

**THE MINISTRY OF
INDUSTRY AND TRADE****THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness****No. 23/2015/TT-BCT***Hanoi, July 13, 2015***CIRCULAR****Prescribing the order and procedures for investment in thermal power
plant projects under build-operate-transfer contracts^(*)**

Pursuant to the Government's Decree No.95/2012/ND-CP of November 12, 2012, defining the functions, tasks, powers and organizational structure of the Ministry of Industry and Trade;

Pursuant to the Government's Decree No. 15/2015/ND-CP of February 14, 2015, on investment in the form of public-private partnership;

At the proposal of the Director General of the General Directorate of Energy,

The Minister of Industry and Trade promulgates the Circular prescribing the order and procedures for investment in thermal power plant projects under Build-Operate-Transfer contracts.

Chapter I**GENERAL PROVISIONS****Article 1.** Scope of regulation and subjects of application

1. This Circular prescribes the order and procedures for investment in thermal power plant projects under build-operate-transfer (BOT) contracts in Vietnam's territory.

2. This Circular applies to organizations and individuals participating in activities related to investment in thermal power plant projects under BOT contracts.

Article 2. Interpretation of terms

1. BOT contract means a contract signed between the Ministry of Industry and Trade and a BOT project owner to build a thermal power plant in Vietnam's territory; after the plant is completed, its project owner is entitled to operate the plant for a certain period; past the period, the project owner shall transfer the plant to the Ministry of Industry and Trade.

2. BOT thermal power plant project means a thermal power plant project invested under a BOT contract.

3. BOT investor means an organization or individual with an official document expressing its/his/her concern and contribution of capital to developing a thermal power plant project under a BOT contract.

4. BOT project owner means the BOT investor already assigned by a competent state agency to develop a BOT thermal power plant project.

5. BOT enterprise means an enterprise set up by a BOT project owner to implement a BOT thermal power plant project.

^(*) *Công Báo Nos 871-872 (29/7/2015)*

6. EPC contractor means a contractor to implement the package of design, supply of equipment and supplies and installation under a BOT thermal power plant project.

7. National electricity development master plan means the specialized electricity plan already approved by the Prime Minister.

8. Memorandum of understanding on the development of a BOT thermal power plant project (below referred to as MOU) means a memorandum of understanding signed between a BOT project owner and the Ministry of Industry and Trade.

9. Feasibility study report (below referred to as FS report) means a document presenting studied contents of the necessity, feasibility and effectiveness of a BOT thermal power plant project.

10. Principle agreement (below referred to as PA) means an agreement signed between the General Directorate of Energy and a BOT project owner.

11. Power purchase agreement (below referred to as PPA) means a contract signed between a BOT enterprise and the Electricity of Vietnam.

12. Land lease agreement (below referred to as LLA) means a contract signed between a BOT enterprise and a competent agency in the locality where a BOT thermal power plant project concerned is located.

13. Coal supply agreement (below referred to as CSA) means a contract signed between a BOT enterprise and a coal supplier.

14. Coal transport agreement (below referred to as CTA) means a contract signed between a BOT enterprise and a coal transporter.

15. Gas supply agreement (below referred to as GSA) means a contract signed between a BOT enterprise and a gas supplier.

Chapter II

SELECTION OF BOT PROJECT OWNERS AND ORGANIZATION OF NEGOTIATION OF PROJECT DOCUMENTS

Section 1

SELECTION OF BOT PROJECT OWNERS

Article 3. The selection of a BOT project owner must comply with the bidding law.

Article 4. International bidding must apply in the following cases:

1. Projects on the list of the national electricity development master plan that are required by the Prime Minister to apply international bidding.

2. The Prime Minister shall decide the form of selection of BOT project owners for projects on the list of the national electricity development master plan for which investors have not yet been identified yet and two or more BOT investors have registered for participation.

Article 5. Appointment of BOT project owners may apply in the following cases:

1. Projects on the list of the national electricity development master plan for which BOT project owners shall be appointed by the Prime Minister.

2. Projects on the list of the national electricity development master plan for which only one BOT investor has registered for participation and the BOT project owner appointment policy has been approved by the Prime Minister.

3. Projects proposed by BOT investors which fall outside the list of the national electricity development master plan and are approved by the Prime Minister.

Section 2

ORGANIZATION OF NEGOTIATION OF PROJECT DOCUMENTS

Article 6. MOU and project implementation plan

1. Within 20 working days after the Prime Minister issues a document assigning a BOT project owner to develop a BOT thermal power plant project, the General Directorate of Energy shall send a draft MOU to and guide the BOT project owner to prepare negotiations and sign an MOU. The contents of the MOU cover:

- a/ Legal bases;
- b/ General description of the BOT thermal power plant project;
- c/ Role and responsibility of the BOT project owner;
- d/ Role and responsibility of the Ministry of Industry and Trade;
- dd/ The general schedule of development of the BOT thermal power plant project;
- e/ The validity duration of the MOU;
- g/ Responsibility of the BOT project owner for the project development cost; payment for making the FS report and the project's FS report appraisal; payment for hiring legal consultants to support the Vietnamese side in the negotiation process and in the project implementation.

2. Within fifteen (15) working days after receiving the draft MOU, the BOT project owner shall give opinions on the draft MOU and the MOU negotiation plan.

3. Within fifteen (15) working days after receiving the official written opinion of the BOT project owner, the General Directorate of Energy shall organize the negotiation of the MOU. The negotiation process must not exceed 30 days.

After reaching agreement on the MOU contents, the General Directorate of Energy shall present the MOU to the Ministry of Industry and Trade for approval and organization of the signing ceremony.

4. The MOU shall be signed by a representative of the Ministry of Industry and Trade and a legal representative of the project owner

5. Within thirty (30) days after the signing of the MOU, the BOT project owner shall make a detailed plan on the implementation of the project and send it to the General Directorate of Energy for consideration and agreement.

6. Within fifteen (15) working days after receiving the detailed plan, the General Directorate of Energy shall issue a written reply.

7. The detailed plan on the project implementation must cover:

- a/ Preparing and approving the Power Center location plan (if any): the date of plan submission; the date of plan approval;
- b/ Preparing and approving the FS report, specifying the date of FS report submission, the date of FS report approval;
- c/ The BOT contract negotiation plan and relevant documents specifying the date of PA negotiation; the signing date of the PA; the scheduled date of commencement of the first round of negotiation; the scheduled date of the end of the first round of negotiation; the scheduled

date of the commencement of the second round of negotiation; the scheduled date of the end of the second round of negotiation; the timetable for negotiations of relevant documents: PPA, LLA, EPC contracts and fuel supply contracts; the signing date of the investment agreement; the date of submission of a dossier of application for investment registration certificate; the official signing date of BOT contract documents;

d/ Financial payment date;

dd/ Commencement and construction, specifying the project's official commencement date; the commercial operation date of each turbine; the commercial operation date of the whole plant.

Article 7. Preparation, appraisal and approval of the Power Center location plan

1. The preparation, appraisal and approval of the Power Center location plan (below referred to as the Power Center planning) must comply with the Ministry of Industry and Trade's Circular No. 43/2014/TT-BCT of November 19, 2014, prescribing contents, order and procedures for elaboration, appraisal and approval of the Power Center planning.

2. Expenses for the preparation, verification and appraisal of such planning shall be allocated from the fund for project investment preparation.

Article 8. Preparation, appraisal and approval of the FS report

1. Within 12 months from the signing of the MOU, the BOT project owner shall submit the General Directorate of Energy a FS report dossier together with opinions of relevant ministries, sectors and the People's Committee of the province or centrally run city where the project is located.

The project's FS report dossier shall be made by a specialized electricity consulting unit possessing an electricity operation license in thermal power plant consultancy and experiences in making FS reports for thermal power plant project with an equivalent or larger scale.

2. Contents of the project's FS report dossier must comply with Article 25 of the Government's Decree No. 15/2015/ND-CP of February 14, 2015, on investment in the form of public-private partnership, and relevant legal documents.

3. The order of appraisal of the project's FS report must comply with Article 26 of the Government's Decree No. 15/2015/ND-CP of February 14, 2015 on investment in the form of public private partnership, and relevant legal documents.

4. The Ministry of Industry and Trade shall approve the FS report dossier after receiving the Ministry of Natural Resources and Environment's decision on approval of the environmental impact assessment report.

5. Expenses for preparation, appraisal and approval of the FS report dossier shall be paid by the BOT project owner.

Article 9. Legal consultants to assist the Ministry of Industry and Trade in negotiating project documents

1. Within 30 days after signing the MOU, the General Directorate of Energy shall propose the mode of selection of legal consultants to assist competent state agencies and submit it to the Minister of Industry and Trade for decision to organize the implementation.

2. Responsibilities of legal consultants:

a/ To assist the Ministry of Industry and Trade in drafting and negotiating in detail the BOT contract, a government guarantee undertaking (below referred to as GGU), the confirmation and approval of the Ministry of Industry and Trade (below referred to as MOIT's A&C);

b/ To complete a set of the project's contracts (including the BOT contract, GGU, A&C, PPA, LLA and CSA or GSA) to ensure the legality, accuracy and synchronicity of contents and wording ready for the signing;

c/ Other tasks prescribed in the consultancy contract.

3. The General Directorate of Energy shall select legal consultants and submit together with a cost estimates for legal consultancy on negotiation to the Minister of Industry and Trade for approval.

4. Expenses to hire legal consultants to assist the Ministry of Industry and Trade in negotiating project documents shall be funded by the state budget. If the state budget fund has not yet timely been allocated, the Ministry of Industry and Trade and the project owner shall agree on the source of funding for legal consultancy to ensure the project's development schedule.

Article 10. Inter-sectoral working group

1. Within fifteen (15) working days after the signing of the MOU, the General Directorate of Energy shall present the Ministry of Industry and Trade the formation of an inter-sectoral working group.

2. The inter-sectoral working group must be composed of:

a/ The head of the group and a number of members from the Ministry of Industry and Trade;

b/ Members from other ministries and sectors, including the Ministry of Planning and Investment, Ministry of Justice, Ministry of Finance, State Bank of Vietnam, People's Committee of the province or centrally run city where the BOT thermal power plant project is located, Electricity of Vietnam (EVN), and Vietnam National Coal Mineral Industries Holding (Vinacomin) (for domestic coal-fuelled projects) or Vietnam National Oil and Gas Group (PVN) (for domestic gas-fuelled projects).

3. Main tasks of the inter-sectoral working group:

a/ To agree with the BOT project owner on the negotiation plan;

b/ To organize and participate in the negotiation of the BOT contract, GGU and the MOIT's A&C;

c/ To involve in settling issues arising in the process of negotiation for the project implementation.

4. Task assignment and working mode of the inter-sectoral working group:

a/ The head of the inter-sectoral working group shall chair the negotiation;

b/ Representatives of ministries, sectors and localities shall take charge of the contents related to the fields under their charge and support the chairperson of the negotiation according to their designated powers and assigned tasks;

c/ The inter-sectoral working group shall work on a part-time basis.

5. Operation fund:

The operation fund of the inter-sectoral working group shall be covered by the state budget.

6. The operation duration of the inter-sectoral working group shall depend on the implementation requirements of the BOT thermal power plant project and be decided by the Ministry of Industry and Trade.

Article 11. Organization of negotiation

1. The negotiation of the PA, BOT contract, GGU and MOIT's A&C shall be conducted if meeting the following conditions:

- a/ The FS report dossier already approved by the Ministry of Industry and Trade;
- b/ The Ministry of Industry and Trade has selected legal consultants;
- c/ The starting time of the negotiation is suitable to the schedule stated in the MOU.

2. The General Directorate of Energy shall coordinate the negotiation of project documents with the BOT project owner, including:

- a/ The inter-sectoral working group shall organize the negotiation of the BOT contract, GGU and MOIT's A&C;
- b/ The EVN shall organize the negotiation of the PPA and its certification and approval documents;

PPA shall be approved after the General Directorate of Energy has a written opinion on the project's long-term fuel supply contract and EPC contractor selection result;

c/ Vinacomin shall organize the negotiation on CSA and the confirmation and approval document of Vinacomin (for domestic coal-fuelled projects);

d/ PVN shall organize the negotiation on GSA and the confirmation and approval document of PVN (for domestic gas-fuelled projects);

dd/ The locality where the project is located shall organize the negotiation on LLA and the confirmation and approval document of such locality;

EVN, Vinacomin, PVN and localities shall agree on the negotiation plan with BOT project owners and report such to the General Directorate of Energy.

3. The BOT project owner shall conduct parallel negotiations on project documents (including the BOT contract, GGU and MOIT's A&C; PPA; CSA; CTA; GSA; and LLA) with related Vietnamese partners to ensure the project schedule.

4. Negotiations on the PA and BOT contract, GGU and MOIT's A&C:

a/ Negotiation on PA

When all requirements prescribed in Clause 1 of this Article are met, the General Directorate of Energy shall send the draft PA to the BOT project owner within fifteen (15) working days.

The draft PA must include the following major contents: basic definitions, validity period of the contract, general schedule of the project, required date of operation, applicable laws, settlement of disputes, risk-sharing mechanism, tax regime, structure of electricity price, contract for land lease and fuel supply, and fundamental principles of GGU.

Within thirty (30) days after receiving the draft PA, the BOT project owner shall submit comments on the content of the draft to the General Directorate of Energy.

The negotiation on PA shall only be conducted after fifteen (15) working days from the receipt of comments of the BOT project owner.

The General Directorate of Energy and the BOT project owner shall organize the signing of PA after the two parties have agreed on detailed contents of PA.

b/ Negotiation on the BOT contract, GGU and MOIT's A&C:

The negotiation shall be divided into two rounds. Each round must consist of three sessions and each session may be held for maximum three (3) days.

Each round of negotiation shall only be completed when all articles and clauses of the contract are passed one after another. Any inconclusive matters shall be left to the next round.

Before each round of negotiation, the General Directorate of Energy shall send the draft BOT contract, GGU and MOIT's A&C to the BOT project owner.

Within sixty (60) days after receiving the draft, the BOT project owner shall send comments on the contents of the draft BOT contract, GGU and MOIT's A&C to the General Directorate of Energy. The negotiation shall be conducted after thirty (30) days after the receipt of comments of the BOT project owner.

At the end of each round of negotiation, the Ministry of Industry and Trade shall collect comments from relevant ministries and sectors to serve as foundations for the next round of negotiation.

The inter-sectoral working group shall continue negotiating with the BOT project owner on comments of ministries and sectors to finalize the draft BOT, GGU and MOIT's A&C.

5. After two rounds of negotiation, the Ministry of Industry and Trade shall report to the Prime Minister the achieved results and inconclusive matters that need direction by the Prime Minister.

The inter-sectoral working group shall continue negotiating with the BOT project owner under the direction of the Prime Minister. The negotiation shall only be completed when the Vietnamese side and the BOT project owner have agreed on all contents of project document.

6. Within ten (10) working days after the negotiation is completed, the Ministry of Industry and Trade shall submit all project documents to the Prime Minister for approval before organizing the signing of the investment agreement with the BOT project owner.

Article 12. Finalization of project documents and signing of the investment agreement

1. After the BOT contract, GGU and MOIT's A&C are agreed by the two parties, the legal consultants assisting the Ministry of Industry and Trade shall make a document confirming the legality and accuracy of contents and wording in the project documents for the Ministry of Industry and Trade to sign the investment agreement with the BOT project owner.

2. The BOT project owner shall coordinate with related parties in finalizing the draft and initialing other project documents such as PPA, CSA (or GSA), CTA and LLA, and reporting the initialing to the Ministry of Industry and Trade.

3. Within thirty (30) working days since the two parties agree on all contents of the BOT contract and GGU, the Ministry of Industry and Trade shall organize the signing of the investment agreement on the BOT contract, GGU and MOIT's A&C with the BOT project owner.

Chapter III

**GRANT OF INVESTMENT REGISTRATION CERTIFICATE AND SIGNING OF
PROJECT DOCUMENTS**

Article 13. Grant of investment registration certificate

1. Within thirty (30) days after signing the investment agreement, the BOT project owner shall submit a dossier of application for an investment registration certificate to the Ministry of Planning and Investment.

2. Dossiers and procedures for grant of investment registration certificates must comply with Article 40 of the Government's Decree No. 15/2015/ND-CP of February 14, 2015, on investment in the form of public-private partnership.

3. The BOT project owner shall coordinate with related Vietnamese parties in giving feedback to opinions as requested by the Ministry of Planning and Investment.

Article 14. Official signing of BOT contract and project documents

1. Within thirty (30) days after being granted the investment registration certificate by the Ministry of Planning and Investment, the BOT project owner shall establish a BOT enterprise, and complete the supplementations as specified in the investment registration certificate for the official signing of project documents.

2. The General Directorate of Energy shall organize the official signing of project documents between the BOT project owner, BOT enterprise and related parties, including:

- a/ The signing of the BOT contract and GGU with the Ministry of Industry and Trade;
- b/ The signing of the PPA with EVN;
- c/ The signing of the CSA with Vinacomin (for domestic coal-fuelled projects);
- d/ The signing of the GSA with PVN (for domestic gas-fuelled projects);
- dd/ The signing of the LLA with the locality where the project is located.

3. The BOT enterprise shall submit the dossier of request for issuance of legal opinions to the Ministry of Justice under the Government's Decree No. 51/2015/ND-CP of May 26, 2015, on issuance of legal opinions.

Article 15. Handling of issues arising in the course of financial arrangement

The General Directorate of Energy shall coordinate with the BOT project owner in handling issues arising in the course of financial arrangement and report cases falling beyond its competence to the Minister of Industry and Trade for submission to the Prime Minister for consideration and decision.

Article 16. Grant of A&Cs

The Ministry of Industry and Trade, provincial-level People's Committees of the localities where the projects are located, and EVN shall grant A&Cs to BOT enterprises according to the BOT contracts, LLAs and PPAs.

Chapter IV

EXAMINATION AND SUPERVISION OF PROJECT IMPLEMENTATION

Article 17. Supervision of performance of project contracts and quality of works

1. The supervision of performance of project contracts must comply with Article 47 of Decree No. 15/2015/ND-CP on investment in the form of public-private partnership, and relevant legal documents.

2. The supervision of quality of works must comply with Article 48 of the Government's Decree No. 15/2015/ND-CP of February 14, 2015, on investment in the form of public-private partnership, and relevant legal documents.

3. The General Directorate of Energy shall assume the prime responsibility for, and coordinate with related ministries and sectors in, inspecting the testing before acceptance and commissioning of works in accordance with the Government's Decree No. 15/2013/ND-CP of February 6, 2013, on quality management of construction works, and relevant legal documents.

4. The General Directorate of Energy shall supervise the observance of obligations by

BOT project owners and enterprises in accordance with project implementation schedule and provisions of BOT contracts.

Article 18. Reporting regime

1. Monthly reporting

During the plant construction, BOT enterprises shall make monthly reports and send them to the General Directorate of Energy and related competent state management agencies on the fifth day of every month. A monthly report must specify:

- a/ Progress of work done up to the time of report;
- b/ Difficulties, proposals and petitions (if any);
- c/ Plan for the subsequent month.

2. Quarterly and annual reports

BOT enterprises shall complete quarterly reports on the fifth of April, July and September, and annual reports on the fifth of January and send them to the General Directorate of Energy and related competent state management agencies.

3. Irregular reports

Upon occurrence of unexpected incidents, natural disasters or fires or at the request of competent state agencies, BOT enterprises shall promptly send reports thereon to the General Directorate of Energy and related competent state management agencies.

Chapter V

IMPLEMENTATION PROVISIONS

Article 19. Effect

- 1. This Circular takes effect on September 1, 2015.
- 2. Organizations and individuals participating in activities related to investment in thermal electricity plant projects under BOT contracts in Vietnam's territory shall implement this Circular.

Article 20. Transitional provisions

- 1. Projects implemented before the effective date of this Circular shall comply with Article 72 of the Government's Decree No. 15/2015/ND-CP of February 14, 2015, on investment in the form of public-private partnership.
- 2. MOUs on projects signed before the effective date of this Circular are not required to be re-signed under this Circular.
- 3. PAs of projects signed before the effective date of this Circular are not required to be re-signed under this Circular

Article 21. Organization of implementation

- 1. The General Directorate of Energy shall guide the implementation of this Circular.
- 2. Any problems arising in the course of implementation shall be reported to the General Directorate of Energy, the Ministry of Industry and Trade, for guidance.-

For the Minister of Industry and Trade
Deputy Minister
HOANG QUOC VUONG