BỘ NGOẠI GIAO	**CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM** **Độc lập - Tự do - Hạnh phúc**
Số: 38/2017/TB-LPQT	*Hà Nội, ngày 30 tháng 10 năm 2017*

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định tại Điều 56 của Luật Điều ước quốc tế năm 2016, Bộ Ngoại giao trân trọng thông báo:

Hiệp định "Chương trình hợp tác tài chính V" giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Vương quốc Tây Ban Nha (FCV-V), ký tại Ma-đơ-rít ngày 24 tháng 5 năm 2017, có hiệu lực kể từ ngày 24 tháng 5 năm 2017.

Bộ Ngoại giao trân trọng gửi bản sao Hiệp định theo quy định tại Điều 59 của Luật nêu trên./.

TL. BỘ TRƯỞNG
VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ

Lê Thị Tuyết Mai

V FINANCIAL COOPERATION PROGRAM

between

The Government of the Socialist Republic of Viet Nam

and

The Government of the Kingdom of Spain

concerning

general terms, procedures and institutional arrangements for financing projects in the Socialist Republic of Viet Nam using the Spanish Fund for the Internationalization (FIEM)

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The Government of the Socialist Republic of Viet Nam and the Government of the Kingdom of Spain

Wishing to strengthen the links of friendship and goodwill between the two countries,

Wishing to deepen the bilateral cooperation and to increase the level of economic relationship between both countries,

With the intention to maintain favourable conditions for the implementation of projects of mutual interest after four bilateral Financial Cooperation Programs developed during almost two decades,

Have agreed as follows,

1. Definitions

In the present V Financial Cooperation Program,

a) The expression "Viet Nam" means the Government of the Socialist Republic of Viet Nam.

b) The expression "Spain" means the Government of the Kingdom of Spain.

c) The expression "MPI" means the Ministry of Planning and Investment of Viet Nam.

d) The expression "MOF" means the Ministry of Finance of Viet Nam.

e) The expression "FIEM" means the Spanish Fund for the Internationalization.

f) The expression "MEIC" means the Ministry of Economy, Industry and Competitiveness of Spain.

g) The expression "SEC" means the State Secretariat for Trade, under the MEC.

h) The expression "ICO" means Instituto de Crédito Oficial. ICO is the Spanish State Finance Agency.

i) The expressions "the parties" or "both parties" mean the Government of the Socialist Republic of Viet Nam and the Government of the Kingdom of Spain.

2. Brief Introduction to FIEM

The Spanish Fund for the Internationalization (FIEM) is a financial facility managed by the SEC, through the Directorate General for International Trade and Investment, with the purpose of promoting the internationalization of Spanish companies by providing medium and long term financing.

Refundable concessional financing under FIEM is offered as a soft credit to non-resident public entities to support export operations or turnkey projects executed by Spanish companies abroad. According to the OECD Arrangement on Officially Supported Export Credits (hereinafter OECD Arrangement), this type of concessional reimbursable financing requires three basic conditions: the recipient country must be eligible for tied aid (low-middle income or lower according to the World Bank), the project must be commercially nonviable, and the public buyer must offer sovereign guarantee.

3. Spanish Committed Funding

MEIC will make available to the MPI a total amount of **305 million euros**, for projects to be carried out by Spanish firms. The said total amount will be distributed as follows:

3.1 Spain puts at the disposal of Viet Nam **up to 275 million euros** in credits in concessional terms to finance the following packages of **Line 5 of the Ho Chi Minh City's Metro Railway System**:

- EP1: Rolling Stock; Equipment in Stabling Yard; Equipment in Stations; The Overhead Line Electrification System.
- EP2: Power Supply.

- EP3: Track, rails, fastenings and switches.
- EP4: Signalling, Communications and Ticketing (Common Systems).
- FEED (Front End Engineering Design) Verification Consultant Services
- Project Management Consultant Services

3.2 Spain will also finance other **projects up to 30 million euros** in credits in concessional terms prioritized by mutual agreement as described in Annex II.

3.3 Additional facilities could be available for **co-financing** projects or project components awarded to Spanish companies through tender financed by multilateral financial institutions or through international tenders issued with Viet Nam´s own financing.

4. General Objectives

4.1 To continue the financial cooperation between Viet Nam and Spain, Spain has agreed to make the FIEM available for financing projects that make a clear contribution to the economic and social development of Viet Nam, primarily in the following fields:

a) Economic infrastructure, involving directly or indirectly mass, land and air transportation
b) Energy and renewable energies
c) Telecommunications
d) Water Management
e) Solid Waste Treatment

4.2 To support the internationalization of Spanish companies, FIEM credits will be tied and finance the total or partial cost of projects prioritized by both parties. In particular:

- Up to 100% of good and services of Spanish Origin
- Local expenses and third countries' goods and services could amount up to 30% of the total value of the exported goods and services.

5. Financial Terms

5.1 FIEM will be provided in accordance with OECD Arrangement.

The concessionality level of FIEM credits will be **35 per cent**.

According to the OECD Arrangement (Art. 40) the discount rate used to calculate the concessionality level of a loan in a given currency, *i.e.* the Differentiated Discount Rate (DDR), is subject to annual change on 15 January and is calculated as follows:

– The average of the Commercial Interest Rate of Reference of the OECD (CIRR) plus a margin depending on the repayment term.

– For all currencies the average of the CIRR is calculated taking an average of the monthly CIRRs valid during the six-month period between 15 August of the previous year and 14 February of the current year. The calculated rate, including the Margin, is rounded to the nearest ten basis points.

5.2 The specific financial terms of each credit will be submitted to the Vietnamese party on a yearly basis by MEC, and notified for the list of projects of each year. Some examples of financial terms for projects in 2016 are attached in Annex I.

5.3 Financial agreements related to concessional credits will be implemented in accordance with internal laws of both countries. Such agreements will be negotiated and signed by ICO and MOF, both acting as representatives of, and duly empowered by, their respective governments.

6. Government debt

6.1 Each credit will abide by the rules of OECD Arrangement and by the respective international and institutional commitments of both parties.

As described in the Project Cycle Procedures attached in **Annex II**, before each credit is submitted to the Spanish Council of Ministers for final approval, MOF will submit a letter confirming the acceptance of the financial conditions.

According to current applicable laws and regulations of Viet Nam (including Law on Public Debt Management), any credit agreement duly executed by MOF for and on behalf of Vietnamese Government, shall be treated as a direct public debt of Viet Nam and consequently constitute a binding and direct liability for Vietnamese Government.

7. Projects Eligible for Financing

FIEM will not finance operations involving exports of defence, paramilitary and police materials intended to be used by armies, police and security forces or counterterrorism services.

FIEM does not finance projects related to certain basic social services, such as education, health and nutrition.

8. Procurement Rules and Commercial Contracts

8.1 Commercial contracts to be financed with soft credits under paragraphs 3.1 and 3.2 of this Financial Cooperation Program should be based on **a competitive bidding procedure restricted to Spanish bidders** (all bidders must be Spanish according to the Spanish Law) according to procedures established in Annex II.

Different procedure of awarding to a Spanish company could be agreed between MPI and MEIC on exceptional cases.

8.2. The restricted tender will be carried out by the Vietnamese Authorities in accordance with the Vietnamese law, although the Spanish authorities will guarantee that the awarding process complies with the principles of the Spanish legal system.

8.3. Commercial contracts to be financed with soft credits under paragraph 3.3 should follow the procedures established in the guidelines of Annex III.

9. Technical Assistance for projects

In order to foster bilateral cooperation and to provide the necessary technical support to get a smooth implementation of projects, a Spanish State-owned company at the service and under the supervision of SEC could be entrusted to carry out technical assistance in the definition, bidding process, follow-up and monitoring of the implementation, and ex-post evaluation of the projects and feasibility studies, if necessary. After due consultation with MPI, MEIC will define the specific tasks to be carried out by this company in each project.

Fees for consultation and technical assistance of the projects will be borne by the Spanish side.

10. Supervision of the implementation of this Financial Cooperation Program and review of the projects

10.1 The parties will whenever deemed necessary by any of them review progress and discuss a pipeline for projects to be financed under this Financial Cooperation Program. A bilateral Finance Working Group, consisting of representatives of both countries will supervise the implementation of this Program, including review of progress, agreement on pipeline of projects and any other matter arising. It will meet at last once every two years.

10.2 The Spanish party will be empowered to carry out as many field visits and project checks as deemed necessary. The Vietnamese party will facilitate these missions and will provide all the relevant information on the projects to be inspected. All Project Management Units (PMU) or project implementing agencies must have a project manager for monitoring and liason tasks between the PMU, the Spanish authorities and the Spanish seller.

11. Currency

All documents related to this Financial Cooperation Program, including the commercial contracts, shall be denominated in euros.

12. Tariffs, Taxes and Duties

Tariffs, duties and taxes levied on imported goods and services into Viet Nam will not be financed through the facilities established under this Financial Cooperation Program.

13. Evaluation

MEIC has the right to entrust to an independent body an ex post evaluation of the implemented project, in order to check the extent to which the operations have reached their goals and targets. MPI and MEIC will conclude over project quality.

14. Disputes Settlement

Any dispute concerning the interpretation or implementation of the Financial Cooperation Program shall be settled by negotiation between the parties to this agreement.

15. Entry into Force, Alterations and Termination

The Financial Cooperation Program shall enter into force on the date of signature and be valid for a period of **four** (4) **years**.

Once the FCP-V has entered into force, the FCP-IV will immediately expire. The remaining funds of the FCP-IV, if any, will be added to the available facilities established in Article 3.2, under the conditions laid out in the new Program.

In any case, projects which are currently implemented under the FCP-IV and those for which the tender has been already launched will enjoy the financial terms of the FCP-IV until the expiry of the contract.

Either Party may suggest alterations. Such suggestions shall be submitted to the other Party in writing, in the English language. Alterations shall enter into force when duly signed by both parties.

The approval of the individual agreements arising thereof must fulfil the requirements established by the respective national laws of Viet Nam and Spain.

In case the above mentioned committed funds are not fully used up by the mentioned expiry date, the contracting parties may extend the validity period of the present Financial Cooperation Program by mutual agreement in written form in the English language.

Either party may terminate this Financial Cooperation Program at any time by notifying the other party in writing, in the English language, of its intention to terminate this Financial Cooperation Program. In this case, the Financial Cooperation Program shall terminate ninety (90) days after the date of receipt of such notification.

Signed in Madrid on the 24th of May 2017 in two copies in the English language.

The Vice Minister of Ministry of Planning and Investment of the Socialist Republic of Viet Nam	The Secretary of State of Trade of the Kingdom of Spain
Nguyen Van Hieu	María Luisa Poncela García

ANNEX I
SET OF POSSIBLE FINANCIAL CONDITIONS

First example:

Repayment period: 33 years.
Grace period: 17 years.
Currency of disbursement: euros
Interest rate: 0,2%
Concessionality level: 35,165% (DDR 2 %)

Second example:

Repayment period: 35 years.
Grace period: 15 years.
Currency of disbursement: euros
Interest rate: 0,2%
Concessionality level: 35,037% (DDR 2%)

Third example:

Repayment period: 29 years.
Grace period: 20 years.
Currency of disbursement: euros
Interest rate: 0,10%
Concessionality level: 35,199% (DDR 1,9%)

These three alternative conditions are valid **until the 14th January 2018.**
As from this date, new conditions will be sent at the request of Vietnamese Authorities, according to the DDR in force.

ANNEX II

PROJECT CYCLE PROCEDURES
V FINANCIAL COOPERATION PROGRAM

STEP 1: Project selection

Regarding Art.3.2, projects will be prioritized by mutual agreement between the parties according to the following procedure.

MPI will select the projects to be financed and present the projects to SEC yearly or on ad hoc basis through the Spanish Economic and Commercial Office.

Based on this list and on-going communication between SEC and MPI, a mutual selection of prioritized projects will be made. No projects will be prioritized if the Vietnamese part does not commit funds to ensure its sustainability beyond the term specified in the contract.

When selected and upon a positive indication from SEC regarding the eligibility for FIEM support, the projects will be included in FIEM's pipeline. SEC reserves the right to propose projects for financing and special preference will be given to projects co-financed with multilateral funds.

Once the project has been prioritized and accepted by both sides the Spanish side will notify the financial proposal to the OECD.

STEP 2: Technical assistance

When necessary, a Spanish State-owned company at the service and under the supervision of the Spanish MEIC will provide technical assistance to the Vietnamese side for preparing the feasibility study and the bidding documents, which shall be respectful of both the Vietnamese and the Spanish laws.

STEP 3: Bidding Process and Signature of the commercial contract

Projects financed by Spanish concessional credits are tied to the procurement of Spanish goods and services. The bidding process of such projects should therefore be opened to all legitimate and eligible Spanish companies.

A copy of the information to be published in Viet Nam shall be sent to the Spanish Economic and Commercial Office of Spain in Ho Chi Minh City at least 20 days prior to the first date of publication in the local newspaper.

Publication in Spain will take place at about the same time as the Vietnamese publication. The Spanish authorities will disseminate the information in Spain using the electronic communication services of ICEX and www.comercio.es.

The bidders will have to acquire the Bidding Documents in Spain. The acquisition shall be free of charge. Each party shall communicate the other one which companies have acquired the Bidding Documents.

The documents shall be available for acquisition during a period of at least 25 days, and at least 45 days will be given from the end of the period of issuance of bid/tender documents until the deadline of their submission.

The Spanish Economic and Commercial Counsellor in Ho Chi Minh City will be kept duly informed of any relevant issues that may arise during the selection process.

One representative from the Spanish Economic and Commercial Office in Ho Chi Minh City shall attend the opening of bids' session of each tender.

MPI will decide on the awarding of the tender, whose outcome will be notified to the Spanish MEIC that will give the Non Objection and will guarantee and communicate its accordance to the general legal principles.

The Vietnamese executing agency and the awarded Spanish company will then negotiate and sign the commercial contract.

STEP 4: Credit Approval Procedure

MEC will send an official letter to the MOF of Viet Nam with the specific financial terms and conditions applicable to this particular project.

After a positive answer has been received, the credit dossier has to be approved by the FIEM Committee -a collegial body chaired by the SEC. The concessional credit will be submitted afterwards to the Spanish Council of Ministers for final approval.

Following the approval, ICO will be designated as financial agent of the Kingdom of Spain for that credit, and will sign the Credit Agreement with the MOF of Viet Nam.

Once the Credit Agreement has been signed, the implementation of the project can proceed. Disbursements will be complying with Vietnamese applicable laws and regulations. Therefore, ICO shall be disburse directly to exporters, linked to commercial contract milestones after receiving the disbursement request from Ministry of Finance.

STEP 5: Evaluations

The Spanish MEIC has the right to entrust to an independent body an ex post evaluation of the implemented project, in order to check the extent to which the operations have reached their goals and targets. The Vietnamese MPI and the Spanish MEIC will conclude over project quality.