BUSINESS
LAW FIRM

NGHỊ ĐỊNH 256/2025/NĐ-CP

QUY ĐỊNH CHI TIẾT VỀ VIỆC XÂY DỰNG DỰ ÁN ÁP DỤNG LOẠI HỢP ĐỒNG XÂY DỰNG – CHUYỂN GIAO

DECREE 256/2025/NĐ-CP

DETAILED REGULATIONS ON PROJECT CONSTRUCTION APPLICATION FOR BUILD – TRANSFER CONTRACT

2025
OCTOBER

MONTHLY
HIGHLIGHT
NO.1

EVALUATING NEW POINTS OF DECREE NO. 256/2025/ND-CP OF THE GOVERNMENT OCTOBER 3, 2025 DETAILED REGULATIONS ON PROJECT CONSTRUCTION APPLICATION FOR BUILD – TRANSFER CONTRACT

Previously, in 2021, the Law on Investment under the Public-Private Partnership Method 2020 (PPP Law 2020) stopped implementing BT contracts for new investment projects due to some shortcomings such as the value of BT works being determined inaccurately, most projects having higher investment rates than projects using public investment capital, the selection of investors was mainly carried out through the form of non-competitive bidding; supervision work was neglected leading to unsatisfactory quality of works, etc. Later, Article 45 of the PPP Law 2020 was amended and supplemented by Law No. 57/2024/QH15 and re-added provisions on BT contracts with the expectation of mobilizing resources from the private sector, helping to reduce pressure on public investment capital to meet the increasing demand for investment in infrastructure system development. On October 3, 2025, the Government issued Decree No. 256/2025/ND-CP detailing the construction of projects applying the type of build-transfer contract (hereinafter referred to as "Decree 256/2025/ND-CP"), consisting of 06 Chapters with 33 Articles and taking effect immediately upon signing. Accordingly, the new Decree will have notable new points as well as correct the previous shortcomings that caused the project applying the type of Build-Transfer Contract (BT Contract) to be suspended for a period of time until now as follows:

Firstly, on the scope of regulation and subjects of application. Decree 256/2025/ND-CP was issued to specify the provisions of the PPP Law, focusing on the implementation of projects applying the Build-Transfer contract type (BT project), including: Article 11 on the process of implementing BT projects; Article 42 on the method of evaluating bidding documents; Point a, Clause 2a, Article 45 on BT projects paid by land funds; Point b, Clause 2a, Article 45 on BT projects paid by state budget. This Decree does not apply to BT projects that do not require payment as prescribed in Point c, Clause 2a, Article 45 of the PPP Law. For BT projects paid by land funds, the mechanism for managing project finance and loan interest after the construction period shall comply with the Government's regulations on the mechanism for managing investment project finance under the public-private partnership method and the payment and settlement mechanism for projects applying the BT contract type. Decree 256/2025/ND-CP applies to organizations and individuals participating in or related to the implementation of BT projects within the scope of this Decree.

Second, on determining land funds and public assets to pay BT project investors. One of the most important highlights of Decree 256/2025/ND-CP is to establish a transparent and strict payment land fund management mechanism.

- Article 6 of Decree 256/2025/ND-CP stipulates the land fund expected to be paid to investors implementing BT projects paying by land fund. Accordingly, in the process of preparing a pre-feasibility study report or an investment proposal report, the competent authority or the investor proposing the project must coordinate with the provincial-level state land management agency to determine the land fund expected to be paid to the investor according to the conditions and principles stated below.

- Regarding the conditions, the land fund used for payment must be subject to State recovery or managed by State agencies and organizations according to Article 217 of the Land Law, except for the case of working headquarters or public service establishments; in some cases where there is interspersed land, the State will recover the entire land for allocation or lease without having to go through auction or bidding. The land fund for payment must also be consistent with the planning approved by competent authorities.
- In principle, the value of the land fund expected to be paid is determined on the principle of ensuring that it is equivalent to the total investment of the BT project, with a possible difference of no more than 10%; if it is lower than 90%, a combination of payment by land and state budget can be applied; if it is necessary to immediately implement important infrastructure projects under the direction of the Party, the State or the resolution of the People's Council or People's Committee, a land fund with a value 110% higher than the total investment can be considered. The value of the land fund expected to be paid must be shown in the pre-feasibility study report or the investment proposal report, in accordance with the approved land price list at the time of making the report. In case the land fund expected to be used for payment is land managed by a State agency or organization, the Provincial People's Committee will assign a specialized agency or affiliated unit to prepare a list of expected land funds, and submit it to the Provincial People's Council for consideration and approval. This is an important innovation compared to Decree 69/2019/ND-CP dated August 15, 2019 of the Government regulating the use of public assets to pay investors when implementing construction investment projects in the form of BT contracts. Accordingly, while previously, Decree 69/2019/ND-CP required the principle of absolute parity between land fund value and BT project value, accompanied by a complicated valuation process through many levels, even in some cases reporting to the Prime Minister, Decree 256/2025/ND-CP has opened up a more flexible mechanism. The method of determining land value in the new Decree is also simpler, based directly on the annual land price list and referring to similar areas if there is no price, and at the same time deducting compensation, support and resettlement costs. In terms of scope, Decree 256/2025/ND-CP clearly stipulates that land funds only include land managed or recovered by the State, excluding headquarters of agencies and public service establishments, and assigns the Provincial People's Council to approve the list of land funds instead of reporting to the Central Government. Thus, it can be seen that Decree 256/2025/ND-CP inherits the basic principles of Decree 69/2019/ND-CP on the use of land funds for BT payments, but at the same time promotes decentralization, increases flexibility and simplifies procedures, thereby facilitating project implementation, but also poses challenges in terms of transparency and supervision in practice.
- Article 7 of Decree 256/2025/ND-CP stipulates the Land Fund and public assets expected to be auctioned to pay investors implementing BT projects with payment from the state budget. Accordingly, in the process of preparing a pre-feasibility study report or a report proposing an investment policy, the competent state agency or the investor proposing the project must coordinate with the specialized agency managing public assets to determine the land fund and public assets expected to be auctioned to create a source of payment for investors implementing BT projects. The auction of land use rights and public assets must comply with

the provisions of the law on land, the law on management and use of public assets as well as the law on asset auction, ensuring a transparent and public process. The proceeds from the auction will be paid directly to the state budget and used to pay investors under the BT contract, and this amount does not have to be included in the medium-term public investment plan. This regulation has an important meaning in establishing a transparent payment mechanism for BT projects funded by the state budget, which requires land funds and public assets to be put up for public auction in accordance with the law on land, public asset management and asset auction. This mechanism ensures that the value of public assets is determined according to the competitive market, avoiding the risk of loss. On the other hand, this regulation also designs a strict financial mechanism when all proceeds from the auction must be paid into the state budget before being used to pay investors.

Third, about the BT project implementation process. At Article 4 of Decree 256/2025/ND-CP has standardized the entire BT project implementation process for each group as follows:

(i) BT projects are under the authority of the National Assembly to decide on investment policies (Clause 1);

(ii) BT projects paid by state budget or BT projects combined with payment by land fund and state budget, except for projects specified in Clause 1 and Clause 4 of this Article (Clause 2);

(iii) BT projects are paid by land fund, except for projects specified in Clause 1 and Clause 4 of this Article (Clause 3);

(iv) BT projects paid by land fund proposed by investors are subject to investor designation as prescribed in the PPP Law, except for projects specified in Clause 1 of this Article (Clause 4).

The BT project implementation process stipulated in Article 4 of Decree 256/2025/ND-CP is built relatively comprehensively, tightly and in accordance with the provisions of the PPP Law 2020. The process is clearly divided according to each form of payment (by state budget, by land fund, or combination), as well as by the authority to decide on investment policies, helping agencies and investors easily determine responsibilities and implementation procedures. A prominent positive point is the permission to carry out a number of procedures at the same time (such as appraisal, approval of technical design, estimates with the process of selecting investors), thereby shortening the time for project preparation and implementation. However, this process still requires close coordination between many state management agencies, which can easily lead to delays if there is no effective monitoring mechanism. In addition, the detailed regulations on the steps from preparing and appraising the feasibility study report to signing the contract contribute to increasing transparency, but also increase the requirements on the management and technical capacity of the participating parties. In general, the process in Article 4 demonstrates the effort to perfect the legal framework to ensure feasibility, publicity and transparency in the implementation of BT projects.

Compared with previous regulations on BT projects in Decree 108/2009/ND-CP, Decree 15/2015/ND-CP and Decree 63/2018/ND-CP, Article 4 of the current Decree has inherited but at the same time shows many important innovations. While previous decrees mainly regulated the process of implementing BT projects in a general direction, without clearly distinguishing by payment source and form of project proposal, Article 4 now specifically defines the process for each type of project: BT under the authority of the National Assembly, BT paid by budget, BT paid by land fund, and BT proposed by investors. In addition, the new Decree also allows for the simultaneous implementation of a number of procedures (such as technical design appraisal, cost estimates, and investor selection process) to shorten implementation time, while more closely linking with land and public investment laws in cases where it is necessary to decide on the policy of changing land use purposes. In general, Article 4 not only inherits the spirit of strict management of previous decrees but also adds a more flexible and transparent mechanism.

Fourth , on the forms of selecting investors to implement BT projects and ensure competition. Decree 256/2025/ND-CP stipulates the forms of selecting investors to implement BT projects, including:

(i) Open bidding as prescribed in Article 37 of the PPP Law;

(ii) Competitive negotiations as prescribed in Article 38 of the PPP Law;

(iii) Designate investors according to the provisions of Article 39 of the PPP Law and Clause 3 of this Article (Projects need to accelerate progress, promote socio-economic development, ensure national interests as proposed by investors and approved by competent authorities in cases of investor designation according to the provisions of Point d, Clause 1, Article 39 of the PPP Law);

(iv) Selection of investors in special cases as prescribed in Article 40 of the PPP Law and Clause 4 of this Article (The project applies the form of selection of investors in special cases as prescribed in Clause 1, Article 40 of the PPP Law).

A highlight of the Decree is that in addition to detailing the process of selecting investors in the familiar form of open bidding and competitive negotiation, the Decree provides more specific regulations on the conditions for applying designated bidding and special cases. For the selection of investors in special cases, the evaluation criteria are clearly designed: from financial capacity, capital mobilization ability, project implementation experience, to history of disputes and complaints. In particular, the bidding documents must eliminate conditions that restrict competition, and the results of selecting investors, as well as the signed contracts, must be made public. This shows the orientation of increasing transparency, minimizing the risk of "backyard" , contributing to creating an equal competitive environment for investors.

Fifth, on contracts and payment mechanisms. Decree 256/2025/ND-CP clearly defines the forms of BT contracts associated with payment methods: by budget, by land fund or a combination of both, while previously the content of BT contracts was often regulated in general, applicable to both payment methods. This new point helps clarify the characteristics of each form, avoiding the situation of sketchy contracts or lack of control provisions. For payments by budget, disbursement is linked to the medium-term and annual public investment plan. This is a new point compared to Decree 69/2019/ND-CP, when previously payment was mainly linked to the contract and the ability to balance the budget, not closely tied to the capital plan. This demonstrates the tightening of budget discipline, ensuring that BT costs do not exceed the ability to allocate public capital. For payments by land fund, the contract must specifically stipulate the land fund, land allocation/lease method, land fund value and the principle of compensation for differences. At the same time, Decree 256/2025/ND-CP separates three situations when paying by land fund: Payment of land fund in general (Article 20), Payment of land fund managed by the State (Article 21); Payment of land fund subject to recovery (Article 22). This is an important new point compared to Decree 69/2019/ND-CP, which only provides general regulations on land fund payments . This detailed division reflects more careful management, because each type of land fund has different legal and procedural characteristics.

Besides, one of the other outstanding regulations is the mechanism for offsetting the difference between the value of BT project works and the value of the land fund for payment. Article 23 of Decree 256/2025/ND-CP inherits the basic principle set out in Decree 69/2019/ND-CP, which is that if the value of the BT project and the value of the land fund paid are not equal, the difference must be handled transparently or the investor must pay additional money to the budget, or the State must pay more to the investor. However, the new regulation in Decree 256/2025/ND-CP has specified this mechanism in more detail, and at the same time added more diverse handling scenarios. Instead of just generally regulating the handling of differences after settlement, Decree 256/2025/ND-CP clearly separates three compensation methods according to each form of payment as follows:

(i) One-time compensation of the difference after completing the entire project and making final settlement of the value of the BT project for projects applying the payment method prescribed in Clause 2, Article 16 of Decree 256/2025/ND-CP;

(ii) Offset the difference for each payment for projects applying the payment method prescribed in Clause 3, Article 16 of Decree 256/2025/ND-CP;

(iii) Offset the difference at the time of land fund payment after signing the BT project contract and at the time of final settlement of BT project works for projects applying the payment method prescribed in Clause 4 or Clause 5, Article 16 of Decree 256/2025/ND-CP.

Notably, Clause 5 of Article 23 of Decree 256/2025/ND-CP has added a mechanism for deducting financial obligations on land. Accordingly, if at the time of payment, the BT project has a higher value than the land fund and the State must pay more to the investor, and at the same time the investor has financial obligations on land (such as land use fees, land rent) in the same province, the difference in value with this obligation can be deducted. Decree 256/2025/ND-CP also emphasizes the investor’s responsibility in case the final settlement value of the project is higher than the approved estimated value. In that case, the investor must bear the entire difference, instead of being recalculated for the State to compensate. This is a cost control mechanism, preventing capital increase or increasing the total investment during the implementation process.

Sixth, on the transfer of BT project works. Based on the inheritance of the stable regulations of Decree No. 35/2021/ND-CP dated March 29, 2021 of the Government detailing and guiding the implementation of the PPP Law, Decree 256/2025/ND-CP stipulates the transfer of BT project works in Article 31 and Article 32 in the following direction: After the BT project works are accepted and meet the conditions for exploitation and use according to the provisions of the law on construction, the investor and project enterprise (if any) prepare a dossier requesting the transfer of BT project works and send it to the competent authority for confirmation and acceptance of the transfer, management, operation and exploitation of the works. Except in the case of early termination of the project contract, the BT project works can only be accepted when the investor and project enterprise (if any) ensure that they fully meet the following conditions:

(i) Construction of BT project works must comply with the standards and regulations prescribed by the law on construction, the law on management of the industry, field and

relevant laws; comply with the provisions of the project contract;
(ii) BT project works are not under any mortgage, pledge or any other ownership restrictions;
(iii) The BT project works fully meet the required functions, capacity and quality in accordance with the technical, technological and quality requirements specified in the project contract at the time of transfer, and are eligible for continued use in accordance with the provisions of law.

Seventh, on the implementation of counterpart projects. Article 32 of Decree 256/2025/ND-CP stipulates the implementation of counterpart projects, i.e. projects used to generate payment resources for BT projects. The highlight of this provision is to emphasize the principle that all procedures of counterpart projects must comply with the laws on investment, land, planning and related laws, thereby bringing counterpart projects back to the common legal framework instead of “prioritizing” or “relaxing” as before. In particular, in the case where the competent authority deciding on the investment policy of the counterpart project is also the authority deciding on the BT project, the investor is allowed to carry out land, investment and planning procedures in parallel right in the BT project preparation stage, helping to shorten the progress and create a connection between the two types of projects. At the same time, the law also sets out clear responsibilities for investors and project enterprises in carrying out procedures for approving investment policies and approving investors for counterpart projects, as well as implementing projects in accordance with approved decisions. Finally, competent state agencies are assigned the role of supervision, ensuring that investors fully implement their commitments. It can be seen that Article 32 both creates a flexible mechanism to synchronize administrative procedures between BT projects and counterpart projects, while ensuring transparency and legal discipline, limiting the situation of taking advantage of the counterpart mechanism to legalize land or public assets.

Thus, it can be seen that Decree No. 256/2025/ND-CP detailing the construction of projects applying the type of build-transfer contract has been researched and developed in the direction of comprehensively innovating the implementation and payment methods for investors, overcoming the maximum inadequacies and obstacles in the implementation of the previous type of BT contract, while ensuring feasibility and consistency with other legal regulations. The promulgation of the Decree is expected to create conditions to improve the effectiveness and efficiency of state management of projects applying the type of BT contract paid by land fund, BT contract paid by state budget, especially resources and payment methods for investors and project enterprises.

HA NOI HEAD OFFICE

Suit 12B05, M5 Building, 91 Nguyen Chi Thanh, Tay Ho Ward, Ha Noi City

HOCHIMINH OFFICE

115 Dang Van Ngu, Phu Nhuan Ward, HCM City

HAI PHONG OFFICE

161/41 Thien Loi, An Bien Ward, Hai Phong City

CONTACT

Phone: (+84) 24 62751708
Fax: (+84) 24 62751707
Email: info@blf.com.vn
Website: https://blf.com.vn