

**THE GOVERNMENT**

No. 20/2023/ND-CP

**THE SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

*Hanoi, May 04, 2023*

**DECREE**

**Amending and supplementing a number of articles of Decree No. 114/2021/ND-CP dated December 16, 2021, on the management and use of official development assistance (ODA) and concessional loans of foreign donors**

*Pursuant to the Law on Organization of the Government dated June 19, 2015; the Law Amending and Supplementing a Number of Articles of the Law on Organization of the Government and the Law on Organization of Local Governments dated November 22, 2019;*

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

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

*Pursuant to the Construction Law dated June 18, 2014, and the Law Amending a Number of Articles of the Construction Law dated June 17, 2020;*

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

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

*Pursuant to the Law Amending and Supplementing a Number of Articles of the Law on Public Investment, Law on Investment in the Form of Public-Private Partnership, Law on Investment, Housing Law, Bidding Law, Electricity Law, Law on Enterprises, Law on Excise Tax and the Law on Enforcement of Civil Judgments dated January 11, 2022;*

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

*The Government promulgates the Decree amending and supplementing a number of articles of Decree No. 114/2021/ND-CP dated December 16, 2021, on the management and use of official development assistance (ODA) and concessional loans of foreign donors.*

**Article 1. Amending and supplementing a number of articles of Decree No. 114/2021/ND-CP of December 16, 2021, on the management and use of official development assistance (ODA) and concessional loans of foreign donors**

1. To amend Clause 2 Article 12 as follows:

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

a) Group-A programs and projects to be funded with ODA or concessional loans, except those specified in Clause 1 of this Article;

b) Programs or investment projects to be funded with non-refundable ODA in the following cases: group-A programs and projects; programs and projects accompanied by policy frameworks; programs and projects in the fields of national defense, security and religious affairs; sector-wide approach programs; procurement of goods subject to the Prime Minister’s permission;”;

2. To add Clauses 3a, 3b Article 12 as follows:

“3a. Ministers and heads of managing agencies shall decide on investment policy for group-B and group-C investment projects to be funded with ODA and concessional loans of foreign donors, approve technical assistance projects to be funded with ODA and concessional loans for preparation of investment projects under their management, except those specified in Clause 2 of this Article.

3b. Provincial-level People’s Councils shall decide on investment policy for group-B and group-C investment projects to be funded with ODA and concessional loans of foreign donors, approve technical assistance projects to be funded with ODA and concessional loans for preparation of investment projects under their management, except those specified in Clause 2 of this Article.”

3. To amend Point d Clause 2 Article 13 as follows:

“d) The Prime Minister shall consider and approve a program or project proposal with the following main contents: Name of the project or program; name of the foreign donor and co-donors (if any); name of the managing agency; expected objectives and main outcomes; expected total funding amount and structure of funding sources and on-lending methods.”

4. To add Clause 5 to Article 13 as follows:

“5. Adjustment of a program or investment project proposal:

In the process of formulation, appraisal, and decision on investment policies, or adjustment of investment policies, in case of change to the main contents of the project proposal approved by the Prime Minister, the managing agency shall carry out the order and procedures for adjustment of the program or investment project proposal as follows:

a) In case of adjustment of the total funding amount due to changes in the exchange rate; reduction of ODA capital or concessional loans, without changing other main contents of the program or project proposal as prescribed

at Point d Clause 2 of this Article: The managing agency is not required to make adjustments to the program or investment project proposal;

b) In case of change to the main contents of the program or project proposal specified at Point d Clause 2 of this Article without increasing ODA or concessional loans: The managing agency shall send a document and report on the reasons for the adjustment to the Ministry of Planning and Investment to summarize opinions from the Ministry of Finance and relevant agencies, and submit them to the Prime Minister for consideration and decision.

c) In case of increasing ODA or concessional loans: The managing agency shall formulate program or project proposal and carry out the order and procedures specified in Clause 2 of this Article. The dossier to be submitted to the competent authority and the time for deciding on adjustment of the program or project proposal shall comply with the provisions of Clause 3 of this Article, the dossier must specify the reasons and contents for the adjustment of the program or project proposal;

d) For national target programs, national important projects, public investment programs; group-A investment projects and programs; programs and projects subject to the Prime Minister's approval: It is not required to make adjustments to the program or project proposal in accordance with this Clause.”

5. To add Clauses 5a, 5b Article 14 as follows:

“5a. The order and procedures for making investment policy decisions for group-B or group-C investment projects to be funded with ODA or concessional loans which falls under the competence of ministers or heads of managing agencies shall be carried out as follows:

a) The Minister or head of managing agency shall assign an attached unit to prepare the investment policy proposal report;

b) The managing agency shall collect written opinions from the Ministry of Planning and Investment, the Ministry of Finance and related agencies;

c) The minister or head of managing agency shall establish an Appraisal Council, or authorize another competent entity to conduct the appraisal of the investment policy proposal report, funding sources and fund-balancing capacity;

d) The minister or head of managing agency shall direct the units specified at Point a of this Clause to complete the investment policy proposal report according to appraisal opinions and opinions of the Ministry of Planning and Investment, the Ministry of Finance and related agencies;

dd) Based on appraisal opinions of functional units, opinions of the Ministry of Planning and Investment, the Ministry of Finance and related agencies, the minister or head of managing agency shall decide on investment policy.

5b. The order and procedures for making investment policy decisions for group-B and group-C projects to be funded with ODA or concessional loans which falls under the competence of provincial-level People's Councils shall be carried out as follows:

a) The chairperson of provincial-level People's Committee shall assign attached units to prepare the investment policy proposal report;

b) The provincial-level People's Committee shall collect written opinions from the Ministry of Planning and Investment, the Ministry of Finance and related agencies;

c) The provincial-level People's Committee shall establish an Appraisal Council, or authorize another competent entity to conduct the appraisal of the investment policy proposal report, funding sources and fund-balancing capacity;

d) The provincial-level People's Committee shall direct the units specified at Point a of this Clause to complete investment policy proposal report according to appraisal opinions and opinions of the Ministry of Planning and Investment, the Ministry of Finance and related agencies;

dd) Based on appraisal opinions of functional units, opinions of the Ministry of Planning and Investment, the Ministry of Finance and related agencies, the provincial-level People's Committee shall submit to the provincial-level People's Council for decision on investment policy.”

6. To amend Clause 7 Article 14 as follows:

“7. In case there is/are a change(s) in contents of a prefeasibility study report or an investment policy proposal report for the national target program, national important project, public investment program; group-A investment project or program to be funded with ODA and concessional loans as compared to the main contents of the program or project proposal approved by the Prime Minister specified at Point d Clause 2 Article 13: The managing agency shall send detailed report on the change(s) compared to the program or project proposal approved in the request for appraisal of the prefeasibility study report or investment policy proposal report under Point b Clause 1 Article 15 of this Decree.”

7. To add Clause 7a Article 14 as follows:

“7a. In case there is/are a change(s) in the contents of an investment policy proposal report for a project other than those specified in Clause 7 of this Article as compared to the main contents of the program or project proposal approved by the Prime Minister specified at Point d Clause 2 Article 13: The managing agency shall carry out the order and procedures for the adjustment of program or project proposal according to Clause 5 Article 13 before carrying out the order and procedures for submitting to the competent authority for decision on the investment policy of the project.”

8. To add Point b1 Clause 1 Article 15 as follows:

“b1) Written opinions of the Ministry of Planning and Investment, the Ministry of Finance and related agencies (for group-B and group-C investment projects to be funded with ODA and concessional loans).”

9. To amend Point c Clause 1 Article 15 as follows:

“c) The managing agency’s report on results of internal appraisal of the investment policy of the program or project funded with ODA and concessional loans (for the national target programs, national important projects, public investment programs; group-A investment programs and projects funded with ODA and concessional loans, other investment programs and projects funded with ODA and concessional loans under the Prime Minister's decision competence).”

10. To add Point a1 Clause 4 Article 15 as follows:

“a1) Consistency with the main contents of the program or project proposal approved by the competent authority.”

11. To amend Point b Clause 7 Article 15 as follows:

“b) Report to the minister, head of managing agency, or the provincial-level People's Council for permission to extend the time limit for appraising the investment policy proposal report, which is subject to investment policy decision by the minister, head of managing agency or the provincial-level People's Council.”

12. To amend Article 17 as follows:

“1. After the project investment policy is approved and before signing a treaty or agreement on ODA or concessional loan, if it is necessary to shorten the bidding preparation time, the competent person shall organize the formulation, appraisal, and approval of a contractor selection plan for the project owner to use as a basis for organizing the implementation of contractor selection, including:

a) Formulating, appraising and approving the invitation for expression of interest or invitation of pre-qualification (if any);

b) Determining a shortlist for procurement of the project (if any);

c) Formulating, appraising and approving of bidding dossiers and dossiers of requirements.

2. The basis for formulating, appraising and approving a contractor selection plan for activities to be carried out in advance includes:

a) Decisions approving investment policy;

b) Non-objection opinion of donors on the formulation, appraisal, and



approval of the contractor selection plan for activities to be carried out in advance.

3. Contractors participating in the expression of interest or pre-qualification must bear all costs related to the preparation and submission of the dossier for expression of interest and dossier for participation of pre-qualification. In case the shortlist has been selected but treaties or agreements on ODA or concessional loans of the project are not concluded, the project owner shall notify the contractors named in the shortlist that the bidding process shall not continue.

4. The project owner shall only be allowed to issue bidding dossiers and dossiers of requirements after treaties and agreements on ODA and concessional loans of the project are concluded.”

13. To add Clause 2a Article 19 as follows:

“2a. For group-A programs and projects:

a) In case of adjusting the implementation period of the project without changing the remaining main contents of the investment policy decision; or reducing ODA or concessional loans leading to the arising of financial obligations without changing the remaining main contents of the investment policy decision as specified in Article 18 of this Decree: The managing agency shall send a document and report on the reasons for the adjustment to the Ministry of Planning and Investment to summarize opinions from the Ministry of Finance, and submit them to the Prime Minister for consideration and decision;

b) In case of adjusting the implementation leading to a change in the main contents of the investment policy decision other than those specified at Point a Clause 2a of this Article: The managing agency shall adjust the investment policy according to the order and procedures specified at Point c Clause 2 Article 34 of the Law on Public Investment.”

14. To amend Clause 3 Article 19 as follows:

“For programs or projects falling within the investment policy-deciding competence of the Prime Minister, excluding group-A programs and projects:

a) In case of adjusting the implementation period of the project without changing the remaining main contents of the investment policy decision, or reducing ODA or concessional loans leading to the arising of financial obligations without changing the remaining main contents of the investment policy decision: The managing agency shall send a document and report on the reasons for the adjustment to the Ministry of Planning and Investment to summarize opinions from the Ministry of Finance, and submit them to the Prime Minister for consideration and decision;

b) In case of adjusting a program or project leading to a change in the main contents of the investment policy decision other than those specified at Point a Clause 3 of this Article: The managing agency shall adjust the investment policy according to the order and procedures specified in Clause 4 Article 14 of this Decree.

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 the following contents: Reasons for adjustment of the investment policy of the program or project; the contents of adjustment of the investment policy of the program or project correspond to the main contents of the pre-feasibility study report and investment policy proposal report.”

15. To amend Clauses 4 and 5 Article 19 as follows:

“4. For projects for which the investment policy is decided by the minister or head of managing agency or provincial-level People’s Council: In case of adjustment leads to any change in the main contents of the investment policy decision, the managing agency shall adjust the investment policy according to the order and procedures specified in Clauses 5a and 5b Article 14 of this Decree.

5. In case the funding limit of a program or project is adjusted due to change in exchange rate; or decrease of the ODA or concessional loan without arising financial obligations or changing the remaining main contents of the investment policy decision prescribed in Article 18 of this Decree, the managing agency is not required to comply with the order and procedures for adjustment of project proposal and decision on adjustment of investment policy.”

16. To add Point c Clause 2 Article 23 as follows:

“c) Approve documents of technical assistance projects funded with non-refundable ODA of foreign donors for preparation of investment projects managed by the managing agency and not subject to the order and procedures for deciding on implementation policy.”

17. To add Clause 3 to Article 23 as follows:

“3. “The provincial-level People's Council shall approve documents of technical assistance projects funded with non-refundable ODA of foreign donors for preparation of investment projects managed by the locality and shall not be subject to the order and procedures for deciding on implementation policy.”

18. To amend Point dd Clause 2 Article 26 as follows:

“dd) On the basis of the appraisal result, the head of the managing agency shall decide to approve the project or non-project documents. For technical

assistance projects for preparation of investment projects managed by the locality, on the basis of the appraisal result, the provincial-level People's Committee shall submit the project document to the provincial-level People's Council for approval.”

19. To add Point a1 Clause 1 Article 33 as follows:

“a1) The Ministry of Finance shall submit to the Prime Minister for deciding the negotiation on the agreement on ODA or concessional loans. A dossier on the negotiation to be submitted to the Prime Minister must comprise: A written proposal for negotiation policy; a draft agreement on ODA and concessional loans and a project investment decision.”

20. To amend Point b Clause 1 Article 33 as follows:

“b) On the basis of 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 05 days after receiving a written request for opinions and related documents.”

21. To amend Clauses 2 and 3 Article 48 as follows:

“2. The managing agency shall send the Ministry of Planning and Investment a document on the use of surplus funds of the program or project funded with ODA or concessional loans. The Ministry of Planning and Investment shall assume the prime responsibility for summarizing opinions from the Ministry of Finance, relevant agencies and foreign donors, submitting them to the Prime Minister for consideration and decision the use of surplus funds.

3. On the basis of the Prime Minister's decision on the use of surplus funds of the program or project funded with ODA or concessional loans, the managing agency shall carry out the order and procedures for decision on investment policy (for new projects), adjustment of investment policy (for the use of surplus funds to increase the effectiveness of ongoing projects) according to its competence to decide on investment policy, adjust investment policy, and carry out the order and procedures for decision on investment policy and adjustment of investment policy specified in Articles 14, 15, 16, 18 and 19 of this Decree.”

22. To add Clause 3a Article 48 as follows:

“3a. For the use of surplus funds of the program or project funded with non-refundable ODA, based on the opinions of donors, the Ministry of Planning and Investment and the Ministry of Finance, the managing agency shall carry out the order and procedures for decision on investment policy (for new projects), adjustment of investment policy (for the use of surplus funds to



increase the effectiveness of ongoing projects) according to its competence to decide on investment policy, adjust investment policy, and carry out the order and procedures for decision on investment policy and adjustment of investment policy specified in Articles 14, 15, 16, 18 and 19 of this Decree.”

23. To replace Appendix II as follows:

**“Appendix II  
FORM FOR PROPOSAL OF AN ODA- OR CONCESSIONAL LOAN-  
FUNDED PROGRAM OR PROJECT**

**I. MAJOR INFORMATION**

1. Name of the program/project in Vietnamese and English.
2. Managing agency, proposing unit and program/project owner (expected): Name, address, other related information.
3. Expected foreign donors and co-donors (if any) for implementation of the program/project.

**II. THE BASIS OF THE PROPOSAL**

- The economic, social, environmental, scientific, technological and related planning-related significance, necessity and feasibility of the program/project according to the planning law.
- The efforts already/being made to solve the problems raised.
- Other programs/projects being carried out in the same field (if any).
- Expected foreign donor (stating the reason for using the ODA and concessional loan of this donor).

**III. CONTENTS OF THE PROPOSAL**

1. Objectives, location, scale and scope of the program/project: Description of the general and specific objectives, location, scale and scope of the program/project.
2. Expected main outcomes of the program/project: Summary of expected main outcomes.
3. Estimated implementation period of the program/project (including the construction and operation period).
4. Expected total funding amount and structure of funding sources for implementation of the project and proposed financial mechanism:
  - Total funding amount: Non-refundable ODA, ODA loans, foreign concessional loans, and counterpart funds in detail in original currency and equivalent value in Vietnam dong and USD (using the exchange rate announced by the Ministry of Finance at the time of proposal).

- Loan terms and conditions: Specify the estimated interest rate (floating/fixed), the expected interest rate and fees (if any); for programs/projects that are expected to use floating interest loans, the floating interest rate in the proposal includes the floating base interest rate (Sibor, Eurobor, etc.) and the referenced margin interest rate in the market at the time of loan proposal; estimated loan period and grace period of the loan.

- Proposed domestic financial mechanism, estimated annual disbursement schedule (associated with the program/project implementation period).

- Plan to balance sources of debt repayment.

5. Plan for loan use and counterpart fund use (including plans for allocating equity), loan security plan, debt repayment plan, and proposed authorized lending agencies (with or without credit risk) in case the project proposal for on-lending to state-owned enterprises and public non-business units.

6. Impact assessment:

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

- Preliminary assessment of the impact on the medium-term public investment plan of the proposing agency.”

## **Article 2. To annul and replace a number of articles and appendices of Decree No. 114/2021/ND-CP**

1. To annul: Point c Clause 2 Article 12; Clause 3 Article 12; Clause 5 Article 14; Clause 10 Article 18 and Clause 2 Article 98.

2. To replace: Appendix II.

## **Article 3. Implementation provision**

1. This Decree takes effect from March 1, 2022.

2. Transitional provisions:

a) For national target programs, national important projects, public investment programs; group-A investment projects and programs; programs and projects subject to the approval competence of the Prime Minister of which the proposal has been approved; and investment policy before the effective date of this Decree, the order and procedures shall be carried out according to Decree No. 114/2021/ND-CP dated December 16, 2021, on the management and use of official development assistance (ODA) and concessional loans of foreign donors;

b) For programs and projects funded with ODA or concessional loans of which the program or project proposal has been approved by the Prime Minister, if it is required to amend or adjust during the course of

implementation, the provisions on adjustment of program and project proposal specified in this Decree shall be complied with;

c) For other programs and projects other than those specified at Point a: The adjustment of the program or project proposal under Clause 4 Article 1 of this Decree is not required;

d) For public investment projects of groups B and C funded with ODA and concessional loans of foreign donors of which the investment policies have been decided by the Prime Minister before the effective date of this Decree, agencies and persons competent to decide on investment policies specified in Clause 2 Article 1 of this Decree shall have the right to adjust investment policies and carry out the order and procedures for adjustment of investment policies in accordance with Clause 5 Article 1 of this Decree;

dd) For public investment projects of groups B and C funded with ODA and concessional loans that have completed the establishment and appraisal procedures and have appraisal documents serving as a basis for the decision on investment policy or adjustment of investment policy under Articles 14, 15, 16, 18 and 19 of Decree No. 114/2021/ND-CP dated December 16, 2021, on the management and use of official development assistance (ODA) and concessional loans of foreign donors, before the effective date of this Decree, the procedures for submitting the Prime Minister for consideration and decision under Decree No. 114/2021/ND-CP dated December 16, 2021, on the management and use of official development assistance (ODA) and concessional loans of foreign donors, shall continue to be followed.

#### **Article 4. Implementation organization**

1. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of People's Committees of provinces and centrally-run cities shall implement this Decree.

2. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with relevant agencies in, guiding the implementation of this Decree.

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

**Tran Luu Quang**