

NEW REGULATIONS ON MANAGEMENT AND USE OF OFFICIAL DEVELOPMENT ASSISTANCE (ODA) AND CONCESSIONAL LOANS FROM FOREIGN DONORS

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On May 4, 2023, the Government issued Decree 20/2023/ND-CP amending and supplementing some articles of Decree 114/2021/ND-CP (**Decree 114**) on management and use of ODA and concessional loans from foreign donors (**Decree 20**). Decree 20, taking effect from March 01, 2022, specifies many notable new points in defining the order, procedure, and the subjects authorized to decide investment policy of programs, projects using ODA and concessional loans as follows:

Firstly, Decree 20 amends and supplements the regulations on authority to decide investment policy of programs, projects using ODA, and concessional loans. Accordingly, in order to narrow the scope of the Prime Minister's authority and decentralize decision-making authority to Ministries, managing agencies, and local state agencies, clauses 1, 2, Article 1 of Decree 20 amends the regulations on the authority of the Prime Minister and supplements the authority of Ministers, Heads of managing agencies and provincial-level People's Councils, specifically:

- The Prime Minister has the authority to decide the investment policy of the following programs and projects:

- Category-A investment programs or projects using ODA, concessional loans, except for national target programs, projects of national importance and public investment programs using ODA, concessional loans as prescribed in clauses 1 and 2, Article 17 of the Law on Public Investment;
- Investment programs, projects using non-refundable ODA in the following cases: Category-A programs, projects; programs, projects enclosed with policy frameworks; programs, projects in the fields of national defense, security, and religion; industry-based approach programs; procurement of goods subject to the Prime Minister's approval.

- Ministers and Heads of managing agencies have the authority to decide the investment policy of Category-B and Category-C investment projects using ODA and concessional loans from foreign



donors, approve technical assistance projects using ODA, concessional loans to prepare investment projects issued by agencies, organizations under their management, except for projects under the authority of the Prime Minister.

- Provincial-level People's Councils shall have the authority to decide the investment policy of Category-B and Category-C investment projects using ODA or concessional loans from foreign donors, approve technical assistance projects using ODA, concessional loans to prepare investment projects under local management, except for projects under the authority of the Prime Minister.

Previously, Decree 114 stipulated that the Prime Minister had the authority to decide investment policy of Category-B and Category-C investment programs, projects using ODA, concessional loans; Category-B programs, projects using non-refundable ODA; technical assistance projects using ODA, concessional loans from foreign donors. At the same time, Decree 114 only allows Heads of managing agencies to decide the investment policy for Category-C investment programs, and projects using non-refundable ODA. Provincial-level People's Councils do not have the authority to decide the investment policy of programs, projects within the scope of Decree 114. In accordance with Decree 20, the Prime Minister no longer retains the authority to decide the investment policy for Category-B and Category-C investment programs, projects using ODA, concession loans; Category-B programs and projects using non-refundable ODA; technical

assistance projects using ODA, concessional loans from foreign donors to prepare investment projects; instead, such authority is assigned to the Ministers, the heads of the managing agency or the provincial-level People's Councils.

In addition, with significant changes in authority, Decree 20 also supplements and amends some regulations related to the implementation of related subjects' authority such as supplementing the order, procedures for deciding investment policies, deciding the extension of the time for appraisal of pre-feasibility study reports, report on proposal of investment policies for programs, projects subject to the competence of Ministers, Heads of managing agencies and provincial-level People's Councils, amending the procedures to adjust the investment policy for programs, projects using ODA and concessional loans, etc.

Secondly, the Decree amends, supplements the composition of the dossier appraising the pre-feasibility study report, *the proposal report for investment policies related to programs, projects using ODA, concessional loans*. Accordingly, Decree 20 requires such additional documents as Letter of suggestion from the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies (for Category-B and Category-C investment projects using ODA, concessional loans). Moreover, Decree 20 specifies the cases that must subject the reports on internal appraisal results of managing agencies on investment policies of programs, projects using ODA and concessional loans, including national target programs, projects of national importance, public investment programs; Category-A investment programs, projects using ODA and concessional loans, other investment programs, projects using ODA and concessional loans under the Prime Minister's authority to decide investment policy.

Thirdly, Decree 20 amends and supplements the regulations on activities to be implemented in advance in the stage of implementation preparation for programs, projects using investment preparation capital. Accordingly, after the project investment policy is approved and before relevant international treaties, agreements on ODA and concessional loans are signed, in order to shorten the time for organizing bidding if necessary, Decree 20 allows competent subjects to organize the establishment, appraisal and approval of the contractor selection plan to create the basis for the investor to implement activities of preparing for contractor selection, including:

- (i)** Prepare, appraise and approve the dossier for expression of interest, a dossier of pre-qualification participation (if any);
- (ii)** Identify a short list for project procurement activities (if any); and
- (iii)** Prepare, appraise, and approve bidding dossiers, and request dossiers.

In addition, Decree 20 supplements the provisions on establishing, appraising, approving the contractor selection plan for pre-implementation activities, including (i) Decision on approving the project investment policy; and (ii) Non-objection opinion of the donors on the establishment, appraisal, and approval of the contractor selection plan for pre-implementation activities. Furthermore, in this case, the contractor expressing their interest or attending the pre-qualification must pay all expenses related to the preparation and submission of the relevant dossier. In the case where the shortlist has been selected but international treaties, agreements on ODA, and concessional loans of the project are not signed, the investor shall notify the contractors named in the shortlist about not continuing the organization of the bidding.

COMMENTS AND RECOMMENDATIONS

Decree 20 amends and supplements a number of important contents on the authority, order and procedures related to the decision on investment policy of programs, projects using ODA and concessional loans. In particular, the change in the authority to decide on investment policy of the programs, projects using ODA, concessional loans is considered a new remarkable feature of Decree 20. Contractors and investors should pay attention to study the changes of Decree 114 in Decree 20, including transitional provisions, such as national target programs, projects of national importance, public investment programs; Category-A investment programs, projects that have the investment proposal, investment policy approved before the effective date of Decree 20 (March 03, 2022) shall continue implementing the order, procedures in accordance with the provisions of Decree 114.