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Hanoi , February 15, 2001

CIRCULAR

PROVIDING GUIDELINES ON CRITERIA FOR HI-TECH INDUSTRIAL PROJECTS; PROJECTS TO PRODUCE NEW AND RARE, PRECIOUS MATERIALS; PROJECTS TO APPLY NEW BIOLOGICAL TECHNOLOGY(IES); PROJECTS TO APPLY NEW TECHNOLOGY(IES) TO MANUFACTURE COMMUNICATIONS AND TELECOMMUNICATIONS EQUIPMENT; AND PROJECTS FOR TREATMENT OF ENVIRONMENTAL POLLUTION OR WASTE, ALL AS PROJECTS TO RECEIVE SPECIAL INVESTMENT PREFERENCE(S); ASSOCIATED ISSUES IN REPORTING ENVIRONMENTAL IMPACTS; IMPORT OF USED MACHINERY, FOR FOREIGN INVESTED ENTERPRISES IN VIETNAM.

- Pursuant to Government Decree No.22/CP, dated May 22, 1993, on the duties, powers and organisation of the Ministry of Science, Technology and Environment;
 - Pursuant to Government Decree No.24/2000/ND-CP, dated July 31, 2000, including detailed regulations on the implementation of the Law on Foreign Investment in Vietnam;
 - Pursuant to Government Decree No.175/CP, dated October 18, 1994, providing guidelines for implementing the Environmental Protection Law;
 - Pursuant to Government Official Letter No.782/CP-QHQT, dated August 23, 2000, providing guidelines for observance of Decree 24/2000/ND-CP,
- The Ministry of Science, Technology and Environment provides guidelines on:
- Criteria for hi-tech industrial projects; projects to produce new and rare, precious materials; projects to apply new biological technology(ies); projects to apply new technology(ies) to manufacture communications and telecommunications equipment; and projects for treatment of environmental pollution or waste as part of high priority investments;
 - Associated issues in reporting environmental impacts;
 - Import of used machinery,
- For foreign invested enterprises in Vietnam.

Chapter I

GENERAL PROVISIONS

A. SCOPE OF APPLICATION

This Circular is applicable to foreign invested projects following the Law on Foreign Investment in Vietnam found in Article 1, Government Decree No.24/2000/ND-CP, dated July 31, 2000, including detailed regulations on the implementation of the Law on Foreign Investment in Vietnam.

B. DEFINITIONS

1. Advanced equipment line' is a specialised, mechanised production line with at least one third of its equipment automated. This assembly line must not require heavy manual labour and must follow standards on industrial hygiene, occupational safety and environmental protection. Enterprise management must follow an advanced system with several stages of operations computerised, such as technological, materials and marketing administration.
2. "Hi-tech industrial projects" include projects on the list of hi-tech industrial projects defined by the Ministry of Science, Technology and Environment in Appendix 1 attached to this Circular.
3. "New materials" include materials on the list of new materials defined by the Ministry of Science, Technology and Environment in Appendix 4 attached to this Circular.
4. "Rare, precious materials" include materials on the list of rare, precious materials defined by the Ministry of Science, Technology and Environment in Appendix 5 attached to this Circular.
5. "New technologies" include technologies on the list of new technologies defined by the Ministry of Science, Technology and Environment in appendixes 6 and 7 attached to this Circular.

The lists in appendixes 1, 4, 5, 6 and 7 can be amended in compliance with the requirements of specific periods.

6. "Environmental pollution" refers to the destruction of the environment and violations of Vietnam's environmental regulations.

7. "Treatment of environmental pollution" refers to human activities to reduce environmental pollution in observance with Vietnam's environmental regulations.

8. "Waste" includes discharge as a result of living activities, production and other activities in Vietnam. Waste can be solid, gas, liquid or other forms.

9. "Waste treatment" refers to the application of technology(ies) and technical approach(es) to turn waste into useful products and/or to reduce environmental pollution.

10. "Environmental protection" refers to activities to keep the environment clean, to improve the environment, to maintain ecological equilibrium, to prevent and treat negative impacts on the environment caused by humans on nature, and to properly utilize and exploit natural resources.

11. "Employee number" as stated in this Circular is the number of employees, both Vietnamese and non-Vietnamese in a year, excluding those working in the country for less than three months.

12. "Revenues" refer to total revenue, calculated based on sales invoices of complete products and/or hi-tech components and parts manufactured by the enterprise, and/or revenues from hi-tech services, excluding revenues from sales of products and/or components and parts purchased from any sources, revenues from ordinary services and other revenues.

Chapter II

CRITERIA OF HI-TECH INDUSTRIAL PROJECTS; PROJECTS TO PRODUCE NEW AND RARE, PRECIOUS MATERIALS; PROJECTS TO NEW BIOLOGICAL TECHNOLOGY(IES); PROJECTS TO APPLY NEW TECHNOLOGY(IES) TO MANUFACTURE COMMUNICATIONS AND TELECOMMUNICATIONS EQUIPMENT; AND PROJECTS FOR TREATMENT OF ENVIRONMENTAL POLLUTION OR WASTE

I. SCOPE OF APPLICATION

- Hi-tech industrial projects;
- Projects to produce new and rare, precious materials;
- Projects to apply new biological technology(ies);
- Projects to apply new technology(ies) to manufacture communications and telecommunications equipment;
- Projects for treatment of environmental pollution or treatment of waste.

II. CRITERIA

1. Criteria of a hi-tech industrial project

a. The enterprise must be a hi-tech product(s) manufacture project whose products include electronic, micro-electronic, information technology (IT), telecommunications, automated and precise mechanical products with production and sales revenues (for those types of products described in Appendix 1 attached to this Circular) accounting for 70 per cent or more of the project's total revenues.

b. The production line must be an advanced system providing products to export standards or at quality similar to that of imported goods of the same kind. The enterprise must follow the ISO 9000 quality management system.

c. The value of equipment/employee is US\$40,000 or more.

Projects for manufacture of computer software parts shall meet the terms of this clause.

d. The value of hi-tech parts and components manufactured by the project (local contents) must account for at least two per cent of the project's annual revenues, or the total value of hi-tech parts and components produced by the project and other industrial enterprises in Vietnam must represent at least 15 per cent of the project's annual revenues.

e. Project staffing:

+ A hi-tech industrial project must have at least 40 per cent of its employees as college and university degree holders provided with professional training in research - application and/or production establishments abroad.

+ A hi-tech industrial project must provide technical training for 100 per cent of its employees as high school graduates and workers, at least five per cent of whom are trained abroad on advanced technology.

g. Funding for research-application and training activities must account for at least two per cent of the project's annual revenues.

Grant research-application and training shall also be counted in the total.

For projects with annual revenues of \$10,000,000 or more, the annual expenses for research-application and training activities must be at least \$200,000.

Those projects with technology transfer contracts approved by the Ministry of Science, Technology and Environment shall be considered to satisfy terms of this clause.

h. Revenues/employee must amount to \$70,000 or more.

Projects with a prescribed capital of \$30,000,000 or more and more than 1,000 employees each shall not be subject to this clause.

i. A hi-tech industrial project must satisfy the Vietnam's environmental regulations.

2. Criteria of a project to manufacture new or rare, precious materials

a. The products of a project to manufacture new or rare, precious materials must be new materials as described in Appendix 4 attached to this Circular or rare, precious materials as described in Appendix 5 attached to this Circular. The project must not include exploitation and processing of rare, precious materials.

b. A project to manufacture new or rare, precious materials must use advanced equipment line(s).

c. A project to manufacture new or rare, precious materials must satisfy Vietnam's environmental regulations.

3. Criteria of a project to apply new biological technology(ies)

a. The project's technology must be new as described in Appendix 6 attached to this Circular.

b. The project must use advanced equipment line(s).

c. The project's application of new technology(ies) must create productive and quality products.

d. A project to apply new biological technology(ies) must satisfy Vietnamese, global, regional and Asian biological security standards.

e. A project to apply new biological technology(ies) must satisfy Vietnam's environmental regulations.

4. Criteria of a project to apply new technology(ies) to manufacture communications and telecommunications equipment

a. The project's technology must be new as described in Appendix 7 attached to this Circular.

b. A project to apply new technology(ies) to manufacture communications and telecommunications equipment must use advanced equipment line(s).

c. The project's application of new technology(ies) must create productive and high quality products.

d. A project to apply new technology(ies) to manufacture communications and telecommunications equipment must satisfy economic and technical terms required in the IT and telecommunications field in the region and the world.

e. A project to apply new technology(ies) to manufacture communications and telecommunications equipment must satisfy Vietnam's environmental regulations.

5. Criteria of a project for treatment of environmental pollution or treatment of waste

a. The project's business lines must be in accordance with those described in Appendix 8 attached to this Circular. For waste treatment, processing projects, 50 per cent of the materials or more must be waste.

b. A project for treatment of environmental pollution or treatment of waste must be financially independent with 70 per cent of its total revenues or more reaped from production and/or business activities associated with treatment of environmental pollution or treatment and processing of waste.

c. A project for treatment of environmental pollution or treatment of waste must satisfy Vietnam's laws on environmental protection.

III. DOCUMENTS FOR REQUESTING INVESTMENT PREFERENCE(S) AND AUTHORITY TO CERTIFY PROJECTS FOR SPECIAL INVESTMENT PREFERENCE(S)

1. Documents for requesting investment preference(s)

a. For new projects:

Apart from terms regulated by articles 106 and 107, Government Decree No. 24/2000/ND-CP, dated July 31, 2000, with detailed regulations on the implementation of the Law on Foreign Investment in Vietnam, documents for requesting investment preference(s) include:

- A petition requesting certification as a project to receive special investment preference(s) (using the form provided in Appendix 2 attached to this Circular).
- The project's technical-economic presentation (this presentation must follow criteria described in II of this Chapter; the presentation of projects described in 5, II must include descriptions of industrial process(es) to be used for treatment of environmental pollution and/or waste, the rate of waste used as materials for treatment and processing activities, the rate of revenues from production and business activities associated with environmental pollution and waste treatment, and the similarity of the project's business lines to those prioritised operations described in this Circular).

b. For ongoing projects

- A petition requesting certification as a project to receive special investment preference(s) (using the form provided in Appendix 2 attached to this Circular).
- The project's technical-economic presentation (this presentation must follow criteria described in II of this Chapter; the presentation of projects described in 5, II must include descriptions of industrial process(es) to be used for treatment of environmental pollution and/or waste, the rate of waste used as materials for treatment and processing activities, the rate of revenues from production and business activities associated with environmental pollution and waste treatment, and the similarity of the project's business lines to those prioritised operations described in this Circular).
- A legal copy of the project's investment licence.

2. Documents for requesting certification as a project to receive special investment preference(s) shall be sent to the investment licence granting body.

3. Authority to certify projects to receive special investment preference(s)

a. For projects whose investment licences are granted by the Ministry of Planning and Investment: The Ministry of Planning and Investment, based on the Ministry of Science, Technology and Environment's document certifying that the project's technology(ies) is(are) consistent with this Circular's regulations, shall outline special investment preference(s) for the project in its investment licence, a copy of which shall be sent to the Ministry of Science, Technology and Environment.

b. For projects whose investment licences are granted by bodies authorised to grant investment licences: Based on the Ministry of Science, Technology and Environment's document certifying that the project's technology(ies) is(are) consistent with this Circular's regulations, local investment licence granting bodies, industrial zone (IZ), export processing zone (EPZ) and hi-tech zone authorities, which have been authorised to grant investment licences, shall outline special investment preference(s) in the project's investment licence, a copy of which shall be sent to the Ministry of Science, Technology and Environment.

c. For projects which satisfy or do not satisfy terms required for receipt of investment preference(s), the relevant State science, technology and environment authority with its appointed powers (as described in a or b, this section) shall be responsible for outlining or refusing to outline investment preference(s), case of refusal must provide a statement of reason(s), and sending written notification of its agreement or refusal to the relevant investment licence granting body within 15 days, commencing from the date of receipt of legal documents for requesting certification as a project to receive special investment preference(s).

d. In enjoying investment preference(s), commencing from the date production begins, the project developer must send reports (using the form provided in Appendix 3b attached to this Circular) to the relevant investment licence granting body and the relevant State science, technology and environment authority on an annual basis.

e. The relevant State science, technology and environment authority shall conduct inspections and examinations using its authorised powers to assure that the project fulfill its commitments. In cases where the project has not satisfied terms in this Circular, the investment licence granting body is authorised to withdraw investment preference(s) described in the investment licence and require the project developer to refund the preference(s) it should not have received.

g. A project developer has the right to send claims associated with investment preference(s) to the relevant authorities in accordance with regulations in the Law on Claims and Denouncement;

Chapter III

REGULATIONS ON REPORTING ENVIRONMENTAL IMPACTS

The establishment and assessment of reports on environmental impacts shall be implemented in observance with regulations in Government Decree No.75/CP, dated October 18, 1994, providing guidelines for implementing the Environmental Protection Law and the Ministry of Science, Technology and Environment's Circular No.490/1998/TT-BKHCMNT, dated April 29, 1998, providing guidelines for establishment and assessment of environmental impacts reports (hereinafter called Circular No.490/1998/TT-BKHCMNT) with the following amendments:

1. The time for assessing reports on environmental impacts shall not exceed 45 days, commencing from the relevant State environmental protection authority's receipt of legal documents. In cases of illegal documents, the assessment body shall be responsible for notifying the project developer of this illegality within five days of receiving the documents, and asking him

(her) to complete the documents. No more than ten days after the environmental impacts report is approved, the assessment body shall be responsible for issuing a decision approving the project's environmental impacts report.

2. The time for considering registration in observance of environmental standards and granting a relevant certificate shall not exceed 20 days commencing from the relevant State environmental protection authority's receipt of legal documents. In cases of illegal documents, the assessment body shall notify the project developer of this illegality while asking him

(her) to complete the documents no later than five days after receiving the documents.

3. The following projects are added to the list of projects required to submit environmental impacts reports as stated in Circular No.490/1998/TT-BKHCMNT:

- Waste processing projects.
- Waste and environmental pollution treatment projects.

Chapter IV

REGULATIONS ON THE IMPORT OF USED EQUIPMENT

1. These regulations are applicable to used machinery (individual or complete) used for manufacturing capital goods and other commodities; used means of transport, loading and unloading vehicles and machinery; used machinery and vehicles serving project construction; and other used specialised equipment of foreign invested projects.

Used equipment to be temporarily imported, re-exported, or leased for implementing goods manufacture contracts or for construction projects by contractors, and used equipment imported in the form of gifts and aid are not subject to this Circular.

2. Imported used equipment must satisfy standards on production, environmental protection and occupational safety and be stated in the project's technical-economic presentation attached to the documents in request of an investment licence.

Excluding used equipment and machinery prohibited from import (on the list of used equipment and machinery prohibited from import in section 3, as follows), the project developer shall decide and be held responsible for the technical-economic efficiency and any consequences associated with the import of used equipment and machinery.

Imported used equipment must satisfy the following terms:

- a. Retaining 80 per cent or more of its original quality.
- b. Meeting Vietnam's standards on occupational safety and hygiene and environmental protection.

Used equipment quality shall be approved through a quality certificate granted by a legal Vietnamese or foreign assessment organisation. This assessment organisation shall be responsible before Vietnam's law for its assessment conclusions.

The Ministry of Science, Technology and Environment and/or the investment licence granting body, when necessary, can require re-assessment of the used equipment to be imported.

Resolution of disputes between competing assessments shall be the responsibility of the Ministry of Science, Technology and Environment.

3. Used equipment prohibited from import

- a. Equipment used in the oil and gas processing and power industries; cement production lines, ore treating lines, metal production lines; and equipment used for producing basic chemicals, fertilisers and pesticides.

- b. Measuring and testing equipment used in the high precision manufacturing; and equipment used in the post and telecommunications network.
 - c. Equipment such as boilers, elevators, nuclear reactor control devices, testing and control systems.
 - d. Waste treatment equipment, dam gates and production line equipment that may harm the environment.
4. Special cases: Based on the written suggestion of centrally governed relevant ministries, branches or municipal or provincial People's Committees, the Ministry of Science, Technology and Environment will consider amending the list of used equipment allowed or prohibited for import.

Chapter V

IMPLEMENTATION PROVISIONS

This Circular shall take effect 15 days after the date of signing.

For projects observing the Law on Foreign Investment in Vietnam, this Circular replaces Circular No.2345/1998/TT-BKHCNMT, dated December 4, 1998; Circular No.1817/1999/TT-BKHCNMT, dated October 21, 1999; Circular No.1818/TT-BKHCNMT, dated October 21, 1999; Circular No.2019/1997/QD-BKHCNMT, dated December 1, 1997; and Circular No.491/1998/QD-BKHCNMT, dated April 29, 1998; all promulgated by the Ministry of Science, Technology and Environment.

Any problems faced in observing this Circular should be brought to the attention of the Ministry of Science, Technology and Environment for resolution.

MINISTER OF SCIENCE, TECHNOLOGY AND ENVIRONMENT

Chu Tuan Nha

1. Decision No. 2019/1997/QD-BKHCNMT of December 01, 1997 promulgating the regulation on general technical requirements for the import of used equipment
 2. Circular No. 2345/1998/TT-BKHCNMT of December 04, 1998 guiding the determination and recognition of high-tech enterprises operating under the law on foreign investment in Vietnam
 3. Circular No. 1818/1999/TT-BKHCNMT of October 21, 1999, guiding the determination and recognition of projects eligible for special investment encouragement under item 5, list i, appendix 1 of the Government's Decree No. 10/1998/ND-CP of January 23, 1998
 4. Circular No. 1817/1999/TT-BKHCNMT of October 21, 1999, guiding the certification of projects eligible for special investment encouragement specified in item 7, list i, appendix i of the Government's Decree No. 10/1998/ND-CP of January 23, 1998
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