

DECREE

**AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF DECREE NO. 121/2007/ND-CP OF JULY 25, 2007,
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 and Trade,

DECREES:

Article 1. To amend and supplement a number of articles of Decree No. 121/2007/ND-CP of July 25, 2007, providing for offshore direct investment in petroleum activities as follows:

1. To add the following Clause 5 to Article

"5. Executive means an enterprise established by the investor under Clause 14, Article 1 of this Decree, for implementing an offshore petroleum project."

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

"1. Activities of formulating a petroleum project are carried out by an investor in a foreign country or in Vietnam 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 relating to the selection of the petroleum project;
- e) Conducting synthesization, assessment and evaluation of the project, including selecting and hiring consultants for project assessment and evaluation;
- f) Organizing and participating in organizing seminars and symposiums;
- g) Establishing and operating enterprises under Clause 14, Article 1 of this Decree, operating overseas representative offices, liaison offices, branches and executive offices of the investor related to the formulation of the petroleum project;
- h) Participating in international bidding; paying deposits, security or other financial guarantees as a bidding condition at the request of bid solicitors and investment-receiving countries;
- i) Negotiating petroleum contracts;
- j) Purchasing and hiring assets for the formulation of the offshore petroleum project;
- k) Other necessary activities."

3. To amend and supplement Article 7 as follows:

"Article 7. Competence to approve investment

1. The Prime Minister shall approve investment in the following petroleum projects:

- a) Petroleum projects formed under a petroleum contract funded with state capital of VND 3 trillion or more or with other economic sectors' capital of VND 5 trillion or more.
- b) Petroleum projects formed through transferring benefits earned from petroleum contract participation or transferring part or the whole of a company funded with state capital of VND 5 trillion or more or with other economic sectors' capital of VND 8 trillion or more.

2. For petroleum projects other than those defined in Clause 1 of this Article, their owner representatives or investors shall decide on the adjustment of their total investment in accordance with Article 16 of Decree No 121/2007/ND-CP."

4. To add the following Clause 5 to Article 9:

"5. An authenticated copy of the business registration certificate or enterprise founding decision of the executive, and the authorization contract between the investor and executive, in case the executive participates in the petroleum project."

5. To add the following Clause 7 to Article 11:

"7. An authenticated copy of the business registration certificate or enterprise founding decision of the executive, and the authorization contract between the investor and executive, in case the executive participates in the petroleum project."

6. To amend and supplement Point a, Clause 1, Article 12 as follows:

"a) The legal status of the investor and executive;"

7. To amend and supplement Clauses 4, 5 and 6, Article 12 as follows:

"4. For petroleum projects falling within the investment-deciding competence of owner representatives or investors, 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. For petroleum projects formed under petroleum contracts and 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 verification report and opinions of concerned ministries and branches, and suggestions on the project.

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

6. If finding through verification that the project is ineligible for 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."

8. To amend and supplement Article 13 as follows:

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

Petroleum projects formed through transferring benefits earned from petroleum contract participation or transferring part or the whole of a company, and other petroleum projects for which the investors can justify the request for urgent shortening of the verification time limit shall be verified and granted investment certificates as follows:

1. The investor shall send to the Ministry of Planning and Investment and concerned ministries and branches a request for shortening the verification time limit, enclosed with the dossier as prescribed in Article 11 of Decree No. 121/2007/ND-CP and Clause 5, Article 1 of this Decree.

2. Within 5 working days after receiving a valid dossier, the Ministry of Planning and Investment shall hold a meeting with concerned ministries and branches to conduct verification and grant an investment certificate instead of consulting ministries and branches under Clauses 2 and 3, Article 12 of Decree No. 121/2007/ND-CP.

3. For petroleum projects falling within the investment-deciding competence of owner representatives or investors, within 3 working days after meeting with ministries and branches, the Ministry of Planning and Investment shall grant an investment certificate, except for projects which are found ineligible through dossier verification and are disapproved. When finding through verification that a project is ineligible for 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.

4. For petroleum projects falling within the approving competence of the Prime Minister, within 3 working days after meeting with ministries and branches, the Ministry of Planning and Investment shall submit to the Prime Minister a verification report and suggestions on the project.

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

5. The Ministry of Planning and Investment shall send copies of the investment certificate to the Ministry of Trade and Industry, the Ministry of Finance, the State Bank of Vietnam and the provincial-level People's Committee of the locality where the investor makes business registration (for institutional investors) or registers permanent residence (for Vietnamese individual investors)."

9. To amend and supplement Clause 1, Article 14 as follows:

"1. If wishing to adjust a petroleum project, which has been granted an investment certificate, in terms of form of investment, execution term, matters related to investor and executive or total investment which, after being adjusted, will be 30% or more lower or higher than that stated in the investment certificate, the investor shall carry out procedures for modifying the investment certificate."

10. To amend and supplement Clause 1, Article 15 as follows:

"1. A petroleum project must be registered and granted a modified investment certificate if it is adjusted in terms of form of investment, execution term, matters related to investor and executive or total investment which, after being adjusted, will be 30% or more lower or higher than that stated in the investment certificate but does not exceed VND 15 billion."

11. To amend and supplement Clause 1, Article 16 as follows:

"1. A petroleum project must be verified for the grant of a modified investment certificate if, after being adjusted, its total investment will change 30% or more lower or higher than that stated in its investment certificate and exceeds VND 15 billion."

12. To amend and supplement Points d and e, Clause 3, Article 16 as follows:

"d) For petroleum projects formed under petroleum contracts and falling within the approving competence of the Prime Minister and those, after adjustment, having total state investment capital of VND 3 trillion or more or capital raised from various economic sectors of VND 5 trillion 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 concerned ministries and branches and suggestions on the modification of the investment certificate.

Within 5 working days after getting the Prime Minister's written approval, the Ministry of Planning and Investment shall grant a modified investment certificate.

e) For petroleum projects other than those defined at Point d, Clause 3 of this Article, the Ministry of Planning and Investment shall verify the dossier and grant a modified investment certificate within 25 working days after receiving a complete and valid dossier."

13. To add the following Article 16a:

"Article 16a. Shortening of the verification time limit for the grant of modified investment certificates

Petroleum projects formed through transferring benefits earned from petroleum contract participation or transferring part or the whole of a company, and other petroleum projects for which the investors can justify the request for urgent shortening of the verification time limit shall be verified and granted certificates as follows:

1. The investor shall send to the Ministry of Planning and Investment and concerned ministries and branches a request for

shortening the verification time limit, enclosed with the dossier as prescribed in Article 16 of Decree No. 121/2007/ND-CP.

2. Within 5 working days after receiving a valid dossier, the Ministry of Planning and Investment shall hold a meeting with concerned ministries and branches to conduct verification and grant a modified investment certificate instead of consulting ministries and branches under Clauses 2 and 3, Article 16 of Decree No. 121/2007/ND-CP.

3. For petroleum projects falling within the investment-deciding competence of owner representatives or investors, within 3 working days after meeting with ministries and branches, the Ministry of Planning and Investment shall grant a modified investment certificate, except for projects which are found ineligible through dossier verification and are disapproved. When finding through dossier verification that a project is ineligible for a modified 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.

4. For petroleum projects falling within the approving competence of the Prime Minister and petroleum projects with total investment, after adjusted, reaching the level falling within the approving competence of the Prime Minister, within 3 working days after meeting with ministries and branches, the Ministry of Planning and Investment shall submit to the Prime Minister a verification report and suggestions on the project adjustment.

Within 2 working days after getting the Prime Minister's written approval, the Ministry of Planning and Investment shall grant a modified investment certificate.

5. The Ministry of Planning and Investment shall send copies of the investment certificate to the Ministry of Trade and Industry, the Ministry of Finance, the State Bank of Vietnam and the provincial-level People's Committee of the locality where the investor makes business registration (for institutional investors) or registers permanent residence (for Vietnamese individual investors)."

14. To amend and supplement Article 19 as follows:

"Article 19. Establishment of new legal persons and competence of executives

1. To prepare investment or carry out activities of forming or implementing 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.

2. If the investor authorizes the executive to carry out the petroleum project, the executive shall be named in the investment certificate granted to the investor under Articles 10, 12, 13, 15 and 16 of Decree No. 121/2007/ND-CP and Clause 13, Article 1 of this Decree. The executive may use the investment certificate or modified investment certificate in activities related to the project implementation. The investor and executive shall be held responsible for the project implementation in compliance with the investment certificate or modified investment certificate and laws."

15. To amend and supplement Article 21 as follows:

"Article 21. Termination and liquidation of petroleum projects

1. Before terminating a petroleum project, the investor shall report it to competent authorities defined in Clause 3, Article 1 of this Decree for consideration and decision.

2. The procedures for terminating an offshore petroleum project shall be carried out in accordance with the related petroleum contract and the law of the investment-receiving country."

16. To amend and supplement Article 23 as follows:

"Article 23. Irrecoverable expenses

When a petroleum project is incapable of recovering expenses, the investor may account them as production and business expenses within 5 years at most after completing the project. For investors governed by the Government's Decree No. 142/2007/ND-CP of September 5, 2007, promulgating the Regulation on financial management of the Parent Company-Vietnam Petroleum Corporation, their petroleum projects which are incapable of recovering expenses comply with Decree No. 142/2007/ND-CP, Decree No. 121/2007/ND-CP and this Decree."

17. To amend and supplement Clause 1, Article 24 as follows:

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

- a) Reinvestment in the petroleum project which has been granted an investment certificate or a modified one;
- b) Investment in other petroleum projects in the investment-receiving country for which the investor has been granted an investment certificate or a modified one."

18. To amend and supplement Clause 2, Article 30 as follows:

"2. The investor may transfer foreign currencies abroad before being granted an investment certificate to cover expenses for the formation of an investment project under Clause 2, Article 1 of this Decree."

19. To replace the phrases "Ministry of Industry" and "Ministry of Trade" in Decree No. 121/2007/ND-CP with the phrase "Ministry of Industry and Trade."

20. To replace the word "notarized" in Articles 9, 11, 15 and 16 of Decree No. 121/2007/ND-CP with the word "authenticated".

Article 2. Effect

This Decree takes effect on April 6, 2009.

Article 3. Implementation responsibility

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

THE GOVERNMENT

PRIME MINISTER

(Đã ký)

Nguyen Tan Dung