

CIRCULAR

GUIDING TECHNOLOGY APPRAISAL OF INVESTMENT PROJECTS

Pursuant to the Government's Decree No. 28/2008/ND-CP of March 14, 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Science and Technology;
Pursuant to the 2005 Investment Law;

Pursuant to the Government's Decree No. 108/2006/ND-CP of September 22, 2006, detailing and guiding a number of articles of the investment Law;

Pursuant to the Government's Decree No. 133/2008/ND-CP of December 31, 2008, detailing and guiding a number of articles of the Law on Technology Transfer;

The Ministry of Science and Technology guides the technology appraisal of investment projects under consideration for grant of investment certificates as follows:

I. GENERAL PROVISIONS

1. Scope of regulation

This Circular guides the appraisal of technologies in investment projects on which the Prime Minister approves the investment policy and projects for which investment certificates are granted by provincial-level People's Committees and management boards of industrial parks, export-processing zones, hi-tech parks and economic zones prescribed in Articles 37, 38 and 39 of the Government's Decree No. 108/2006/ ND-CP of September 22, 2006, detailing and guiding a number of articles of the Investment Law.

2. Subjects of application

This Circular applies to:

a/ Agencies in charge of technology appraisal of investment projects defined in Part IV of this Circular.

b/ Organizations and individuals related to technology appraisal of investment projects.

II. CONTENTS OF TECHNOLOGY APPRAISAL

In the dossier of an investment project, the following contents must be appraised:

1. The project's technology

a/ To identify whether or not the project's technology is on the list of technologies encouraged for transfer, the list of technologies restricted from transfer or the list of technologies banned from transfer, issued together with the Government's Decree No. 133/2008/ND-CP of December 31, 2008, detailing and guiding a number of articles of the Law on Technology Transfer.

b/ To evaluate the completeness of technology: The technology charts may vary among different types of products and production methods, but must express all steps in the production chain which must be followed to turn out products as quantitatively and qualitatively planned.

c/ To evaluate the cutting edge of the technology chain: An advanced technology chain is a specialized production chain which is organized by mechanical automation methods with the application of digital techniques and has at least 1/3 (one third) of its automatic equipment (calculated according to value) operating under control programs; involves no stage of heavy manual labor: and is arranged in a space meeting industrial hygiene, labor safety and environmental sanitation standards.

d/ To select technology: It is necessary to analyze and compare the advantages and disadvantages of each technology option stated in the investment project and. on the basis of evaluating the completeness of the technology, the cutting edge of the technology chain and the suitability of the technology, to give comments on the selected technology.

e/ Apart from regulations in this Circular, investment projects in hi-tech parks must satisfy criteria specified in the Regulation on criteria for determining projects to manufacture hi-tech products, issued together with the Science and Technology Minister's Decision No. 27/2006/QĐ-BKHCN of December 18, 2006.

2. Products turned out by the technology and the product market

a/ Forecasts about market demands (at home and abroad), with identical products and reliability of forecasts taken into consideration.

b/ Forecasts about the market share of products turned out by the technology, and the export rate.

c/ The rationality of the technology scale.

d/ Applicable product quality standards.

e/ Competitiveness (in terms of quality, design and price) of products turned out by the selected technology.

3. Equipment in the technology chain

a/ Equipment in the technology chain must be evaluated so as to determine whether or not their utilities and quality satisfy technological requirements for turning out products of expected quality and quantity.

b/ The compatibility of equipment in the technology chain (the list of equipment needed for the investment project must show the capacity for performing all stages in the technology chain and meeting requirements on product quantity and quality). Particularly for projects in which foreign parties contribute equipment as capital, attention must be paid to prevent the inclusion of unnecessary equipment in the list of equipment.

c/ On the basis of the list of equipment of the investment project, it is required to examine:

- The origin of equipment (manufacturing countries and firms).
- Signs and codes, technical properties and utilities of equipment.
- The capacity of equipment.
- The year of manufacture.
- The current state of equipment (new or used).
- The warranty duration.

d/ Mode of equipment procurement: to determine whether bidding will be organized and reasons therefor.

e/ It is encouraged to use new equipment for investment projects. In case of importing used equipment, current provisions of Vietnam's laws must be complied with.

4. Materials, fuels, supplies, parts and spare parts for production

a/ To examine the possibilities of exploiting, supplying, transporting and storing materials and supplies for the project;

b/ To examine the categories, volume and value of parts, spare parts or semi-finished products which need to be imported for processing, assembling or manufacturing products;

c/ To examine the categories, volume and value of materials, fuels and supplies which need to be imported, the possibility of using locally or domestically available materials, fuels and supplies and the possibility of using less polluting materials.

5. Effectiveness of the project

When assessing the project's effectiveness, including contributions of technology, the following aspects must be examined:

a/ Socio-economic benefits to be brought about by the project (the capability of generating a new production capacity, new production lines and new products, expanding the market, creating jobs, making contributions to the state budget and bringing economic benefits to the project owners);

b/ The technology's effects on localities and sectors (raising the level of production technology of sectors, contributing to renewing production technology in localities, contributing to raising product value, turning out local key and specialty products).

6. Other related matters (if any).

III. ORDER OF, PROCEDURES FOR AND FUNDS FOR TECHNOLOGY APPRAISAL

1. Dossiers of request for technology appraisal A dossier of request for technology appraisal comprises:

a/ A written request for technology appraisal of the investment project, filed by the agency competent to grant investment certificates.

b/ Documents in the dossier of request for an investment certificate.

c/ Explanations on techno-economic issues, clearly stating the technology solution, including the technology process; analysis and selection of the technology option; the list of machines and equipment; the technology chain; and assessment of the technology's environmental impacts and its socio-economic benefits.

d/ The draft technology transfer contract (if the technology is contributed as capital to the investment project).

2. Order of technology appraisal

a/ Within 15 working days after receiving a dossier of request for technology appraisal, the agency in charge of technology appraisal shall study and send its appraisal opinions on the technology to the agency competent to grant investment certificates:

b/ For an investment project with clear technological contents in which the staff of the agency in charge of technology appraisal are experts, the agency in charge of technology appraisal may directly process the dossier and send its written opinions to the agency competent to grant investment certificates for consideration in the process of granting an investment certificate. The investment project's technology appraisal card and the document of investment project's technology appraisal shall be made according to the forms provided in Appendices I and II of this Circular (not printed herein):

c/ For a project with complicated technological contents, involving many domains or having a broad scope of influence, thus requiring opinions from experts and specialized agencies, depending on the complexity of the investment project's technology, the head of the agency in charge of technology appraisal for the investment project shall decide to consult experts, seek critical opinions from specialists or specialized organizations, hold a consultative meeting or set up an appraisal council.

- For a project which must be referred to experts, the agency in charge of technology appraisal shall send the project dossier to experts for their opinions. Consulting experts must possess relevant professional qualifications and have worked for at least 5 years in the domains of technology to be appraised. The investment project's technology assessment cards of experts shall be made according to the form provided in Appendix III to this Circular {not printed herein).

- For a project for which a consultative meeting must be organized, it is required to invite specialists who have worked for at least 5 years in the domains of technology to be appraised and representatives of relevant line agencies. The consultative meeting's minutes must fully express the pros and cons, conclusions of the meeting chairman and the list of participants. It shall be made according to the form provided in Appendix IV to this Circular (not primed herein).

- For a project for which an appraisal council must be set up, the agency in charge of technology appraisal shall issue a decision to set up a council for technology appraisal for the investment project. An appraisal council must be composed of at least 7 members, of whom 2 3 are specialists who have directly worked for at least 5 years in the domains of technology to be appraised, and a chairman who is a prestigious top specialist in the domains of technology to be appraised. The council's conclusions will serve as a basis for the agency in charge of technology appraisal to give its opinions on the investment project's technology.

The investment project's technology appraisal cards of council members and minutes of the council's meetings shall be made according to the forms provided in Appendices V and VI of this Circular {not printed herein).

3. Funds for technology appraisal of investment projects

a/ Funding sources: Annually, agencies in charge of technology appraisal for investment projects shall estimate funds for technology appraisal and include them in the assigned regular expenditure estimates of technology appraisal agencies or organizations. The central budget shall provide funds for technology appraisal tasks performed by the Ministry of Science and Technology while local budgets shall provide funds for technology appraisal tasks performed by provincial-level Science and Technology Services as assigned by local administrations;

b/ Expenses items:

- Expense for consultants and assessing specialists;

- Expense for the organization of consultative meetings;
- Expense for the establishment of appraisal councils;
- Meal, accommodation and travel expenses for specialists and council members who live faraway;
- Expenses for document printing and drinking water at meetings.

c/ Expense levels:

Expense levels specified in Item a, Clause 4. Part II of Joint Circular No. 44/2007/TTLT-BTC-BKHCN of May 7, 2007, of the Ministry of Finance and the Ministry of Science and Technology, shall be applied in conformity with annual state budget expenditure estimates.

Specifically:

- For a consultative meeting:

+ The meeting chairman: VND 300,000; + Secretary: VND 200,000; + Expert opinions: VND 300,000/person at most;

+ Participants: VND 70,000/person.

- For a technology appraisal council:

+ The council president: VND 300,000;

+ Members and scientific secretary: VND 200,000/person;

+ Critical members: The expense level will depend on the technological contents and complexity of the project but must not exceed VND 450,000/critical member;

+ Administrative secretary: VND 150,000/ person;

+ Participants: VND 70,000/person.

- Meal, accommodation and travel expenses for council members, expenses for document printing and drinking water at meetings of appraisal councils must comply with regulations on expenses for working trips and conferences.

Officers engaged in the appraisal of projects as their assigned tasks and salaried from the state budget are not entitled to the above expense items for appraisal work.

d/ Execution and finalization of funds:

- Annually, based on the assigned estimates, agencies in charge of technology appraisal of investment projects shall make payment in accordance with this Circular and other regulations on state budget management;

- The payment and finalization of funds must comply with the Law on State Budget and guiding documents.

IV. ORGANIZATION OF IMPLEMENTATION

1. The Ministry of Science and Technology shall organize technology appraisal of investment projects prescribed in Clause 2. Article 76 of the Government's Decree No. 108/2006/ND-CP of September 22, 2006. The Department for Technology Assessment, Appraisal and Survey under the Ministry of Science and Technology is the unit in charge of organizing the appraisal.

2. Provincial-level Science and Technology Services shall organize technology appraisal of investment projects falling within the competence of provincial-level People's Committees as decentralized in Article 80 of the Government's Decree No. 108/2006/ND-CP of September 22, 2006.

3. For investment projects on the construction of works, if project-appraising agencies send written requests to agencies performing the state management of science and technology for opinions on technology, technology options and technology chains of works which require technology, this Circular may apply to the appraisal of technologies in these projects.

V. IMPLEMENTATION PROVISIONS

1. This Circular takes effect 45 days from the date of its signing.

2. This Circular replaces Circular No. 55/2002/TT-BKHCMNT of July 23, 2002, of the Ministry of Science, Technology and Environment, guiding technology and environment appraisal of investment projects.

3. If meeting with any problems in the process of implementing this Circular, ministries, ministerial-level agencies, government-attached agencies, provincial-level People's Committees and concerned agencies, organizations and individuals should promptly report them to the Ministry of Science and Technology for study, amendment and supplementation.

**FOR THE MINISTER OF SCIENCE AND
TECHNOLOGY
VICE MINISTER**

Nguyen Quan