

DECREE

Providing for offshore direct investment in petroleum activities

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Investment Law;

At the proposal of the Minister of Industry,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Governing scope

1. This Decree provides for offshore direct investment in petroleum activities by investors based in Vietnam.
2. If a treaty to which Vietnam is a contracting party contains provisions different from the provisions of this Decree, the provisions of that treaty apply.
3. Vietnam-based investors making offshore direct investment in petroleum activities shall adhere to this Decree, the regulations on offshore investment and relevant provisions of law. If the provisions of this Decree are different from those of relevant decrees, the provisions of this Decree apply.

Article 2.- Subjects of application

This Decree applies to Vietnam-based investors (below referred to as investors), including:

1. Limited liability companies, joint-stock companies, partnerships or private enterprises which have been granted business registration certificates under the Enterprise Law.
2. Enterprises set up under the State Enterprise Law which have not been re-registered under the Enterprise Law.
3. Foreign invested enterprises set up under the Foreign Investment Law which have not been re-registered under the Enterprise Law and the Investment Law.
4. Enterprises of political organizations or socio-political organizations which have not been re-registered under the Enterprise Law.
5. Cooperatives and unions of cooperatives set up under the Law on Cooperatives.
6. Vietnamese business households and individuals.

Article 3.- Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Petroleum activities means activities of formulating and executing petroleum projects on oil and gas prospecting and exploration, field development or exploitation, including the piping and processing of crude oil and other directly related activities.
2. Petroleum contract means a written agreement signed between the representative of an owner of petroleum resources and an investor or other partners, under which the investor then enjoy the benefits of participation in the petroleum contract.
3. Petroleum assets means values or products created in the course of investment in a petroleum project.
4. Total investment in a petroleum project means all expenses for the formulation and execution of a project which is classified and formulated according to Article 4 of this Decree.

Article 4.- Formulation and classification of petroleum projects

1. A petroleum project is formulated by one of the following modes:

- a/ Signing a petroleum contract;
- b/ Transferring the benefits of participation in a petroleum contract;
- c/ Transferring part or the whole of a company.

2. Petroleum projects include:

- a/ Oil and gas prospecting, exploration, development and exploitation projects which are executed from the prospecting and exploration stage;
- b/ Oil and gas development and exploitation projects which are executed from the development and exploitation stage.

Article 5.- Application of investment incentives

1. If newly promulgated laws or policies provide for benefits or incentives higher than those investors are entitled to under their investment certificates, investors may enjoy the benefits and incentives according to new regulations from the date those regulations take effect.

2. If benefits and incentives stated in his/her/its investment certificate or permit for offshore direct investment in petroleum activities are higher than those he/she/it is entitled to under current regulations, an investor may continue enjoying the benefits and incentives stated in that investment certificate or permit.

Article 6.- Formulation and execution of petroleum projects

1. Activities of formulating a petroleum project are carried out by an investor in a foreign country or in Vietnam, aimed to directly or indirectly support the formulation of an offshore petroleum project, including:

a/ Researching into markets and investment opportunities;

b/ Conducting field surveys;

c/ Reviewing documents;

d/ Collecting and purchasing documents and information related to the selection of the petroleum project;

e/ Conducting synthesization, assessment and evaluation, including hiring consultants for the assessment and evaluation;

f/ Participating in, organizing seminars and symposiums;

g/ Activities of the investors overseas representative offices, liaison offices, branches and executive offices, which are related to the formulation of the petroleum project;

h/ Participating in international bidding;

i/ Negotiating petroleum contracts;

j/ Other necessary activities.

2. Activities of executing a petroleum project include organization of the execution of the project according to the approved working program and budget, based on petroleum contracts or written agreements on investment signed with partners or written agreements on transfer of the benefits of participation in the contracts or transfer of part or the whole of a company which has been granted an investment certificate.

Chapter II

COMPETENCE TO APPROVE INVESTMENT AND PROCEDURES FOR THE GRANT AND ADJUSTMENT OF INVESTMENT CERTIFICATES

Article 7.- Competence to approve investment

1. The Prime Minister shall approve investment in petroleum projects each funded with state budget capital of VND 1,000 billion or more or with other economic sectors capital of VND 3,000 billion or more.

2. Petroleum projects other than those defined in Clause 1 of this Article shall be decided by their owners representatives or by investors.

Article 8.- Investment certificates

1. Approval of a petroleum project takes the form of an investment certificate granted by the Ministry of Planning and Investment.

2. An investment certificate is granted for a petroleum project according to either of the following two processes:

a/ Registration for the grant of an investment certificate, for petroleum projects capitalized at under VND 15 billion each;

b/ Verification for the grant of an investment certificate, for petroleum projects capitalized at VND 15 billion or more each.

Article 9.- Dossiers of registration for the grant of investment certificates

A dossier of registration for the grant of an investment certificate comprises:

1. A written registration for the grant of an investment certificate, made according to the form promulgated by the Ministry of Planning and Investment.

2. A notarized copy of the investment certificate, for investors holding foreign investment capital; of the business registration certificate or the enterprise establishment decision, for domestic institutional investors; or of the peoples identity card or passport, for investors being individuals.

For an investor holding foreign investment capital that has been granted an investment license before July 1, 2006, but has not been re-registered or transformed according to the Investment Law, a notarized copy of the investment license is required.

3. The offshore investment decision, issued by a competent authority specified in Clause 2, Article 7 of this Decree.

4. The petroleum contract or written agreement on investment signed with a partner or the written agreement on transfer and receipt of contract participation benefits or of a part or the whole of a company.

A dossier of registration for the grant of an investment certificate is submitted to the Ministry of Planning and Investment in 3 sets, including one original.

Article 10.- Process of registration and grant of investment certificates

1. The Ministry of Planning and Investment shall examine the validity of a dossier of registration for the grant of an investment certificate according to Article 9 of this Decree.

If it is necessary to clarify some contents related to that dossier, within 3 working days after receiving it, the Ministry of Planning and Investment shall send a written request to the investor for explanation.

2. Within 15 working days after receiving a valid dossier, the Ministry of Planning and Investment shall grant the investor an investment certificate.

If disapproving a dossier of registration for the grant of an investment certificate, the Ministry of Planning and Investment shall notify such in writing, stating the reasons for disapproval. The investor may lodge a complaint about such disapproval in accordance with law.

3. The Ministry of Planning and Investment shall send copies of an investment certificate to the Ministry of Industry, the Ministry of Finance, the State Bank of Vietnam, the provincial-level Peoples Committee of the locality where the investor registers business (for institutional investors) or permanent residence (for investors being Vietnamese individuals).

Article 11.- Dossiers of verification for the grant of investment certificates

A dossier of verification for the grant of an investment certificate comprises:

1. A written request for verification for the grant of an investment certificate, made according to the form promulgated by the Ministry of Planning and Investment.
2. A notarized copy of the investment certificate, for investors holding foreign investment capital; of the business registration certificate or the enterprise establishment decision, for domestic institutional investors; or the peoples identity card or passport, for investors being individuals.

For an investor holding foreign investment capital that has been granted an investment license before July 1, 2006, but has not been re-registered or transformed according to the Investment Law, a notarized copy of the investment license is required.

3. The report on the feasibility of the petroleum project, stating its objectives, location, scale, investment capital sources, execution schedule and economic efficiency.
4. The financial capacity report, made by the investor that is also responsible for it.
5. The offshore investment decision, issued by a competent authority specified in Clause 2, Article 7 of this Decree.

6. The petroleum contract or written agreement on investment with a partner or the written agreement on transfer and receipt of the participation benefits or of a part or the whole of a company.

A dossier of verification for the grant of an investment certificate is submitted to the Ministry of Planning and Investment in 8 sets, including one original.

Article 12.- Process of verification for the grant of investment certificates

1. Contents of verification for the grant of an investment certificate:

- a/ The investors legal status;
- b/ The legality of investment capital;
- c/ The projects execution schedule (for development and exploitation projects).

2. Within 3 working days after receiving a valid dossier of verification for the grant of an investment certificate, the Ministry of Planning and Investment shall send its copies to relevant ministries and branches for comment.

3. Within 10 working days after receiving a dossier, ministries and branches shall send their written comments to the Ministry of Planning and Investment. Past this time limit, any agency which gives no written comments is considered having agreed with the investors request in the dossier of verification for the grant of an investment certificate.

4. Within 25 working days after receiving a complete and valid dossier, the Ministry of Planning and Investment shall verify the petroleum project and grant an investment certificate.

5. If disapproving a dossier of verification for the grant of an investment certificate, the Ministry of Planning and Investment shall notify such in writing, stating the reasons for disapproval. The investor may lodge a complaint about such disapproval in accordance with law.

6. With regard to petroleum projects falling within the approving competence of the Prime Minister, within 20 working days after receiving a complete and valid dossier, the Ministry of Planning and Investment shall submit to the Prime Minister a report on verification results and opinions of ministries and branches, and suggestions on the grant of an investment certificate.

Within 5 working days after getting the Prime Ministers approval, the Ministry of Planning and Investment shall grant an investment certificate.

7. The Ministry of Planning and Investment shall send copies of an investment certificate to the Ministry of Industry, the Ministry of Finance, the State Bank of Vietnam, the provincial-level Peoples Committee of the locality where the investor registers business (for institutional investors) or permanent residence (for investors being Vietnamese individuals).

Article 13.- Shortening of the time limit for verification for the grant of investment certificates

For an urgent petroleum project, the investor shall send a written explanation together with the dossier stipulated in Article 11 of this Decree to the Ministry of Planning and Investment and relevant ministries and branches, requesting shortening of the verification time limit. Within 5 working days after receiving a valid dossier, the Ministry of Planning and Investment shall preside over meetings with relevant ministries and branches in order to conduct verification and grant an investment certificate without having to consult ministries and branches under the provisions of Clauses 2 and 3, Article 12 of this Decree.

With regard to petroleum projects falling within the approving competence of the Prime Minister according to Clause 1, Article 7 of this Decree, within 3 working days after completing the verification, the Ministry of Planning and Investment shall submit to the Prime Minister a report on verification results.

Within 2 working days after getting the Prime Ministers approval, the Ministry of Planning and Investment shall grant an investment certificate.

Article 14.- Adjustment of investment certificates

1. If wishing to adjust a petroleum project which has been granted an investment certificate in terms of the form of investment, execution term, or

total investment amounts which, after being adjusted, is 30% lower or higher than the amount stated in the investment certificate, the investor shall carry out procedures for adjustment of the investment certificate.

2. Adjustment of a petroleum project follows one of the following processes:

a/ Registration, grant of an adjusted investment certificate;

b/ Verification, grant of an adjusted investment certificate.

Article 15.- Conditions and procedures for registration and grant of adjusted investment certificates

1. A petroleum project must be registered and granted an adjusted investment certificate if it is adjusted in terms of the form of investment, execution term, or total investment amount which, after being adjusted, is 30% lower or higher than the amount stated in the investment certificate but does not exceed VND 15 billion.

2. A dossier of registration for the grant of an adjusted investment certificate comprises:

a/ A written request for the grant of an adjusted investment certificate, made according to the form promulgated by the Ministry of Planning and Investment;

b/ The decision on adjustment of the petroleum project, issued by a competent authority specified in Clause 2, Article 7 of this Decree;

c/ The report on operation of the petroleum project up to the time of request for adjustment of the investment certificate;

d/ A notarized copy of the investment certificate.

3. A dossier of registration for the grant of an adjusted investment certificate is submitted to the Ministry of Planning and Investment in 3 sets, including one original.

If it is necessary to clarify some contents related to that dossier, within 3 working days after receiving it, the Ministry of Planning and Investment shall send a written request to the investor for explanation.

4. Within 15 working days after receiving a valid dossier, the Ministry of Planning and Investment shall grant the investor an adjusted investment certificate.

If disapproving a dossier of verification for the grant of an adjusted investment certificate, the Ministry of Planning and Investment shall notify such in writing, stating the reasons for disapproval. The investor may lodge a complaint about such disapproval in accordance with law.

5. The Ministry of Planning and Investment shall send copies of an adjusted investment certificate to the Ministry of Industry, the Ministry of Finance, the State Bank of Vietnam, the provincial-level Peoples Committee of the locality where the investor registers business (for institutional investors) or permanent residence (for investors being Vietnamese individuals).

Article 16.- Conditions for, and process of verification for the grant of adjusted investment certificates

1. A petroleum project must be verified for the grant of an adjusted investment certificate if after being adjusted its total investment amount changes 30% compared with the amount stated in its investment certificate and exceeds VND 15 billion.

2. A dossier of verification for the grant of an adjusted investment certificate comprises:

a/ A written request for verification for the grant of an adjusted investment certificate, made according to the form promulgated by the Ministry of Planning and Investment;

b/ The decision on adjustment of the petroleum project, issued by a competent agency specified in Clause 2, Article 7 of this Decree;

c/ The report on operation of the petroleum project up to the time of request for adjustment;

d/ A notarized copy of the investment certificate;

e/ The explanation about adjusted contents.

3. Process of verification for the grant of an adjusted investment certificate:

a/ The dossier of verification for the grant of an adjusted investment certificate is submitted to the Ministry of Planning and Investment in 6 sets, including one original;

b/ Within 3 working days after receiving a complete and valid dossier, the Ministry of Planning and Investment shall send it to concerned ministries and branches for comment;

c/ Within 15 working days after receiving the dossier, the concerned ministries and branches shall send their written comments to the Ministry of Planning and Investment. Past this time limit, any agency which gives no comments shall be considered having agreed with the investors request in the dossier;

d/ If the petroleum project falls under the deciding competence of the owners representative or the investor, the Ministry of Planning and Investment shall verify the dossier and grant an adjusted investment certificate within 30 working days after receiving a complete and valid dossier;

e/ If the petroleum project falls under the approving competence of the Prime Minister or after adjustment its total state investment capital reaches VND 1,000 billion or more or its capital mobilized from various economic sectors reaches VND 3,000 billion or more, within 25 working days after receiving a complete and valid dossier, the Ministry of Planning and Investment shall submit to the Prime Minister a report on verification results, enclosed with opinions of relevant ministries and branches and its suggestions regarding the approval of adjustment of the investment certificate.

Within 5 working days after getting the Prime Ministers approval, the Ministry of Planning and Investment shall grant an adjusted investment certificate.

f/ If disapproving the dossier of verification for the grant of an adjusted investment certificate, the Ministry of Planning and Investment shall notify

such in writing, stating the reasons. The investor may lodge a complaint about such disapproval in accordance with law.

4. The Ministry of Planning and Investment shall send copies of an adjusted investment certificate to the Ministry of Industry, the Ministry of Finance, the State Bank of Vietnam, the provincial-level Peoples Committee of the locality where the investor registers business (for institutional investors) or permanent residence (for investors being Vietnamese individuals).

Chapter III

EXECUTION OF PETROLEUM PROJECTS

Article 17.- Notification of execution of petroleum projects

1. Within 60 days after a petroleum project is approved according to the law of the investment-receiving country, the investor shall send a written notice on execution, enclosed with copies of the written approval, of the petroleum project, or a legal document of equal validity to the ministries of: Planning and Investment, Finance, Trade, Industry, and Foreign Affairs; the State Bank of Vietnam, and the provincial-level Peoples Committee of the locality where the investor registers business (for institutional investors) or registers permanent residence (for investors being Vietnamese individuals).

2. A notice on execution of a petroleum project has the following contents:

a/ The name and address of the head office of the legal person set up in a foreign country (if any); the name and address of the branch or representative office (if any);

b/ The objectives and fields of investment;

c/ The investment capital of the enterprise set up overseas, the investors contributed capital amount;

d/ The information on the investors representative and the enterprises overseas representative, including their full names, permanent addresses (in Vietnam and in the foreign country), positions and numbers of the peoples identity cards or passports.

3. In case of a change in the contents defined in Clause 2 of this Article, within 30 days after making the change, the investor shall notify such in writing to the Ministry of Planning and Investment.

Article 18.- Time limit for execution of petroleum projects

1. If within 12 months after being granted an investment certificate a petroleum project is not approved by the investment -receiving country or within 6 months after being approved by the investment-receiving country, it is not executed, the investor shall give written explanations and request the Ministry of Planning and Investment to extend the project execution term or terminate the petroleum project.

2. Within 15 working days after receiving a written request for extension of the execution term or termination of a petroleum project, the Ministry of Planning and Investment shall give written approval or disapproval of that request and concurrently send its copies to the ministries of: Planning and Investment, Finance, Trade, Industry, and Foreign Affairs; the State Bank of Vietnam, and the provincial-level Peoples Committee of the locality where the investor registers business (for institutional investors) or registers permanent residence (for investors being Vietnamese individuals).

3. The extension of the execution term of a petroleum project shall conform to the petroleum contract or the written agreement on investment with a partner or the written agreement on the transfer and receipt of the participation benefits or a part or the whole of a company.

Article 19.- Establishment of new legal persons

To prepare investment or carry out activities of formulating or executing a petroleum project, the investor may set up or join in setting up a new enterprise in Vietnam, in the investment-receiving country or in a third country in accordance with relevant laws.

Article 20.- Reporting regime

Annually, within 6 months from the end of a fiscal year of investment-receiving countries, investors shall send reports on their operation and financial statements certified by audit agencies or competent agencies of the investment-receiving countries to the ministries of: Planning and Investment, Industry, and Finance; the State Bank of Vietnam, and the business registration agency.

Article 21.- Termination and liquidation of petroleum projects

The termination of operation of a petroleum project complies with the related petroleum contract and the law of the investment-receiving country.

Article 22.- Transfer of petroleum projects

If upon transfer of part or the whole of a petroleum project, the investor still has interests in that project, he/she/it shall register for adjustment of the investment certificate under the provisions of Articles 14, 15 and 16 of this Decree. If the transfer of a petroleum project generates profits, the investor shall perform tax liabilities in accordance with the tax law.

Article 23.- Irrecoverable expenses

When a petroleum project is incapable of recovering expenses, the investor may offset them with his/her/its production and business fund for 5 years at most after completing the project.

Article 24.- Use of profits for offshore investment

1. After fulfilling his/her/its tax liabilities under the laws of the investment-receiving country and Vietnam, an investor may retain overseas profits gained from a petroleum project and use it for the following purposes:

a/ Re-investment in the petroleum project which has been granted an investment certificate;

b/ Investment in other petroleum projects in the investment-receiving country for which the investor has been granted an investment certificate.

2. Investors using profits of petroleum projects according to Clause 1 of this Article shall register with the State Bank of Vietnam and annually report to the Ministry of Planning and Investment on the use of after-tax profits for re-investment.

Article 25.- Transfer of profits to the home country

1. Within 6 months after obtaining a tax finalization report or a legal document of equivalent validity according to the law of the investment-receiving country, an investor shall transfer all profits back to Vietnam, except for profits retained under the provisions of Clause 1, Article 24 of this Decree.
2. If wishing to prolong the time limit specified in Clause 1 of this Article, an investor shall give written explanations to the State Bank of Vietnam for consideration and decision. The extension may be effected twice at most for not more than 6 months each.

Article 26.- Accounting

An investor may apply an accounting system to a petroleum project in compliance with the related petroleum contract. Investors shall report to the Ministry of Finance on accounting systems they apply.

Article 27.- Trade

Investors may participate in bidding for provision of services or procurement of equipment and facilities for petroleum projects in accordance with petroleum contracts.

Article 28.- Import and export activities in Vietnam

1. When importing or exporting equipment, machinery, supplies, raw materials or fuels for petroleum projects, investors shall abide by Vietnamese law on import and export. If commercial contracts or petroleum contracts are unavailable, investment certificates may be used instead in the import/export dossiers.
2. When importing crude oil exploited from petroleum projects under their ownership investors shall abide by Vietnamese law on import and export. Investors may import and re-export technical materials, magnetic tapes and specimens used for research and analysis purposes.
3. Investors may temporarily import for re-export supplies, equipment, specimens and other equipment and materials for research, processing, explanation or manufacture for petroleum projects.

Article 29.- Taxes

1. When determining the enterprise income tax amount payable in Vietnam for an offshore petroleum project, an investor may deduct the enterprise income tax amount he/she/it has paid overseas or which has been paid for him/her/it by the investment-receiving country (evidenced by valid vouchers) but the deductible enterprise income tax amount must not exceed the amount calculated at the tax rate specified in the Enterprise Income Tax Law.
2. Individuals working for petroleum projects shall pay income tax on high-income earners according to Vietnamese law. When determining the income tax amount payable in Vietnam, an individual earning high income may deduct the personal income tax amount he/she has paid overseas or which has been paid for him/her by the investment-receiving country (evidenced by valid vouchers), but the deductible tax amount must not exceed the amount payable according to Vietnamese law on income tax on high-income earners.
3. Equipment, facilities, supplies, raw materials and fuels liable to export tax and value added tax which investors export to foreign countries for execution of investment projects are eligible for export tax exemption and the value added tax rate of 0%.
4. Specimens, technical materials (magnetic tapes, paper rolls and other materials) imported for research and analysis purposes for execution of petroleum projects are eligible for import tax exemption and not liable to value added tax.
5. If special-used equipment and supplies for petroleum activities, which have not yet been produced in the country, are temporarily imported for processing then re-exported for execution of petroleum projects, they are exempt from import and export taxes and not liable to value added tax.

Article 30.- Transfer of investment capital abroad

1. An investor may transfer investment capital abroad for carrying out investment activities after meeting the following conditions:
 - a/ Having been granted an investment certificate;
 - b/ The petroleum project has been approved by a competent state agency of the investment-receiving country according to the law of that country.
2. The transfer of foreign currencies abroad before the grant of an investment certificate for study and preparation of an investment project complies with the law on foreign exchange management and relevant provisions of law.
3. The transfer of investment capital abroad complies with the law on management of foreign exchange, export, technology transfer and relevant provisions of law.

Chapter IV**STATE MANAGEMENT OF OFFSHORE INVESTMENT IN PETROLEUM ACTIVITIES****Article 31.-** Powers and responsibilities of state management agencies

Ministries, ministerial-level agencies, government-attached agencies, provincial/municipal Peoples Committees and overseas Vietnamese diplomatic missions shall perform the state management of offshore investment in petroleum activities according to the provisions of Chapter IV of the Governments Decree No. 78/2006/ND-CP of August 9, 2006, on offshore direct investment.

Article 32.- Responsibilities of the Ministry of Industry

To coordinate with the Ministry of Planning and Investment in formulating policies and plannings on offshore direct investment in petroleum activities; comment on issues in its assigned state management domains when requested by the Prime Minister or the Planning and Investment Ministry; supervise and inspect offshore direct investment in petroleum activities from the time petroleum projects are granted investment certificates till the expiration of those certificates.

Article 33.- Handling of violations

Organizations and individuals violating this Decree shall be handled in accordance with law.

Chapter V

IMPLEMENTATION PROVISIONS

Article 34.- Implementation effect

This Decree takes effect 15 days after its publication in "CONG BAO."

Article 35.- Implementation responsibility

1. The Ministry of Planning and Investment, the Ministry of Industry and the Ministry of Finance shall guide the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and presidents of provincial/municipal Peoples Committees shall implement this Decree.

THE GOVERNMENT
PRIME MINISTER
(Đã ký)

Nguyen Tan Dung