

GOVERNMENT GUARANTEE FOR BOTH DOMESTIC AND FOREIGN LOANS

By Eunjung Dana Ahn

On 16 February 2011, the Vietnamese Government issued a new regulation Decree 15-2011-ND-CP replacing Decision 272-2006-QĐ-TTg of the Prime Minister on the provision and control of government guarantee for foreign loans dated 28 November 2006 (“Decree 16”).

Responsible Government Organization

The Ministry of Finance remains the main Government body responsible for issuing and managing government guarantee. Although the Ministry of Justice seems to have larger role in negotiation of loan agreements which will be guaranteed under Decree 15, its role remains minimal.

Quota on Foreign Loans and Government Guarantees

The Ministry of Finance issues government guarantee in accordance with a decision of the Prime Minister on each loan or bond issue tranche and within the approved quota on foreign loans and government guarantees.

Guarantee for both Domestic and Foreign Loans

While Decision 272 only applied to government guarantee for foreign loans, Decree 15 applies to government guarantee on both foreign and domestic loans. Under Decree 15, the Government may provide guarantees for both domestic and foreign loans in the form of a letter of guarantee or decision on guarantee or guarantee agreement.

Projects eligible for a Government Guarantee

Following projects are eligible to be considered for a government guarantee:

- Investment projects in which investment is decided by the National Assembly or the Prime Minister.
- Projects applying high technologies and projects in energy, mineral exploitation and processing, or export production or provision of export services decided by the Prime Minister in conformity with national socio-economic development.
- Projects in localities eligible for State investment incentives as decided by the Prime Minister.

Owners of the projects listed above may apply for a government guarantee, provided that the project owners satisfy certain conditions with respect to the project, borrower (or bond issuer) and loans (or bonds to be issued).

Guarantee Fee and Level of Guarantee

As in Decision 272, government guarantee fees remain capped at 1.5% per year of the outstanding balance of the guaranteed loan and the maximum level of a government guarantee remains at 80% of the total investment of the project including all relevant loan fees, except where the Prime Minister waives the equity requirements of an enterprise borrower in the case of key project or large and urgent project with particular importance for national socio-economic development.

Unlike Decision 272 which made no distinction between foreign invested and Vietnamese invested projects, Decree 15 provides that, in the case of a foreign-invested enterprise eligible for a government guarantee, only the portion of the loan capital of the Vietnamese party in the foreign-invested enterprise will be guaranteed.

Restrictions on the Assignment and Transfer of the Investor's Ownership Interest in the Borrower

In alliance with the limit on the level of a guarantee, Decree 15 also provide restriction on the ability of a Vietnamese party (in a foreign invested enterprise) to transfer its shareholding or capital contribution to a

foreign investor. Vietnamese parties may assign a part or all of their interest to foreign investor(s) only after making notification of the proposed assignment to the Ministry of Finance and completing repayment of that proportion of the loan corresponding to the ratio of shares or capital to be assigned.

In addition, investors holding 5% or more of the ownership interest in the Borrower must undertake to jointly hold a minimum of 65% of paid up charter capital during the entire duration of validity of the guarantee. The borrowing enterprise must register a list of such investors with the Stock Exchange or Securities Trading Centre in accordance with guidelines of the Ministry of Finance. Again, any proposed assignment requires approval of the Ministry of Finance.

Effectiveness

Decree 15 came into force on 5 April 2011. In the case of government guarantee issued prior to promulgation of Decree 15 and which still in effect, any issues in relation to such guarantee will continue to be implemented pursuant to Decree 15.