

**THE MINISTRY OF
CONSTRUCTION**

No. **03/2009/TT-BXD**

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness

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CIRCULAR

DETAILING A NUMBER OF PROVISIONS OF THE GOVERNMENT'S DECREE No. 12/2009/ND-CP OF FEBRUARY 12, 2009, ON MANAGEMENT OF INVESTMENT PROJECTS ON THE CONSTRUCTION OF WORKS

Pursuant to the Government's Decree No. 17/2008/ND-CP of February 4, 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Construction; Pursuant to the Government's Decree No. 12/2009/ND-CP of February 12, 2009, on management of investment projects on the construction of works; The Ministry of Construction details a number of provisions of the Government's Decree No. 12/2009/ND-CP of February 12, 2009, on management of investment projects on the construction of works (below referred to as Decree 12/CP), as follows:

Chapter I

DETAILED PROVISIONS ON THE IDENTIFICATION OF INVESTORS; AND EVALUATION AND APPROVAL OF INVESTMENT PROJECTS ON THE CONSTRUCTION OF WORKS

Article 1. Identification of investors of state budget-funded projects under Points b and c. Article 3 of Decree 12/CP

1. For projects in which investment is decided by ministers, heads of ministerial-level agencies or presidents of People's Committees at all levels, investment deciders shall assign managers or users of works to act as investors.

In case managers or users of works cannot yet be identified or managers or users of works are ineligible for organizing the implementation of projects, investment deciders shall assign eligible units to act as investors. Managers or users of works shall appoint their employees to join units assigned to act as investors in formulating projects, designing, monitoring, managing, testing, receiving and putting works into operation or use. The employees appointed to join investors are those who will later participate in managing and using works or have professional qualifications relevant to the nature of projects.

Investors shall appoint employees of managers or users of works to suitable positions to participate in managing the above jobs in order to ensure the efficiency and purposes of projects.

2. If it is impossible to identify units to be assigned to act as investors according to the above provisions, investors shall be identified as follows:

a/ Investment deciders may concurrently act as investors.

b/ Investment deciders may assign project management units set up under their decisions to act as investors if these project management units have the legal entity status and are fully eligible for implementing projects, or investment deciders may contract eligible organizations to act as investors.

Article 2. Evaluation of investment projects on the construction of works under Article 10 of Decree 12/CP

1. For state budget-funded projects:

a/ After receiving investors' project dossiers, units in charge of project evaluation shall seek opinions of agencies managing specialized construction works defined in Clause 3 of this Article on basic designs and seek opinions of other agencies related to projects.

b/ Units in charge of project evaluation shall sum up evaluation contents and opinions on basic designs and opinions of relevant agencies: make remarks, assessments and recommendations and submit them to investment deciders for approval of projects.

c/ The time limit for evaluating a project is specified in Clause 7, Article 10 of Decree 12/CP, of which the time limit for examining and giving opinions on basic designs and seeking opinions of relevant agencies thereon, counting from the date of receipt of a complete dossier, is:

- 45 working days, for projects of national importance;

- 20 working days, for group-A projects:

- 15 working days, for group-B projects;

- 10 working days, for group-C projects.

Past the above time limit, if relevant agencies give no opinions, they will be deemed to have agreed with the dossier and shall take responsibility for the fields under their management.

2. For projects funded with capital of other sources:

a/ Investment deciders shall themselves organize the evaluation of projects and may designate units in charge of project evaluation.

b/ When evaluating a project, the investment decider shall seek opinions of the agency managing specialized construction works defined in Clause 3 of this Article on its basic design and opinions of agencies related to the project in accordance with law.

c/ The time limit for examining and giving opinions on basic designs and seeking opinions of relevant agencies thereon is specified at Point c, Clause 1 of this Article.

3. Competence of agencies managing specialized construction works to give opinions on basic designs:

a/ For projects of national importance and group-A projects:

- The Ministry of Industry and Trade may give opinions on basic designs of investment projects on the construction of mines, oil and gas works, power plants, power transmission lines, transformer stations, works on chemicals, industrial explosive materials, machine manufacture, metallurgy, and other specialized industrial projects, except industrial works on construction materials.

- The Ministry of Agriculture and Rural Development may give opinions on basic designs of investment projects on the construction of irrigation works, dikes and other specialized agricultural works.

- The Ministry of Transport may give opinions on basic designs of investment projects on the construction of transport works.

- The Ministry of Construction may give opinions on basic designs of investment projects on the construction of civil works, industrial works on construction materials and urban technical infrastructure facilities, and other investment projects on the construction of works at the request of the Prime Minister. Particularly for investment projects on the construction of civil works of less than 20 stories, provincial-level Construction Services of localities where projects exist may give opinions on their basic designs.

For a project involving works of different types, the Ministry in charge of giving opinions on its basic design is one of the above Ministries having the function of managing works which are decisive to the nature and purposes of the project.

b/ For group-B and group-C projects:

- Provincial-level Industry and Trade Services may give opinions on basic designs of investment projects on the construction of mines, oil and gas works, power plants, power transmission lines, transformer stations, works on chemicals, industrial explosive materials, machine manufacture, metallurgy, and other specialized industrial projects, except industrial works on construction materials.

- Provincial-level Agriculture and Rural Development Services may give opinions on basic designs of investment projects on the construction of irrigation works, dikes and other specialized agricultural works.

- Provincial-level Transport Services may give opinions on basic designs of investment projects on the construction of transport works.

- Provincial-level Construction Services may give opinions on basic designs of investment projects on the construction of civil works, industrial works on construction materials and urban technical infrastructure facilities, and other investment projects on the construction of works at the request of presidents of provincial-level People's Committees.

For a project involving works of different types, the Service in charge of giving opinions on its basic design is one of the above Services having the function of managing works which are decisive to the nature and objectives of the project.

c/ For group-B and group-C projects in which investment is decided by the Ministry of Industry and Trade, the Ministry of Agriculture and Rural Development, the Ministry of Transport or the Ministry of Construction and which are in the specialized fields assigned to them for management, these Ministries may themselves examine basic designs without having to seek opinions of provincial-level Services managing specialized construction works defined at Point b. Clause 3 of this Article, on their basic designs.

d/ State economic groups which are assigned by the Government to perform state management of certain fields may themselves examine basic-designs of investment projects on the construction of works in those fields in which investment is decided by themselves without having to seek opinions of agencies managing specialized construction works on basic designs. For projects in other fields in which investment is decided by these groups, opinions of agencies managing specialized construction works defined at Point a or b of this Clause, must be sought on their basic designs.

4. Responsibilities of agencies giving opinions on basic designs:

a/ Agencies managing specialized construction works shall examine, give opinions and take accountability for the contents specified in Clause 3, Article 11 of Decree 12/CP.

b/ When giving opinions on basic designs, agencies managing specialized construction works will not collect charges or fees. Units in charge of project evaluation shall divide project evaluation charges to agencies participating in project evaluation.

Article 3. Evaluation and approval of econo-technical reports on the construction of works under Article 13 of Decree 12/CP

1. For state budget-funded works:

a/ Investors shall evaluate working drawing designs and estimates of works and submit them to persons with investment-deciding competence for approval. When necessary, investors may hire consultants to conduct verification as a basis for evaluation of working drawing designs and cost estimates of the construction of works. Construction state management shall be performed through the grant of construction permits.

The results of evaluation of working drawing designs and estimates shall be presented in the form provided in Appendix 1 to this Circular (not printed herein).

b/ A dossier of an econo-technical report on the construction of a work (below referred to as the econo-technical report) submitted by an investor for evaluation comprises:

- A report on the econo-technical report for evaluation, made according to a form provided in Appendix 2 to this Circular (not printed herein);
- The econo-technical report:
- A report on the results of evaluation of the working drawing design and cost estimates.

c/ Investment deciders shall evaluate econo-technical reports before approving them. Units in charge of evaluation of econo-technical reports are specialized units of investment deciders.

d/ The time limit for evaluation of an econo-technical report is 15 working days.

e/ The evaluation of an econo-technical report covers:

- Examination of efficiency assurance elements: necessity of investment; size; implementation period; total investment capital and socio-economic benefits.
- Examination of feasibility assurance elements: land use demand and ground clearance capability; elements affecting the work, such as those related to defense, security, environment and relevant regulations.
- Examination of the results of evaluation of the working drawing design and estimate.

f/ Approval of econo-technical reports:

- Units in charge of evaluation of econo-technical reports shall send dossiers of econo-technical reports to investment deciders for approval.

A dossier of an econo-technical report submitted for approval comprises a report on the econo-technical report for approval, made according to a form provided in Appendix 3 to this Circular (not printed herein); and the investor's dossier of the econo-technical report submitted for evaluation as mentioned at Point b. Clause 1 of this Article.

- A decision approving the econo-technical report, made according to a form provided in Appendix 4 to this Circular (not printed herein).

An approved econo-technical report means that the person with investment-deciding competence has approved the working drawing design and estimate; the investor is not required to re-approve but only needs to sign for certification and append a seal "approved" in the working drawing design before commencing construction.

2. For works funded with capital of other sources:

Persons with investment-deciding competence shall evaluate and approve econo-technical reports by themselves and take responsibility for their approval. Construction state management shall be performed through the grant of construction permits.

Chapter II

DETAILED PROVISIONS ON CONSTRUCTION PERMITS

Article 4. Works not subject to construction permits under Point b. Clause 1, Article 19 of Decree 12/CP

Works not subject to construction permits under Point b. Clause 1, Article 19 of Decree 12/ CP include:

1. Works to be constructed in lines not running through urban centers but conformable with approved construction plannings.
2. Works under construction investment projects in which investment has been decided by the Prime Minister, ministers, heads of ministerial-level agencies or presidents of People's Committees at all levels, except works only subject to formulation of econo-technical reports.

Article 5. Temporary construction permits under Clause 2. Article 19 of Decree 12/CP

1. Temporary construction permits are only required in areas for which approved construction plannings have been publicized but not yet implemented.
2. Based on the nature, characteristics and period of implementation of a construction planning in each region, the provincial-level People's Committee shall specify the size of works to be granted temporary construction permits to suit the local practical situation.
3. A temporary construction permit must indicate the duration of existence of a work. Upon the expiration of the duration indicated in the permit, if the ground has not yet been cleared, such work is allowed to exist until the State clears the ground for planning implementation. Then the investor shall voluntarily dismantle the work or be coerced to do so and bear all expenses for dismantlement.

4. The competence to grant temporary construction permits is similar to that for works subject to construction permits under Article 23 of Decree 12/CP.

5. The compensation for ground clearance for planning implementation must comply with current regulations; particularly, compensation will not be paid for works constructed under temporary construction permits.

Article 6. Permits for the construction of rural houses

1. For commune or commune cluster centers to be possibly developed into urban centers for which approved construction plans are not yet available, district People's Committees shall issue regulations as a basis for the grant of construction permits and management of construction order as prescribed.

2. The plan of the work construction ground under Clause 3. Article 21 of Decree 12/CP shall be made according to a form provided in Appendix 5 to this Circular (not printed herein).

Such a plan must indicate sizes and land-occupying area of the house, works on the land lot, distances to surrounding works, and points for connecting electricity, communication, water supply and drainage to outside public technical infrastructure facilities (if any). The drawing must indicate the name of the house owner, address of residence and construction location, and the name and address of the drawer.

Article 7. Competence to grant construction permits under Clause 1. Article 23 of Decree 12/CP

Provincial-level People's Committees may grant or authorize directors of provincial-level Construction Services to grant construction permits for construction works mentioned in Clause 1, Article 23 of Decree 12/CP.

Article 8. Adjustment of construction permits under Article 24 of Decree 12/CP

1. When wishing to adjust construction designs under granted construction permits regarding construction location of the work or foundation level for construction of the work; red marking lines or construction marking lines; construction area; total floor area; height of the work; number of stories (for civil works) or other details, investors shall apply for the modification of construction permits before constructing works according to adjusted designs. For other changes, investors are not required to apply for the modification of granted construction permits.

2. Agencies which have granted construction permits have the competence to modify construction permits and shall take responsibility for modifications. Modification of a construction permit shall be written in the "extension, modification" section or in an appendix to the construction permit already granted to the investor.

Article 9. Construction management for works exempt from construction permits under Clause 1, Article 19 of Decree 12/CP

Before starting the construction of works exempt from construction permits under Points b. c and d. Clause 1. Article 19 of Decree 12/CP. investors shall notify in writing the dates of starting construction, enclosed with drawings of construction plans, base plans and main vertical sections of works, to agencies competent to grant construction permits as decentralized and commune-level People's Committees for information, monitoring and management under regulations. For works subject to project formulation, apart from the above documents, written opinions of agencies managing specialized construction works on their basic designs are required.

Article 10. Dismantlement of construction works under Article 32 of Decree 12/CP

1. Competence to decide on the dismantlement of works:

a/ People's Committees at all levels may decide to dismantle works for ground clearance under construction plannings and works subject to coercive dismantlement under law.

b/ Investors of projects or owners, managers or users of works may decide to dismantle works mentioned in Clause 1 Article 32 of Decree 12/ CP.

2. Work dismantlement plans:

a/ The dismantlement of a work must have a dismantlement plan. The person deciding to dismantle a work shall approve the dismantlement plan.

b/ The person deciding to dismantle a work shall draw up the dismantlement plan or hire a consultant to do so.

c/ A work dismantlement plan must indicate dismantlement measures and process; dismantlement equipment and shielding measures to ensure safety for people, property, security, order and environmental sanitation, and dismantlement order, progress and funds.

d/ A work must be dismantled by a capable and experienced unit under an approved dismantlement plan, ensuring safety for people, property and adjacent works. Before dismantling a work, it shall notify the commune-level People's Committee and owners of adjacent works of the dismantlement.

Chapter III

DETAILED PROVISIONS ON MANAGEMENT OF INVESTMENT PROJECTS ON THE CONSTRUCTION OF WORKS

For state budget-funded projects, investors shall, based on the size and nature of projects and their practical conditions and circumstances, select the forms and models of project management below as appropriate.

Projects funded with capital of other sources are encouraged to refer to and apply these forms and models of project management.

Article 11. Direct management of projects by investors under Articles 33 and 34 of Decree 12/ CP

1. Investors' direct management of projects means that investors use their apparatuses to directly manage project implementation or assign project management units established by them to manage project implementation. Specifically:

a/ Model 1: Investors do not establish project management units but use their existing apparatuses to directly manage project implementation. This model is applicable to small projects capitalized at under VND 7 billion each when investors' apparatuses are capable of managing project implementation.

b/ Model 2: Investors set up project management units to assist them in managing project implementation. Specifically:

- Investors shall assign existing project management units to concurrently manage new projects.

- If existing project management units are ineligible for managing new projects, investors shall set up new project management units to manage project implementation.

2. In model 1, investors shall use their legal persons to directly manage project implementation. Investors shall issue decisions appointing their persons to participate in project management with specific tasks, including persons directly in charge of project management. Persons appointed to participate in project management may work on a part-time or full-time basis.

3. In model 2, the following principles must be adhered to:

a/ Project management units are set up and managed by investors, and have their powers and tasks assigned by investors.

b/ Project management units have the legal entity status or use the investor's legal entity status to manage project implementation.

c/ The organizational structure of a project management unit is composed of the director (or head), deputy directors (or deputy heads) and professional staff members. This organizational structure must suit assigned tasks and ensure the progress, quality and

efficiency of the project. Project management unit members may work on a full-time or part-time basis.

d/ A project management unit may be assigned to manage different projects provided that each project is separately monitored and finalized in time in accordance with law.

e/ Project management units shall operate under regulations promulgated by investors and take accountability before investors and law for their assigned tasks and powers.

f/ Investors shall appoint responsible persons to direct, urge and inspect project management units in exercising their powers and performing their tasks in order to ensure that projects are implemented according to approved contents and progress. Investors shall take full responsibility for the jobs under their tasks and powers in accordance with law, including jobs already assigned to project management units.

4. Investors (in model 1) or project management units (in model 2), if having full capabilities as specified in Decree 12/CP and relevant legal documents, may themselves perform such project jobs as formulation and evaluation of designs and estimates; contractor selection; construction supervision or quality inspection of construction works. Investors and project management units may hire consultants to manage the project implementation.

5. Project management units with the legal entity status and professional capability may be assigned to manage the implementation of projects of other investors in case agencies establishing their project management units also decide on investment in those projects. In this case, these agencies shall issue decisions assigning specific tasks and promulgating mechanisms for coordination between investors and project management units to ensure the progress, quality and efficiency of projects. After the construction is completed, project management units shall hand over the works to investors for operation or use. Those project management units may be contracted to act as project management consultants for other investors if they fully satisfy conditions specified by law and are so permitted by agencies deciding on their establishment.

Article 12. Investors' hiring of project management consultants under Articles 33 and 35 of Decree 12/CP

1. Investors' hiring of project management consultants means that investors sign contracts to hire other legal entities to act as project management consultants. In this case, investors shall appoint staff members in charge and assign tasks to their units to perform the tasks and exercise the powers of investors and manage the contract performance by project management consultants.

2. Project management consultants must have full capabilities relevant to jobs they perform under Decree 12/CP.

3. Project management consultants shall perform project implementation management under contracts signed with investors. Contracts on hiring project management consultants must indicate the scope of jobs and management contents as well as powers and responsibilities of consultants and investors.
4. Project management consultants shall organize apparatuses and appoint persons in charge to directly manage project implementation under contracts signed with investors. Project management consultants shall notify in writing the tasks and powers of their persons in charge and apparatuses directly managing projects to investors, other contractors and concerned organizations and individuals.
5. Project management consultants may hire other organizations or individuals to participate in some jobs of project implementation management as approved by investors.

Chapter IV

TRANSITION PROVISIONS

Article 13. Transition provisions on procedures for evaluating and approving investment projects on the construction of works and subsequent jobs

1. Before the effective date of Decree 12/CP, for investment projects on the construction of works which have been evaluated but not yet approved, or which have been approved but not yet implemented or are being implemented, evaluated procedures need not to be re-evaluated. Subsequent jobs must comply with Decree 12/ CP and this Circular.
2. For projects approved before the effective date of Decree 12/CP, in the course of their implementation, investors shall report adjustments to the projects which result in changes in evaluated basic designs, if any, to investment deciders for decision. Units in charge of project evaluation shall send dossiers of project adjustments to state management agencies for opinions on basic designs under Decree 12/CP and this Circular.
3. Regarding the evaluation, approval and adjustment of investment projects on the construction of works, if the provisions of the Government's Decree No. 99/2007/ND-CP of June 13, 2007, on management of work construction investment expenses are different from those of Decree 12/CP, the provisions of Decree 12/CP prevail.

Article 14. Transition provisions on the grant of construction permits

For works under investment projects on the construction of works approved before the effective date of Decree 12/CP which are subject to construction permits and for which dossiers of application for construction permits had been submitted before the effective date of Decree 12/ CP, dossiers of application for construction permits need not to be made again under Decree 12/CP and this Circular.

Article 15. Transition provisions on capability conditions for persons participating in managing investment projects on the construction of works

Individuals who will participate in project management under Clause 4. Article 36 of Decree 12/CP from January 1, 2010, shall obtain certificates of skills of managing investment projects on the construction of works according to regulations.

Chapter V

IMPLEMENTATION PROVISIONS

Article 16. This Circular replaces the Construction Ministry's Circular No. 02/2007/TT-BXD of February 14, 2007, guiding a number of provisions on the formulation, evaluation and approval of investment projects on the construction of works: construction permits and management of investment projects on the construction of works under the Government's Decree No. 16/2005/ND-CP of February 7,2005, and Decree No. 112/2006/ND-CP of September 29, 2006.

Article 17. Effect

1. This Circular takes effect on May 11,2009. To annul previous regulations on identification of investors: evaluation and approval of investment projects on the construction of works: grant of construction permits: dismantlement of works: and management of investment projects on the construction of works which are contrary to Decree 12/CP and this Circular.

2. Any problems arising in the course of implementation should be reported to the Ministry of Construction for consideration and settlement.-

THE MINISTER OF CONSTRUCTION

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