

Client Alert

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Draft Decree on the issuance and management of government guarantees as the result of the new Public Debts Management Law 2017

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Within a year, Vietnam's Belt on Sovereign Guarantees is being tightening again.

Decree No. 04	2015 State Budget Law	2017 Public Debts Management Law	Draft Decree
<i>Effective: 1 March 2017</i>	<i>Effective: 1 January 2017</i>	<i>Effective: 1 July 2018</i>	<i>Anticipate: 1 July 2018</i>
<ul style="list-style-type: none"> Longer planning stage Stricter conditions on eligibility Lower cap on guaranteed amount with higher fees 	<ul style="list-style-type: none"> Better control of State budget and public debts Transitional period between Decree No. 04 and Public Debts Management Law 2017 	<ul style="list-style-type: none"> Tighten the belt on the public debts regime, including GGU Increase room for domestic players in traditional PPP structures 	<ul style="list-style-type: none"> Guarantee limit, not plan No exception for guarantee fee Extra condition for M&A for project company MOJ and the Borrower regarding legal opinion No consultation with SBV

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This note highlights the common key provisions as well as differences between Decree No. 04 and the Draft Decree¹, in which sponsors and lenders alike can anticipate in tightening the belt on Vietnam's sovereign guarantees.

Same conditions and rationale

Since 1 March 2017, Decree No. 04 imposes on both domestic sponsors and foreign lenders with a stricter regime with respect to issuing government guarantees and undertakings (**GGU**) in Vietnam.² It requires a longer planning stage, stricter conditions for eligibility, lower cap on guaranteed amount with higher fees. Those restrictions remain in the Draft Decree.

Both Decree No. 04 and the Draft Decree have the same rationale, which is to tighten the belt on Vietnam's sovereign guarantee and better control public debts. Under this stricter regime, whether or not it is the government's intention, there could be one possible consequence in the power and

¹ Available on MOF web page, link: http://www.mof.gov.vn/webcenter/portal/btc/r/cd/dtvtb/ctdtvtb?id=14045&_afLoop=22615435694887574#!%40%40%3F_afLoop%3D22615435694887574%26centerWidth%3D0%2525%26id%3D14045%26leftWidth%3D100%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3D10fdcf76n0_107, accessed on 06 December 2017.

² Decree No. 04/2017/ND-CP dated 16 January 2017 by the Government on the issuance and management of government guarantee ("**Decree No. 04**").



infrastructure sector, where only domestic investors (rather than foreign lenders alike) could engage the Vietnam government's involvement in traditional public-private partnership structures, which have been historically overlooked in Vietnam.

Guiding Decree from changes in Legislations

Decree No. 04 continues to operate as a guiding Decree for the 2002 State Budget Law³ and the 2009 Public Debt Management Law.⁴ However, since 1 January 2017, Vietnam has been on a new State budget regime due to the effectiveness of the 2015 State Budget Law.⁵ In addition to that, from 1 July 2018, Vietnam's belt on sovereign guarantees is getting tighter and harder due to the 2017 Public Debt Management Law.⁶ Given substantial changes in the above two legislations, both in term of their contents and approaches, this could be the right time for the new guiding Decree to implement the 2017 Public Debt Management Law.

From a guarantee plan to a guarantee limit terminologies

In regard of terminology, the government employs the term of "guarantee limit" instead of "guarantee plan". The Draft Decree introduces Article 6 regarding the development of the 5-year government guarantee limit, which will be the base to build the government guarantee limit for the period of 3 years and annually. Under the Draft Decree, in case of necessity and special circumstances, any changes of the 5-year government guarantee limit within the adjustment plan criteria for public debt must be submitted by the government to the National Assembly for review and approval.

No exemption of guarantee fee

Article 34 of the Draft Decree no longer includes any exception of guarantee fee that was previously applicable to special projects, which were approved in principle by either the National Assembly, government or Prime Minister as provided in Article 29.5 of Decree No. 04.

However, the guarantee fee schedule is applicable to project companies, which are classified into two groups: (1) project type: (i) projects with an offtake agreement or (ii) other projects, and (2) financial capacity ratio of project company.

Extra condition for M&A transactions of project company

Article 42.7 of the Draft Decree requires that under a GGU, a split, separation, merger, consolidation, or conversion of a project company must not increase the government's obligations as a guarantor. Those transitions

³ Law No. 01/2002/QH11 adopted on 16 February 2002 by the National Assembly on State Budget (the "**2002 State Budget Law**")

⁴ Law No. 29/2009/QH12 adopted on 17 June 2009 by the National Assembly on Public Debt Management (the "**2009 Public Debts Management Law**")

⁵ Law No. 83/2015/QH13 adopted on 25 June 2015 by the National Assembly on State Budget ("**2015 State Budget Law**")

⁶ Law No. 20/2017/QH14 adopted on 23 November 2017 by the National Assembly on Public Debt Management ("**2017 Public Debts Management Law**")



must be reported to the Ministry of Finance (MOF) and approved by the Prime Minister.

Clearer relationship between Borrower and the Ministry of Justice (MOJ)

Article 58.2 of the Draft Decree clearly states that the scope of negotiation between the Borrower and the MOJ regarding the issuance of legal opinions is about the guarantee letter and the government as a guarantor.

No more consultation with the State Bank (SBV)

Article 60 of the Draft Decree only keeps two tasks for the SBV, which are (i) to certify or register foreign loans for the Borrower as a guaranteed subject with the issuance of the GGU by the MOF, and (ii) to update the credit information system of the State Bank of Vietnam with information related to the status of the guaranteed loan at international credit institutions and banks' branches.