



V I L A F

VIETNAM INTERNATIONAL LAW FIRM

Newsletter Summer 2017:

New regulations affecting project development and financing

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Government Guarantee

Decree 04/2017/ND-CP of the Government dated 16 January 2017 on provision and management of government guarantees ("Decree 04").

Decree 04 came into effect from 01 March 2017 and replaced Decree 15/2011/NĐ-CP dated 16 February 2011 regulating the provision and management of government guarantees ("Decree 15"). Set out below are some of the salient points contained in Decree 04 as compared with the prior Decree 15.

Medium-term plan and annual plan for demand of government guarantees

An entity meeting the criteria for a government guarantee is now required by Decree 04 to establish a 3 year plan to demonstrate

its need for a government guarantee for loans or bond issuance. This plan must be sent to the Ministry of Finance ("MOF"). The MOF shall base on this plan to formulate a medium-term plan to provide government guarantees and medium-term debt management programs.

Entities that have been issued with in-principle approval for provision of a government guarantee must establish an annual plan for demand of government guarantees and register the same with the MOF prior to October in each year preceding the year of the requested government guarantee.

Decreased level of government guarantees

Previously under Decree 15, the Government could guarantee up to 80% of the total investment capital of the relevant program/project. This threshold is reduced to a maximum of 70% under Decree 04. The level of guarantee is further detailed and reduced as per the following categories:

- 70%: Projects subject to in-principle approval of the National Assembly or the Prime Minister ("PM"); and projects which must be implemented urgently;
- 60%: Group A projects with total investment capital from VND2,300 billion (about USD100 million) and subject to in-principle approval of the PM; and
- 50%: Other projects.

Government guarantee for foreign invested companies

Under Decree 15, the Government would only guarantee the proportion of loan capital corresponding to the liability of the Vietnamese partner in a foreign invested company. The Vietnamese partner in such company could only assign its shareholding or capital contribution portions to foreign investors after completing repayment of the debt obligation to the lender in respect of the outstanding debt corresponding to the proposed shareholding to be assigned. However, this restriction has been removed under Decree 04, which means the Government may now provide a guarantee for a loan where the borrower is a foreign invested enterprise.

Conditions for provision of government guarantees

As compared to Decree 15, Decree 04 imposes more conditions on the applicants for government guarantees, indicating a stricter approach of the Government towards the issuance of government guarantees. Specifically, the conditions for borrowers/bond issuers now include:

- operating for at least 3 years;
- having equity capital of at least 20% of the total investment capital;
- being free from accumulated losses;
- having a debt/equity ratio not exceeding 3:1 according to the audited financial statement of the year closest to the date of appraisal of the application for provision of government guarantees; and
- having a guarantee from shareholders/members who together hold at least 65% equity capital.

Conditions for programs and projects include:

- having an in-principle approval for provision of government guarantee;
- having registered the annual plan for demand of government guarantees with MOF;
- being within the annual government guarantee limit issued by the PM;

- having a feasible financial plan for the project, including a debt payment ratio in the first 5 years of the project being at least 0.9:1 for projects with a guaranteed off-take agreement and or 1:1 for other projects; and
- purchasing default insurance to cover 100% debt repayment liability in case of certain projects mentioned in Decree 04.

In-principle approval of provision of government guarantees

Unlike Decree 15, where the PM was required to issue an in-principle approval for provision of government guarantees in all cases, Decree 04 differentiates between the authority to issue government guarantees of the Government and that of the PM. Specifically, the Government shall issue in-principle approval in the following cases:

- projects subject to in-principle approval of the National Assembly;
- projects not using State capital but which have total debt (from loans, bonds) subject to government guarantee over USD300 million; and
- projects which are implemented by companies with foreign ownership above 30% of the charter capital.

The PM shall issue in-principle approval for all other projects.

Decree 04 also requires that borrowers/bond issuers apply for issuance of government guarantees within 3 years from the date of the in-principle approval, otherwise, such approval will expire.

Project account

It is a new requirement under Decree 04 that the entities which have been issued with a government guarantee, except for credit institutions conducting targeted credit programs of the State, must open a project account at an approved commercial bank.

A project account is used for carrying out transactions in relation to the loan and/or capital from the bond issuance; receiving capital contribution, revenue of the project; and for repayment of the relevant loan/bond. This account must also be registered with the SBV and the MOF.

The main functions of this project account bank include: conducting the payment, checking and supervising the project account, assisting and supervising the implementation of the government guaranteed loan/bond issuance. One notable responsibility of such bank is that it shall review the loan drawdown application from the borrower and issue the compliance confirmation for the loan drawdown application before the loan drawdown application is submitted to the lenders.

Programs, projects issued with in-principle approval for issuance of government guarantee prior to the effective date of Decree 04

Programs, projects which were issued with in-principle approval for issuance of a government guarantee before 1 March 2017 (i.e. the effective date of Decree 04) must comply with the level of government guarantee under Decree 15 (i.e. maximum 80%) within 1 year from the above date or within a period approved by the Government/ PM. Upon the expiry of such period, the level of government guarantee under Decree 04 will apply.

Land rentals

Decree 35/2017/ND-CP of the Government dated 3 April 2017 regarding the land use fees, land rental and surface water rental in economic zones and high-technology zones ("Decree 35").

Decree 35 applies to land allocation, land lease and surface water lease in economic zones and high-technology zones by the Government to developers. Decree 35 shall take effect from 20 June 2017.

Evaluation of land use fees (in Vietnamese "tiền sử dụng đất")

The evaluation of land use fees is implemented in accordance with Decree 45/2014/ND-CP of the Government dated 15 May 2014 on payment of land use fees ("Decree 45"), as amended from time to time.

Methods to evaluate the land rental in the economic zones

Land sites leased by the Government with an annual payment, and not subject to public auction, will be evaluated as per the formula below:

Annual land rental = land rate (%) * land value

In which,

- a. Land rate (%): ranges from 0.5% – 3% and is provided by provincial People's Committee based on relevant elements such as purpose, location etc. as planned by the competent authority; and
- b. Land value: is provided in accordance with the land adjustment coefficient provided by the Government. The land rental value is adjusted every 5 years by the Industrial Zone Management Board ("IZMB").

For the land lease including surface water lease in economic zones, the rent rate of land with water surface must not be lower than 50% of the rental rate of adjacent land without water surface for the same use purpose.

Evaluation of surface water rental

For the fixed term surface water lease: 20 Million VND to 300 Million VND per km² per year

For the variable term surface water lease: 100 Million VND to 750 Million VND per km² per year

Exemption from land use fees and land rental in economic zones

Exemption from land use fees is applicable to those projects which are allocated land by the Government with payment of land use fees to build social housing for workers in accordance with the zoning approved by competent authorities. Exemptions are not applicable to those projects which build commercial houses for sale and/or rent.

Land rental and surface water rental are exempt during the entire lease term in the following instances:

1. Investment projects in sectors entitled as special investment incentives;
2. Investment projects to build residential housing for workers in economic zones, or, lands which are leased from those investors to build and conduct business in infrastructure in economic zones to conform to the zoning plans approved by the competent authorities;
3. Land for institutional buildings designed for general public within economic zones;
4. Land for maintenance and repair service centers, car lots (including ticket counters, administrative & operational departments, and public areas) in order to serve public transportation in economic zones; and
5. Land for water supply projects in the territory of economic zones comprising: water service installation, sewage treatment, pipelines systems, water main laying and water main diversion projects; and water support and management departments (administrative buildings, operation departments, workshops, warehouse or storage of materials and equipment).

Land rental and surface water rental are entitled to fixed lease terms in the following cases:

1. Projects on the list of sectors entitled to investment incentives:
 - 15 years for the investments designated in the district level which are not included in the list of geographical areas entitled to investment incentives;
 - 17 years for the investments designated in the district level geographically in difficult socio-economic conditions;
 - 19 years for the investments designated in the district level geographically in difficult extreme socio-economic conditions.

2. Projects not included in the list of sectors entitled to investment incentives:

- 11 years for the investments designated in the district level which are not included in the list of geographical areas entitled to investment incentives;
- 13 years for the investments designated in the district level geographically in difficult socio-economic conditions;
- 15 years for the investments designated in the district level geographically in difficult extreme socio-economic conditions.

The fixed term entitlement is not automatic. An investor must submit an application to IZMB to apply for the entitlement, and such entitlement is only effective upon receipt of confirmation from the IZMB.

Payment of land use fees and land rental

Annual payment: Two installments. The first 50% fee rental must be paid prior to 31 May, the remaining balance of 50% fee rental must be paid prior to 31 October.

Once-off payment: 50% fees, rental shall be paid within 30 days from the notice date of IZMB, and paying the remaining balance of 50% fees must be paid within the next 60 days.

Notable transition regulations

If the current annual rental is higher than the rental provided under Decree 35, an investor is entitled to apply for an adjustment in accordance with Decree 35 as from 01 January 2017. Such re-adjustment is not applicable to once-off payment. For those projects which have lower incentives than the incentives provided under Decree 35, an investor is entitled to apply for better incentives specified in Decree 35 as from 20 June 2017.

Solar power projects

Decision 11/2017/QĐ-TTg of the Prime Minister dated 11 April 2017 on the mechanism encouraging the development of solar power projects in Vietnam ("Decision 11"). Decision 11 shall take effect from 1 June 2017 until 30 June 2019.

On 11 April 2017, the Prime Minister of the Government issued Decision 11/2017/QĐ-TTg on the mechanism encouraging the development of solar power projects in Vietnam ("Decision 11"). Decision 11 takes effect from 1 June 2017 until 30 June 2019. Power purchase agreements ("PPAs") of solar power projects signed before 1 June 2017 need to be amended for compliance with Decision 11. Ministry of Industry and Trade ("MOIT") will propose the mechanism encouraging the development of solar power projects in Vietnam for the period after 30 June 2019. Below are some key points introduced under Decision 11.

Solar Power Master Plan

- Solar Power Master Plan applies to grid-connected solar power projects, and does not apply to roof-top ones.
- Solar Power Master Plan includes national master plan prepared by MOIT and approved by the Prime Minister, and provincial master plans prepared by provincial People's Committees and approved by MOIT.
- For projects not yet included in Solar Power Master Plan and Power Master Plan, MOIT will approve to supplement a project of 50 MW or less to the master plans, and MOIT will propose to the Prime Minister for approval to supplement a project of more than 50MW to the master plans.

Feed in Tariff ("FIT")

Grid-connected solar power projects is entitled to FIT at VND 2,086 VND/kWh (excl. VAT) equivalent to US cents 9.35/kWh. Reference exchange rate is VND 22,316 against US\$1.00 as announced by the State Bank of Vietnam on 10 April 2017. Adjustment of FIT following VND/USD exchange rate fluctuation will be implemented in accordance with the PPA mandatory template to be issued by MOIT. The above FIT only applies to grid-connected projects having capacity of solar cell of more than 16% or of solar module of more than 15%. Wind farm projects are entitled to FIT of VND 1,614/kWh, equivalent to US cents 7.8 /kWh Rooftop solar power projects will follow the net-metering mechanism. At the end of year or at the time of the PPA termination, the electricity excess volume will be sold to EVN at the FIT rate applied to grid-connected projects. Annually, MOIT will issue FIT rate for the next year for rooftop projects based on VND/USD exchange rate announced by the State Bank of Vietnam on the last exchange rate announcement date of the previous year.

Offtake and PPA

- EVN (or its authorized subsidiaries) will offtake electricity generated by solar power projects;
- PPAs for solar power projects will be prepared in accordance with the PPA mandatory; and
- PPA will have the term of 20 years from the commercial operation date, and may be extended or renewed by the parties

Investment incentives

- Import duty – a solar power project is exempted from import duty on goods imported to create fixed assets of the project. It is also entitled to other import duty incentives applicable to renewable energy projects, including exemption from import duty within 5 years from commencement of production for raw materials, materials and components imported for production of the project which cannot be produced domestically

- Corporate income tax (CIT) - a solar power project is entitled to CIT incentives as same as a project in the preferential investment sectors and a renewable energy project, including the following:
 - CIT rate: 10% for 15 years, which could be extended to 30 years in certain cases subject to the Prime Minister's approval; and
 - CIT exemption for the first 4 years and 50% reduction of CIT in the subsequent 9 years.
- Land use fee/land rental - a solar power project is en-

titled to land use fee/land rental incentives as same as a project in the preferential investment sectors and a renewable energy project. Subject to the location of the project, it may be exempted from land use fee/land rental for a period of 3 to 15 years or for the whole term.

Participation in the competitive electricity market

Decision 11 does not regulate this matter. However, under the regulations on the competitive electricity market, solar power projects are not required to participate in the competitive electricity market.

VILAF NEWS

BANKING & FINANCE

ANZ selling the Vietnam Retail Business

VILAF advised ANZ in the bidding process and the sale of its retail banking business in Vietnam.

According to public information, ANZ's retail business served 125,000 customers in Vietnam and included US\$547 million in deposits and US\$161 million in lending assets as of September 2016, with 8 branches and 289 employees.

After the retreat from the retail business, ANZ Vietnam will continue to operate in Vietnam with a focus on the institutional client business.

Partners Vo Ha Duyen and Pham Si Hai Quynh together with Senior Associates Nguyen Thanh Tung and Nguyen Thi Kim Anh advised ANZ in this deal.

SMBC acquiring BIDV Financial Leasing

VILAF advised Sumitomo Mitsui Trust Bank Limited in the acquisition of 49 per cent of the equity stake of BIDV Financial Leasing Company, forming a joint venture called BIDV-SuMi TRUST Leasing Company (BSL).

Partner Nguyen Quang Hung and Counsel Vu Le Trung advised in this deal.

Jetstar Pacific Airlines purchasing Airbus aircrafts

VILAF advised Vietnam's Jetstar Pacific Airlines ("JPA") in a purchase agreement with Airbus for 10 A320 aircraft and credit agreements with Vietinbank to obtain a secured loan of USD 117 million to finance the initial payments to Airbus prior to delivery.

Partner Dang Duong Anh and Counsel Vu Le Trung advised JPA in this deal.

Goshawk leasing aircrafts to VietJet

VILAF advised Goshawk in the financing and leasing of Airbus 321 aircrafts to Viet Jet. The financing was arranged by Natixis.

Partner Vo Ha Duyen advised in this deal.

VIB Bank and PVI strategic partnership in distributing bancassurance products

VILAF advised VIB Bank in inking a deal with PVI on the distribution of bancassurance products on all PVI general insurance to corporate customers. The partnership agreement will last for 10 years.

Partner Pham Si Hai Quynh advised in this deal.

CAPITAL MARKETS

BIDV arranging Becamex Bonds

VILAF advised BIDV as the arranger in the issuance of bonds in two phases: Phase 1 is VND 1,500 billion bond issuance and the second phase is VND 530 billion bond issuance.

Partner Tran Tuan Phong and Counsel Vu Le Trung advised in this deal.

IFC investment in Anova Corporation Bonds

VILAF advised International Finance Corporation (IFC), a member of the World Bank Group, in the investment of USD 15 million in five-year convertible bonds issued by the animal feed subsidiary of Vietnam's veterinary medicine firm Anova Corporation.

Partner Nguyen Quang Hung and Senior Associate Tran Thuy Anh advised in this deal.

MERGERS & ACQUISITION

SCCC acquiring LafargeHolcim Group's Vietnam assets

VILAF advised Siam City Cement Public Company Limited (SCCC) in their EUR 460 million purchase of LafargeHolcim Group's Vietnam assets. After 23 years of operation, Lafarge-Holcim Vietnam has emerged as one of the most successful joint ventures in Vietnam.

Partner Tran Tuan Phong and Counsel Nguyen Vu Quynh Lam advised SCCC in this deal.

SCG acquiring Vietnam Construction Materials JSC

VILAF advised SCG Cement-Building Materials Company Limited, a subsidiary of SCG in the acquisition of 100% stake in Vietnam Construction Materials Joint Stock Company, which has cement plants in central Vietnam. The stake in VCM costs USD 156 million.

Partner Dang Duong Anh, Counsel Nguyen Vu Quynh Lam, and Senior Associate Nguyen Hong Ha advised in this deal.

SCG acquiring equity interests in Long Son Petrochemicals

VILAF has advised Vina SCG Chemicals Co., Ltd., a wholly-owned subsidiary of SCG, in the acquisition of 25% equity stake in Long Son Petrochemicals Company Limited from QPI Vietnam Limited, a subsidiary of Qatar Petroleum.

This equity transaction will increase SCG's direct and indirect stake in LSP to 71% (from 46%). LSP is positioned as Vietnam's first petrochemicals complex. The project possesses competitive aspects ranging from integration, economies of scale, and competitive feedstock flexibility. Non-petrochemical supporting infrastructure such as a deep sea port and other facilities are also included at approximately 30% of the total investment cost.

Partner Vo Ha Duyen and Counsel Trinh Luong Ngoc advised Vina SCG Chemicals in this deal.

Earth Chemical acquiring A My Gia Joint Stock Company

VILAF advised Earth Chemical Co., Ltd in the USD80 million acquisition of 100% of equity interest from all Vietnamese individual shareholders in A My Gia Joint Stock Company, a company manufacturing and selling home care products for over 13 years in Vietnam.

Partner Luu Hoang Ha and Counsel Trinh Luong Ngoc advised in this deal.

TE Healthcare investment in Vietnam Integrated Medical Service Company

VILAF advised TE Healthcare and TPG in acquiring shares and investing in Vietnam Integrated Medical Service Company from Hanh Phuc Hospital.

Partner Tran Tuan Phong and Senior Associate Tran Thuy Anh advised in this deal.

Buyout of shares in Prime Group, Prime Tien Phong and Prime Vinh Phuc

Following the business plan announced earlier in the beginning of the year 2016, by February 2017, the Siam Cement Group (SCG) has completed the acquisition of 15% remaining stake of Prime Group. While, Prime Group held 84% and 76% Charter capital of Prime Tien Phong and Prime Vinh Phuc, respectively. The remaining percentages of the Charter capital of Prime Group, Prime Tien Phong and Prime Vinh Phuc were held by the relevant Vietnamese Sponsors.

Partner Dang Duong Anh, Counsel Nguyen Vu Quynh lam, and Senior Associate Nguyen Hong Ha advised in this deal.

Advising on Anti-dumping on import of certain galvanized steel

POSCO Engineering & Construction Ltd., Co. (POSCO), a Korean manufacturer of certain galvanized steel (together with other Chinese manufacturers) was investigated for dumping acts as requested by local manufacturers. The temporary anti-dumping tax applied to POSCO and its trading companies was 12.40%. However, it was reduced to 7.02% in the Final Determination of the investigation agency.

VILAF assisted POSCO against the Vietnam Competition Authority in this anti-dumping case.

Partner Bui Ngoc Anh and Senior Associate Mac Phuong Khanh advised in this transaction.

VinaCapital divestment from Cau Tre Food Processing

VILAF advised VinaCapital in its divestment from Cau Tre Food Processing (CT). VinaCapital sold its 37.3% stake to CJ CheiJedang Corporation of Korea.

Partner Pham Si Hai Quynh advised in this deal.

VILAF Annual Legal Article Writing Contest

VILAF launched its Annual Legal Article Writing Contest last 30 March 2017 with the focus on environmental pollution.

Law students who have completed at least a year in recognized Ho Chi Minh City law schools were invited to tackle one of the more pressing issues our country faces today:

Recently, the issue of environmental pollution has been gaining increasing attention in Vietnam resulting in significant damage and losses due to violations by corporate entities. Vietnam has environmental laws and regulations on the books, but are they sufficient to provide any real deterrence and enforcement? Citing laws, regulations, and other sources, what actions, regulations, enforcement procedures need to be considered to prevent and end current corporate environmental pollution in Vietnam?

The contest ran until 14 May 2017 wherein three (3) winners was declared winning cash, an award certificate, and a summer internship at the firm.

This is the first year that VILAF has hosted this event to offer law students not only the opportunity to advance their legal writing skills, but also the eligibility for the cash scholarship prizes and internship potential at VILAF which could lead to full-time employment upon graduation.

An awards luncheon was held on Friday, 9 June 2017 at Shri Restaurant in Ho Chi Minh City for the winners, Le Minh Mien Thao (1st place), Hoang Le Minh Thu (2nd place), and Duong Nguyen Tri Thanh (3rd place).

VILAF Chairperson, Ms. Vo Ha Duyen expressed, "VILAF is looking forward to organizing this event every year to discover talents and contribute to the building of excellent lawyers in the future. Law students today will become important assets of the city in the future."



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