

Nội dung toàn văn Decree 80/2020/ND-CP use of grant aid not in the form of official development assistance of foreign agencies

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

No. 80/2020/ND-CP

Hanoi, July 8, 2020

DECREE

ON MANAGEMENT AND USE OF GRANT AID NOT IN THE FORM OF OFFICIAL DEVELOPMENT ASSISTANCE OF FOREIGN AGENCIES, ORGANIZATIONS, AND INDIVIDUALS FOR VIETNAM

Pursuant to the Law on Organization of the Government dated June 19, 2015;

Pursuant to the Law on Promulgation of Legislative Documents dated June 22, 2015;

At the request of the Minister of Planning and Investment;

The Government promulgates a Decree on management and use of grant aid not in the form of official development assistance of foreign agencies, organizations, and individuals for Vietnam.

Chapter 1.

GENERAL PROVISIONS

Article 1. Scope

1. This Decree sets forth management and use of grant aid not in the form of official development assistance of foreign agencies, organizations, and individuals for agencies and organizations legally incorporated in Vietnam for the purposes of socio-economic development, humanitarian aid, not for profit and commercial purposes.

2. Cases not governed by this Decree:

a) Grant aid of foreign agencies and organizations which has been officially signed under regulations of the Law on treaties and grant aid in agreements on ODA signed on behalf of the state or the Government of the Socialist Republic of Vietnam;

- b) Gifts to agencies and organizations not for humanitarian and charitable purposes;
- c) Grants under agreements on cooperation, services contracts, contracts for technology transfer earning profit for distribution;
- d) Individuals receiving grants for research work under the Law on Science and Technology No. 29/2013/QH13;
- dd) Urgent international aids of the Government, international organizations, foreign non-governmental organizations and individuals for relief approved and provided within 3 months from the occurrence of the natural disaster and urgent international aids for disaster recovery approved and provided within 9 months from the occurrence of the natural disaster.

Article 2. Regulated entities

1. This Decree applies to agencies, organizations and individuals participating in or related to the management and use of grant aid not in the form of official development assistance (below referred to as aid) covered by Article 1 of this Decree.

2. Aid donors in this Decree are foreign organizations and individuals that are acting in good faith, respect and comply with Vietnamese law, including:

- a) Foreign non-governmental organizations, non-profit organizations, social funds and private funds established under foreign laws;
- b) Foreign individuals, including overseas Vietnamese;
- c) Enterprises and companies established under foreign laws, excluding foreign-invested economic organizations operating in Vietnam under the provisions of the Investment Law;
- d) Research and training organizations established under foreign laws (including research institutes and cooperation organizations of foreign governments);
- dd) Ministries, agencies and organizations affiliated to foreign governments, diplomatic missions of countries in Vietnam which directly provide aid, or authorize foreign legal entities to manage aid that the reception and implementation of aid does not require official signing under the provisions of the International Treaty Law or does not require the Vietnamese party to sign on behalf of the State or Government of the Socialist Republic of Vietnam.

3. Eligible aid recipients include organizations established under Vietnamese law and having functions and tasks and operating in line with the objectives and contents of received aid (below referred to as recipients), including:

- a) Regulatory agencies and public sector entities that are fully or partially funded by the state budget;
- b) Socio-political, socio-political-professional organizations, social organizations, socio-professional organizations, science and technology organizations, social funds and charity funds that are legally established according to the provisions of Vietnamese law on associations, scientific and technological organizations, social funds and charity funds;
- c) Social enterprises that receive aid to achieve the objective of solving social and environmental issues;
- d) Other entities as decided by the Prime Minister.

Article 3. Interpretation of terms

For the purposes of this Decree, the following term has the meaning attributed as follows:

1. "Program or project management board" (hereinafter referred to as "project management board") means an organization established to assist aid owners or project owners in implementing one or several programs or projects.
2. Forms of aid provision include: programs, projects, non-projects, in which:
 - a) "Program" means a combination of activities related to one or more branches, sectors, territories or target groups for the attainment of one or certain defined objectives, which are performed in one or multiple periods.
 - b) "Project" means a combination of interrelated activities aimed at achieving one or more specific objectives, which is implemented in a given administrative division and given period with specified resources.
 - c) "Non-project" means donation of money, objects, goods and experts (including volunteer experts), at one time or on separate occasions, and provision of inputs for organizing conferences and associations, seminars, research, surveys, and training.
3. "Managing agencies" include:
 - a) Central agencies of political organizations and affiliated agencies; the Supreme People's Procuracy; the Supreme People's Court; agencies affiliated to the National Assembly; State Audit; Office of the President; ministries, ministerial-level agencies, agencies affiliated to the Government; central agencies of the Vietnam Fatherland Front and socio-political organizations; the People's Committees of provinces or central-affiliated cities (hereinafter referred to as provincial People's Committees);

b) Where humanitarian aid does not have a specific address, the central agency of the Vietnam Fatherland Front is the managing agency;

c) Ministries, ministerial-level agencies, governmental agencies and provincial People's Committees shall promulgate decisions on establishment of socio-political, socio-political-professional organizations, social organizations, socio-professional organizations, science and technology organizations, social funds and charity funds that are legally established according to the provisions of Vietnamese law on associations, scientific and technological organizations, social funds and charity funds;

d) Central agencies of associations or unions of associations set up under the Prime Minister's Decision;

dd) If the recipient is a social enterprise, the People's Committee of the province where the business is registered is the managing agency.

4. "Aid owner" means the unit assigned to manage and implement aid approved by a competent authority. The aid owner is called the "Project Owner" in case the aid is provided in the form of program or project.

5. "Aid amounts" for the purpose of this Decree refer to financial support or goods and services requiring no repayment provided by the aid donor to the aid recipient to realize socio-economic development and humanitarian objectives, not for commerce or profit purpose.

6. "Program or project document" means an official document expressing the commitment between the recipient's and the donor's representatives on a specific program or project, which states the objectives, activities, to-be-achieved outcomes, to-be-used resources, implementation duration and plan, and obligations, benefits and responsibilities of related parties.

7. "Aid for consequence relief" includes:

a) Emergency relief and aid intended to remedy consequences of emergencies (excluding international aid mentioned at Point dd Clause 2 Article 1 of this Decree);

b) Relief amounts after 03 months from the occurrence of the disaster, aid for disaster recovery shall be made after 09 months from the occurrence of the disaster.

8. "Aid classified as state budget revenue" means aid amounts if the recipient is an agency or organization:

a) Party and National Assembly agencies, the Supreme People's Procuracy, the Supreme People's Court; ministries, ministerial-level agencies, governmental

agencies and affiliated juridical persons; provincial-level People's Committees and affiliated juridical persons;

b) The Vietnam Fatherland Front, the Vietnam General Confederation of Labor, the Ho Chi Minh Communist Youth Union, the Vietnam Peasants' Association, the Vietnam War Veterans' Association, the Vietnam Women's Union;

c) Wholly state-owned enterprises and other entities under the scope of revenue and expenditure management according to the provisions of law on state budget;

d) Other recipients as decided by the Prime Minister.

9. "Counterpart fund" means an amount contributed by the Vietnamese party in resources (in kind or cash) for the preparation and implementation of aid. Counterpart fund shall be allocated from the central budget, local budgets, self-allocated fund of aid owners, contributed capital of beneficiaries and other lawful capital sources. Counterpart fund is used for the process of preparation and implementation of aids according to specific requirements of programs or projects.

Article 4. Principles of aid management and use

1. Aid management and use must comply with Vietnamese law. The aids shall be received, implemented and used only after it has been approved by the Vietnamese competent authorities. The aid money must come from a lawful source of money and assets.

2. Not to receive goods (including supplies and equipment) on the list of goods banned from import as per the law.

3. The managing agency is fully responsible for managing and using aid effectively.

4. Cash flows received and spent on aid amounts must be effected through aid-receiving accounts, ensuring openness to the public and transparency, and fully reported according to the provisions of Chapters III and IV, V of this Decree.

5. Aid classified as state budget revenues must be fully estimated, accounted and settled into the state budget.

6. For aid not belonging to the state budget revenues, aid owners may manage by themselves and take responsibility for aid use purposes, aid use results, ensuring compliance with regulations of Vietnam and commitment to donors. The aid owner shall periodically report to the managing agency for consolidating and reporting to the Ministry of Planning and Investment for general consolidation.

7. After 06 months from the date the aid is approved, if the aid has not been implemented without plausible reasons, the approval authority may revoke the

decision on approval for receiving aid. The managing agency shall notify the donor of such revocation.

Article 5. Prohibited acts in the use of aid

1. Using aid to serve the purpose of money laundering, financing terrorism, evading taxes, infringing upon national security and social order and safety, undermining the great unity bloc of the entire nation; violating social morality, traditions, customs and national cultural identity.
2. Using aid to seek shared profits or personal interests, not for humanitarian purposes, socio-economic development, or for community benefits.
3. Acts of corruption, causing loss and waste in aid management and use.

Article 6. Capital prepared for aid

1. With regard to aid amounts which are managed by managing agencies fully or partially funded by the state budget, the managing agencies shall prepare and aggregate into the annual general budget plan as prescribed in the Law on State Budget.
2. For aid amounts not belonging to the state budget revenues (central or local), the aid owner shall balance and allocate capital to prepare aid amounts.
3. In case donors provide financial assistance for preparing programs or projects, aid owners shall include capital for preparing programs or projects in the total aid.

Chapter II.

APPRAISAL AND APPROVAL FOR AID AMOUNTS

Article 7. Competence to approve

1. The Prime Minister may approve:
 - a) Aid amounts related to security, national defense and religion, and aid targeted to directly support the development of legal documents;
 - b) Imported goods subject to decision of the Prime Minister in accordance with relevant laws;
 - c) Other cases not prescribed in Clauses 2,3,4 of this Article.
2. The head of the managing agency may approve:
 - a) The aid amounts not specified in Clause 1 of this Article and the remedial aids granted directly to a ministry, branch or locality, regardless of the aid scope.
 - b) The aid that the recipient is the organization whose establishment decision or charter or certificate of registration is issued by the managing agency, consistent

with the functions and duties of the recipient, except for organizations established by the Ministry of Home Affairs.

3. The Minister of Home Affairs shall approve aid amounts of associations, social funds and charity funds subject to decision of the Ministry of Home Affairs to permit the establishment and approve the charter.

4. The President of the Central Committee of the Vietnam Fatherland Front may approve humanitarian relief with no specific address (The aid donor does not assign relief to a specific locality).

5. Heads of associations or unions of associations set up under the Prime Minister's decision may approve aid amounts for agencies under their management according to law provisions.

Article 8. Aid documentation

The aid documentation is made in 6 sets, documents in foreign languages must have a certified Vietnamese translation attached.

1. A program or project file consists of the following documents:

- a) A program/project proposal;
- b) A written agreement on the provision of aid by the aid donor.
- c) Program or project documents;
- d) Documents proving legal status (not applicable to aid donors being diplomatic missions, governmental agencies, foreign local governments).

For foreign non-governmental organizations registered in Vietnam: A copy of the registration certificate issued by the Vietnamese competent authority;

For individual aid donors: submit a certified true copy of the passport;

For other aid donors: submit certified true copies of the organization's legal status.

2. A non-project file consists of the following documents:

- a) A non-project proposal;
- b) A written agreement on the provision of aid by the aid donor;
- c) The non-project aid document, which is formulated by the aid owner in coordination with the aid donor, including the following main contents: Purpose, content, list of goods (for aid in form of goods or objects), expected results of the aid; time performance; value of non-project aid; implementation method and coordination mechanism in the implementation process; obligations to report results after receiving and using aid;

d) Documents proving legal status (not applicable to aid donors being diplomatic missions, governmental agencies, foreign local governments).

For foreign non-governmental organizations registered in Vietnam: A copy of the registration certificate issued by the Vietnamese competent authority; For individual aid donors: submit a certified true copy of the passport;

For other aid donors: submit certified true copies of the organization's legal status.

dd) For non-project aid provided in the form of providing experts, the aid dossier comprises: documents stated at Points a, b, c and d of this Clause; resume of experts with commitment to be responsible for the information supplied; operational program; work permit and legal documents on professional practices of experts in accordance with relevant laws.

3. Non-project aid dossiers are used goods, equipment and means of transport, which are subject to approval by the Prime Minister:

a) In addition to the requirements set out in Clause 2 of this Article, a certificate of goods quality assessment issued by a legal and qualified verifying organization that is accredited by Vietnam or the host country. The assessment certificate must state the conclusion regarding the quality of goods, equipment and means of transport meeting Vietnamese standards or meeting the requirements of equivalent standards accepted by Vietnam.

b) For non-project aid being used transport means, the following documents are required: a certified Vietnamese translation of the registration or certificate of vehicle ownership of the aid donor; certified Vietnamese translation of the Registration Certificate of the competent authorities of the country of the aid donor. In case of temporarily imported means of transport, a registration certificate of the competent Vietnamese agency is required.

4. Program and project documents and non-project aid documents are made according to the forms prescribed in Appendices I, II and III to this Decree.

5. Aid projects related to public investment or construction investment must be formulated according to the provisions of law on management of public investment and work construction investment.

6. Receiving authorities:

a) The Ministry of Planning and Investment: For aid amounts subject to the Prime Minister's approval.

b) Managing agencies: For aid amounts not subject to the Prime Minister's approval.

Article 9. Appraising agency

1. Program or project documents and non-project documents must be appraised as a basis for approval, signing and implementation.
2. For aid subject to the approval of the Prime Minister specified in Clause 1, Article 7 of this Decree, the Ministry of Planning and Investment shall assume the prime responsibility for appraisal.
3. For aid subject to the approval of the head of the managing agency specified in Clauses 2, 3, 4 and 5, Article 7 of this Decree to be implemented at the central level, the managing agency shall assign the relevant subordinate units to assume the prime responsibility for appraisal; at the local level, the Department of Planning and Investment is the lead appraising agency.
4. Depending on the size and nature of the project, the appraising agency may invite central and local specialized agencies or consultancy organizations and independent consultants to assist them in the appraisal.
5. Concerned agencies, organizations and individuals participating in the appraisal shall take legal responsibility for the appraisal checklist of non-project aid within the scope of their management responsibilities.

Article 10. Procedures for appraisal and approval of non-project aid program or project documents

1. Evaluate the validity of the appraisal dossier based on the provisions of Article 8 of this Decree.
2. Seek consultation in writing from relevant agencies:
 - a) For the aids specified in Clause 1, Article 7 of this Decree, the Ministry of Planning and Investment shall seek the consultation for approval in writing to the Ministry of Finance, the Ministry of Public Security, the Ministry of Foreign Affairs and the Union of Vietnamese friendship organizations (in case the aid donor is a foreign non-governmental organization) and relevant specialized agencies.
 - b) For the aids specified in Clauses 2, 3, 4 and 5, Article 7 of this Decree to be implemented at the central level: the managing agency shall seek the consultation for approval in writing to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Public Security, the Ministry of Foreign Affairs and the Union of Vietnamese friendship organizations (in case the aid donor is a foreign non-governmental organization) and relevant professional agencies.
 - c) For aid subject to the approval specified in Clauses 2, 3 and 4, Article 7 of this Decree, implemented in localities: the Department of Planning and Investment

shall send a dossier to the Department of Finance and the Police Department of provinces and departments, agencies and relevant local authorities to seek consultation. In case the aid content exceeds the local management competence, the Planning and Investment Department of province shall report it to the People's Committee of province seek consultation from concerned ministries and branches.

3. Appraisal of aid amounts

Depending on the size, nature and content of the aid, the agency in charge of appraisal shall carry out the appraisal by consolidating opinions or hold an appraisal meeting. The conclusion of the appraising agency is the basis for the competent authority to consider approving the aid.

In case the aid does not meet the receipt requirement, the managing agency shall notify the aid donor of its decision on refusal to receive the aid.

4. For aid for consequence relief, when approving a project or non-project document, the head of the managing agency is not required to seek appraisal from the concerned agencies.

5. Content of appraisal

a) The conformity of the program's or project's objectives with specific development objectives of ministries, branches, localities, implementing units and program or project beneficiaries;

b) The legal status of aid donors and aid recipients and the legality according to Vietnamese law provisions of concerned organizations and individuals; appropriateness between aid purposes and the functions, tasks and competence of the aid recipient;

c) The aid owner's ability to receive and implement; Vietnamese party's ability to contribute counterpart fund;

d) Contents of domestic financial mechanism for aid classified as state budget revenues; rationality in the budget structure of programs or projects for major items of programs or projects;

dd) Commitments, preconditions and other conditions of the parties involved;

e) Efficiency and impact on socio-economy, security, social order, the ability to apply program or project results into practice and the sustainability of the program or project after completion ; effective use of non-project aid.

6. The time limit for appraisal must not exceed 20 days after receiving a duly complete dossier.

Article 11. Approval decision

1. The approval decision includes the following main contents:
 - a) name of program, project, non-project;
 - b) Name of managing agency, aid owner; aid donor, co-donor of foreign aid;
 - c) Key objectives and results of the aid; the list of goods and objects for non-project aid.
 - d) Time and place of implementation;
 - dd) Total capital of the program, project or non-project aid (grant aid, counterpart fund); grant aid shall be managed and implemented by the aid recipient, and managed and implemented by the aid donor;
 - e) Financial mechanism applied to aid: belong to state budget revenue; or not belong to the state budget revenue.
 - g) Implementation management method.
2. Within 05 days from the date on which the competent authority issues a decision on approval for the aid, the managing agency shall notify the aid donor of the aid approval decision and concurrently send it to the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies the approval decision of the managing agency for supervision and coordination.

Chapter III.

MANAGEMENT OF AID PROVISION

Article 12. Organization of management of programs or projects

Based on the scale, nature and specific conditions for implementing a program or project, the capacity of managing the program or project, the managing agency may decide to apply one of the forms of management below:

1. Using a subordinate specialized apparatus that is fully qualified, capable of managing and executing projects of a scale of under USD 200,000 (two hundred thousand US dollars).
2. Using an active management board to manage new programs and projects.
3. Establishing a separate management board for each program or project.

Article 13. Tasks and powers of managing agencies

1. Mobilize aid on the basis of demands and orientations for socio-economic development and aid receiving capacity.
2. Approving aid according to their competence.

3. Deciding the management apparatus for the implementation of the program or project.
4. Approving the program/project implementation plan; making financial plan, annual state budget revenues and expenditures on the basis of the aid owner's proposal, in accordance with relevant provisions of law.
5. Directing the bidding work according to current law provisions. In case the aids are not part of the budget revenue, the implementation of bidding shall comply with the agreement with the aid donor.
6. Taking responsibility for financial management, fully reporting sources of capital and assets to receive and use aid amounts. Approving financial statements on annual basis and upon completion of the project.
7. Taking responsibility for periodically summarizing financial statements of aid amounts approved by the managing agencies.
8. Checking and supervising the project implementation, the observance of current regulations on project management.
9. Send annual report on aid disbursement and use; annual general report on aid mobilization results, implementation, supervision and appraisal of aids under their management, to the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies no later than January 15 of the following year; send the final report on aid amounts to the Ministry of Planning and Investment and the Ministry of Finance within 06 months after the completion of the aid.
10. Take responsibility for loss, waste, corruption and other violations in aid management and use under their management.

Article 14. Tasks and powers of aid owners

1. The aid owner must be identified in the decision on approval for aid receipt.
2. The aid owner is responsible for:
 - a) Organizing the apparatus to manage and implement the program or project based on the decision of the managing agency. Managing and using effectively aid sources and counterpart fund of the program or project. If a project management board is not established, the aid owner must open accounts to receive and disburse aid at state treasuries or commercial banks established and operating under Vietnamese law. Performing revenue and expenditure activities for the aid through accounts on the basis of the approved financial plan;
 - b) Developing annual operation and financial plans and submitting them to competent authorities for approval; elaborating annual state budget revenues and

expenditures for aid classified as state budget revenues and submitting them to competent authorities for approval;

c) Directing the bidding work according to current law provisions on bidding;

d) Supervising the implementation of contracts and handle arising problems according to its competence;

dd) Monitoring and evaluating the program or project.

3. Take responsibility for accounting, final accounts, and reporting on all sources of capital and properties received and used.

4. Report on aid receipt, implementation, disbursement of aid every 6 months and annually to the managing agency. The report on completion of aid must be sent to the managing agency no later than 06 months after the end of implementation.

5. Take responsibility for losses, wastefulness, corruption and violations within their competence in the organization and management of the implementation of the program or project and non-project, which causes economic, social and environmental damage and affects the overall goals and effectiveness of the program or project;

6. Other duties and powers as prescribed by law.

Article 15. Tasks and powers of the project management board

1. Represent the project owner, be held accountable to the project owner, managing agency and take legal responsibility for their decisions.

2. The project management board must open accounts at the State Treasury system where transactions are made or commercial banks that are established and operate under Vietnamese law. Perform revenue and expenditure activities for the aid through accounts on the basis of the approved financial plan.

3. The project management board\ shall perform tasks within the project framework, including:

a) Make the overall and annual implementation plan, the financial plan of the project and submit it to the head of the managing agency for approval;

b) Negotiate and sign contracts;

c) Carry out bidding works and manage contracts within their assigned scope;

d) Manage finance and assets and carry out procedures for disbursement, accounting and settlement in accordance with the financial management regulations of this Decree and in accordance with provisions of the aid donor.

4. Formulate detailed plans to supervise and evaluate the implementation of program or project.
5. Report on the implementation of the program or project, every 6 months and every year, and financial management status to the project owner and the managing agency.
6. Carry out taking-over inspection, transfer and final accounts of program or project. After finishing the program or project, within 06 months, the project management board must complete the report on completion of the program or project and send it to the project owner.
7. Other duties assigned.

Article 16. Modification and supplementation of program or project during the implementation process

1. For programs or projects subject to approval of the Prime Minister:

The managing agency shall carry out the procedure to submit to the Prime Minister when there are any adjustments, modifications or additions that lead to changes in the contents of the aid approval decision.

2. For programs or projects subject to approval of the managing agencies:

- a) Modifications or supplementations that will make a program or project fall into any of the cases specified in Clause 1 Article 7 of this Decree must be submitted to the Prime Minister for consideration and approval;

- b) Modifications or supplementation not mentioned at Point a Clause 1 of this Article shall be approved by approving agency.

3. Procedures shall conform to Articles 8, 10 and 11 of this Decree.

Article 17. Sale of goods of aid amounts

Goods belonging to aid amounts agreed to be sold in Vietnam by the aid recipient and aid donor must be decided by competent authorities defined in Article 7 of this Decree concurrently with the approval of aid amounts, based on written consent of the Ministry of Finance. Used goods, when permitted to be imported into Vietnam, are not commercial goods and shall be not auctioned. Wholly new and unexpired goods must be auctioned according to current regulations on property auction.

Article 18. Handover of aid implementation results

After completion, the project owner shall conduct the taking-over inspection, appraisal, and take necessary measures to exploit and hand over the achieved results to the project beneficiaries and send the project completion report to the managing agency, Ministry of Planning and Investment, and Ministry of Finance.

Article 19. Handling of disputes

In case of any dispute related to a contract during the process of implementing a program or project, the parties shall negotiate and settle it. In case no agreement is reached between the parties, the settlement of disputes shall be made through conciliation, arbitration or court in accordance with the provisions of law and the contract signed by two parties. .

Chapter IV.

AID-RELATED FINANCIAL MANAGEMENT

Article 20. Financial management principles for aid capital

1. The principle of financial management of aid capital belonging to the state budget revenues shall apply only to aid amounts managed and implemented by project owners themselves.
2. For aid directly managed by the aid donor: The managing agency is responsible for managing the approved program or project documents; performing according to their functions and tasks; and complying with the provisions of accounting, taxation and other relevant laws. In case the aid donor hands over ownership of the properties and equipment of the program or project to the project owner, the project owner shall establish the property ownership according to current regulations. .
3. Aid classified as state budget revenues shall be estimated, controlled, accounted, and settled according to the provisions of law on state budget and financial management prescribed in this Decree. Any new item that has not been aggregated in the estimate shall be allocated by the competent authority, the project owner shall make additional estimates in accordance with the law on state management and relevant laws.
4. For aid capital not belonging to the state budget revenue, the aid recipient shall manage and use it according to program, project or non-project documents already approved by the competent authorities; the charter of organization and operation of the recipient and compliance with regulations on accounting and tax and relevant law provisions.
5. For aids belonging to the state budget revenue to enterprises where the State wholly holds the capital for implementation, depending on the nature of the aid, it shall be recorded as increasing state capital of the enterprise or other revenues of the enterprise.

Article 21. Opening accounts for aid program or project

1. Counterpart fund account:

a) Counterpart fund account funded by state budget capital: The project owner shall open an account at the State Treasury system where the transaction is conducted to control and pay for the project's counterpart fund;

b) Counterpart fund account not funded by the state budget: The project owner shall open accounts at the State Treasury system where transactions are made or commercial banks that are established and operate under Vietnamese law.

2. Aid capital account: The project owner shall open aid capital accounts at the State Treasury system where transactions are made or commercial banks that are established and operate under Vietnamese law.

a) Procedures for opening an account at the State Treasury and the management and use of accounts shall comply with current regulations;

b) The State Treasury shall organize the control and payment for projects funded by aid capital classified as the state budget revenues;

c) The procedures for opening an account at a commercial bank established and operating under Vietnam's law shall comply with relevant provisions of law.

Article 22. Financial planning of grant aid capital classified as the State budget revenue

1. Based on the decision on approval for project or non-project documents or decision on investment in program or project, the project owner shall elaborate 3-year aid capital expenditure estimates and grant aid spending and expenditure estimates in accordance with the Law on State Budget and relevant laws and send them to the managing agency for consolidation.

2. The estimation of revenue and expenditure estimates of aid classified as annual state budget revenues shall be detailed according to each donor, program, project or non-project.

3. Making, synthesizing, submitting, approving, assigning and adjusting plans of aid capital:

a) Aid capital used for public investment shall comply with the law on public investment;

b) Aid capital used for regular spending shall comply with the provisions of law on state budget.

4. On the basis of the annual capital limit assigned by the competent agencies, the managing agencies shall make detailed allocation for each program, project and non-project and notify the Ministry of Finance and the Ministry of Planning and Investment on the detailed allocation plan.

5. The managing agency shall direct and organize the implementation of cost estimates and report on the implementation of aid budget revenue and expenditure plans according to current regulations.

Article 23. Control of expenditures, disbursement, accounting and recording of revenues and expenditures of grant aid capital in cash

1. Project owners shall control expenditures at the State Treasury according to the regulations on state budget management of aid capital classified as state budget revenues. Procedures for controlling expenditures, accounting, recording revenues and expenditures comply with the law on administrative procedures in the sector of the State Treasury.

2. A dossier of expenditure control sent to the State Treasury for the first time comprises:

a) A decision on budget estimate assignment or supplementation of budget estimate assignment by the competent authority;

b) A certified true copy of the written agreement on commitment and receipt of aid capital;

c) A certified true copy of the decision on approval for program/project documents or the approved program investment decision and project documents;

d) Contract of procurement of related goods and services (if any). In case of signing in a foreign language, enclose the Vietnamese translation with the signature and seal of the project owner. The project owner shall take legal responsibility for the correctness and accuracy of the Vietnamese translation contents;

dd') A written request for certification of valid non-business capital expenditure, or a written request for payment of investment capital of the project owner according to the Government's regulations on administrative procedures in the field of State Treasury.

3. Dossier of installment payment sent to the State Treasury complies with regulations on expenditures of state budget capital.

4. Disbursement of aid capital classified as state budget revenue in cash for program or project: Based on the results of expenditure control, at the request of the project owner, the State Treasury or commercial bank shall disburse for the project as prescribed; send monthly notification of the aid capital disbursement amount of each account holder for each program or project to the Ministry of Finance.

5. Recording of revenues and expenditures for projects funded by aid classified as state budget revenues:

a) Monthly or from time to time, based on the results of expenditure control, the State Treasury shall concurrently record revenue and expenditure as prescribed. In case the project owner opens an aid capital account at a commercial bank, in addition to the above-mentioned dossier, the project owner encloses with a list of payment statements from the aid capital account at the commercial bank;

b) The State Treasury shall account it into the state budget according to aid spending contents in the state budget entries according to regulations. Advances shall be recorded according to the regime of making advance payment entries. The advances recovered shall be recorded as decrease in advance payments. The payment of completed volumes of shall be recorded as revenues and expenditures actually spent and made the annual budget settlement;

c) Time of accounting shall conform to current regulations on state budget capital.

6. The advance payment and control of expenditures from aid capital sources classified as state budget revenues in cash comply with current regulations on state budget capital.

7. Interests on aid capital deposit accounts must be separately accounted and used to pay banking service charges according to regulations. Banking service fee is a project expense.

8. When finishing spending activities on grant aid capital accounts at commercial banks, in cases where there is no commitment in the approved project documents on the use of aid deposit interests, the project owner shall pay all interest amounts earned on deposit accounts into the state budget according to current regulations. The use of the earned interest balance shall comply with the provisions of law on public investment and state budget.

9. For aid not classified as state budget revenue:

a) The accounting, accounting and settlement of aid amounts not classified as state budget revenue shall comply with the law provisions on accounting and the organization and operation regulations of the aid recipient. The project owner shall prepare an annual report on aid settlement and upon completion of the project on the basis of quarterly disbursement data, which have been collated with the commercial bank where the aid-receiving account is opened and the aid donor, to send to the managing agency for approval of settlements;

b) The managing agency shall approve settlements, sum up and send to the Ministry of Finance, the Ministry of Planning and Investment and relevant agencies;

The time when the managing agency approves the annual settlement report for the project and summarize and send to the Ministry of Finance, Ministry of Planning and Investment and relevant agencies: no later than June 30 every year.

Article 24. Receipt of aid capital in form of goods and services

1. The receipt of aid imported from abroad shall comply with the Customs Law, the Law on Export and Import Duty and the Law on Tax Administration. A dossier to be sent to the customs authority to carry out procedures for clearance of imported aid goods comprises:

a) A decision on approval for program/project documents, non-project aid and program, project, non-project documents: 01 copy with certification true copy of the original by competent authority as per provisions of relevant laws;

b) Other documents in accordance with regulations of law on customs procedures.

2. A dossier of claim for tax refund or exemption for goods and services purchased domestically using aid capital sent to the tax authority comprises:

a) A decision on approval for program/project documents, non-project aid and program, project, non-project documents: 01 copy;

b) A written request for certification of valid non-business capital expenditure, or a written request for payment of investment capital of the project owner according to the Government's regulations on administrative procedures in the field of State Treasury (for cases of receiving grant aid classified as state budget revenue).

c) Other documents prescribed by law related to tax refund or exemption.

3. Taxes, fees and charges comply with current laws on taxes, fees and charges.

4. For cases of receiving aid classified as state budget revenues, after delivery, the project owner shall make a dossier and send it to the State Treasury to record the State budget revenues and expenditures as prescribed.. A record of revenue and expenditure includes:

a) A decision on approval for program/project documents, non-project aid and program, project, non-project documents: 01 copy with certification true copy of the original by competent authority as per provisions of relevant laws;

b) The written request for recording revenues and expenditures according to the Government's regulations on administrative procedures in the field of the State Treasury;

c) In case of imported goods: Contract, bill of lading or other equivalent transport documents, commercial invoice or import goods declaration in case of no commercial invoice: 01 copy with certification true copy of the original by competent authority as per provisions of relevant laws. In case of goods purchased domestically: Sales contract, VAT invoice, goods transfer note: 01 copy with certification true copy of the original by competent authority as per provisions of relevant laws;

d) Decision on allocation of estimates of aid capital classified as state budget revenue or modified estimates in the year by competent authorities.

5. The State Treasury shall record price of imported goods as the price excluding taxes, fees and charges as prescribed.

6. Asset management with regard to the aid classified as state budget revenue: comply with the Law on Public Asset Management and guiding documents. In cases where there is a different agreement with the aid donor, the project owner shall consult the Ministry of Finance before implementation.

7. With regard to the aid properties not classified as state budget revenue:

a) The aid owner opens a separate monitoring book;

b) The management and use of assets of the program, project and properties formed from the project shall be implemented in accordance with the agreement with the aid donor mentioned in the project document approved by the competent authority;

c) Upon completion of a project, the property of the program or project and the property formed from the program or project are considered the property of the project owner; not to buy, sell, offer, donate or transfer in any manner;

d) In case of change of owner, total or partial division, merger, bankruptcy, or assets of an aid project transferred to an organization with similar functions as prescribed by competent authorities for further implementation (if the program or project has not yet been completed) or be transferred to the managing agency based on the consent of the managing agency. In case of failure to comply with the above plans, the managing agency shall report to the Ministry of Finance for consideration.

Article 25. Taxes on aid amounts

Taxes on aid amounts comply with current provisions of Vietnamese law.

Article 26. Audit of aid amounts

1. Aid classified as state budget revenue is subject to state audit.

2. Aid not classified as state budget revenue: is subject to independent audit at the request of the aid donor.

Chapter V.

STATE MANAGEMENT OVER AID

Article 27. Contents of state management of aid

1. Promulgating and organizing the implementation of legal documents on aid management and use according to Vietnamese law.

Providing information on aid management and use within the scope of regulation of this Decree.

3. Monitoring and evaluating the results of aid management and use governed by this Decree according to current law provisions.

4. Handling violations and settling complaints and denunciations of organizations and individuals related to aid management and use.

5. Rewarding Vietnamese agencies, organizations and individuals and the aid donors for their achievements in aid provision, management and use.

Article 28. Tasks and powers of the Ministry of Planning and Investment

1. Act as contact point responsible for state management of aid under the scope of regulation of this Decree.

2. Elaborate and submit for promulgation, or promulgate according to its competence legal documents on aid management and use.

3. Evaluate and sum up the opinions of concerned agencies and submitting them to the Prime Minister for consideration and approval of aid amounts falling under the Prime Minister's competence.

4. Submit to the Prime Minister annual general reports on aid management and use; propose solutions to improve effectiveness of aid use management within the scope of this Decree.

5. Examine the compliance with the regulations on receipt, approval and implementation within the competence of aid recipient agencies and units under the scope of regulation of this Decree.

Article 29. Tasks and powers of the Ministry of Finance

1. Take charge and cooperate with concerned agencies in elaborating a regime of guidance on state financial management of aid.

2. Contribute opinions on aid amounts as prescribed.

3. Carry out state financial management of aid classified as state budget revenues.
4. Summarize financial management for aid amounts. Send annual reports to the Ministry of Planning and Investment for consolidating and reporting to the Prime Minister.
5. Supervise the financial management and compliance with financial regulations applicable to aid recipients under the scope of regulation of this Decree.

Article 30. Tasks and powers of the Ministry of Foreign Affairs

1. Contribute opinions on aid amounts as prescribed.
2. Participate in supervising the implementation of aid provided by foreign non-governmental organizations in accordance with aid commitments and strictly comply with registered activities of foreign non-governmental organizations with competent authorities.
3. Provide regular and adequate information on the issuance, extension, modification and supplementation of licenses to, and the operation of foreign non-governmental organizations as a basis for mobilizing and appraising aid in accordance with this Decree.

Article 31. Tasks and powers of the Ministry of Public Security

1. Guide and assist Vietnamese agencies and organizations in receiving and using aid amounts in accordance with Vietnamese law on protection of national security and maintenance of social order and safety.
2. Participate in appraisal and give comments to the Ministry of Planning and Investment on relevant aids before submitting to the Prime Minister for consideration and decision; participate in appraisal and give comments.
3. Coordinate with concerned agencies in inspecting, examining and supervising the reception and use of aid to ensure political security and social order and safety.
4. Perform tasks according to its competence upon detecting violations in the FNG aid receipt and use.
5. Provide relevant information as a basis for consideration during the appraisal of aid amounts to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Foreign Affairs and the Ministry of Home Affairs.

Article 32. Tasks and powers of the Ministry of Home Affairs

1. Assume the prime responsibility for appraisal according to approval competence; participate in appraisal and give comments on the receipt of aid with relevant content.

2. Guide and assist Vietnamese agencies and organizations in observing the State's religious guidelines and policies in receiving and using aid amounts.
3. Annually summarize the aid management and use by organizations governed by Vietnam's law on associations, social funds and charity funds. Send annual reports to the Ministry of Planning and Investment for consolidating and reporting to the Prime Minister.
4. Inspect and supervise the reception, management and use of aid by associations, social funds and charity funds according to the state management competence of the Ministry of Home Affairs.

Article 33. Tasks and powers of managing agencies

In addition to the tasks and powers defined in Chapters I, II, III, IV of this Decree, managing agencies have the following tasks and powers:

1. Ministries, ministerial-level agencies, governmental agencies and People's Committees of provinces and centrally-affiliated cities shall, according to their assigned functions and tasks, coordinate in the management and use of aid under field of management in accordance with the law.
2. Give opinions during the appraisal of and approval for aid amounts in the specialized fields under their management as assigned by the Government.
3. Heads of managing agencies shall approve aid according to their competence provided for in this Decree and take legal responsibility law for their approval decisions.
4. People's committees of provinces and centrally-affiliated cities shall assign the Department of Planning and Investment to act as a focal point for the management and use of aids covered by this Decree.
5. Promulgate the Regulation on aid management and use within agencies according to the provisions of this Decree and relevant legal documents.
6. Direct, guide and inspect their attached units in receiving, managing and using aid under current regulations and strictly fulfilling commitments with donors.
7. Supervise and evaluate the receipt and implementation of aid amounts approved by heads of agencies; to timely detect and handle according to their competence problems and violations in receiving and using aid or notify them to concerned aid state management agencies defined in this Chapter for handling.
8. Sufficiently and timely allocate preparatory capital and domestic capital for implementing aid programs and projects in accordance with approved program or project documents.

9. Take responsibility before the Government for the quality, efficiency and progress of implementation of aid programs and projects in accordance with law.

10. Fully comply with the prescribed reporting regime.

Chapter VI.

IMPLEMENTATION

Article 34. Implementation

1. The Ministry of Planning and Investment shall issue documents on guidelines for forms of reports on the implementation of the reporting regime as per this Decree.

2. The Ministry of Planning and Investment shall issue documents on guidelines for forms of reports on financial management as per this Decree.

Article 35. Transitional handling

1. Aid amounts that have been sent to aid-approving agencies or the Ministry of Planning and Investment for appraisal and submission to the Prime Minister for consideration and approval of reception before the effective date of this Decree shall continue to comply with the Government's Decree No. 93/2009/ND-CP of October 22, 2009 promulgating the Regulation on management and use of foreign non-governmental aid.

2. For aid approved before the effective date of this Decree, financial management and reporting regime must comply with Decree No. 93/2009/ND-CP of October 22, 2009 of the Government promulgating the Regulation on management and use of foreign non-governmental aids and documents on guidelines for the implementation of the Government's Decree No. 93/2009/ND-CP of October 22, 2009 till the end of the aid amount stated in the approval decision of the competent authority.

Article 36. Entry in force and responsibilities

1. This Decree takes effect on September 17, 2020, and replaces the Decree No. 93/2009/ND-CP dated October 22, 2009 promulgating the Regulation on management and use of foreign nongovernmental aid.

2. Ministers, heads of ministerial-level agencies, heads of governmental agencies, chairpersons of People's Committees of provinces and central-affiliated cities, concerned organizations and individuals shall implement this Decree./.

**ON BEHALF OF THE
GOVERNMENT**

THE PRIME MINISTER

Nguyen Xuan Phuc