shall comply with Clause 1 of this Article;

b) For an international treaty which is signed for the next loans: Based on the managing agency's proposal for the next loan need; the limit of ODA loans and concessional loans approved by the competent authorities in the decision on investment; the project schedule and the result of disbursement of funds of the signed international treaties, the Ministry of Finance shall assume the prime responsibility for and coordinate with the managing agency and relevant agencies in determining the value of the next loans, discuss and reach an agreement with the donor and carry out the order and procedures as prescribed in Clause 1 of this Article.

3. If an international treaty requires legal opinions from the Ministry of Justice, after receiving a complete dossier under regulations on provision of legal opinions, the Ministry of Justice shall provide legal opinions in accordance with law.

## **Section 2**

### **CONCLUSION OF AGREEMENTS ON ODA OR CONCESSIONAL LOANS**

#### **Article 31. Grounds for proposing the conclusion of agreements on ODA or concessional loans**

1. For framework agreements on ODA loans or concessional loans: Grounds for proposing the conclusion of framework agreements include the outcome of mobilization, strategy and policy on development cooperation, and the fields prioritized for use of ODA or concessional loans of Vietnam and the foreign donors or a decision on approval of investment policy of such program or project if it attached to a specific program or project.

2. For a specific agreement on ODA loans or concessional loans: Grounds for proposing the conclusion of agreements include the international treaties or

framework agreements on ODA loans or concessional loans (in case of signing a framework international treaty or a framework agreement) and a decision on the program or project investment.

3. For a specific agreement on non-refundable ODA: In case the donor requires for a conclusion, grounds for proposing the conclusion of agreements on non-refundable ODA include framework international treaties on non-refundable ODA (in case of signing an international treaty) and the project or non-project aid documents or the feasibility study report (for investment projects) approved by the competent authorities.

### **Article 32. Agencies proposing the conclusion of agreements on ODA or concessional loans**

1. The Supreme People's Court, the Supreme People's Procuracy, the State Audit Office of Vietnam, ministries, ministerial-level agencies, and government-attached agencies are agencies proposing to the Prime Minister the conclusion of specific agreements on non-refundable ODA for programs and projects of their respective agencies, except for cases specified in Clause 3 of this Article.

2. The Ministry of Finance is the agency proposing to the Prime Minister the conclusion of framework agreements and specific agreements on ODA or concessional loans or non-refundable ODA loans granted for ODA or concessional loan-funded programs and projects, except for non-refundable ODA loans specified in Clause 3 of this Article.

3. The Ministry of Planning and Investment is the agency proposing to the Prime Minister the conclusion of framework agreements and specific agreements on non-refundable ODA loans not linked with loans for programs and projects other than those prescribed in Clauses 1 and 2 of this Article.

### **Article 33. Order and procedures for conclusion, amendment, supplementation and extension of agreements on ODA or concessional loans**

1. Order and procedures for conclusion of agreements on ODA loans or concessional loans are prescribed as follows:

a) Based on Article 31 of this Decree and the managing agency's proposal, the Ministry of Finance shall propose donors or foreign lenders to send a draft agreement on ODA loans or concessional loans;

b) The Ministry of Finance shall submit the Prime Minister for deciding the negotiation of agreement on ODA loans or concessional loans. A dossier on the negotiation to be submitted to the Prime Minister including: A written proposal for negotiation policy and proposal for on-lending (in case of on-lending ODA or concessional loans); draft agreement on ODA loans or concessional loans; a decision on the project investment;

c) Grounds for the Prime Minister's approval of the negotiation, the

Ministry of Finance shall consult the Ministry of Foreign Affairs, the Ministry of Justice and relevant agencies about the draft agreement on ODA loans or concessional loans. The consulted agencies shall issue written replies and send them to the Ministry of Finance within 15 days after receiving a written request for opinion and relevant documents;

d) The Ministry of Finance shall assume the prime responsibility for and coordinate with relevant agencies in negotiating with donors or foreign lenders about the draft agreement on ODA loans or concessional loans;

dd) Based on the negotiation results, the Ministry of Finance shall submit the Prime Minister for deciding on the conclusion of agreement on ODA loans or concessional loans with the donors or foreign lenders;

e) Based on the Prime Minister's decision, the Ministry of Finance or a person authorized by the Prime Minister shall sign in the agreement on ODA loans or concessional loans with the donors or foreign lenders;

g) For an agreement on mixed capital: The Ministry of Finance shall carry out order and procedures for conclusion as prescribed in this Clause;

h) For programs and projects funded by ODA or concessional loans which are signed into many agreements on ODA loans or concessional loans according to the project's phasing progress: Based on the value of the loans as determined in the signed framework international treaty, the Ministry of Finance shall assume the prime responsibility for and coordinate with the managing agency and relevant agencies in carrying out order and procedures for conclusion as prescribed in this Clause.

2. Order and procedures for amendment, supplement or extension of agreements on ODA loans or concessional loans are prescribed as follows:

a) The managing agency shall send a written request to the Ministry of Finance for amending, supplementing or extending the agreement on ODA loans or concessional loans;

b) The Ministry of Finance shall consult the Ministry of Foreign Affairs, the Ministry of Justice and relevant agencies about the proposal for amendment, supplement or extension of an agreement on ODA loans or concessional loans. The consulted agencies shall issue written replies and send them to the Ministry of Finance within 15 days after receiving a written request for opinion and relevant documents;

c) The Ministry of Finance shall summarize opinions and report to the Prime Minister for approving the amendment, supplement or extension contents of the agreement on ODA loans or concessional loans;

d) Based on the Prime Minister's approval, the Ministry of Finance shall carry out the procedures for amendment, supplement or extension of the

agreement on ODA loans or concessional loans with the donors or foreign lenders;

dd) In case the amendment, supplement or extension of an agreement on ODA loans or concessional loans leads to the change in contents of the Decision on investment policy of the program or project approved by the competent authorities: The managing agency shall adjust the investment policy in accordance with Article 19 of this Decree before carrying out the order and procedures for amendment, supplement or extension of an agreement on ODA loans or concessional loans according to Points a, b, c and d of this Clause.

3. The order and procedures for conclusion, amendment, supplementation or extension of agreements on non-refundable ODA are prescribed as follows:

a) The proposing agency shall discuss and reach an agreement with the foreign donor on the draft agreement;

b) The proposing agency shall consult the Ministry of Foreign Affairs, the Ministry of Justice and relevant agencies on the draft agreement. The consulted agencies shall be responsible for issuing written replies within 15 days after receiving a written request for opinion and relevant documents;

c) The proposing agency shall discuss with the foreign party on finalization of the draft agreement and propose the conclusion of such agreement to the Prime Minister;

d) After obtaining the Prime Minister's permission for the conclusion, the head of the agency authorized by the Prime Minister shall conclude the agreement with the foreign donor;

dd) For the amendment or supplement of an agreement on non-refundable ODA: Based on the summarization of opinions from the Ministry of Foreign Affairs, the Ministry of Justice and relevant agencies, the proposing agency shall submit them to the Prime Minister for consideration and decision.

4. If an agreement on ODA loans or concessional loans requires legal opinions from the Ministry of Justice, after receiving a complete dossier under regulations on provision of legal opinions, the Ministry of Justice shall provide legal opinions in accordance with law.

5. If the donor does not require to sign in an agreement on non-refundable ODA: Based on the project or non-project aid documents approved by the competent authorities, the managing agency or the State Bank of Vietnam (for international financial and monetary institutions represented by the State Bank of Vietnam) and the donor shall exchange documents on the commitment and reception of non-refundable ODA to implement the project or non-project in accordance with relevant law regulations; send the original copy to the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies for supervision, coordination and implementation.

6. In case the donor requests for signing in an agreement on implementation of a project or non-project: The managing agency shall formulate and discuss the contents and sign with the donor on the principle of not contrary to international treaties, agreements on ODA loans and concessional loans and relevant law provisions.

## **Chapter V**

### **MANAGEMENT OF IMPLEMENTATION OF PROGRAMS, PROJECTS AND NON-PROJECTS**

#### **Article 34. Forms of program, project and non-project management**

Depending on the size, nature and practical conditions, their program or project management capacity, and foreign donors' regulations on management of ODA and concessional loans, investment deciders shall decide to apply one of the following forms of program or project management:

1. For investment programs and projects: Shall comply with law provisions on public investment management and construction investment management.

2. For non-refundable ODA-funded technical assistance projects and non-project aid:

a) The managing agency shall directly manage and administer the implementation or assign one unit under its competence to be the project owner and directly manage and administer the implementation of program, project and non-project. For technical assistance projects and non-project aid with the value of USD 200,000 or less, the head of the managing agency, the project owner shall not be required to establish a project management unit, and may use its specialized apparatus to manage and administer the project and non-project implementation.

b) Full management of the program, project or non-project by the foreign donor: In case the contents of the program, project or non-project aid document or specific international treaty or agreement on ODA or concessional loans which states that the foreign donor shall directly manage the whole program, project or non-project, the head of the managing agency, the project owner shall appoint an attached unit to coordinate with the foreign donor in supervising the implementation progress and quality and using the outcomes of the program, project or non-project.

c) Partial management of the program, project or non-project by the foreign donor: In case the contents of the program, project or non-project aid document or specific international treaty or agreement on ODA or concessional loans which states that the foreign donor shall directly manage part of the program or project



and the Vietnamese party shall manage the remainder, the head of the managing agency, the project owner shall decide to establish a project management unit for the Vietnamese party's management of certain tasks in accordance with Vietnam's current regulations and commitments to the foreign donor.

3. For other programs and projects, the managing agency shall decide to apply one of the following forms:

a) Establishment of a new project management unit;

b) Use of an existing project management unit to manage and implement the new program or project; The managing agency, the project owner must issue a decision on providing additional tasks of management and implementation of the new program or project to the existing project management unit;

c) Management and implementation by the project owner;

4. Establishing a project management unit to manage and implement large-scale programs or projects applying high technology or related to security or national defense; programs and projects with special funding sources or management models which require establishment of a project management unit; or programs and projects for which the establishment of a project management unit is mandated by the relevant treaty or agreement on ODA or concessional loans.

5. The project owner using an attached professional unit that has sufficient conditions and capacity to manage and implement small-scale projects or projects with community participation.

6. Hiring a consultancy organization to manage some or all of the program or project implementation tasks.

### **Article 35. Establishment of a project management unit**

1. Within 30 working days after the issuance of the investment decision, the head of the managing agency shall issue a decision to establish a project management unit. If the project owner has full legal person status, the head of the managing agency may authorize the project owner to issue a decision to establish a project management unit (except specialized or regional project management units established under regulations on construction investment management).

2. In case of establishment of a new project management unit under Point a, Clause 3, Article 34 of this Decree, The decision to establish a project management unit shall be enclosed with a document specifying its organizational structure; functions and tasks; responsibilities, powers and authorization; and tasks assigned to key personnel in the unit.

3. In case of use of an existing project management unit to manage a new program or project in accordance with Point b, Clause 3, Article 34 of this Decree: based on the decision on the establishment of such unit, the head of the managing

agency or the project owner shall add and adjust the functions and tasks of the project management unit, create a new account and stamp to cover management of the new program or project.

4. In case of program or project management by the project owner under Point c, Clause 3, Article 34 of this Decree: based on the decision of the head of the managing agency that assigns the project owner to manage the project implementation, within 30 days after the issuance of the investment decision, the project owner shall issue a decision to appoint and assign additional tasks to units and employees of the project owner to carry out program or project management activities in accordance with current law, under which there must be at least a person in charge of management and a person in charge of finance who may work on a full-time or part-time basis and must have qualifications relevant to their positions.

5. Within 15 working days after the issuance of the decision to establish the project management unit, the head of the managing agency or the project owner that has legal person status authorized by the head of the managing agency shall issue a Regulation on organization and operation of the project management unit. In case the international treaty or agreement of ODA or concessional loan for the program or project contains provisions on the organizational structure of project management and tasks and powers of the project management unit, these provisions shall be specified and fully incorporated in the regulation on the organization and operation of the project management unit.

### **Article 36. Tasks and powers of managing agencies in the program and project implementation management**

1. To decide on the organization of the program or project management apparatus, including: The project owner, the program or project steering committee (when necessary).

2. To draw up and approve 05-year medium-term plans for implementation of ODA or concessional loan-funded programs and projects in the 05-year medium-term public investment plan.

3. To approve overall plans for program and project implementation; and to summarize and approve annual plans for program and project implementation.

4. To direct bidding work in accordance with current laws and treaties or agreements on ODA or concessional loans concerning bidding.

5. To organize to monitor, inspect the implementation of the plan; supervise and evaluate the implementation to ensure that programs and projects are implemented on schedule, with quality and achieve set objectives in accordance with the law on public investment and this Decree's provisions on supervision and evaluation.

6. To take responsibility for costs arising due to subjective causes, loss,

waste, corruption, wrongdoings and violations in the ODA and concessional loan management and use under their respective management as prescribed by the law on public investment.

7. To perform other tasks and powers as prescribed by law and specific international treaties or agreements on ODA and concessional loans for programs and projects.

### **Article 37. Tasks and powers of project owners in program and project implementation management**

1. To organize an apparatus for program and project management and implementation on the basis of decisions of the managing agencies.

2. To take responsibility for the management and efficient use of ODA or concessional loans and counterpart fund of programs or projects from the time of preparation and implementation to the time of putting programs or projects into operation or use.

3. To draw up and submit to the managing agencies for approval 05-year medium-term plans, master plans and annual plans for program and project implementation; to draw up and approve annual plans on counterpart fund, for programs and projects funded by loans wholly or partially on-lent from the state budget and counterpart fund arranged by the project owners themselves.

4. To draw up action plans for each quarter in order to serve the administration, supervision and evaluation of programs and projects.

5. To carry out the bidding work in accordance with current laws on bidding and specific international treaties or agreements on ODA loans or concessional loans.

6. To negotiate and conclude, and supervise the performance of, contracts and handle problems according to their competence.

7. To coordinate with local administrations in carrying out compensation, support and resettlement work in accordance with law provisions and specific international treaties, agreements on ODA or concessional loans for programs and projects (for construction investment projects).

8. To supervise and evaluate programs and projects in accordance with the law on public investment supervision and evaluation and this Decree, aiming to ensure that programs and projects are implemented on schedule, with quality and achieve set objectives.

9. To direct the project management unit to make the accounting, settlement, auditing the program or project in accordance with law provisions; make completion reports and settlement reports for programs and projects; to audit and hand over output assets and documents of programs and projects, and comply with provisions on project closure in specific international treaties or

agreements on ODA or concessional loans for programs and projects.

10. To take full responsibility for loss, waste, corruption, wrongdoings and violations falling within their competence in the program and project management and implementation causing economic, social or environmental damage and affecting the objectives and overall effectiveness of programs and projects.

11. For programs or projects funded by loans wholly or partially on-lent from the state budget, to repay fully and timely the on-lent loans under the on-lending conditions signed with competent financial agencies and banks.

12. To perform other tasks and powers as prescribed by law and specific international treaties or agreements on ODA or concessional loans for programs and projects.

13. To take responsibility before law and managing agencies within the limit of their rights and obligations prescribed in this Decree and relevant laws.

### **Article 38. Tasks and powers of project management units in program and project implementation management**

1. The tasks and powers of a project management unit shall be assigned by the project owner in the decision to establish the project management unit.

The project owner may authorize the project management unit to decide or sign documents within the former's competence in the course of management of the program or project implementation. This authorization shall be stated in the decision to establish the project management unit or in a specific authorization document issued by the project owner.

2. A project management unit may be assigned to manage many programs or projects, but such shall be approved by the project owner and ensure the following principles: Each program or project is not interrupted, and is managed and financially settled in accordance with current laws. If a project management unit lacks conditions for performing certain management and supervision tasks, it may hire consultants to perform these tasks with the approval of the project owner.

3. A project management unit shall perform the tasks assigned by the project owner and report to the project owner, including:

a) Making a master plan and annual plans on program and project implementation;

b) Preparing for and implementing programs and projects;

c) Carrying out bidding activities, contract management, and compensation, support and resettlement work;

d) Disbursing funds for and managing finance and assets of programs and

projects;

dd) Monitoring and evaluating the program and project implementation;

e) Preparing for acceptance and handover of output results of programs and projects after completion; finishing payment, settlement and audit work, handing over assets of programs and projects; making completion reports and finalization reports of programs and projects; and implementing project closure according to international treaties or agreements on ODA or concessional loans for programs and projects;

g) Performing other tasks in the program or project framework assigned by the project owner.

4. To perform other tasks and powers as prescribed by law and specific international treaties or agreements on ODA or concessional loans for programs and projects.

5. To take responsibility before law and managing agencies within the limit of their rights and obligations prescribed in this Decree and relevant laws.

#### **Article 39. Hiring of program or project management consultants**

1. Program or project management consultancy organizations shall perform tasks and implement commitments under the contracts signed with the project owner and comply with relevant current laws.

2. The project owner shall select management consultants for the program or project through bidding and sign in the consultancy contract in accordance with current regulations. When applying the form of hiring of program or project management consultants, the project owner shall appoint a specialized agency of the project owner's apparatus or a focal point to inspect and supervise the performance of the consultancy contract.

#### **Article 40. Formulation, appraisal, approval and assignment of plans on public investment with foreign capital for programs and projects using ODA and concessional loan capital**

1. Formulation, appraisal, approval and assignment of plans on public investment with ODA and concessional loan capital for projects of public investment shall be implement as prescribed in Chapter III of the Law on Public Investment and regulation of the Government on detailing a number of articles of the Law on Public Investment.

2. ODA and concessional loan capital of foreign donors applied domestic financial regime for re-provide loan for public service provider and enterprise shall be implemented as prescribed in the Law on Public Debt Management and other related law regulations.

3. Programs and projects which have investment policy decided by the

competent authority and new project must ensure the time for capital arrangement of Group A project not exceed 06 years, Group B project not exceed 04 years, Group C project not exceed 03 years. In case of failing to meet the above mentioned duration, the Prime Minister shall decide on the time for capital arrangement for project implementation of project funded by central budget capital.

Time for implementation of programs and projects funded by ODA and concessional loan capital shall be calculating from the day such program and project be arranged with capital from the competent authority.

**Article 41. Formulation and approval of overall plans for implementation of programs and projects funded by ODA, concessional loans and counterpart fund**

1. An overall plan for program and project implementation shall be formulated for the entire implementation period of a program or project and must cover all components, items, activity groups and corresponding funding sources (ODA, concessional loan and counterpart fund) and its tentative implementation schedule.

2. Within 30 days after signing a specific treaty or an agreement on ODA or concessional loan, based on the Report on Study of Feasibility, approved program or project document, program or project investment decision, and the specific treaty or agreement on ODA or concessional loan for the program or project, the project owner shall work with the foreign donor in formulating or reviewing and updating the overall plan for program and project implementation, and submit it to the managing agency for consideration and approval.

3. Within 05 working days after approving the overall plan for program or project implementation, the managing agency of such program or project, shall send the approval decision enclosed with such overall plan to the Ministry of Planning and Investment, the Ministry of Finance and related agencies and the foreign donor to serve the supervision, evaluation and coordinated implementation of the program or project.

**Article 42. Formulation and approval of annual plans for implementation of programs and projects funded by ODA or concessional loans and counterpart fund**

1. Based on the overall program or project implementation plan approved by the managing agency, disbursed funds and disbursement plan under the specific treaty or agreement on ODA or concessional loans, the project owner shall consider and submit the annual program or project implementation plan to the head of the managing agency for approval. Annual plans for implementation of programs and projects funded by ODA or concessional loans and counterpart fund is part of the annual investment plan of the managing agency.

2. An annual plan for program or project implementation must detail components (technical assistance and construction investment ones), items and main activities, funding sources, including also counterpart fund, and tentative implementation schedule.

3. Once approved by the managing agency, the annual plan shall be used as the basis for the project owner to prepare quarterly implementation plans to serve the administration, supervision and evaluation of the program or project implementation.

4. Annually, at the time of formulating socio-economic development plans and state budget estimates under current regulations, the managing agency shall incorporate annual plans for program and project implementation in its annual public investment plan and budget plan. On the basis of annual budget plans of managing agencies, the Ministry of Planning and Investment shall prepare investment funding plan and coordinate with the Ministry of Finance in submitting to the Government for consideration and approval annual socio-economic development plans and budgets to be submitted to the National Assembly for adoption.

5. The process and procedures for assignment of annual plan tasks for program and project implementation must comply with current regulations on assignment of annual socio-economic development plan tasks.

6. Within 05 working days after approving an annual plan for program and project implementation, the project owner shall send its approval decision enclosed with such plan to the managing agency and, through the latter, to the Ministry of Planning and Investment, related agencies and the foreign donor to serve the supervision, evaluation and coordinated implementation of programs and projects.

7. For programs and projects wholly funded by loans on lent from the state budget: Annually, at the time of formulation of socio-economic development plans and state budget estimates, the project owner shall make a plan for program and project implementation and submit to the managing agency for approval an ODA and concessional loan plan, which shall be sent to the Ministry of Planning and Investment and the Ministry of Finance and the agency authorized to conduct the lending for monitoring and supervision of implementation. The managing agency and project owner shall self-balance counterpart fund according to the program or project implementation schedule.

8. For programs and projects partially funded by loans from the state budget: Depending on the nature of each program or project component (whole allocation or on lending), the project owner shall apply the process of formulation and submission for approval of the program or project plan corresponding to each of its components prescribed in Clauses 1, 2 and 7 of this Article.

### **Article 43. Counterpart fund for program and project preparation and implementation**

1. Sufficient counterpart fund shall be ensured for program and project preparation and implementation (including activities to be carried out in advance, if any). Sources, level and mechanism of counterpart fund must be suitable to the program or project expenditure items already agreed upon between the managing agency and foreign donor and stated in the Feasibility Study Report, the document of the program or project in which investment has been appraised and decided by competent authorities.

2. Counterpart fund shall be used for the following expenses:

a) Expenses for activities of the project management unit (salary, bonus, allowance, office, working instruments and administrative expenses);

b) Expenses for design appraisal, approval of total cost estimate, completion of investment and construction procedures and other necessary administrative procedures;

c) Expenses related to the course of contractor selection;

d) Expenses for conferences, workshops and training in program or project management and implementation operations of program and project;

dd) Expenses for receiving and popularizing international technology, experiences and skills;

e) Expenses for public information about and advertisement of programs and projects and community activities;

g) Payments for taxes, customs charges and insurance premiums under current regulations;

h) Interest payments, deposits, commitment charges and other relevant charges payable to foreign parties;

i) Expenses for receipt of equipment and domestic transport (if any);

k) Expenses for finalization and verification of completed finalization statements;

l) Expenses for compensation, ground clearance and resettlement;

m) Expenses for basic activities of programs or projects (survey, technical design, construction; construction of several items, procurement of several equipment);

n) Expenses for supervision and evaluation activities; quality control and testing, acceptance test, handover and finalization of programs or projects;

o) Provisional expenses and other reasonable expenses.

3. For programs or projects to be wholly funded by allocations from the



state budget: The managing agency shall balance counterpart fund in its annual budget estimate according to annual budget estimates and others financial source in accordance with law provisions and clearly determine sources of capital construction and non-business administrative funds corresponding to program or project expenditure items; ensure full and timely allocation of counterpart fund according to the schedule stated in the Feasibility Study Report, the documents of programs or projects in which investment has been approved and decided by competent authorities, in conformity with the law on the state budget and treaties or agreements on ODA and concessional loans for programs or projects.

4. For programs and projects wholly funded by lending: The project owner shall self-allocate counterpart fund or submit it to the managing agency for decision in order to ensure sufficient counterpart fund for programs or projects before signing on lending contracts.

5. For programs and projects with combined financial regime (funded by state budget capital and on- lending): The managing agency and project owner shall allocate sufficient counterpart fund in accordance with relevant law provisions before signing the on- lending contract.

6. For programs or projects to be funded by allocations from the state budget which are approved or concluded at a time not coinciding with the time of making annual budget estimates, and not yet allocated with counterpart fund: The managing agency shall send a written request to the Ministry of Planning and Investment and the Ministry of Finance for handling according to their competence or for submission to competent authorities for consideration and decision on addition to the annual budget estimate.

In case the time of making plans on counterpart fund for preparing and implementing programs or projects considered for aid does not coincide with the time of making annual budget plans, the managing agency shall balance counterpart fund in its total allocated fund. In case the managing agency fails to self-balance counterpart fund, it shall send a written request to the Ministry of Planning and Investment and the Ministry of Finance for consideration and submission to competent authorities for decision on fund advance and deduction later in the subsequent annual plan.

7. Sources of counterpart fund include the state budget and other funding sources of the State; funds of project owners (for the case of on lending ODA and concessional loans); and ODA and concessional loans of foreign donors under decisions of the Prime Minister.

8. Spending norms for expenses from the counterpart fund shall be implemented in accordance with the regime of state budget expenses and related law provisions.

#### **Article 44. Taxes and charges for programs and projects**

Taxes and charges levied on programs and projects must comply with current regulations on taxes and charges and treaties to which the Socialist Republic of Vietnam is a contracting party. In case provisions of domestic law and a signed treaty differ on a matter, such treaty shall prevail.

#### **Article 45. Compensation, support and resettlement**

Compensation, support and resettlement in the program or project implementation must comply with current regulations and treaties on ODA and concessional loans to which the Socialist Republic of Vietnam is a contracting party. In case provisions of domestic law and a signed treaty differ on a matter, such treaty shall prevail.

#### **Article 46. Bidding**

1. The selection of contractors must comply with treaties between Vietnam and foreign donors; in case a treaty to which the Socialist Republic of Vietnam is a contracting member contains provisions on contractor selection which are different from those of the Bidding Law, the provisions of such treaty shall prevail. In case a treaty makes no mention on the application of procedures for contractor selection, the contractor selection must comply with the Bidding Law.

2. The procedures for submission, appraisal and approval of bidding contents must comply with Vietnam's bidding law. The content of appraisal and approval must comply with provisions of treaties on the principles established in Clause 1 of this Article.

#### **Article 47. Surplus funds**

1. Surplus funds (ODA and concessional loans) arising during the program or project implementation, including surplus fund after bidding, surplus fund due to changes of exchange rates, and other surplus funds.

2. Surplus funds shall not be used for ground clearance, duty payment and regular expenses.

3. In case of necessity to use the surplus funds to promote the effectiveness without changing the main target as prescribed in the Decision on investment policy of the programs and projects on process: The managing agency shall cooperate with the Ministry of Planning and Investment, the Ministry of Finance and the foreign donor to determine the efficiency and necessity to decide on using the surplus funds and implement the order and procedure of modifying investment policy, modifying the program and projects on process as prescribed in Article 19 and Article 22 of this Decree or order and procedure of modifying implementation policy and the Decision on approval of the document of project on processing as prescribed in Article 27 this Decree.

4. In case of necessity to use the surplus funds for operating new programs

and projects: The managing agency shall send a document enclosed with the investment policy proposal report for the new program or project to be funded by surplus funds to the Ministry of Planning and Investment. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with related agencies in, reaching agreement with the foreign donor on the use of such funds, applicable financial regime and implement the order and procedure of investment policy as prescribed in Article 14, 15, 16, 17, 18 of this Decree.

5. Termination of surplus funds: The managing agency shall sum up comments of the Ministry of Planning and Investment and make propose to the Ministry of Finance to terminate the surplus funds of the project. Bases on the proposal for termination of surplus funds of the managing agency, the Ministry of Finance shall notice on termination of surplus funds to the donor.

In case the charge for termination of surplus fund or others charge arising, the managing agency shall sum up comments of the Ministry of Planning and Investment and make propose to the Ministry of Finance to terminate the surplus funds of the project. Bases on the proposal of the managing agency, the Ministry of Finance shall report to the Prime Minister for permission to termination of surplus fund before notice on termination of surplus fund to the donor.

#### **Article 48. Management of construction, acceptance test, handover, audit and finalization**

1. For construction investment projects, the appraisal and approval of construction designs and total cost estimates, grant of construction permits, quality management of works, acceptance test, handover, warranty, and insurance of construction works must comply with current regulations on construction investment management and treaties on ODA or concessional loans to which the Socialist Republic of Vietnam is a contracting party. In case provisions of domestic law and a signed treaty differ on a matter, such treaty shall prevail.

2. For technical assistance programs or projects, after finishing them, the managing agencies shall organize acceptance test and take necessary measures to further operate and develop the achieved results as well as comply with current regulations on financial and asset management of programs and projects.

3. The program and project audit and finalization must comply with current regulations and treaties on ODA or concessional loans to which the Socialist Republic of Vietnam is a contracting party or at the request of foreign donors. In case provisions of domestic law and a signed treaty differ on a matter, such treaty shall prevail.

#### **Article 49. Monitoring, inspection, evaluation and supervision of ODA or concessional loan-funded programs and projects**

1. Monitoring, inspection, evaluation and supervision of ODA or

concessional loan-funded programs and projects:

Monitoring, inspection, evaluation and supervision of ODA or concessional loan-funded programs and projects shall be implemented as prescribed in Article 69, 70, 71, 72, 73, 74, 75, 76, 77 of the Law on Public Investment and other relevant law provisions. In case provisions of domestic law and a signed treaty differ on a matter, such treaty shall prevail.

b) The Ministry of Planning and Investment, ministries, central and local agencies shall take responsibility to formulate, manage, operate and apply the National system on information and database on public investment as prescribed in Clause 2 Article 97 of the Law on Public Investment and other relevant law provisions.

2. Monitoring, inspection, evaluation and supervision of independent technical support programs and projects funded by non- refundable ODA not attached to loan or non- project aid:

a) Monitor and inspection of programs, project and non- project aid: The project owner shall take responsibility to monitor and inspect on the implementation of program and project, non- project aid on the basis of the program or project document which approved by the competent authority in order to ensure that the program or project, non- project aid shall reach the established target, periodically report to the managing agency on the result of monitoring and inspection.

b) Evaluation of program, project and non- project aid: Within 03 months from the ending date of the implementation of the program, project and non- project aid, the project owner shall finalize the report on finishing evaluation of the program, project and non- project aid with the following content: The process of implementation; result of the implementation of targets; mobilized sources; benefit from the program, project and non- project aid to beneficiaries; impacts and sustainability; experiments gained after the course of implementation and proposal of necessary recommendations; responsibility of relevant agencies, organizations, individuals;

c) Reporting regime on implementation of the program, project and non- project aid of the managing agency and project owner: managing agency and project owner shall take responsibility to submit the report in accordance with current law provisions.

## **Chapter VI**

### **FINANCIAL MANAGEMENT OF ODA AND CONCESSIONAL LOANS**

#### **Section 1**

#### **OPENING AND MANAGEMENT OF PAYMENT ACCOUNTS**

**Article 50. Opening of payment accounts for ODA or concessional loan-funded programs and projects at the State Treasury system and serving banks**

1. ODA and concessional loan accounts:

a) The state budget's ODA or concessional loan shall be managed, recorded and monitored on the accounts of the budget of the corresponding level;

b) Project owners shall open accounts for their projects at the State Treasury or serving banks to receive ODA or concessional loans for spending on their programs' or projects' activities.

2. Counterpart fund accounts: Project owners shall open accounts at the State Treasury where transaction be convenient (hereinafter referred to as the transaction State Treasury) to implement the control work and payment of counterpart funds (domestic fund) of their projects.

**Article 51. Criteria for selection of serving banks for ODA or concessional loan-funded programs and projects**

1. Being a bank selected among banks with ODA and concessional loan withdrawal management experiences, having a credit rating in Vietnam, satisfying banking operation standards and complying with regulations on prudential ratios in banking operations.

2. Having branches which meet the requirements of the program or project.

3. Accepting responsibilities of a serving bank specified in Article 50, 52, 53, 54, 63, 68 and 79 of this Decree.

**Article 52. Responsibilities of a serving bank**

1. To carry out procedures for the Ministry of Finance or project owners to open ODA or concessional loan accounts for their programs and projects in accordance with international treaties, ODA or concessional loan agreements signed by the competent authority provision as prescribed in Chapter VI and VII of this Decree.

2. To monitor and manage the accounts, make banking transactions, and collect charges under regulations; to report on the accounts of ODA or concessional loan-funded programs and projects under Chapter VI and VII of this Decree.

**Article 53. Principles of opening and management of accounts to receive ODA or concessional loan advances**

1. The State Treasury or serving bank shall open advance accounts (transaction accounts) for project owners or the Ministry of Finance to meet the projects' payment requirements, ensuring the direct flow of funds to projects

without any intermediary account. If a project has more than one aid, separate accounts shall be opened for them to monitor fund withdrawal.

2. If a project is implemented by multiple units assigned by the managing agency, the project owner shall open sub-accounts at the State Treasury office with which the project owner has transactions or at branches of the serving bank.

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

4. Management of interest on advance accounts:

a) Interest generated on an advance account shall be separately monitored and used to pay banking service charges under regulations. Banking service charges constitute an expense of the project. If the generated interest is not enough to pay banking service charges, the project owner shall prepare an estimate and pay them with the counterpart fund;

b) Upon completion of spending activities on the advance account, for a project wholly funded by the state budget, the project owner shall remit the unused interest on the advance account to the state budget. For a project wholly funded with on-lent loans, the unused interest shall be considered a revenue of the project owner. If the project is partially funded with on-lent loans, the unused interest shall be distributed according to the on-lending ratio.

#### **Article 54. Responsibilities of agencies opening accounts of ODA or concessional loan-funded programs and projects**

1. At the request of the project owner that is also the account holder, the State Treasury or serving bank shall provide guidance on dossiers and procedures for opening a payment account for the project and making payments and fund withdrawals and other operations under current regulations.

2. The State Treasury or serving bank shall guide and provide adequate information for project owner to make payments through the State Treasury system or the serving bank.

3. Every month as agreed by the account-opening agency and account holder and upon request of the account holder, the account-opening agency shall send advance account statements to the account holder which must specify the amount in the original currency, beneficiary, transaction dates, applied exchange rate, equivalent amount in VND, opening balance, spent amounts, and closing balance of the period.

4. Every month as agreed by the account-opening agency and account holder and upon request of the account holder, the account-opening agency shall send to the account holder a notice of interest (if any) generated on the advance account of the project; banking service charges collected; difference between the interest and total charges, and opening balance and closing balance of the period.

5. Within 02 working days after receiving a notice of an amount of money disbursed by the foreign donor, the account-opening agency shall credit it to the account of the project and inform the account holder thereof.

6. Before the 10th of every month, the State Treasury or serving bank shall send to the Ministry of Finance a report on the previous month's activities of the advance accounts of ODA or concessional loans in its entire system. Such a report must specify the names of the projects and project owners, accounts, sub-accounts (for each source of funding); non-refundable ODA and loans, which are presented separately; opening balance, total amount withdrawn from the foreign donor's loan in the period, total amount spent in the period, closing balance, and return of funds (if any) to the foreign donor; interests generated on the accounts of ODA and concessional loans in the period; amount of interest used to pay banking service charges; and unused interest at the end of the period.

7. Annually, up on the end of the financial year, to implement the collate of account residue with the project owner.

## **Section 2**

### **FORMULATION OF FINANCIAL PLANS ON ODA OR CONCESSIONAL LOANS**

#### **Article 55. Formulation of annual financial plans for ODA or concessional loan-funded programs and projects**

1. On the basis of the original or revised medium-term plan, the managing agency shall prepare annual financial plans for the ODA or concessional loan-funded program or project.

2. For each program or project, treaty or agreement on ODA or concessional loans, a separate annual financial plan shall be formulated, specifying separately development investment fund, fund for regular expenses (if any), on-lent loan and counterpart fund. If the project is partially funded by on-lent loans, the ratio of allocated funds and on-lent loans must comply with the financial mechanism approved by a competent authority.

3. The allocation of ODA or concessional loans and counterpart funds in the annual budget estimate must conform with concluded treaties or agreements on foreign ODA and concessional loans and suit the actual disbursement capacity of ODA or concessional loan-funded programs and projects.

4. Annual financial plans for ODA or concessional loan-funded programs and projects shall be formulated according to the procedures for formulation of annual state budget estimates prescribed in the Law on the State Budget and related law provisions.

## **Article 56. Incorporation of financial plans on ODA and concessional loans in annual state budget estimates**

1. For development investment projects funded by the state budget, the Ministry of Planning and Investment shall summarize plans on withdrawal of ODA and concessional loans and plans on provision of counterpart funds and send them to the Ministry of Finance for incorporation into annual state budget estimates.

2. For funds for regular expenses, the Ministry of Finance shall incorporate plans on withdrawal of ODA and concessional loans and counterpart funds in annual state budget estimates.

3. For loans on-lent to provincial-level People's Committees, provincial-level People's Committees shall formulate plans on withdrawal of on-lent loans and report them to competent authorities prescribed in the Government's Decree on management of local administrations' debts and send them to the Ministry of Finance for incorporation in annual state budget estimates to be reported to competent authorities for decision.

4. For on-lent loan-funded projects of enterprises and public non-business units, project owners shall send annual plans on disbursement of on-lent loans to the Ministry of Finance for registration and to the on-lending agency. The Ministry of Finance shall summarize these plans and propose the Government to decide on annual limits on ODA and concessional loans to be on-lent in accordance with law provisions.

5. The Ministry of Finance shall guide the formulation of annual financial plans for ODA or concessional loan-funded programs and projects.

## **Article 57. Upload and approval of annual estimate on the Treasure and Budget Management Information System (TABMIS)**

1. For central budget, base on the budget estimate approved by the National Assembly and assigned by the Prime Minister, the ministries, ministerial level agencies shall allocate and upload so that the Ministry of Finance shall inspect and approve the estimate from the source of ODA, non-refundable ODA attached to loan and concessional loan capital of foreign donor on TABMIS in accordance with law provisions on operation and exploit of TABMIS and other relevant guiding documents.

2. For local budget, base on the budget estimate approved by the provincial level People's Council and assigned by the provincial People's Committee, the Department of Finance shall upload and confirm the plans on investment capital, regular expenses estimate funded by ODA and non-refundable ODA attached to loan and concessional loan capital of foreign donor supplement to target to the local budget; ODA and non-refundable ODA attached to loan and concessional loan capital of foreign donor allocated by the Government to on-lend for the local



budget on TABMIS in accordance with regulations in force.

3. Upload information of estimate on TABMIS must ensure the correct code of allocated ODA and concessional loan capital, ODA and concessional loan capital supplement to target to the local budget and ODA on-lend to the local budget; for ODA and concessional loan capital supplement to target to the local budget, the financial agency uploads information on TABMIS must ensure the correct list and capital level assigned by the Government.

### **Section 3**

## **CONTROL OF SPENDING OF ODA AND CONCESSIONAL LOANS**

### **Article 58. Principles of spending control**

The control and spending of ODA and concessional loans (below referred to as spending control) must comply with current regulations on state budget funding sources.

1. Spending control shall apply for all expenses of project funded by ODA and concessional loan capital, including expenses in the form of credit letter or authorized to foreign party for direct expenses, ensure the basis of estimate and the expenses of the project comply with signed international treaties on ODA and concessional loan capital and comply with domestic current regulation on financial management.

2. Spending control of program and project funded by ODA and concessional loan capital shall be applied payment control in accordance with regulations in force for state budget capital source within the scope of foreign capital estimate, counterpart fund, annual plans for on-lend capital which approved, capital estimate amended, supplemented in the year (if any) approved by the competent authority.

3. Spending control documents and written request for certification of valid expenditures on public service capital and written requests for payment of investment capital of project owners according to the provisions of law on administrative procedures in the field of state treasury.

4. Duration of spending control for advance expenses and payment within the budget year:

a) Advances amount under the regime: The spending control shall be implement no later than December 12 of the plan year, the project owner shall submit dossier and documents to the spending control agencies before December 31 of the year.

b) Payment of completed volume shall be controlled of spending and

disbursed until January 31 of the following year.

5. For project or component project under the capital plan for investment and development wholly funded by the state budget or apply partly on-lending, the spending control shall be implemented in accordance with law provisions on management and payment of investment capital for investment projects funded with state budget capital.

6. For project and component of on-lending under the credit limit applicable to loan agreements signed from 2017 and earlier: Dossier and procedure on spending control apply for project and component of on-lending under the credit limit shall be implemented in accordance with provisions of the credit institution using the on-lending fund and in comply with signed international treaties and agreements on ODA and concessional loan capital. Institution using the on-lending fund from ODA and concessional loan capital shall be legally responsible for the correctness and validity of credit loans and credit expenses in the expenditure statement submit to the Ministry of Finance, when making and sending the dossier for foreign capital withdrawal.

7. Dossiers and procedures for spending control of project or project component wholly funded by on-lending: On-lending agency shall apply provision as prescribed in Clause 3 this Article and the Contract of on-lending.

8. Based on the project owner's request for payment of all forms of capital withdrawal, the spending control agencies shall base on the payment terms specified in the contract (number of payments, payment period, time of payment, and payment terms) or approved estimates for cases of non-contractual payments and the value of each payment, to control expenditures and make payments to project owners. The project owner is responsible for the method of contractor selection, the accuracy and legality of the acceptance volume to be paid, norms, unit prices, estimation of job types, work quality and compliance with current regulations. Project owners are responsible for managing and using capital for the right purposes, with the right subjects, reasonable and efficiently. Comply with law provisions on financial management regime of ODA and concessional loan capital.

### **Article 59. Spending control agencies**

1. The State Treasury offices at all levels shall control payment documents of projects or project components that are wholly funded by the state budget; projects that are partially funded by the state budget and partially funded by on-lent loans; and projects funded by on-lent loans of provincial-level People's Committees.

2. The on-lending agencies authorized by the Ministry of Finance shall control payment documents of projects or project components that are wholly funded by on-lent loans.

3. For programs and projects other than those specified in Clauses 1 and 2 of this Article, the Ministry of Finance shall appoint appropriate spending control agencies, ensuring that a single expenditure is not controlled by more than one agency.

#### **Article 60. Spending control methods**

1. Pre-spending control means the spending control agency's inspection and certification of the lawfulness and validity of an expenditure before the project owner withdraws fund to pay a contractor or beneficiary. Pre-spending control shall apply to expenditures other than those specified in Clause 2 of this Article.

2. Post-spending control means the spending control agency's inspection and certification of the lawfulness and validity of an expenditure after the project owner has withdrawn fund to pay a contractor or beneficiary. Post-spending control shall apply to the following cases:

a) Payment from the advance account to a contractor or supplier, except advance accounts held by the Ministry of Finance that are subject to pre-spending control.

b) Transfer of advances from the advance account to secondary accounts, for a project managed by multiple levels;

c) Expenditures made from secondary accounts on project management activities specified in the budget estimate approved by a competent authority.

d) Payment by letter of credit (L/C) for goods and equipment procurement, except for the last payment.

3. Within 30 days from the date of withdrawal of fund for payment, the project owner shall prepare adequate payment documents and send them to the spending control agency for certification as the basis for making subsequent payments. When necessary, the project owner may reach agreement with a contractor on pre-spending control of expenditures specified in Clause 2 of this Article, then notify the spending control agency thereof for coordinated inspection.

### **Section 4**

#### **ODA AND CONCESSIONAL LOAN WITHDRAWAL AND ACCOUNTING MANAGEMENT**

##### **Article 61. ODA and concessional loan withdrawal methods**

ODA and concessional loan withdrawal methods include:

1. Withdrawal of budget support: ODA or concessional loans shall be disbursed to the state budget with regard to direct budget support or outcome-based aid.

2. Program- or project-based withdrawal: One or more than one of the following withdrawal methods may be applied to program- or project-based withdrawal: Direct payment, payment by letter of credit, capital refund, advance account.

### **Article 62. Time limit for processing requests for ODA or concessional loan withdrawal**

1. The time limit for processing a written request for fund withdrawal at the Ministry of Finance is 04 working days counting from the date a complete dossier is received. The time limit for processing a written request for spending report is 07 working days counting from the date a complete dossier is received.

2. In case programs and projects using ODA loans and concessional loans finish the implementation of the last disbursement in the year ending of the project, the project owner shall submit the written request for fund withdrawal is before December 01 (of the plan year) to ensure the disbursement before January 31 of the next year. In case of force majeure lead to the disbursement cannot be implement by January 31 of the next year, regulations on extension of implement duration and disbursement of capital for medium and annual public investment plans specified in Clause 2 Article 68 of the Law on Public Investment shall be applied.

### **Article 63. Order and procedures for withdrawal of ODA and concessional loans**

1. Order and procedures for withdrawal of funds as budget support:

a) The managing agency or project owner shall assume the prime responsibility for, or coordinate with the Ministry of Finance and related agencies in, fulfilling of Vietnam commitments to the foreign lender in order to satisfy the withdrawal prerequisites specified in the concluded treaties or agreements on ODA or concessional loans;

b) The managing agency or project owner shall assume the prime responsibility for, or coordinate with related agencies in, preparing a dossier of request for fund withdrawal and send it to the Ministry of Finance in accordance with provisions of the donor or as required by the foreign lender;

c) For general budget support, the Ministry of Finance shall process the dossiers of request, send them to the foreign lender and transfer the withdrawn funds to the state budget for use under the concluded international treaties or agreements on ODA and concessional loan capital;

d) For ODA or concessional loans provided as field-specific budget

support:

The managing agency shall reach agreement with the Ministry of Finance on the time of withdrawal and ODA or concessional loan amount to be withdrawn, ensuring that the disbursed amount has been included in the annual financial plans of component projects.

ODA or concessional loans disbursed to the state budget shall be distributed to component projects for use strictly according to the current state budget management procedures.

2. Order and procedures for withdrawal of funds for outcome-based aid:

a) The project owner or managing agency shall assume the prime responsibility for, and coordinate with related agencies in, fulfilling the disbursement indicators as agreed with the foreign lender as the basis for fund withdrawal. The project owner may receive an advance after satisfying the requirements of the foreign lender to perform tasks as agreed to fulfill the commitments associated with the disbursement indicators;

b) The project owner or managing agency shall assume the prime responsibility for, or coordinate with related agencies in, preparing reports and documents or providing documents proving the fulfillment of the disbursement indicators stated in the concluded agreement on ODA or concessional loans and send them to the foreign lender. The project owner shall prepare a dossier of request for fund withdrawal and send it to the Ministry of Finance as required by the foreign lender;

c) The disbursed ODA or concessional loan amount shall be transferred to the account of the program or project implementing unit opened at the State Treasury as agreed with the donor. The spending of the disbursed amount must comply with current state budget management procedures. At the end of a budgetary year, the unused amount of the estimated fund shall be handled under current regulations on state budget management; the unused cash amount on the advance account may be further spent under regulations on the program's or project's activities in the subsequent budgetary year.

d) In case of fund withdrawal on a results-based financing basis, the project owner uses the exchange rate between Special Drawing Rights (SDR) with Vietnam Dong (VND) notify on the donor website system at the time of making fund withdrawal application.

3. Order and procedures for withdrawal of funds with regard to ODA or concessional loans provided as project-based aid:

a) Withdrawal methods:

Direct payment: Money shall be directly paid to contractors and suppliers of the project.

Payment by the letter of credit (L/C): A form of payment by letter of credit issued by the bank upon the request of the project owner committing on paying a certain amount to the contractor or supplier if such contractor or supplier can present a valid dossier, in accordance terms specified in the L/C.

Fund return: The foreign donor shall reimburse from the to refund valid expenditures paid by the project owner for the project.

Advance account is the form in which the foreign donor shall transfer an advance to an account opened exclusively for the project at the serving bank for the project owner to pay regular and valid expenses of the project in order to reduce the frequency of fund withdrawals.

b) After the foreign donor issues a notice of certification of the fulfillment of the prerequisites for fund withdrawal by Vietnam under the treaty or agreement on ODA or concessional loans, the project owner or project management unit shall prepare a dossier of request for fund withdrawal according to the form issued by the foreign lender applicable to each withdrawal method, and send it to the Ministry of Finance.

In case the foreign lender requests additional documents or only accepts part of the request, the Ministry of Finance or foreign lender shall send a notice to the project owner for promptly joining in responding to reasonable requests of the foreign lender.

c) Dossiers of request for fund withdrawal addressed to the Ministry of Finance: For each time of fund withdrawal, the project owner or an authorized unit shall prepare a dossier of request for fund withdrawal appropriate to each method of fund withdrawal and send it to the Ministry of Finance. Dossiers of request for fund withdrawal shall be prescribed in the Appendix VII attached to this Decree;

d) Withdrawal of fund in electronic method shall be implemented in comply with the guidance of the Ministry of Finance after reaching agreement with the donor.

#### **Article 64. Principles of management of the accounting of ODA and concessional loans into the state budget**

1. ODA and concessional loans used for offsetting state budget deficits shall be fully and accurately accounted into the state budget.

2. For programs and projects that are wholly or partially funded by the state budget whose expenditures are controlled by the State Treasury, the State Treasury office where transactions are conducted shall account into the state budget ODA and concessional loans which are fully funded by the state budget and those on-lent proportionally (to provincial-level People's Committees).

3. State budget accounting shall be carried out on the basis of documents

on disbursement of ODA or concessional loans to fund users as notified by the foreign donor. For payments from the advance account, project owners shall make a written request for ODA or concessional loan accounting and send it to the State Treasury for certification at the same time with carrying out spending control procedures. For other methods of fund withdrawal, project owners shall make a written request for ODA or concessional loan accounting and send it to the State Treasury for certification within 03 working days after receiving disbursement documents from the foreign donor, and to the Ministry of Finance for monitoring.

#### **Article 65. Accounting of direct budget support**

Based on the money receipt or credit note of the serving bank, the State Treasury shall implement the debit accounting of ODA, concessional loan capital, revenue recording of State budget on ODA and concessional loan capital in accordance with law provisions; in case of transfer foreign currency into the Fund of Foreign Currency, the State Treasury shall implement the accounting in accordance with law provisions on state budget revenue of debit on foreign currency.

#### **Article 66. Accounting of ODA and concessional loans at the State Treasury**

The State Treasury shall implement the accounting on revenue and expense record of project funded by ODA and concessional loan capital subjected to allocation and on-lending capital sources for programs and projects are controlled spending at the State Treasury system, to be specific as follows:

1. Accounting according to the code of allocated ODA, supplemented to a target for the local, on-lending ODA to localities and detail accounting of non-refund ODA, ODA and concessional loan capital.
2. Advance amount according to the regime of making accounting on advance payment. Recall of advance amount according to the regime of making accounting on reduce of advance payment.
3. Payments for completed volumes, accounting of revenues and expenditures, actual expenditures and implementation of annual budget settlement.
4. Expenses in the annual plan have been controlled by the State Treasury and transferred money to contractors, goods service providers before January 31 of the next year, the State Treasury shall make the record on revenue and expenditure in to the implementation budgetary year. All expenses have been controlled by the State Treasury, vouchers of money transfer to contractors and suppliers after January 31 of the next year, the project owner shall allocate into the plan of the next year to make the accounting on revenue and expenditure.
5. Dossier on revenue and expenditure accounting shall be implemented in

accordance with provisions of the Government on administrative procedure on the field of State Treasury. The project owner shall submit the dossier to the State Treasury where conduct transaction to confirm of the accounting no later than February 01 of the next year.

### **Article 67. Accounting of ODA and concessional loans to be on-lent in the Ministry of Finance**

1. For ODA capital and concessional loans of the Government are on-lent by the Ministry of Finance; loans authorized by the Ministry of Finance to finance and credit institutions being on-lent agencies to provide on-lent to investment programs and projects: Base on the disbursement notice of the donor, report on disbursement statement of the project owner, the Ministry of Finance shall make the accounting on debt obligations in accordance with regulations on accounting regime applicable to loans and debt payment of the Government and local authority; tracking statistics of on-lent debts and Government guarantee.

2. For programs and projects with state budget accounting implemented by the Ministry of Finance, up on modification, base on the disbursement notice of the donor, the Ministry of Finance shall make the Notice on accounting modification and send copies of the Data modification notice to the on-lent agency and the project owner to adjust corresponding accounting data on financial and accounting statement of foreign capital.

### **Article 68. Accounting exchange rate**

1. For donors directly disbursing and paying by letter of credit in foreign currencies to contractors, suppliers, the accounting in Vietnam dong (VND) shall apply the exchange rate at the beginning of the day transfer of the service bank, the bank where the State Treasury opens its account, or the exchange rate at the beginning of the day transfer of Joint Stock Commercial Bank for Foreign Trade of Vietnam in the absence of a serving bank on the date the donor debits to the Government.

2. For amounts paid directly by the donor in VND, the donor's actual payment rate between the debt receiving currency and the payment currency shall be applied.

3. In case the project makes expenditures from the advance account, expenditures from the advance account in VND and in foreign currencies shall apply the respective foreign currency transfer buying rate of the service bank or the bank where the State Treasury opens the account at the time of payment.

4. In case of transfer of advance revenue or expenses to actual payment up on completed volumes, the exchange rate at the beginning of the day transfer of the servicing bank or the bank where the State Treasury opens the account at the time of recording the advance payment revenue and expenditure for accounting of advance recovery shall applied.



5. The project owner is responsible for determining and applying the exchange rate when requesting the State Treasury conducting the spending control transaction or requests accounting on revenues and expenditures in foreign currencies as prescribed.

6. Project owners shall re-evaluate the exchange rates for monetary items denominated in foreign currencies of project activities at the end of the accounting period before making the financial statement and up on request of the donor, monetary items denominated in foreign currencies must be re-evaluated of exchange rates shall comply with regulation of financial regime applied by such agency.

**Article 69. Time limit for state budget accounting:**

1. For expenditures of ODA or concessional loans the control of which has been certified and the disbursement be implemented by January 31 of the subsequent year, within 05 working days, to implement the accounting at the State Treasury office where transactions are conducted;

2. The State Treasury shall complete the accounting of expenditures of ODA and concessional loans that arise in a budgetary year within 30 days from January 01.

3. The order and procedures for management of the accounting of ODA and concessional loans into the state budget must comply with the Government's regulations on administrative procedures at the State Treasury.

**Section 5**

**REPORTING, ACCOUNTING, AUDIT, FINANCIAL FINALIZATION,  
AND INSPECTION**

**Article 70. Online report on information of ODA and foreign concessional loans**

1. The managing agency shall upload information on Program and project proposal, Report on proposal of investment policy or Pre-Feasibility Study Report, Project documents, the Feasibility Study Report approved by the competent authority on the information system and the National database on public investment, the website of the Ministry of Finance. The report shall be made within 10 days from the issuance day of the deciding or approving document of the competent authority.

2. The project owner or the Managing board of the project shall send the online report on the Information system and the National database on public investment, the website of the Ministry of Finance on information of the Master

plan on implementation of the program and project, expectation of annual disbursement demand, the annual assigned capital plan and amending, supplementing plan (if any), ODA and foreign concessional loan capital disbursement situation.

a) For the Master plan of on implementation of the program and project and the amending, supplementing of Master plan (if any), the project or the Managing Board of the project shall report within 10 days from the receiving date of the approval documents of the managing agency.

a) For the Master plan of on implementation of the program and project and the amending, supplementing of Master plan (if any), the project or the Managing Board of the project shall report within 10 days from the receiving date of the approval documents of the managing agency.

b) For the actual capital disbursement situation, the project owner or the Managing Board of the project shall make report on informations of ODA and foreign concessional loan capital disbursement situation within 05 days from the ending day of the month on the Information system and the National database on public investment and the website of the Ministry of Finance.

3. The Ministry of Planning and Investment and the Ministry of Finance shall make guidance on forms of online report prescribed in this Article.

### **Article 71. Reporting on the disbursement and accounting of state budget**

1. Within 15 days from the end of a quarter, the project owner shall control expenditures at the State Treasury where transactions are conducted, make a report on disbursement of ODA or concessional loans in the quarter and send it to the managing agency and the same-level finance agency together with a state budget revenue and expenditure statement certified by such State Treasury office.

Enterprises and public non-business agencies that receive on-lent loans shall make disbursement reports under the Government's Decree on on-lending.

2. Within 30 days after the ODA or concessional loan is closed, the project owner shall submit a report on termination of withdrawal of ODA or concessional loan to the Ministry of Finance and the managing agency, which serves as the basis for the financial finalization of the project.

3. The project owner shall prepare financial statements according to the concluded treaty or agreement on ODA or concessional loans, the Finance, the project document (if any) and send them to the foreign donor, the managing agency and the same-level finance agency for monitoring and timely direction of the financial management of the project.

4. Annually, within 60 days from the end of the reporting period, to serve the comparison of accounting figures and actual disbursements, the managing

agency shall review and send a report on disbursement, accounting and payment of ODA or concessional loans as revenues and expenditures of the state budget to the Ministry of Finance and State Treasury.

5. The Ministry of Finance shall make the guidance on form of disbursement report.

#### **Article 72. Accounting, audit, financial finalization**

The accounting, audit, financial finalization, of ODA or concessional loan-funded programs and projects shall be carried out under current regulations on budget state funds, guidance of the Ministry of Finance and specific requirements for ODA or concessional loan sources.

#### **Article 73. Provisions on asset management**

Provisions on management of public assets generate from ODA or foreign concessional loans shall be implemented in accordance with the law on management and use of public assets.

### **Section 6**

#### **OTHER PROVISIONS ON FINANCIAL MANAGEMENT**

#### **Article 74. Peculiarity contents of ODA or concessional loan-funded programs and projects**

1. The advance capital of contract, making recall of the advance payment, retain rate for maintenance shall be implemented as prescribed in the contract between the project owner and the contractor in accordance with law provision on contract (the project owner has the right to make agreement with the contractor on the bail of advance for contract with the value of advance amount not exceed VND 01 billion). The project owner shall take responsibility on managing and recall the advance capital for the contractor. In case of unable to recall such amount, the project owner shall take responsibility to arrange refund for the donor.

2. For each proposal for confirm and payment of construction work maintenance charge for contractor changing, the project owner shall make the list on monitoring the schedule of maintenance charge transfer and the accumulation of the amount to be transfered, send to the State Treasury for compare and confirm the amount of maintenance charge in accordance with terms of the contract so that the project owner transfer to pay for the contractor. Time for payment of construction work maintenance charge is the time of calculating the annual capital plan assign to the project.

3. For the last payment of the independent audit charge, it shall be paid

from the counterpart fund.

**Article 75. Financial management provisions for projects with content of regular expenses prescribed in concluded international treaties or agreement on loan**

1. The project owner shall make the plan on disbursement and capital recall in the planing year and in the next 02 years for each program or project, in which separate the ODA, concessional loan capital, non- refundable ODA for regular expenses and counterpart fund and send to the Ministry of Finance.

2. The Ministry of Finance shall sum up the plan on ODA and non-refundable ODA attached to the loan on regular expenses allocated to ministries, ministerial level agencies, central agencies and the provincial People's Committee in to the annual state budget estimate.

3. After the capital on regular expenses approved by the competent authority, related agencies shall upload the plan on using of capital for regular expenses on to Tabmis in accordance with regulations in force.

4. Spending control of the project or activities under the regular expenses estimate shall be implement in accordance with the Law on State Budget and documents on guiding the implementation.

5. For regular expenses project, the financial regime of public administration shall apply. For project combined of investment expenses and regular expenses, the project owner shall report to the managing agency for deciding on appropriate financial regime.

6. Within 06 months from the day of disbursement completion, for project funded by ODA, concessional loan capital allocated with regular expenses capital, the Managing Board of the project shall make the financial finalization report on project completion, separate for ODA (non- refundable ODA, ODA, concessional loan capital, counterpart fund) on the basis of synthesize the whole result on financial finalization data on years of project implementation, which notified for consideration of approval for the financial finalization by the competent authority and send to the managing agency. The managing agency shall sum up and send to the Ministry of Finance.

7. The project owner (unit funded by budget) shall make and send annual financial finalization report, annual financial report to the managing agency (directly superior financial unit) or send to the financial agency (in case of absent of superior financial unit) in accordance with law provisions on financial regime for public administration. The approval, appraisal and notification on annual financial finalization shall be implemented in accordance with provisions of the Ministry of Finance on approval, appraisal and notification on annual financial finalization.

## Chapter VII

### FINANCIAL MANAGEMENT OF NON- REFUNDABLE ODA

#### **Article 76. Principles of financial management of non- refundable ODA**

1. Non- refundable ODA under the revenue of state budget which be estimated, controlled of spending, conducted accounting, record of revenue and expenses, conducted settlement in accordance with law provisions on state budget management and financial management as prescribed in this Decree. In case of new generated that has not been synthesized in the estimate allocated and assigned by the competent authority, the project owner shall make the supplement estimate in accordance with law provisions on state management and related laws.

2. For non- refundable ODA directly managed and implemented by the donor. The managing agency shall take responsibility to manage in accordance with concluded international treaties and agreements on non- refundable ODA, program and project documents or the Feasibility Study Report of program and project; implement in accordance with function and task of the managing agency; comply with regulations on accounting, taxation and other related law provisions. In case the donor handover the ownership of asset, equipment of the program and/ or project to the project owner, the project owner shall implement the asset possession in accordance with regulations in force.

3. For non- refundable ODA under the combine mechanism: Implement in accordance with regulation on financial management of ODA and concessional loan capital as prescribed in Chapter VI of this Decree.

4. For non- refundable ODA of emergency aid for relief and remedy of natural disasters: Implement in accordance with provisions of the Government on receive, management and use of international emergency aid for relief and remedy of natural disasters.

5. In case regulations on financial management in this Chapter differ from international treaties on non- refundable ODA concluded by the competent authority, provisions of such treaties shall apply.

#### **Article 77. Open payment account for program and project funded by non- refundable ODA**

1. Counterpart fund accounts: Project owners shall open accounts at the State Treasury to control and disburse counterpart funds of their projects.

2. Non-refundable ODA accounts: The project owner open the account to receive non- refundable ODA at the system of the State Treasury where conducting the transaction or at the serving bank.

a) Order and procedure for open the account at the State Treasury and the management and use of the account shall be implement in accordance with current law regulations.

b) The State Treasury shall organize the control and payment of ODA.

#### **Article 78. Formulation of financial plan of non- refundable ODA**

1. Base on the Decision on approval of the project, non- project aid or Decision on program, project investment; international treaties or agreements on non- refundable ODA (if any), the project owner shall formulate the 03 years and annual plan on revenue and expenses of non- refundable ODA in accordance with provisions of the Law on State budget and related law and send to the managing agency for synthetization.

2. Formulation of annual estimate on revenue and expenses of non- refundable ODA shall be detail for each donor, program, project or non- project aid, international treaty and agreement on non- refundable ODA.

3. Formulation, synthetization, submission, approval, assignment and modification of the capital plan funded by non- refundable ODA:

a) For non- refundable ODA spend on public investment expenses, implement in accordance with law provisions on public investment.

b) For non- refundable ODA spend on regular expenses, implement in accordance with law provisions on the state budget.

4. On the basis of annual capital limit assigned by the competent agency, the managing agency shall allocate for each program, project and/ or non- project aid and inform to the Ministry of Finance and the Ministry of Planning and Investment on the detail plan on assignment.

5. The managing agency shall direct and organize the implementation of the estimate and report on the implementation of the plan on non- refundable ODA revenue and expenses in accordance with current regulations.

#### **Article 79. Control of spending, disbursement, accounting and make record of revenue and expenses of ODA non- refundable by cash**

1. The project owner shall implement the spending control at the State Treasury in accordance with law provisions on state budget management. Order and procedure on revenue and expenditure accounting shall be implemented in accordance with law provisions on administrative procedure on the field of State Treasury.

2. The dossier of spending control send to the State Treasury at the first time shall include:

a) Decision on estimate assignment or supplementation of estimate assignment of the competent authority;

b) Copy from the origins of the Decision on approval of the program or project document or Decision on program or project investment and program or project document or approved Feasibility Study Report;

c) Copy from the origins of the international treaty of agreement on non-refundable ODA or Exchange diplomatic note or Notification letter on non-refundable ODA;

d) Contract of the related commodity and service procurement (if any). In case the contract concluded in foreign language, it must be attached with the translation in Vietnamese with the signature and seal of the project owner. The project owner shall be legally responsible for the truthfulness and accuracy of the Vietnamese translation;

dd) Written request for certification of valid expenditures on public service capital and written requests for payment of investment capital of project owners according to the provisions of the Government on administrative procedures in the field of state treasury.

3. Dossier of each payment send to the State Treasury shall be implemented in accordance with law provisions on expenses from state budget capital.

4. Disbursement of non- refundable by money ODA for program and project: Base on the result of spending control, up on request of the project owner, the State Treasury or the serving bank shall implement the disbursement for the project in accordance with law provisions; make monthly notice on the amount of non- refundable ODA disbursement of each account holder according to program, project to the Ministry of Finance.

5. Accounting on record of revenue and expenses of project:

a) Each month or depend on each time of generate, up on result of spending control and the written request for record of revenue and expenses of non-refundable ODA sent by the project owner, the State Treasury shall simultaneously make record of revenue and expenses in accordance with law provisions. In case the project owner opens the account of ODA capital at the serving bank, besides the above mentioned dossier, the project owner shall enclose with copies of payment voucher from the account of ODA capital at the serving bank;

b) The State Treasury shall finalize into the state budget according to the payment content of aid as prescribed in the index of state budget in accordance with law provisions. Advance amount according to the regime of making accounting on advance payment. Recall of advance amount according to the regime of making accounting on reduce of advance payment. Payments for completed volumes, accounting of revenues and expenditures, actual expenditures and implementation of annual budget settlement.

c) Time of accounting shall comply with current regulation for capital from

state budget.

6. Advance payment and spending control of non- refundable by money ODA shall be implemented in comply with current regulations on capital from state budget.

7. a) Interest from non- refundable ODA generated on a deposit account shall be separately monitored and used to pay banking service charges under regulations. Banking service charges constitute an expense of the project.

8. Up on completion of expenses activities on the non-refundable ODA accounts at the serving bank, if in concluded treaty or agreement on non-refundable ODA have no commitment on using the interest of aiding deposit, the project owner shall remit the whole amount of generated interest in to the state budget in accordance with current regulations. Using of the generated interest shall be implemented in accordance with law provisions on public investment and state budget.

#### **Article 80. Receipt of non- refundable ODA by commodities and services**

1. The receipt of aid- based commodities import from foreign countries shall be implemented in accordance with the Law on Customs, the Law on Export and Import Duties and the Law on Tax Administration. The dossier sends to the customs agency conducting the customs clearance procedure for imported aid commodities shall include:

a) International treaty or agreement on non- refundable ODA or exchange documents on commitment and receipt of non- refundable ODA: 01 copy which certified of true origin by the competent authority in accordance with relevant law provisions;

b) The Decision on approval of the project or non- project aid document or Decision on program investment and program document or approved Feasibility Study Report; 01 copy which certified of true origin by the competent authority in accordance with relevant law provisions;

c) Other documents in accordance with law provisions on customs procedure.

2. Dossier on tax refund or tax exemption of the domestic commodity and service purchased by the non- refundable ODA capital, send to the taxation authority shall include:

a) International treaty or agreement on non- refundable ODA or exchange documents on commitment and receipt of non- refundable ODA: 01 copy;

b) The Decision on approval of the project or non- project aid document or Decision on program investment and program document or approved Feasibility Study Report; 01 copy;



c) Written request for certification of valid expenditures on public service capital and written requests for payment of investment capital of project owners according to the provisions of the Government on administrative procedures in the field of state treasury.

d) Other documents in accordance with law provisions on tax refund or tax exemption.

3. Implementation of charge and fee shall be conducted in accordance with law provisions on charge and fee.

4. After receipt the commodity, the project or non- project aid owner, shall compile the dossier and submit to the State Treasury for making of record of revenue and expenses in accordance with law provisions. Dossier on record of revenue and expenses shall include:

a) International treaty or agreement on non- refundable ODA or exchange documents on commitment and receipt of non- refundable ODA: 01 copy which certified of true origin by the competent authority in accordance with relevant law provisions;

b) The Decision on approval of the project document or Decision on program investment and program document or approved Feasibility Study Report; 01 copy which certified of true origin by the competent authority in accordance with relevant law provisions;

c) Written request on revenue and expenditure accounting in accordance with provisions of the Government on administrative procedure on the field of State Treasury.

d) In case of importing commodity: Contract, bill of lading or other transport bill with equivalent validity, commercial invoice or declaration of imported commodity in case absent of commercial invoice: 01 copy which certified of true origin by the competent authority in accordance with relevant law provisions; In case of domestic purchase commodity: Procurement contract, value added invoice, commodity handover record: 01 copy which certified of true origin by the competent authority in accordance with relevant law provisions;

dd) Decision on assignment of non- refundable ODA estimate or supplemented estimate within the year of the competent authority.

5. The State Treasury shall make the accounting on record of revenue and expenses for imported commodity by the price without charge and fee in accordance with law provisions.

## **Chapter VIII**

### **TASKS, POWERS AND RESPONSIBILITIES OF AGENCY AND ORGANIZATION ON MANAGEMENT AND USE OF ODA AND**

## CONCESSIONAL LOAN CAPITAL

### **Article 81. Tasks and powers of the Ministry of Planning and Investment**

1. To preside on formulation of strategies and policies on development cooperation with foreign donor; orientation of attracting, management and use of ODA and concessional loan capital from foreign donor.

2. To assume the prime responsibility for drafting and submitting for promulgation or promulgating legal documents on ODA and concessional loan management and use according to its competence.

3. To preside on determination of capital demand for development investment from ODA and concessional loan capital; synthesize and submit to the Prime Minister on Proposal of program and project funded by ODA and concessional loan capital.

4. To take the prime responsibility and coordinate with related agencies to appraise the fund and the capacity of fund balancing of investment project funded by ODA and concessional loan.

5. To assume the prime responsibility for, and coordinate with related agencies in, proposing to the Government the conclusion of framework treaties and specific treaties and framework agreement on non-refundable ODA loans not linked with loans specified in Clause 4, Article 29 of this Decree; to propose to the Prime Minister the conclusion of framework agreement and specific agreements on non-refundable ODA not attached to loans specified in Clause 4, Article 32 of this Decree.

6. To summarize and submit to the Prime Minister for consideration and decision investment policy on ODA or concessional loan-funded programs and projects within the deciding-competence of the Prime Minister, excluding group-A projects; to send official written requests to foreign donors on approved Proposal of program and project, Decision on investment policy of program, project and request for consideration of sponsorship.

7. To summarize and submit to the Prime Minister for consideration and decision the implementation policy for non-refundable ODA-funded technical assistance projects and non-project aid, which fall within the competence of the Prime Minister; to send official notice to foreign donors on approved project, non-project aid and request for consideration of sponsorship after the implementation policy, documents of technical assistance projects and non-project aid decided by the competent authority.

8. To coordinate with the Ministry of Finance in formulating framework and specific treaties or agreements on ODA and concessional loans.”

9. To coordinate with the State Bank of Vietnam on formulating international treaty on non-refundable ODA not attached to loans with international financial and currencies institutions.

10. To coordinate with the Ministry of Finance and related agencies in determining the grant element, assessing impacts of loans on public debt safety indicators, and determining the domestic financial mechanism applicable to programs and projects in accordance with law.”

11. To supervise and evaluate, examine and inspect ODA or concessional loan-funded programs and projects under regulations on public investment supervision and evaluation and ODA and concessional loan management and use.

12. To act as the focal point in solving difficulties and problems during the program and project implementation, and matters involving many ministries and sectors in order to ensure the implementation progress and promote the disbursement of ODA and concessional loans; to propose the Prime Minister for decision measures to handle matters related to ODA and concessional loans within the competence of the Prime Minister.

In necessary cases, to assume the prime responsibility for forming an inter-sectoral team to directly work with the managing agency, project owner, project management unit and foreign donor in order to consider, assess and timely solve difficulties within its competence.

13. To submit to the Prime Minister periodical (biannual and annual) and irregular reports on ODA and concessional loan mobilization, management and use; to propose solutions to difficulties arising in the program and project implementation.

## **Article 82. Tasks and powers of the Ministry of Finance**

1. To coordinate with the Ministry of Planning and Investment and related agencies on formulation of strategies and policies on development cooperation with foreign donor.

2. To guide the preparation of contents concerning conditions on use of funds, domestic financial mechanism and financial management of programs and projects; and financial appraisal of projects funded by on lent loans.

3. To assume the prime responsibility for determining the grant element and assessing impacts of ODA or concessional loans on public debt safety indicators, and determine the domestic financial mechanism applicable to ODA or concessional loan-funded program and project.”

4. To assume the prime responsibility for, and coordinate with related agencies in, proposing to the Government the conclusion of framework and specific treaties on ODA concessional loans and non-refundable ODA for programs and projects specified in Clause 2, Article 29 of this Decree; to propose

to the Prime Minister the conclusion of framework agreement and specific agreements on ODA loans, concessional loans and non-refundable ODA for programs and projects specified in Clause 2, Article 32 of this Decree.

5. To coordinate with the Ministry of Planning and Investment to appraise the fund and the capacity of fund balancing of investment project funded by ODA and concessional loan.

6. To officially represent the “borrowers” with regard to ODA or concessional loans in the name of the State or the Government before foreign donors.

7. To synthesize and submit to the Prime Minister on decision for termination of surplus funds; sent official notice to the donor on termination of surplus funds as prescribed in Clause 5 Article 47 of this Decree.

8. Regarding financial management of programs and projects:

a) To assume the prime responsibility for, and coordinate with related agencies in, guiding the financial management of programs and projects;

b) To specify procedures for fund withdrawal and management of fund withdrawal of programs and projects in pursuance to current laws and treaties and agreements on ODA and concessional loans already concluded with foreign donors;

c) To allocate funds from the state budget and other sources in order to repay ODA and concessional loans when they become due;

d) To monitor and examine the financial management in the use of ODA and concessional loans and organize the accounting of the state budget related to these funding sources;

dd) Implement the report regime on disbursement, fund recall and debt payment of ODA and concessional loan capital in accordance with law provisions on public investment and public debt management and other current regulations;

e) To assume the prime responsibility for, and coordinate with the Ministry of Planning and Investment in, adequately and timely arranging counterpart funds from the non-business administrative source in order to prepare and implement programs or projects eligible for central budget allocation in the annual funding plans;

g) To organize the on lending and withdrawal of part of on lent funds of programs and projects applying the mechanism of on lending from the state budget.

### **Article 83. Tasks and powers of the State Bank of Vietnam**

1. To coordinate with the Ministry of Planning and Investment and related agencies in formulating strategies and policies on development cooperation with

foreign donors and master plans and plans on ODA and concessional loan attraction, coordination and management and use; to analyze and assess the use efficiency of these funding sources.

2. To coordinate with the Ministry of Planning and Investment and the Ministry of Finance in appraising ODA, concessional loans and counterpart fund and the ability to balance these funding sources (for funds from the World Bank, the Asian Development Bank, the International Monetary Fund and other international financial and monetary institutions and international banks for which the State Bank of Vietnam acts as a representative).

3. To assume the prime responsibility for, and coordinate with related agencies in, proposing to competent authorities the conclusion of treaties on non-refundable ODA loans not linked with loans with international financial and monetary institutions prescribed in Clause 3, Article 29 of this Decree.

4. To coordinate with the Ministry of Finance in proposing to competent authorities the conclusion of treaties, framework agreement and specific agreements on ODA and concessional loans with international financial and monetary institutions and banks for which the State Bank of Vietnam acts as a representative.

5. To give opinions on banks eligible to act as serving banks of ODA or concessional loan-funded programs and projects.

#### **Article 84. Tasks and powers of the Ministry of Justice**

1. To appraise draft treaties and agreements on ODA and concessional loans in accordance with law.

2. To participate in negotiations and contribute opinions on the content of draft treaties and agreements on ODA and concessional loans.

3. To contribute opinions on investment policy proposal reports of programs and projects on legal cooperation with foreign donors.

4. To appraise documents of technical assistance projects and non-project aid on legal cooperation with foreign donors which fall within the approving competence of the Prime Minister in accordance with the law on management of international legal cooperation; to give comments on programs, projects and non-project aid on legal cooperation within the approving competence of managing agencies.

5. To give opinion on treaties and agreements on ODA and concessional loans in accordance with law.

#### **Article 85. Tasks and powers of the Ministry of Foreign Affairs**

1. To coordinate with related agencies in elaborating and implementing guidelines and orientations for ODA and concessional loan mobilization as well

as counterpart policies on the basis of the general external relation policies; to participate in ODA and concessional loan mobilization.

2. To coordinate with the Ministry of Planning and Investment and related agencies in, directing representative missions of the Socialist Republic of Vietnam in foreign countries or at international organizations to mobilize ODA and concessional loans in line with the guidelines and orientations on mobilization as well as master plans and plans on attraction, coordination, management and use of ODA and concessional loans in each period.

3. To join in negotiations and contribute opinions on draft treaties and agreements on ODA and concessional loans; to give opinions and proposals on conclusion of treaties and agreements on ODA and concessional loans.

4. To implement domestic procedure on conclude and implementation of treaty; organize the archive and storage and publication of treaty on ODA and concessional loan capital in accordance with provision of the Law on Treaties.

5. Grant the authorization on the conclusion of agreements on ODA or concessional loans

6. To participate in the program and project evaluation at the request of competent agencies.

7. To monitor and examine the performance of procedures for the conclusion and implementation of treaties and agreements on ODA and concessional loans in accordance with law.

#### **Article 86. Tasks and powers of other ministries, ministerial-level agencies and government-attached agencies**

1. To coordinate with the Ministry of Planning and Investment and related agencies in formulating strategies, master plans and plans on ODA and concessional loan attraction, coordination, management and use; to formulate policies and methods to coordinate, and enhance the use efficiency of, ODA and concessional loans in the fields under their respective management.

2. To formulate program and project proposals, reports on proposal of investment policy or prefeasibility study reports, and project or non-project aid documents and submit them to competent authorities for decision or approval according to their competence.

3. To coordinate with proposing agencies in proposing to competent authorities the conclusion of specific treaties or agreements on ODA or concessional loans for the programs and projects under their management in accordance with Clauses 2 and 3, Article 29, and Clauses 2 and 3, Article 32, of this Decree; and to implement such treaties or agreements in accordance with law.

4. To propose to the Government the conclusion of specific treaties on non-

refundable ODA aid prescribed in Clause 1, Article 29 of this Decree and organize the implementation of these treaties in accordance with the law on treaties; to propose to the Prime Minister the conclusion of agreements on non-refundable ODA prescribed in Clause 1, Article 32 of this Decree, and organize the implementation of these agreements in accordance with law.

5. To perform state management of ODA and concessional loans in the sectors or fields under their respective management in accordance with law.

6. To ensure publicity and transparency and take responsibility for the use efficiency of ODA and concessional loans for programs and projects they directly manage and implement.

### **Article 87. Tasks and powers of provincial-level People's Committees**

1. To coordinate with the Ministry of Planning and Investment, other ministries, sectors and related agencies in formulating strategies, master plans and plans on ODA and concessional loan attraction, coordination, management and use; to develop policies and measures to coordinate and raise the use efficiency of ODA and concessional loans in their respective localities.

2. To formulate program and project proposals, reports on proposal of investment policy or prefeasibility study reports, and project or non-project aid documents and submit them to competent authorities for decision or approval according to their competence.

3. To coordinate with proposing agencies in proposing to competent authorities the conclusion of specific treaties or agreements on ODA or concessional loans for the programs and projects under their management in accordance with Clauses 2 and 3, Article 29, and Clauses 2 and 3, Article 32, of this Decree; and to implement such treaties or agreements in accordance with law.

4. To coordinate with the Ministry of Planning and Investment in submitting to the Prime Minister the conclusion of specific treaties on non-refundable ODA prescribed in Clause 4, Article 29 of this Decree and organize the implementation of these treaties in accordance with the law on treaties; and the conclusion of agreements on non-refundable ODA prescribed in Clause 3, Article 32 of this Decree, and organize the implementation of these agreements in accordance with law.

5. To direct and organize land recovery, compensation and ground clearance for programs and projects in their respective localities in accordance with law and treaties on ODA and concessional loans to which the Socialist Republic of Vietnam is a contracting party.

6. To perform state management of ODA and concessional loans in their respective localities in accordance with law.

7. To ensure publicity and transparency and take responsibility for the use efficiency of ODA and concessional loans for programs and projects they directly manage and implement.

8. To arrange funds to fully pay debts owed to the central budget on schedule in order to pay foreign debts for programs and projects applying the mechanism of on lending ODA and concessional loans from the central budget to provincial-level budgets.

## **Chapter IX**

### **PROVISIONS OF IMPLEMENTATION**

#### **Article 88. Organization of implementation**

1. The Ministry of Planning and Investment shall issue the Circulars on guiding the implementation of this Decree.

2. The Ministry of Finance shall promulgate according to its competence Circulars on guiding the implementation of this Decree regarding financial management for ODA and concessional loans.

#### **Article 89. Transitional handling**

1. For programs, projects funded by ODA, concessional loan capital approved the list by the competent authority, in the course of implement have demand to amend and modify shall be implemented in accordance with provisions on modification of this Decree.

2. Programs and projects approved the Proposal of the programs or projects; the investment policy of programs and projects before the effective date of this Decree shall continue to implement the upcoming order and procedure as prescribed in this Decree.

3. For technical support programs and projects funded by non- refundable ODA prepared independent investment project and technical support project, non- project aid funded by ODA which have the program or project document approved before the effective date of this Decree shall continue to implement the upcoming order and procedure as prescribed in this Decree.

4. For technical support project and non- project aids funded by non- refundable ODA which have the project or non- project aid document approved before the effective date of this Decree, in the course of implementation have modification which not cause any change in to technical support project and non- project aids under the competent of approval as prescribed in Clause 1 Article 23 of this Decree, the managing agency shall implement the order and procedure on modifying the document of project, non- project aid as prescribed in Clause 2



Article of this Decree. In case the modified contents lead to the change in to the technical support project and non- project aids under the competent of approval as prescribed in Clause 1 Article 23 of this Decree, the managing agency shall implement the order and procedure of approval and modification as prescribed in Clause 25, 26, 27 of this Decree.

5. Agreement on ODA, concessional loan capital concluded by the competent authority on representative of the State, in case of modification and supplement, provisions on ODA and concessional loan capital shall be prescribed in this Decree.

6. For umbrella project on going, managing agencies of umbrella projects have no function of coordinating, allocating and assigning funds for component projects.

### **Article 90. Effect**

1. This Decree takes effect on May 25, 2020, and replaces the Government's Decree No. 16/2016/ND-CP dated March 16, 2016 and the Government's Decree No. 132/2018/ND-CP dated October 01, 2018 on management and use of ODA and concessional loans of foreign donors.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees and related organizations and individuals shall implement this Decree. -

*For the Government*  
*The Prime Minister*  
*Nguyen Xuan Phuc*