

Decree on BT officially issued: Thoroughly overcoming violations of 'changing land for infrastructure'



VCN - After more than 10 drafts, reports, receiving explanations and completion of the Government's Decree No. 69/2019 / ND-CP on regulating the use of public assets to pay investors when implementing construction investment projects in the form of build-transfer contract (BT) was officially issued.

This is one of the most anticipated regulations among the guiding documents on the Law on Public Property Management and Use, which is expected to solve difficulties and obstacles in using public assets to pay BT investors.

Guarantee on equal price

Compared with the current regulations on payment mechanisms for investors when implementing BT projects, in addition to the land fund payment mechanism inherited from Decision No. 23/2015 / QD-TTg of the Prime Minister prescribing the State mechanism of payment by land fund to investors when implementing the investment project of construction in the form of BT, the Decree has supplemented the use of some other public assets to pay for investors. Assets include: Land fund; land, houses and other assets attached to land of state agencies, public non-business units; infrastructure assets in service of national interests and public interests; other types of public assets according to the Law on Public Property Management and Use.

The principle of paying BT projects with public assets is also clearly defined. Mr. La Van Thinh, Director of the Department of Public Property Management, Ministry of Finance, said the determination of principles is very difficult but must specify that the value of public assets must be determined according to market prices and regulations of law at the time of payment. Decree 69 regulates the use of public assets to pay investors when implementing BT projects on the principle of equal value of BT projects equivalent to the value of public assets paid. Specifically, the value of public assets is determined according to market prices prescribed by law at the time of payment. The BT project value is determined by bidding results. This is an issue emphasized by the Ministry of Finance, because if implementing the principle of price parity, it is impossible to "build a bridge for VND200 billion and allocate a land plot of VND2,000 billion".

One of the new points compared to the previous regulation on the use of public assets to pay BT investors must be aggregated and reflected in the state budget. The time for the case of payment by land fund is the time when the provincial People's Committee issues a decision to allocate or lease land to investors; The time of payment for infrastructure assets and other public assets is the time when competent state agencies issue decisions to hand over assets to investors. Notably, the loan interest in the financial plan of the BT contract for the value of the BT project completed according to the schedule ends from the time that competent state agency issues the land allocation decision, lease land, and give property to investors.

Using "clean land"

Regarding the valuation of BT projects, Decree 69 clearly defines the calculation method. Specifically, the value of projects recorded in BT contracts for payment is determined according to bidding results and does not change from the date the BT contract is signed, unless the competent state agency permits adjustments to the scale, technical design, compensation and site clearance costs of BT projects, loan interests in the financial plan of the BT contract in accordance with the provisions of law, resulting in changes in the projected value BT projects. The value of BT projects for payment is the value settled according to the provisions of law. This is an important principle, avoiding arbitrary adjustment of BT projects.

The use of land fund for investors in recent years has been effective through mobilizing resources from the private sector and providing public services, reducing pressure on the state budget. Therefore, the Decree also stipulates the use of public assets as land fund to pay BT investors.

Two groups of land funds used for payment to investors include: land which has not been cleared and land cleared (or clean land). The selection of land fund to investors must ensure that land belongs to land use planning and plans approved by competent state agencies. The land acquisition for the land fund paid to investors must comply with regulations. In case the land fund has been cleared for payment to investors, the provincial People's Committee shall report to the Prime Minister for consideration and decision before deciding the investment policy. Similarly, if using an office to pay investors, they must report to the Prime Minister.

In addition, the value of the paid land fund is actually the value of the land fund after being adjusted according to the BT contract appendices and ensuring the principle of price parity, the value of the BT project is equivalent to the value of the asset of paid products. Thus, if the provincial People's Committee uses "clean land" to pay BT investors, it must report to the Prime Minister and at the same time comply with the principle of price parity. According to Mr. La Van Thinh, the new decree will thoroughly overcome the mistakes when implementing "changing land for infrastructure".

Another important provision mentioned is transitional processing to guide implementation for projects signed before 2018 (when the Law on Public Property Management and Use takes effect). The Decree stipulates, for BT contracts paid by land fund, working offices for investors implementing BT projects have been signed in accordance with the provisions of law at the time of signing BT contracts before the date 1/1/2018, which has not yet completed the payment to investors, shall continue to make payment according to the contents of the signed contract. In case the contents related to payment are not clearly specified in the BT contract, the provisions of the 2013 Land Law, the 2014 Investment Law, the 2014 Construction Law, the State Budget Law In 2015, the 2017 Law on Public Property Management and Use and related laws take effect at the time of payment. Accordingly, the determination of the value of BT projects must comply with the provisions of the law on investment, construction and relevant laws.

Decree 69 will officially take effect from October 1, 2019 and does not require a circular.

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