

**MINISTRY OF FINANCE**

-----

No.: 86/2011/TT-BTC

**SOCIALIST REPUBLIC OF VIET NAM**

**Independence - Freedom – Happiness**

-----

*Hanoi, June 17, 2011*

**CIRCULAR**

**STIPULATING ON MANAGEMENT, PAYMENT OF INVESTMENT CAPITAL AND ADMINISTRATIVE FUNDS WITH INVESTMENT NATURE OF STATE BUDGET**

*Pursuant to the State Budget Law No.01/2002/QH11 dated 16/12/2002; Decree No.60/2003/ND-CP dated 6/6/2003 of the Government detailing and guiding the implementation of the State Budget Law;*

*Pursuant to the Construction Law dated 26/11/2003; Pursuant to Decrees of the Government: No.12/2009/ND-CP dated 12/02/2009 on management of investment projects of work construction; No.83/2009/ND-CP dated 15/9/2009 on amending, supplementing a number of Articles of Decree No.12/2009/ND-CP on management of investment projects of work construction; No.85/2009/ND-CP dated 15/10/2009 guiding the implementation of Bidding Law and the selection of construction contractors under the Construction Law; No.112/2009/ND-CP dated 14/12/2009 on management of work construction investment costs, No.48/2010/ND-CP dated 07/5/2010 on contracts in the construction activity;*

*Pursuant to Regulation of management of investment and construction issued together with the Decrees: No.52/1999/ND-CP dated 08/7/1999, No.12/2000/ND-CP dated 05/5/2000, No.07/2003/ND-CP dated 30/01/2003 of the Government;*

*Pursuant to Decree No.71/2005/ND-CP dated 06/6/2005 of the Government on investment management of special works construction;*

*Pursuant to Decree No.118/2008/ND-CP dated 27/11/2008 of the Government defining the functions, tasks, powers and organizational structure of the Finance Ministry;*

*The Finance Ministry stipulates on management, payment of investment capital of State budget (SB) as follows:*

**Part I**

**GENERAL PROVISIONS**

**Article 1. Scope of governing, subjects of application**

1. The Circular applies to investment projects with investment and development capital and administrative funds with investment nature of state budget funds (hereinafter referred to as projects) managed by the ministries, ministerial-level agencies, governmental agencies, political organizations, socio-political organizations, social organizations, social- professional organizations, economic corporations, state-owned corporations (hereinafter referred to as the Ministry) and the provinces and centrally-run cities (hereinafter referred to as provinces) and districts, towns and provincial cities (hereinafter referred to as district); including investment projects with many different funds in which if the investment fund from state budget with the largest proportion in total investment capital of projects or investment fund from the state budget

not obtaining the largest proportion in total investment if the parties agree on the method of management by the State budget capital source shall comply with the provisions of this Circular.

2. This Circular does not apply to the projects of socio-economic infrastructure construction investment of the poor districts implementing the Resolution 30a/2008/NQ-CP dated 27/12/2008 of the Government on the Program of supporting rapid and sustainable poverty reduction for the 61 poor districts; and not applicable to investment projects under the commune-level budget (including the communes implementing national target programs of new rural construction); the investment projects of the oversea-based representative agencies of Vietnam; projects to buy the copyright ownership.

For a number of other investment and development expenditures from state budget (expenditure of state reserves, expenditures in support of working capital for enterprise, expenditures for contributing capital in joint venture, expenditures for foreign loans and foreign aid expenditures, expenditures for the funds of development assistance) comply with the separate guidelines of each type of expenditure as mentioned above.

For investment projects from other fund sources of the State out of State budget fund are encouraged to apply the principles of payment as stipulated in this Circular.

3. The application objects are the organizations and individuals involved in the management and payment of investment capital and administrative fund with investment nature of the state budget capital source.

#### **Article 2. The state budget capital for investment and development and administrative fund with investment nature, including**

- Domestic capital of all state budget levels;
- Foreign debt loans of the Government and foreign aid capital to the government, authorities of all levels and the state agencies (the state budget).

#### **Article 3. The agency of investment capital payment from the state budget**

- The State Treasury is assigned task of controlling the payment of investment capital from the state budget.
- Several agencies and other units assigned the task of controlling the payment of investment capital from the state budget for some specific projects as decided by the Prime Minister.
- The commercial banking institutions are the service banks for the projects funded with official development assistance (ODA).

### **Part II**

#### **SPECIFIC PROVISIONS**

##### **A. ALLOCATION, DISTRIBUTION VERIFICATION OF INVESTMENT CAPITAL**

#### **Article 4. Conditions and rules of allocation**

1. The investment projects are allocated investment capital plan from the state budget every year when having the following sufficient conditions:

- For the projects to prepare investment: required to suite to planning of territorial and branch development approved by competence.

- For the projects to implement investment: it must have the decision to invest from the time before October 31 of the preceding year of the plan year. Time and funds allocated to implement the projects of group B not exceeding five years, the projects of group C not exceeding three years.

2. For investment capital under the central management: After being assigned the annual budget estimation by the Prime Minister, the Ministries allocate the investment capital plan for each project under management scope had sufficient conditions specified to ensure consistency with the targets assigned on the total capital level; structure of domestic capital, foreign capital, economic branch structure; capital level of important projects of the state, project of group A and in accordance with National Assembly's Resolution, directive of the Government on the administration of planning of socio- economic development and estimation of the annual state budget.

3. For the capital investment under the local management: The People's Committees at all levels make the plan of allocating investment capital submitting to People's Councils at the same level for decision. According to the Resolution of the People's Councils, People's Committees allocate and decide to assign investment capital plan for each project under management scope that are sufficient prescribed conditions, to ensure compatibility with the target assigned on the total investment; structure of domestic capital, foreign capital, economic branch structure; capital of the important projects of the State and in accordance with the National Assembly's Resolution and directive of the Government on administering plan of socio - economic development and annual state budget estimation. Particularly for the projects invested by the funds retained by the National Assembly's Resolutions and decisions of the Prime Minister (if any) and additional capital targeted from the central budget to local budgets and required to comply with the provisions on the investment objects and the use target of each investment capital source.

- Departments of Finance are responsible for coordinating with the Departments of Planning and Investment to expect the allocation of investment capital for each project managed by the provinces before reporting to the provincial People's Committees for decision.

- Departments of Finance and Planning of districts are responsible for coordinating with the district functional authorities to advise the district People's Committees to allocate investment capital for each project managed by the district.

4. Ministries and People's Committees at all levels allocate in details of development investment capital for each project under the code of investment projects and economic sector (types, terms) in Annex 02 issued together with Decision No.33/2008/QĐ-BTC dated 2/6/2008 of the Minister of Finance on the system of state budget catalog and its amendments and supplements (if any).

5. Principles for allocating capital to the projects in the plan of year

- To ensure the conditions of the project at point 1 and the provisions at point 2 and point 3 of Article 4 of this Circular.

- To arrange the concentration of capital for the projects under the direction of National Assembly and the Government of the operating plan of social - economic development and state budget estimation; allocate sufficient funds to pay for the projects put in the use and approved the investment capital settlement of completed projects but be short of capital; allocate capital to pay for the audit costs, verification and settlement approval of projects completed but not been yet paid due to the settlement has not been approved.

- If the project is allocated capital in the plan of investment implementation, but only for the preparation of investment and preparation to implement the project, it should clearly be noted in the allocation of capital.

6. The allocation and assignment of budget estimation for the projects must be completed before December 31 of last year.

(Form of allocation of investment capital plan in accordance with Annex 01 attached).

7. After the allocation of investment plans

- The Ministries send plans of investment capital to the Ministry of Finance and State Treasury (central). State Treasury transfers capital plans of the projects (with details by chapter code, code of investment projects and economic sector (types, terms)) of the Ministries to the local State Treasury as a basis for control, payment of capital;

- People's Committees of provinces send investment capital plan to the Ministry of Finance, and the departments of Finance and State Treasury (province) to monitor and for use as a basis for control, payment of capital;

- District People's Committees send investment capital plan to the Departments of Finance, departments of Finance, Planning, and State Treasury (district) to monitor and for use as a basis for control, payment of capital.

- Simultaneously with sending of the plan for the above agencies, ministries and People's Committees at all levels assign plan targets for investors to make.

#### **Article 5. Verification of the allocation of investment capital**

1. For the projects managed by the Ministries:

1.1. After receiving the plan of investment capital allocation of ministries, State Treasury implements the control of payment as prescribed. If a project is not enough investment procedures, State Treasury shall not pay.

1.2. Ministry of Finance shall give appraisal opinion of allocation and send to the ministries within 5 working days after receiving the plan of investment capital allocation of the ministries. If there is a project allocated not in compliance with regulations, the Ministry of Finance gives opinion for the State Treasury to stop payment, if payment is made, the funds paid for the project must be recovered. The Ministries are responsible for directing the investors of the projects allocated not in compliance with regulations to reimburse the state budget the funds which have been paid and take responsibility for all consequences caused due to the allocation not in compliance with regulations.

2. For the projects managed by the provinces and districts:

In the process of participation with the concerned units of the plan of annual investment capital, Departments of Finance, departments of Finance and Planning also implement the verification tasks of the plan of investment capital allocation before the agencies submit to the provincial-level, district-level People's Committees for decision. Based on the decision on investment capital plans of the provincial-level, district-level People's Committees, State Treasuries shall control the payment as stipulated. Where there is project not enough investment procedures, State Treasury shall not pay and notify the Department of Finance, department of Finance and Planning for submitting to the provincial-level, district-level People's Committees for handling.

3. The documents accompanying the plan of investment capital allocation for the allocation verification includes:

- For the projects to prepare the investment, it needs just one of the following documents:

+ The decision of the competent authorities for permission to prepare the investment;

+ The written approval of cost estimates for the preparation of investment;

+ The decision to allocate the plan targets of the competent authorities.

- For the implementation of investment projects: the Decision of project investment (or approval decision of economic - technical reports for the projects only required to make economic - technical report) of the competent authorities, the decision to adjust the project (if any).

## **Article 6. Adjustment of the plan of investment capital**

1. Principle:

- Periodically, the ministries and localities review progress of implementation and investment objectives of the projects in year in order to adjust the investment capital plans under the authority or submit to the Prime Minister for adjusting the plan of investment capital, transfer capital from the projects that are not able to make into the projects implemented beyond their schedule, owed volume, the projects are likely fulfill beyond the plan in year.

- Before submitting the plan of adjusting the investment capital of each project to the Ministry of Finance, Ministry of Planning and Investment (for projects of the central budget), to the financial agencies, the agencies of Planning and Investment (for the projects of the local budgets), the ministries and localities direct the investors to close the time of payment and work with the State Treasury to confirm the number of fund of annual plan paid for the project, confirm the remaining fund due to not practicable, to ensure the project plan is not lower than the fund that state treasury has paid after the adjustment. The ministries and localities are responsible for the disbursement data and number of adjustment capital plan.

- Where, after adjustment, but fund is also surplus compared to the assigned plan, the surplus fund is adjusted for other units as decided by the competent authorities.

2. Ministries and provinces shall adjust the plan of investment capital, sending the same level financial agency and the State Treasury as a basis for payment. The time limit for adjustment of annual investment capital plans is not later than December 25 of plan year. The verification of the investment capital allocation adjustment is made as Article 5 of the Circular.

(Forms of the investment capital allocation adjustment in Annex 02 attached)

## **B. PAYMENTS OF INVESTMENT CAPITAL**

### **Article 7. Opening of account**

1. For domestic capital:

The investor or project management units (hereinafter referred to as investors) are opened accounts at the state Treasury where is convenient for transactions of investors and for the control of the State Treasury's payment and comply with regulations of the Ministry of Finance on the regime to open and use accounts at the State Treasury.

State Treasury shall guide investors to open accounts for the payment of funds.

## 2. For foreign-owned capital:

Investors may open accounts at the service banks or at the State Treasury under the guidance of the Ministry of Finance.

### **Article 8. Basic documents of the project**

To serve the management and control of payment of investment capital, the investor must send to the state treasury where opened the payment account the basic documents of the project (these documents are the originals or copies stamped true copy of the investor, to be sent once until the end of the investment project, except for the case required to add, adjust), including:

#### 1. For the project to be prepared investment:

- Cost estimates for the preparation of investment approved.
- The written approval of the results of contractor selection in accordance with provisions of the Bidding Law;
- The contract between the investor and the contractor.

#### 2. For the projects to implement investment:

##### 2.1. For projects of domestic capital:

- Project of work construction investment (or economic - technical reports for the projects only required to make economic-technical report) and investment decisions of the competent authority, the decision to adjust the project (if any);
- The written approval of the results of contractor selection in accordance with the provisions of the Bidding Law (including bidding, bidding appointment, direct procurement, competitive offers, self-making and selection of contractors in the special case, selection of architectural design consultancy contractors of construction works);
- The contract between the investor and the contractor and the documents attached to the contract in accordance with the law regulations (unless the documents with technical nature);
- Estimation and estimation approval decision of the competent authorities for each work, work items, works in case of bidding appointment or self-making and the works done without contract (except for projects only required to make economic and technical reports).

##### 2.2. For ODA projects: Apart from the documents as prescribed above, it must have:

- The Vietnamese translation signed and sealed by investors: international agreements on ODA signed between Vietnam and donors and documents relating to the other payments (if any). Separately, contracts between investors and contractors must be written in Vietnamese or the Vietnamese translation, signed and sealed by the investor (the regulations on the conditions and terms of payment and the contents directly related to the payment of the contract).

Investors shall take responsibility before law for the truthfulness and accuracy of the contents of the Vietnamese translation.

- Advance payment guarantee (if any) as specified by the contract (including the project of domestic capital, but constructed by the foreign contractors).

#### 3. For the preparation of investment, but the capital allocation in the investment implementation plan should have cost estimation for the preparation of the investment approved.

4. For the preparation of the project implementation but the capital allocation in the investment implementation plan:

- Project of work construction investment (or economic-technical reports for the project required only to make economic-technical report) and investment decisions of the competent authorities, the decisions to adjust the project (if any);
- Cost estimation for the preparation implementing the project approved;

Particularly, the premises clearance must be accompanied by plans for premises clearance approved by the competent authorities;

- A written selection of contractor in accordance with provisions of the Bidding Law;
- The contract between the investor and the contractor and the documents attached to the contract in accordance with the law regulations (unless the documents with technical nature).

5. For the case of self-making:

- Project of work construction investment (or economic-technical reports for the project required only to make economic-technical report) and investment decisions of the competent authorities, the decisions to adjust the project (if any);
- Estimation and estimation approval decision of the competent authorities for each work, work items, works (except for project only required to make economic-technical report).
- A document issued by the competent authorities to permit self-making the project (the case of having not yet had the investment decisions of the competent authority);
- A written work assignment or internal contract;

#### **Article 9. Payment of investment capital**

State finances the investors so that the investors pay to the contractor under the contract or pay for the works of the project implemented not under a contract, including:

- Advance payment;
- Payment for completed volumes.

#### **Article 10. Advance payment**

The advance payment of capital of the investor to the contractor is only for works necessary to make advance payment and it must be clearly defined object, contents, and specific works in the contract. Advance capital, time of advance payment and the recovery of the advance payment must comply with state regulations for each type of specific contract as follows:

1. The level of advance capital:

1.1. For construction contracts:

- Contracts valued at less than 10 billion dong, the minimum advance payment is equal to 20% of contract value;
- Contracts valued at from 10 billion dong to 50 billion dong, the minimum advance payment is equal to 15% of contract value;

- A contract valued over 50 billion dong; the minimum advance payment is equal to 10% of contract value.

1.2. For the contracts to provide technology equipment, EPC contracts, turnkey contracts and other types of construction contracts: the minimum advance payment is equal to 10% of contract value.

1.3. For consultancy contracts:

Advance payment level at least equal to 25% of contract value.

1.4. The maximum advance payment level of the types of above contracts is 50% of contract value. In special cases, the advance payment with higher levels must be permitted by person who decides the investment.

1.5. For the premise clearance:

The advance capital level is based on the progress of implementation in the premises clearance plan. Ministries and People's Committees at all levels must allocate sufficient funds for the premises clearance.

1.6. Apart from maximum capital level under the contract mentioned above, for some components, semi-products in the construction of great value must be produced in advance to ensure the progress of construction and a number of materials must be reserved by season, advance capital level by necessary needs are agreed by the investor and the contractor.

1.7. The advance capital level for all items specified in points 1.1 to 1.6 above shall not exceed the annual capital plan which has been arranged for the bidding package or project.

1.8. The advance payment of capital is made after the contract takes effect; in case investor and the contractor agreed the advance payment guarantee in the contract, the contractor must have guarantee for the advance payment.

2. Recovery of advance capital:

2.1. Advance capital are recovered through the times of payment for the completed volume of the contract, it starts to recover from the first payment and finished when the value of payment for completed volume reached 80% of the contract value. Recovery level of each time agreed by the investors and the contractor and specified in the contract.

2.2. For the premises clearance:

- For the compensation and assistance: after payment to the beneficiary, the investor gathers documents and conducts procedures for payment and recovery of advance payment within at least 30 working days from date of payment to the beneficiary.

- For the housing purchase of resettlement and other premises clearance: the advance capital is recovered in each payment period for completed volume and fully recovered when work of premises clearance is done.

3. Investors are responsible for together with contractor calculating the reasonable advance payment, management of the use of advance capital of right purposes, the right object, and effectiveness and for repaying the sufficient capital already advance paid according to regulations.



In case advance capital has not yet recovered but not used, if it is more than 6 months as specified in the contract that a volume of works must be made but the contractor has not implemented them due to objective or subjective cause or after the advance capital is done but the contractor used it for the wrong purposes, investor is responsible for together with the State Treasury recovering to repay the advance capital to the state budget. Where the end of year plan that the advance capital has not been fully recovered due to the contract unpaid to reach a prescribed percentage shall continue to recover in next year's plan and not deducted from the investment capital payment plan in the next year.

#### 4. Dossier of payment for advance payment:

To be paid in advance, investors sent to the State Treasury the following documents:

- Written request for payment of investment capital;
- Documents of transfer;
- Guarantee for the advance payment amount of the contractor (if owner and the contractor agreed with an advance payment guarantee in the contract), investors sent the State Treasury a copy stamped true copy of the investor.

5. The State funds to the investor for paying in advance in the plan year not later than December 31 (except for advance payment to carry out premises clearance, it shall be performed to the end of January 31 of next year). Investors may be paid in advance a lump sum or many times for a contract based on the demand for payment of advance capital but not exceeding the advance capital level in accordance with the above provisions; in case the capital plan is arranged insufficient advance capital, the investor may be advanced paid further in next year's plan.

### **Article 11. Payment for completed volumes**

#### 1. For the works that has been done through the construction contract:

The contract settlement must conform to the type of contract, contract price and the terms of the contract. The number of payments, payment periods, payment time, payment terms, payment records, and payment conditions must be clearly stated in the contract.

##### 1.1. For the lump sum contracts:

Payment is based on a percentage of the contract price or price of works, work items, the workload corresponding to the payment periods stated in the contract.

##### 1.2. For the contracts under fixed-price unit:

Payment is based on completed actual volume (including the volume of increase or decrease which is approved by competent authorities, if any) tested and the unit price in the contract.

##### 1.3. For the contracts under adjustment unit price:

Payment is based on completed actual volume (including the volume of increase or decrease which is approved by competent authorities, if any) tested and unit price which has been adjusted by drift of prices according to the agreement in the contract.

##### 1.4. For the contracts over time:

- The cost of experts is determined on the basis of salaries for experts and concerned costs agreed in the contract by the parties multiplied with the actual working time tested (monthly, weekly, daily, and hours).

- Expenses out of remuneration for experts are paid by the method specified in the contract.

1.5. For the contracts under the percentage (%):

Payment is done by ratio (%) of the contract price. Rate (%) for the times of payment is agreed by the parties in the contract. When the contractor has fulfilled all its obligations under the contract, the investor makes payment to the contractor the amount in percentage (%) of value of the work or the value of work volume which has been done defined in contract.

1.6. For the contracts combined all types of prices:

Payment must be made corresponding to the types of contracts under the provisions of the clauses 1.1, 1.2, 1.3, 1.4 and 1.5 above.

1.7. For the workloads arising out of contract:

The payment for the arisen volume (out of the contract) which has not got the unit price in the contract, shall follow the additional terms of the contract which the parties had agreed before the implementation and must conform to the provisions of relevant legislation. Where supplementing the arisen works, investor and contractor must sign annexes according the following principles:

a) Where the volume of arisen work is more than 20% of the corresponding work volume stated in the contract or arisen volume which has not got the unit price in the contract shall be paid on the basis of mutually agreed determining new price unit under the principles agreed in the contract on unit price for the volume arisen;

b) If the volume of arisen work is less than or equal to 20% of the corresponding work volume stated in the contract, shall apply unit price in the contract, including unit price has been adjusted by agreement of the contract (if any) for payment;

c) For contracts under fixed unit price and the contracts over time, when the price of fuel, materials and equipment applied measures to stabilize prices by the State in accordance with provisions of the Ordinance on price of irregular fluctuations or when the State has a change on policy of taxes, wages directly affecting the contract price shall be paid on the basis of unit price adjustment if it is permitted of the level to decide the investment and the parties have agreed in the contract;

d) For the contracts under the unit price of adjustment, the unit price in the contract is adjusted for the workload that at the time of signing the contract, the principal and the contractor commit to adjust the unit price due to the drift of prices happens after a certain period of time from the effective date of the contract.

e) For the lump sum contracts and contracts under ratio (%): if there is any reasonable arisen works outside of the signed contract (for construction contract, it is the workload located outside of work required to perform as designed; for consulting contract, it is the volume outside of the consulting tasks required to perform). In this case, when adjusting the volume without changing the investment objectives or without exceeding the total approved investments, the investor and contractor calculate, agree and sign contract annexes; if it exceeds the total approved investment, it must be reviewed and decided by persons who are competent to decide the investment; if there

is no agreement, the volume of arisen work would be as the new bidding package, the selection of contractors to carry out this package is under current regulations;

#### 1.8. Payment dossiers:

When completed volume is tested for acceptance by the payment period and payment terms in the contract, the investor makes dossier of requesting for payment and send to the State Treasury, including:

- The written determination of value of workload completed under the contract requesting for payment certified by the principal representative and representative of consultant (if any) and representative of the contractor (Annex 03.a attached).

When there is a work volume arisen out of contract, the investor sends a sheet of the value of the arisen work volume (if any) outside the signed contract requesting for payment certified by the principal representative and representative of consultant (if any) and representative of the contractor (Annex 04 attached).

- Written request for payment of investment capital or advance payment - Annex 05 attached.
- Transfer vouchers issued in accordance with provisions of accounting voucher system of the Ministry of Finance.

#### 2. For the works are done not through the construction contract:

- For the works of the project which are done not through the construction contract (as some project management works conducted directly by the investor, the cases of self-making...), the payment is implemented based on the completed workload list and approved estimation consistent with the nature of each type of work. Payment dossier includes: list of the completed workload and approved estimation for each job; written request for payment of investment capital or advance payment (if any) and transfer vouchers.

- For compensation costs, assistance compensation and resettlement, payment dossier includes: list of certification of compensation volume, premises clearance has been made (Annex 03.b attached) contract and the records of housing handing over (in case of housing purchase for immigration of premise clearance). Separately, costs for the organization of the compensation for premises clearance must have approved estimation; the written request for payment of investment capital or advance payment (if any) and transfer vouchers.

For the compensation, assistance compensation, and resettlement, it must build the works (including the housing construction of immigration of premises clearance): the advance payment, payment is made as for the projects or work construction bidding packages.

### **Article 12. Principles of payment control of State Treasury**

1. On the basis of the dossier requesting to be paid by investor, State Treasury based on the payment terms stipulated in the contract (number of payments, payment periods, payment time and the payment conditions) and the value of each time of payment to make payment to the investor. Investor is responsible for the accuracy and legality of implementation volume, norms, unit prices, and estimation of the types of works, quality of work; State Treasury is not responsible for this problem. State Treasury based on the dossier of payment and make payment under the contract.

2. State Treasury shall control the payment under the principle of "pay first, control later" for each time of payment and of "control first, pay later" for final payment of the contract. Based on this principle, State Treasury guides specifically control method of payment in the state treasury system; make sure to create favorable conditions for investors, contractors and in accordance with regulations of the State.
3. Within 07 working days in case of "control first, pay later" and in 03 working days in case of "pay first, control later" since received full payment dossiers under the provisions of investor, based on the contract (or the approved estimation for the works done without a contract) and the amount that the investor requests for payment, State Treasury controls, grant capital to pay for the projects and recover advance capital as prescribed.
4. Year capital plan of the project is used only for payment for the completed volume which is tested for acceptance to December 31 of the plan year; payment period for the completed volume till the end of January 31 of next year (including payments to recover advance paid capital), except for projects permitted delaying the implementation and payment by competent authorities.
5. The projects invested using capital of official development assistance (ODA), if an international treaty that the competent agencies and organizations of the socialist Republic of Vietnam has signed with the provisions of management of payment and settlement of other funds with the provisions of this Circular shall comply with the provisions of international treaty.
6. Amount to be paid for each job, work item, work which is not exceeded the approved estimation or price of bidding package; total payment for the project must not exceed the total approved investment. Amount to be paid for the project in year (including advance payments and payments for completed volumes) must not exceed the annual capital plan already approved for the project. As for ODA projects, the advance payment, and payment for completed volumes is not limited by the annual financial plan of the project but not exceeding the general financial plan of the whole project.
7. For some important special projects required having the mechanism of advance payment, payment of other capital with those specified above, after consulting the competent authorities, the Ministry of Finance will have its own guidelines.

**Article 13. The management, payment, recovery, and settlement of advance capital of budget estimation of next year for the projects are implemented as follows**

1. The advance payment of budget estimation of next year is done in accordance with provisions of clause 3, Article 57 of the State Budget Law No.01/2002/QH11 on 16/12/2002 and Article 61 of Decree No.60/2003/ND-CP dated 06/6/2003 of the Government detailing and guiding the implementation of the Law on State Budget and Circular No. 59/TT-BTC dated 23/6/2003 of the Ministry of Finance guiding the implementation of Decree No.60/2003/ND- CP dated 06/6/2003.
2. After the project is permitted the advance payment by the competent authority, the ministries, branches, and localities allocate the right list which has been assigned. The Ministry of Finance notifies the ministries, branches and localities on the list, the total advance payment level, advance capital source, the advance year, and recovery, and send to the State Treasury to pay for the project. Where the ministries, branches, and localities allocate the wrong list and the advance capital level as notified by the Ministry of Finance, the State Treasury stops the payment and report to the Ministry of Finance for consideration and handling.

3. Term of payment: is implemented as the payment term for investment capital in the year plan. Other special cases shall be decided by the Prime Minister. Expiry of payment term, State Treasury makes procedures for cancellation of the unused advance capital.

4. Recovery of capital: the ministries, branches, and localities are responsible for arrangement of capital plan for the project in the next year budget estimation to repay the advance capital; when the allocation appraisal of investment capital in the annual plan is made. For the central budget capital, the Ministry of Finance notifies recovery of advance capital, maximum number of recovery equal to capital level advanced, unless the cases are permitted by Prime Minister. Where the Ministries does not allocate or allocate insufficient funds of recovery under the regulations, the Ministry of Finance recovers advance capital by subtracting the estimation of the investment expense assigned and sends written notice thereof to the Ministry to coordinate implementation. For local budget capital and additional funds with target from the higher-level budget for the lower-level budget, in case People's Committees of all levels do not allocate or allocate insufficient funds of recovery under the regulations, local State Treasury notifies the Department of Finance, Department of Finance and Planning to report to the People's Committees of all levels for recovery arrangement of the advanced capital in accordance with provisions.

5. Capital settlement: settlement term of advance capital by the time limit is arranged for recovery. Where a project is recovered advance capital by period of several years, the recovered capital of a certain year plan shall be settled in the budget year of such year, the amount paid but not yet arranged to recover shall be transferred to the next year for settlement in accordance with the plan of capital recovery.

**Article 14. Regulations on prolonging of the time of implementation and payment of investment funds for basic construction (including investment capital of basic construction under annual plan and advance capital for budget estimation of next year)**

1. End of January 31 of next year, the capital plan which has been allocated for the projects but not used or used not up shall not be paid more and canceled, except for the cases being permitted to prolonged by the Minister of Finance (for central budget), Chairmen of People's Committees (for the local budget) decisions for a long time. The eligible cases of consideration, decision to be prolonged to next year as stipulated in point a, Item 3, clause I of Circular No.108/2008/TT-BTC dated 18/11/2008 of the Ministry of Finance guiding the handling of budget at the end of year and compile, reported the annual state budget settlement and amend and supplement (if any).

2. The consideration of prolonged capital transfer of the projects implemented as follows:

After the expiry of the annual capital payment term in accordance with provisions (on January 31 of next year), based on the performance and payment of capital of the basic construction investment projects, at the request of investors and the projects of those mentioned in point 1.14 above, the governing agency synthesizes and sends a written request accompanied by certification of the State Treasury where the project was opened account on the number of capital paid till the end of January 31 of next year (Annex No.06 issued with this Circular) to the Ministry of Finance (for projects of the central budget) and Chairmen of People's Committees (for projects of the local budget).

3. The time to prolong performance and payment: not more than a year after the plan year; other cases shall be decided by the Prime Minister.

4. Time to consider for prolonged transfer:

- A written request for prolonging of the governing agency shall be submitted before February 15 each year, which should clearly be stated the project's name, year capital plan, capital paid till the end of January 31 of next year, amount proposed to prolong the time of performance and payment, prolonged time, the reasons for prolonging.

- Based on the written request of the governing agency, the Minister of Finance (for projects of the central budget) and Chairmen of People's Committees (for projects of the local budget) decide the list and duration of investment projects be prolonged.

- The decision of the list and duration of projects to be permitted to prolong shall end before March 15 each year.

End of March 15 of next year, the cases which have no written acceptance of the competent authority to permit the prolonging of performing plan to continue payment into the next year budget, the remaining amount shall be canceled.

## **C. MANAGEMENT OF INVESTMENT CAPITAL PAYMENT FOR THE SPECIFIC PROJECTS**

### **Article 15. State secret works**

1. Type of project of state secret as stipulated in Article 2 of Decree No.71/2005/ND-CP dated 06/6/2005 of Government on the management of specific projects construction investment.

The management of construction investment of state secret projects shall comply with Decree No.71/2005/ND-CP dated 06/6/2005 of Government on the management of specific projects construction investment.

The allocation and verification of investment capital allocation; control, payment and settlement of investment capital of the state secret projects shall comply with regulations as for investment capital from the state budget. Particularly for projects of state secrets managed by the Ministry of Public Security and Ministry of Defense, Ministry of Finance shall transfer funds directly to the Ministry of Public Security and Ministry of Defense to take over, manage payment and settlement of investment capital for the projects.

2. Allocation and verification of investment capital allocation:

- Allocation and verification of investment capital allocation comply with regulations as for investment capital from the state budget, which clearly define the list and capital of the projects of state secrets.

- For the projects of state secrets managed by the Ministry of Public Security and Ministry of Defense, Ministry of Finance shall verify the allocation and send to the Ministry of Public Security and Ministry of Defense for management, control, and capital payments for the projects.

3. Transfer of capital and payment of capital:

- The payment of investment capital is made in accordance with provision as for investment capital from the state budget.

- Ministry of Public Security, Ministry of Defense open deposit accounts at the Exchange Department - State Treasury to receive funds transferred by the Finance Ministry to pay for projects on state secrets managed by the Ministry of Public Security and Ministry of Defense; based on the annual capital plan and implementation schedule of the project, the Ministry of Finance transfers funds to the Ministry of Public Security, Ministry of Defense in the form of transfer orders. The amount of capital transferred each time is based on the report of performance schedule of the projects and written requests for funds transfer of the Ministry of Public Security, Ministry of Defense. After January 31 of next year, the balance on deposit accounts shall return to the state budget.

- Ministry of Public Security, Ministry of Defense performs the function of control and payment of capital for the projects of state secrets in accordance with the right provisions on the control, payment of investment capital.

- For state secret projects managed by the ministries, other branches and provinces, State Treasury only receives vouchers of capital withdrawal and money transfer upon requests of investors without controlling on the contents. Investors are solely responsible for the control of the content of payment.

- End of plan year, the Ministry of Public Security, Ministry of Defense reports on the implementation of the plan, the situation of receipt and use of capital; certification of capital paid in the year, the accumulation of amount paid from commencement till the end of the State budget year for each project; comment on the implementation of investment plans, execution of policies on finance.

#### **Article 16. Construction works under order of emergency**

1. Type of construction works under an emergency order under the provisions in Article 2 of Decree No.71/2005/ND-CP dated 06/6/2005 of Government on the management of specific projects construction investment.

The management of projects construction investment under emergency orders complies with Decree No.71/2005/ND-CP dated 06/6/2005 of Government on the management of specific projects construction investment.

2. Capital payment:

2.1 Payment in advance: advance capital level of advance and recovery of advance capital complies with provisions as for investment capital from the state budget. Dossier for advance capital payments includes:

- Decision to construct emergency projects of a competent person;

- Written request for payment of investment capital;

- Document of money transfer.

- Guarantee for the advance capital of the contractor (if investor and the contractor agreed advance capital guarantee in the contract);

2.2 Payment for completed volumes: to comply with regulations as for investment capital from the state budget.

#### **Article 17. Temporary works**

1. Type of temporary work under the provisions of Article 2 of Decree No.71/2005/ND-CP dated 06/6/2005 of Government on the management of specific works construction investment.

2. Capital payment:

The management of the advance payment, payment of capital for the temporary works is done under the provisions as for the investment capital from state budget and is supplemented as follows:

In case for the complex, large-scale works that cost for building temporary house at site for staying and administering construction made the estimation shall control the payment according to the estimation approved; apart from the records and documents of the projects, payment dossier includes: approval decision together with the approved estimation, the determination table of value of completed workload, the written request for payment of investment capital, transfer vouchers.

Where the costs of sheds, houses, and operators of construction on the site calculated by ratio % in the construction contract shall be paid at the rate prescribed and payment under the contract is not made in accordance above provision.

#### **D. MANAGEMENT, PAYMENT OF ADMINISTRATIVE FUND WITH NATURE OF INVESTMENT**

##### **Article 18. Use of capital**

Administrative fund with nature of investment in the state budget estimation of the agencies, administrative units are only used for the cases of investment in renovation and expansion and upgrading of existing material facilities (including the new construction of work items in the existing facilities of the agencies, administrative units). Not to arrange administrative funds for new investment projects.

##### **Article 19. Planning, allocation and verification of capital allocation**

Planning, allocation, verification of capital allocation is made in accordance with provisions of the Law on State Budget and the Finance Ministry's guidelines for administrative funds.

##### **Article 20. Advance payment, payment of capital**

1. Basic documents:

- Projects with capital level from 01 billion dong or more, basic documents are as for investment projects with capital for development investment.

- For projects with capital level of less than 01 billion dong, basic documents include:

+ Economic-technical report and decision to approve the economic-technical report or estimation and approval decision of the design-estimation (not required for approval before the October 31 preceding the plan year);

+ A written selection of contractor in accordance with provisions of the Bidding Law;

+ The contract between the investor and contractor.

2. Advance payment of capital:



- For projects with total capital level from 01 billion dong or more, advance capital and advance capital recovery is implemented as for investment projects with capital for investment and development.
- For projects with capital level of less than 01 billion dong, advance capital level at least equal to 30% of the contract value or the approved estimation. Advance capital are gradually recovered in each payment period for completed volumes and recovered fully when the payment reached 80% of the contract value or the approved estimation.
- Dossier of capital advance payment includes: Written request for payment of investment capital, transfer vouchers, advance payment guarantee of the contractor (if investor and the contractor agreed advance payment guarantee in the contract).
- The management of the capital advance payment is made under the provisions of Article 10 above.

### 3. Payment of capital:

- For projects with total capital level from 01 billion dong or more, control, capital payments is made under the provisions as for the investment projects from the state budget.
- For projects with total capital level of less than 01 billion dong, control, capital payments is made under the guidance of the Ministry of Finance on the management, allocation, and payment of State budget expenditures through the State Treasury.

### 4. Regime of report, settlement, and inspection.

Be implemented by the provisions for administrative fund capital and the guidelines of the Ministry of Finance. Particularly, the settlement for the projects with total capital level from 01 billion dong or more is made as provided for under the investment capital by guidelines of the Ministry of Finance.

## **E. REGIME OF REPORT, SETTLEMENT AND INSPECTION**

### **Article 21. Report**

1. For the investors, the Ministries and the provinces: implement the regime of report as stipulated in Decision No.52/2007/QD-TTg 16/4/2007 by the Prime Minister on the regime of reporting implementation of investment capital plans of the State, Circular No.05/2007/TT-BKH on 09/8/2007 of the Ministry of Planning and Investment on issuing the report forms and instructions for the implementation of Decision No.52/2007/QD-TTg 16/04/2007, Decision No.803/2007/QD-BKH on 07/30/2007 of the Ministry of Planning and Investment on the issuance of reporting the performance of ODA project programs.

### 2. For the state treasury:

- To perform report regime as prescribed by the Ministry of Finance.
- End of the year of plan, State Treasury synthesizes investment capital payment data and report to the financial agency at the same level in accordance with provisions on the settlement of the state budget.
- End of year of plan, State Treasury confirms the number of payment during the year; accumulate number of payment from commencement till the end of state budget year from for each project made by the investor.

## **Article 22. Settlement of investment capital**

The settlement of annual investment capital and settlement of investment capital when the projects are completed is implemented under the guidance of the Ministry of Finance on the mode of investment capital settlement.

Where settlement has been approved, if the amount settled is lower than the amount paid for the project, the investor is responsible for the recovery from the contractor to reimburse the State the surplus paid capital; if the amount settled is higher than the amount paid, investor is responsible for paying further or arranging capital for the next year plan to pay to the contractor.

## **Article 23. Inspection**

The Ministries, the Provincial People's Committees, the Financial agencies and State Treasury inspect regularly or irregularly the investors and contractors participating in the project on the use of advance funds, payment funds for completed volumes and the execution of policies, regime of investment, finance and development of the State.

The financial agencies at all levels inspect regularly or irregularly the State Treasury on the implementation of mode of payment of investment capital.

## **F. RESPONSIBILITIES AND POWERS OF THE CONCERNED AGENCIES**

### **Article 24. For the investors**

1. To perform the functions and tasks assigned under the regulations. To receive and use funds for proper purposes, right objects, saving and effective. Strictly observe the provisions of law on the management of finance, investment, and development.
2. To conduct the acceptance test of volume, make payment dossier and payment requests for the contractor under the time prescribed of the contract.
3. Investors allocate sufficient funds in the annual plan to purchase construction project insurance as prescribed.
4. Take responsibility for the accuracy and legality of implemented volumes, norms, unit prices and estimation of the types of works, work quality and value of payment request; to ensure the accuracy and truthfulness and lawfulness of data and documents in the dossier submitted to the State Treasury and functional agencies of the State.
5. Promptly and fully report as prescribed to the agency to decide the investment and the concerned state agencies; to provide sufficient records and documents, the situation according to provisions to the State Treasury and the financial agency to serve the management and payment of funds; and subject to inspection of the financial agency and the agency to decide the investment on the use of investment capital and compliance of policies, the financial regime of investment, development of the State.
6. Regularly inspect the implementation of the advance capital of contractors, it is required to inspect before, during and after the application of capital advance payment to contractors.
7. Perform accounting of investor; settle investment capital according to the current regulations. At the end of the plan year, make compare table of annual capital payment data and send to the State Treasury where the investor transacts to confirm (the form in Annex 06).

8. Be required to pay capital if they meet the conditions and require the State Treasury to reply and explain the contents that are not appropriate in payment of capital.

**Article 25. For the ministries and People's Committees of provinces and districts**

1. To guide, inspect and urge the investors under the management to implement the investment plans, receive and use the investment capital for the right purposes, right regime of the State.
2. Within the scope of assigned authority, be responsible before the government and the state law of its decisions.

**Article 26. For the financial agencies at all levels**

1. Ensure sufficient funds in accordance with provisions of the Ministry of Finance for the State Treasury to pay for the projects.
2. Implement provisions on report and settlement of investment capital.
3. Coordinate with the functional agencies to guide and inspect the investors, the State Treasury, the contractors in the implementation of the project on the compliance of regime, financial policy of investment and development, the management, use of investment capital, investment capital payment in order to have the processing solutions of the violations; issue the decision to withdraw the account, the contents of wrong spending of the State regime.
4. To be requested the State Treasury, the investors to provide the necessary documents and information for the state management of finance, investment and development, including materials for evaluation of investment projects and allocation of annual investment capital plan, the documents reporting on the implementation of plan and of investment capital in accordance with the regulations on regime of report information, documents for the verification of settlement of investment capital in accordance with provisions.

**Article 27. For the State Treasury**

1. Guide the investors to open accounts to be paid investment capital.
2. Control, pay capital promptly and fully to the project if they meet the conditions and time as specified.
3. Issue the process of paying investment capital and administrative fund with nature of investment for the uniform implementation in the State Treasury system. Organize the control and payment of capital in accordance with provisions on professional skill process; pay timely, sufficiently, and conveniently to the investors while ensuring simple administrative procedures and strict management of state capital.
4. It required having clear ideas in writing to send to the investor for the payment reduction or payment refusal; answering the questions of the investors in the capital payment.
5. State Treasury controls payment only on the basis of documents submitted by the investor and according to the principle of payment provided, not taking responsibility for the accuracy of the volume, the norms, unit prices, quality of work. When detecting the decision of the competent authorities contrary to the current regulations, it must make a written request for review and state clearly recommendations. If the specified time is over but having no reply, it has the right to settle following its own proposal; or if the reply is unsatisfactory, it is resolved in accordance

with the opinion of the competent authorities, and it must report to the higher competent authorities and the financial agencies for review and handling.

6. Frequently urge the investors, project management Units to comply with regulations on the advance payment and withdrawal of advance funds, and coordinate with the investors to inspect the advanced capital to recover the outstanding amounts not used or used improperly.

7. Urge the investors to pay off debts after the project is finalized and its account is settled.

8. Implement the regime of report information and settlement of investment capital use and administrative fund of investment nature as prescribed.

9. To be requested the investors to provide concerned records, documents, and information for the control of the capital payment.

10. Periodically and irregularly inspect the investors on the implementation of project, the observance of the regime, policy of finance, investment and development, the management and use of investment capital; to be suspended payment of capital or recovery of funds that investors used for improper purposes, the wrong objects or contrary to the regime of financial management of the State, and report to the Ministry of Finance for handling.

11. Not to participate in the Councils of acceptance test in the works and projects.

12. End of the plan year, confirm number of payment during the year, accumulate amounts of payment from the commencement to the end of the state budget year for each project, or confirm the amount of capital paid by the management requirements (forms under Annex 06).

13. Take responsibility before the Minister of Finance and the laws of the State of the receipt and payment of investment capital and administrative fund of investment nature of the state budget capital.

### **Part III**

## **IMPLEMENTING PROVISIONS**

### **Article 28. Transitional settlement**

1. The issues related to the advance payment rate of capital, advance capital recovery comply with transition settlement specified in clause 1, Article 52 of Decree No.48/2010/ND-CP dated 07/05/2010 of the Government on contracts in the construction activity. Issues on the advance payment will be specified in the contract, the State Treasury to make payments in accordance with the terms of advance payment, payment in the contracts.

2. Particularly the issue of payment stipulated by objects as contract and documents, records of payment in accordance with Decree No.48/2010/ND-CP dated 05/07/2010 of Government on contracts in construction activity and other issues of amendment and supplementation are made uniformly for all projects from the effective date of this Circular to ensure consistency in the control of the investment capital payment of the state treasury.

### **Article 29. Implementation Provisions**

1. This Circular takes effect from August 05, 2011, replaces the Finance Ministry's Circulars No. 27/2007/TT-BTC dated 03/4/2007; No.130/2007/TT-BTC dated 02/11/2007; No.88/2009/TT-BTC dated 29/04/2009; No.209/2009/TT-BTC dated 05/11/2009 guiding the management and settlement of investment capital and business capital with investment nature of the state budget.

2. During the implementation, if any difficulties arise, the units promptly report to the Ministry of Finance to study for amendment and supplement properly./.

**FOR MINISTER  
DEPUTY MINISTER**

**Pham Sy Danh**

**SYSTEM**

**OF FORMS ISSUED TOGETHER WITH CIRCULAR STIPULATING MANAGEMENT AND  
PAYMENT OF INVESTMENT CAPITAL**

<b>No.</b>	<b>Annexes</b>	<b>Names of Annexes</b>
1	Annex 01	Plan of development and Investment of capital under the state plan in ...
2	Annex 02	Adjustment plans of development, investment of capital under the State plan in ...
3	Annex 03.a	Table determining value of the workload completed upon the contract requesting payment.
	Annex 03.b	The list determining the workload of clearance made.
4	Annex 04	Table determining value of the workload arisen out of contract requesting payment.
5	Annex 05	Written request for payment of investment capital.
6	Annex 06	Data compare table of payment of investment capital in...

-----  
*This translation is made by **LawSoft**, for reference only. **LawSoft** is protected by copyright under clause 2, article 14 of the Law on Intellectual Property. **LawSoft** always welcome your comments*