

THE GOVERNMENT

No. 83/2009/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

Hanoi, October 15, 2009

DECREE

AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE
GOVERNMENT'S DECREE NO. 12/2009/ND-CP OF FEBRUARY 12, 2009, ON
MANAGEMENT OF WORK CONSTRUCTION INVESTMENT PROJECTS

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the National Assembly's November 26, 2003 Construction Law No. 16/ 2003/QH11;
Pursuant to the National Assembly's June 19, 2009 Law No. 38/2009/QH12 Amending and
Supplementing a Number of Articles of the Laws Concerning Capital Construction Investment;
At the proposal of the Minister of Construction.*

DECREES:

Article 1. To amend and supplement a number of articles of the Government's Decree No. 12/2009/ND-CP of February 12, 2009, on management of work construction investment projects, as follows:

1. To supplement Point a, Clause 3, Article 2 as follows:

"Article 2. Categorization and state management of work construction investment projects

3. In addition to the provisions of Clause 2 of this Article, depending on sources of capital used for projects, the State shall also manage projects under the following provisions:

a/ For state budget-funded projects, including component projects, the State shall manage the entire process of construction investment, from identification of investment policies, project formulation, investment decision, designing, estimation, contractor selection, construction to test, take-over and operation or use of works. Investment deciders shall allocate sufficient capital within 3 years, for group-C projects, or 5 years, for group-B projects, depending on project implementation schedules."

2. To amend and supplement Clause 1, Article 10 as follows:

"Article 10. Competence to evaluate work construction investment projects

1. Investment deciders shall evaluate projects before approving them. In charge of project evaluation are specialized units under investment-deciding authorities. Project evaluation units shall send project dossiers to line agencies, construction state management agencies and other concerned agencies for evaluation. Investment deciders may hire consultants to verify several or all of the contents specified in Clauses 1. 2 and 3, Article 11 of this Decree.

From the date of receipt of project dossiers, concerned agencies shall examine them within:

- 45 working days, for national important projects;

- 20 working days, for group-A projects;

- 15 working days, for group-B projects;
- 10 working days, for group-C projects.

Past the above time limits, if giving no opinion, concerned agencies will be regarded as having agreed with the project dossiers and shall take responsibility for the issues under their management.

Before approving work construction investment projects within urban centers which are approved by competent state agencies, investment deciders shall seek opinions of these agencies on the projects' basic designs. For other projects, investment deciders may decide to seek opinions on their basic designs when necessary.

Project evaluation units shall send project dossiers to specialized construction work-managing agencies defined in Clause 6 of this Article for opinion on basic designs. Agencies giving opinions on basic designs will enjoy 25% of the project evaluation charge. The Ministry of Finance shall promulgate a document guiding this provision.

Persons decentralized or authorized to make investment decision shall evaluate projects already decentralized or authorized for investment decision."

3. To amend and supplement Clauses 1 and 2, Article 14 as follows:

"Article 14. Adjustment of work construction investment projects

1. A work construction investment project with state capital accounting for 30% or more of its funding may be adjusted in any of the following cases:

- a/ It is affected by natural disaster, such as earthquake, storm, flood, tsunami, fire, enemy sabotage or another force majeure event;
- b/ There arise elements which bring about higher efficiency for the project;
- c/ Changes in the construction planning directly affect the project's location, size or objective."

2. When project adjustments result in changes in the project's location, size or objective or an increase in the approved total investment, investors shall report them to investment deciders for decision. When project adjustments result in neither changes in the project's location, size or objective nor an increase in the approved total investment, investors may themselves decide on these adjustments. Project adjustments must be evaluated before decision.

In case project adjustments do not conform to branch or construction plannings approved by competent state management agencies, opinions of these agencies must be collected."

4. To amend and supplement Article 15 as follows:

"Article 15. Contests to select architectural designs of construction works

1. Large public works subject to specific architectural requirements for which investment deciders shall decide on holding contests to select architectural designs include:

- a/ Public works of grade I or special grade:
- b/ Works subject to specific architectural requirements, including:
 - Symbolic works, typical works, works built in locations directly affecting urban appearance or architectural landscape, or works subject to specific requirements, such as international border

gates, monuments, radio and television broadcasting centers, central railway stations and airports;

- Works subject to solemn architectural requirements and symbolizing power, such as working offices of Party and State agencies and administrative-political centers of provincial or higher level:

- Traffic works within urban centers subject to high aesthetic requirements;

- Works symbolic of cultural and historical traditions and of special importance to localities.

2. In addition to the works specified in Clause 1 of this Article, investors shall themselves decide on holding contests to select architectural designs of other works.

3. Expenses for contests to select architectural designs of works shall be included in projects' total investment.

4. Authors of selected architectural designs will have their author rights protected and will, if being fully capable as prescribed, be prioritized to negotiate and sign contracts for formulating work construction investment projects and making construction designs. If incapable of doing so, they may enter into partnerships with capable designing consultancy organizations in order to negotiate and sign contracts with investors.

If authors of selected architectural designs refuse to formulate work construction investment projects or to make construction designs, investors may select other contractors in accordance with law."

5. To amend and supplement Clause 3, Article 20 as follows:

"Article 20. Dossiers of application for permits for construction of urban works or houses

3. The design drawing displaying the locations of the level ground and main cross-sections and vertical sections; the work's foundation ground and cross-sections; a plan on the locations or lines of works (for works built in lines); a plan on electricity and water supply and rainwater and wastewater drainage systems and their technical connection points. Particularly for repair or renovation works requiring construction permits, photos of the works' present conditions are required."

6. To amend and supplement Clause 1, Article 23 as follows:

"Article 23. Competence to grant construction permits

1. Provincial-level People's Committees shall grant construction permits for construction works of special grade and grades I and II; religious works; works of historical-cultural relics; monuments and mural paintings within the administrative boundaries under their management: works situated along high streets and thoroughfares in urban centers; works under foreign-invested projects; and works under other projects and works as prescribed by provincial-level People's Committees."

7. To amend and supplement Point a, Clause 2, and Clause 4, Article 36 as follows:

"Article 36. General provisions on capability conditions of organizations and individuals

2. Organizations and individuals must fully meet capability conditions for carrying out the following activities:

a/ Formulation and evaluation of work construction investment projects: construction valuation:

4. Holders of the title of manager or person in charge of construction plan design; manager or person in charge of construction design; construction survey manager; or construction supervisor must possess practicing certificates as required. To join in project management, individuals must possess certificates of professional qualifications in the management of work construction investment projects."

8. To add the following Clause 5 to Article 57:

"Article 57. Organization of implementation

5. The Ministry of Planning and Investment shall guide capability conditions of organizations and individuals for evaluating work construction investment projects."

9. To annul Article 4,

Article 2. Effect

1. This Decree takes effect on December 1, 2009.

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

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung