

DECREE No. 22/1999/ND-CP OF APRIL 14, 1999 PROVIDING FOR INVESTMENT ABROAD BY VIETNAMESE ENTERPRISES

THE GOVERNMENT

Pursuant to the Law on Organization of the Government of September 30, 1992;

With a view to creating conditions for Vietnamese enterprises to invest abroad and helping to broaden and increase the efficiency of economic, technical and trade cooperation with foreign countries;

At the proposal of the Minister of Planning and Investment,

DECREES:

Article 1.-

1. Investing abroad by Vietnamese enterprises is the act by which Vietnamese enterprises take capital in the form of money and other properties abroad to directly invest in foreign countries according to the stipulations of this Decree;

2. This Decree does not regulate the investment abroad by Vietnamese enterprises in the forms of credit loans, purchase of stocks and investment abroad in the domains of banking and insurance.

Article 2.-

1. The Vietnamese enterprises allowed to invest abroad comprise:

a/ Enterprises set up under the Law on State Enterprises;

b/ Cooperatives set up under the Law on Cooperatives;

c/ Enterprises set up under the Law on Companies;

d/ Enterprises set up under the Law on Private Enterprises.

(The enterprises mentioned in this Clause shall be hereafter called Vietnam enterprises for short).

2. Investment abroad by enterprises with foreign investment and with the parties joining in business cooperation contracts shall follow separate stipulations of the Government.

Article 3.- Vietnam enterprises investing abroad shall have to meet the following conditions:

1. The project of investment abroad must be feasible;

2. Having the financial capability to meet the need of investment abroad;

3. Fully accomplishing their financial obligations to the State.

Article 4.- Vietnam enterprises are allowed to invest abroad with:

1. Machinery, equipment, spare parts; materials, raw materials and fuel;

2. The value of the industrial property right; technical know-how; technological process, technical services;

3. Foreign currency;

4. Other property rights, except those not allowed to be transferred abroad as prescribed by law.

Article 5.-

1. The transfer of investment capital abroad in the form of money and properties mentioned in Article 4 of this Decree must comply with current regulations on the management of foreign exchange, on export and technology transfer;

2. The exemption of export tax on the properties invested abroad by the enterprises mentioned Point 1, Article 4 of this Decree shall be made according to the prescriptions of law on export tax and import tax.

The Ministry of Trade shall confirm the list of the above-mentioned tax-exempted goods; the General Department of Customs shall base itself on the written confirmation of this list to exempt them from export tax.

Article 6.-

1. Vietnam enterprises investing abroad shall have to comply with the stipulations concerning the application for investing abroad mentioned in Articles 7, 8, 9 and 10 of this Decree. They include:

a/ State enterprises;

b/ Enterprises of other economic sectors with an investment capital abroad valued at 1,000,000 US dollars upward.

2. For the investments not regulated by Clause 1 of this Article, the enterprise needs only to register with the Ministry of Planning and Investment according to the prescribed form.

Article 7.- The dossier of investment abroad sent to the Ministry of Planning and Investment shall comprise:

1. An application for investment abroad;
2. A copy of the decision to set up the enterprise;
3. The written permit of investment issued by the competent agency of the country receiving the investment, or the contract or the written agreement with the foreign side on the investment project;
4. The presentation of the objective of the project, the sources of the investment capital of the enterprise, the form of investment, the method of capital transfer, and the method of transfer of profit home;
5. The financial situation of the enterprise;
6. The written agreement on investment abroad of the agency that has decided the setting up of the enterprise (in case of a State enterprise).

Article 8.- After receiving the dossier of the project, the Ministry of Planning and Investment shall organize the evaluation of the project with the following main contents:

1. The financial capability of the Vietnam enterprise investing abroad;
2. Efficiency of the project (various kinds of remittances to the budget, possibility of broadening the market).

Article 9.- The competence of deciding the investment abroad is stipulated as follows:

1. The Prime Minister shall decide on projects of the enterprises which are set up by his own decisions, or State enterprises with investment capital valued at 1,000,000 USD dollars upward;
2. The Minister of Planning and Investment shall decide on the remaining projects.

Article 10.- The evaluation of projects of investment abroad is prescribed as follows:

1. Vietnamese enterprises investing abroad shall make dossiers as prescribed in Article 7 of this Decree in 8 sets (including the original) and send them to the Ministry of Planning and Investment;
2. Within 5 days after receiving the valid dossier, the Ministry of Planning and Investment shall send the dossier of the project to the related ministries and the People's Committees of the related provinces and centrally-run cities for consultation;
3. Within 10 days after receiving the dossier, the agencies mentioned above shall send their written comments to the Ministry of Planning and Investment concerning issues in the project falling under their jurisdiction;
4. For the projects under the decision authority of the Prime Minister, 15 days at the latest after receiving the project dossier, the Ministry of Planning and Investment shall have to present to the Prime Minister its evaluation comments attached to the dossier of the project and the comments of the related ministries and branches and the People's Committees of the related provinces and centrally-run cities so that the Prime Minister may consider and decide. Within 7 days after receiving the decision of the Prime Minister, the Ministry of Planning and Investment shall have to notify thereof to the enterprise;
5. With regard to the remaining projects, after receiving the written comments of the related ministries and branches and the People's Committees of the related provinces and centrally-run cities, the Ministry of Planning and Investment shall inform the enterprises of the decision. In case of divergence of opinions, the Ministry of Planning and Investment shall propose to the Prime Minister to consider and decide;
6. In case the application for investment is accepted, the Ministry of Planning and Investment shall issue the investment permit to the enterprise and send copies of it to the related ministries, branches and the People's Committees of the related provinces and centrally-run cities.

In case the application for investment is not accepted, the Ministry of Planning and Investment shall notify the enterprise of its decision and state the reason therefor.

7. The time for evaluation and issue of the permit for investment abroad shall not exceed 30 days after reception of the valid dossier.

Article 11.- The enterprise is allowed to proceed with the procedures related to the transfer of money and properties invested abroad for the execution of the project only after the Ministry of Planning and Investment issues the permit and the project of investment has been accepted by the competent agency of the country receiving the investment.

Article 12.- To carry out its project of investment abroad, the enterprise must open an account at a bank which is authorized to operate in Vietnam. All transactions to transfer money abroad and into Vietnam related to the activities of the enterprise must be effected through this account.

Article 13.- Profits and incomes of Vietnam enterprises abroad have to be transferred to the country within 6 months at the latest after the end of the fiscal year of the investment-receiving country. In case of arrears, the reason must be explained to the State Bank of

Vietnam.

Article 14.- An enterprise investing abroad which wants to use the profit to re-invest abroad must be agreed upon by the Ministry of Planning and Investment and must register with the State Bank of Vietnam.

Article 15.- On completion of its project of investment abroad on schedule or ahead of schedule the enterprise must fill the procedures of liquidation and transfer to the country all its income through liquidation 6 months at the latest after completion of the liquidation.

Article 16.- Enterprises engaged in investment abroad must carry out their financial obligations and tax obligations toward the State as prescribed by current law.

If the investment is made in a country which has signed an agreement on avoidance of double taxation with Vietnam, the tax obligations of the enterprise shall be made according to the stipulations of the agreement

Article 17.- Each year, within six months after completion of the fiscal year of the country accepting the investment, the enterprise must report on the situation of its operations and make a financial report certified by the audit agency or a competent agency of the investment-accepting country to the Ministry of Planning and Investment, the Ministry of Finance, the State Bank of Vietnam and the agency that has decided to set up the enterprise.

Article 18.- Within the ambit of their functions, the State management agencies managing the enterprise investing abroad which has properties under State ownership shall have to manage and supervise the enterprise in the process of negotiation, signing and deploying its activities in order to preserve and develop the capital.

Article 19.- Enterprises and/or individuals that violate the stipulations in Articles 11, 12, 13, 14, 15, 16 and 17 of this Decree shall, depending on the character and extent of the violation, be subject to discipline or administrative sanctions or examined for penal liability. If they cause damage they shall have to make compensation as prescribed by law.

Article 20.- This Decree takes effect 15 days after its signing.

The enterprises which have been issued with permits for investment abroad prior to the effective date of this Decree are allowed to continue their operations as prescribed in the permits of investment and must obey the provisions of this Decree.

The Ministry of Planning and Investment shall have to guide the implementation of this Decree.

The Ministers, the Heads of the ministerial-level agencies, the Heads of the agencies attached to the Government, the Presidents of the People's Committees of the provinces and cities centrally-run shall, within the ambit of their functions and tasks, have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI

THE GOVERNMENT

Phan Van Khai