LEGAL NEWSLETTER

IN THIS LEGAL NEWS LETTER

Notable Activities of NHQuang

On January 22, 2024, the Ha Noi Department of Culture and Sports organized a Workshop on "Mechanism for Business Improvement District (BID) to explain, absorb, revise and complete the Draft Law on Capital (amended)" with the participation of representatives from several National Assembly Committees, ministries, departments, Ha Noi People's Council, Ha Noi People's Committee, scientists and experts in the fields of law, culture, sports, tourism, etc. Mr. Nguyen Hung Quang – Managing Partner of NHQuang&Associates was invited to attend the Workshop as a legal expert.

In his paper "International Experience on Business Improvement District (BID) and Proposal of BID Model for Ha Noi" presented at the Workshop, Mr. Quang proposed that Ha Noi develop BID to preserve tangible and intangible cultural values, especially the old town, old village spaces as well as new spaces for cultural development. The paper also presented Ha Noi's potential in developing BID based on international experience and some proposals to recognize the BID model in the Draft Law on Capital (amended) and the model implementation measures once the Law is approved.

The paper is posted on VNLawFind at https://vnlawfind.com.vn/kinh-nghiem-quoc-te-ve-khu-thuc.../

SOME TYPICAL NEW REGULATIONS OF THE LAND LAW 2024

HUNG QUANG, THUY MAI

On January 18, 2024, the National Assembly promulgated Law on Land No. 31/2024/QH15 (**Land Law 2024**) replacing the Law on Land No. 45/2013/QH13 dated November 29, 2013 (**Land Law 2013**) and taking effect from January 1, 2025. The Land Law 2024 has many outstanding amendments and supplements that address the limitations of the previous law. This article will not analyze the new regulations of the Land Law 2024 that have been introduced and evaluated by many other agencies and organizations such as land price determination, land allocation, land lease but will focus on some important contents of this Law related to the operation of enterprises, especially real estate and energy businesses. Some of these contents are researched and contributed by lawyers of NHQuang&Associates during the development of the Land Law 2024, specifically as follows:

Firstly, supplementing specific regulations on projects in the vicinity of traffic connection points and traffic routes with potential for development. Previously, the Land Law 2013 does not have any specific definition of the vicinity but only mentions that "*for projects of technical infrastructure, construction, and embellishment of urban areas or rural residential areas, the location and area of recovered land in the vicinity must be simultaneously determined for auction of land use rights for implementation of housing projects, trade, services, production and business*" (Article 39, Article 40, and Article 146).

The Land Law 2024 has supplemented the definition of the vicinity in clause 49 Article 3, which writes "*vicinity is the land adjacent to traffic connection points and traffic routes with potential for development according to the plan*". Thus, the concept of "vicinity" under the Land Law 2024 has narrowed down the scope of the vicinity as mentioned in the Land Law 2013. The Land Law 2024 also sets forth the State's responsibility for land acquisition to implement projects in the vicinity of traffic connection points and transport routes with development potential as one of the cases of land acquisition for socio-economic development in the national and public interest as stipulated in clause 26 Article 79 of the Land Law 2024. This regulation will

adjust the provisions of the Law on Urban Planning 2009 related to the determination of "vicinity", specifically "land fund along both sides of a road", including:

"*Article 31. Planning for renovation and refurbishment of urban centers; development of new urban quarters and new trunk roads in urban centers*
3. Detailed planning for new trunk roads in an urban center must ensure the following requirements:
a) The planned area must be at least 50 m outward from the red line boundary of a planned road;
b) To effectively exploit the land fund along both sides of a road; to study the space, architecture and shape of construction works and the setback of each specific work, ensuring the integrity and peculiarities of the area."
"*Article 62. Preparation of land funds for urban development according to planning*
4. When implementing projects to develop roads under approved planning, competent state agencies shall concurrently organize the recovery of land along both sides of roads according to planning and hold auctions or bidding to select investors under law."

The new provision on "the vicinity" of the Land Law 2024 is the basis for the State to consider and acquire land under planning for the development of transport routes (including roads, railways, waterways, and roads) as planned. Connection points include not only areas connecting transport routes but also railway stations and piers, etc., which are the locations that are convenient for urban development. This new regulation helps to create the basis for the State and makes it more favorable to

acquire land with the goal of urban development oriented towards public transport in the spirit of Resolution 06-NQ/TW of the Politburo on planning, construction, management and sustainable development of Viet Nam's urban areas until 2030 with the vision to 2045, or Resolution 15-NQ/TW of the Politburo on orientations and tasks for the development of Ha Noi to 2030 with a vision to 2045. In addition, the land acquisition mechanism for "the vicinity" is expected to increase revenue for the State budget from geographical differences when the State plans and invests in technical infrastructure development.

Second, supplementing detailed regulations on cases where the State acquires land for the construction of energy projects. According to point e clause 2 Article 10 of the Land Law 2013, the land for energy projects is recognized as land used for public purposes in the group of non-agricultural land. The Land Law 2024 continues to affirm that the land for energy projects is the land for public purposes by stipulating the construction of energy projects as one of the cases in which the State acquires lands for socio-economic development in the national and public interest.

According to clause 5 Article 79 of the Land Law 2024, the acquisition of land for socio-economic development in the national and public interests aims to "*build energy and public lighting works, including power plants and auxiliary works of power plants; dams, embankments, reservoirs and water pipelines serving hydroelectric power plants; power transmission line systems and substations; service, repair and maintenance business works within the scope of power plants; public lighting*". Compared to the Land Law 2013, this regulation has listed the specific types of energy projects in the case of land acquisition in order to solve problems in land acquisition for the construction of energy projects, especially renewable energy projects and power transmission.

Third, supplementing detailed regulations on land for underground construction. Previously, the Land Law 2013 has mentioned and regulated the land for underground construction. However, the regulations are not yet specific and there are still several limitations, which lead to difficulties in the management and exploitation relative to underground construction, such as the impossibility of solving problems related to the rights of a subject to the ground, water surface, above-ground space, and underground in case such land use right belongs to another entity.

Clause 1 Article 216 of the Land Law 2024 has detailed the land for underground construction. This regulation aims to clearly define the content of "surface rights" stipulated in the Civil Code 2015 (from Articles 267 to 273). Specifically, according to the Land Law 2024, the land for underground construction includes "*land for construction of above-ground works for the operation, exploitation and use of underground works and underground space to build underground works that are not underground parts of above-ground constructions*". The Land Law 2024 has (i) stipulated that land users are entitled to transfer, lease, or sublease underground spaces after they are determined by the State in accordance with law; and (ii) adopted support and preferential policies to encourage organizations and individuals to use capital, techniques, and technologies for the implementation of underground construction projects. This new regulation aims to maximize land resources, use land efficiently and economically, and create favorable conditions to encourage organizations and individuals' investment in the development of underground works (such as underground parking lots, urban railways, and underground stations), especially in urban areas.

Fourth, supplementing detailed regulations on multi-purpose combined land. Multi-purpose combined land reveals the real demand in the context of Viet Nam's strong socio-economic development, typically the combination of developing renewable energy sources (such as rooftop solar power, wind power) on the same land area with agricultural development, fishery, etc. The implementation scheme of the Political Declaration establishing a Just Energy Transition Partnership (JETP Declaration) has also set out one of the requirements and tasks to ensure equity in energy transition, namely *using multi-purpose land for renewable energy production in combination with agricultural, aquaculture development to promote access to energy, generate investment opportunities, create jobs and increase the initiatives of enterprises in the process of changing agricultural land use purposes for renewable energy development*.

However, the Land Law 2013 only stipulates the principle of land use for the right purposes and there is no mechanism to regulate the land area used for

different purposes, leading to difficulties in implementation, causing many obstacles in land access for renewable energy power projects in recent years. Therefore, the Land Law 2024 has specified cases in which land is used for multiple purposes (for example, agricultural land is also used for commercial, and service purposes) and conditions and requirements for multi-purpose land use in Article 218. This is one of the important new points of the Land Law 2024 to promote the efficient use of land and resolve the problems in recent years, especially for renewable energy power projects.

Fifth, *supplementing specific regulations on the contribution of land use rights and land readjustment*. Land accumulation is a necessity in economic development, especially in agricultural development to expand the scale of land area based on the consolidation of many plots, creating conditions for households from small, autarkic/self-sufficient production to large-scale production of goods. In fact, there are also many cases in which people wish to donate their land to pave roads in rural residential areas or cooperative plots to avoid the situation of "super thin" and "super distorted" land and houses. The contribution of land use rights helps to address the above needs, but the provisions on land use right contribution have just been referred to in the Land Law 2013 and are not specific and clear about the procedures for contributing land use rights, cases of contributing land use rights and conditions for implementation, resulting in practical entanglements.

To solve the above problems, Article 219 of the Land Law 2024 stipulates that contribution of land use rights, land readjustment is a method of rearranging land in a certain land area based on the consent of land users to adjust all or part of the land area under their use in that area according to the plan approved by the competent authority. Article 219 specifies the cases in which the contribution of land use rights and land readjustment are permitted, including:

(i) Concentrating agricultural land for the implementation of production.
(ii) Implementing projects on embellishment, development of rural residential areas, expansion and upgrading of rural roads.
(iii) Implementing urban embellishment and development projects; renovating, upgrading or rebuilding apartment complexes; expanding and upgrading roads in urban areas.

It can be seen that the Land Law 2004 has provided many amendments and supplements to complete the legal framework on land and resolve the outstanding issues of the Land Law 2013. Businesses should update and study the provisions of the Land Law 2024 as well as further guiding documents for application in their business investment activities. They should also pay attention to the transitional provisions in the Land Law 2024 such as transitions in land use planning; transition in land acquisition; compensation, assistance and resettlement when the State acquires land; transition in land allocation, land lease, and change of land use purposes. For your better understanding of the new policies and regulations of the Land Law 2024, NHQuang&Associates is willing to provide relevant answers and legal opinions upon request./.

SOME PREFERENTIAL AND SUPPORTING POLICIES FOR INVESTMENT PROMOTION IN HIGH-TECH PARKS

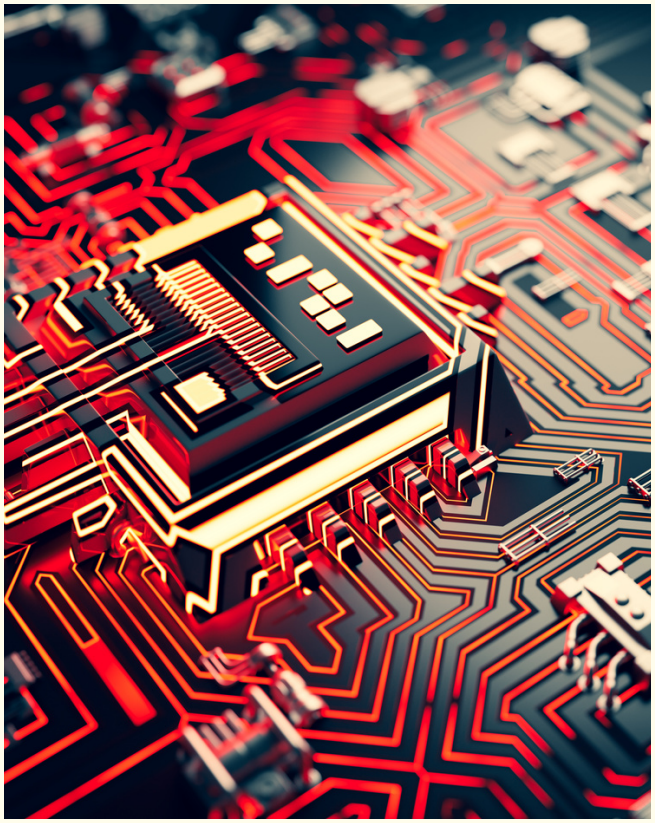
HUYEN THU

On February 1, 2024, to solve some obstacles, create a more favorable legal background, and promote the development of high-tech parks, the Government issued Decree 10/2024/ND-CP on high-tech parks (**Decree 10**), replacing Decree 99/2003/ND-CP on high-tech park regulation and Article 112, Decree 31/2021/ND-CP (amending and supplementing some articles of Decree 99/2003/ND-CP). One of the outstanding contents of Decree 10 is the specific determination of three policy groups for high-tech park development, including (i) Group of policies on investment in construction and development of high-tech parks (section 1, Chapter III); (ii) Group of preferential and supporting policies for investment promotion (section 2, Chapter III); and (iii) Group of other policies (section 3, Chapter III). In particular, the preferential and supporting policies encouraging individuals and organizations to invest in high-tech parks are mainly regulated in group (ii) with five preferential policies and supporting mechanisms. Below are some typical contents of this policy group:

- *Preferential and supporting policies for investment projects in high-tech parks*: Decree 10 stipulates that preferential and supporting levels for investment projects and activities in high-tech parks are applied under regulations on investment, tax, land, credit, and other relevant laws. In addition, investors will be prioritized to participate in many support programs such as employee training and recruitment; technology transfer; innovation, innovative startups of small and medium enterprises; loan support;

- *Mechanism for encouragement of investment in construction and business of technical infrastructure*: According to Decree 10, organizations and individuals with experience and capacity in investment in construction and business of high-tech park infrastructure are encouraged to invest in construction and business of all/part of high-tech parks' technical infrastructure system with preferential policies on exemption from land rent, refund of compensation and site clearance, and being given priority when borrowing capital, and implementing capital mobilization methods under the law;

- *Policy for development of social infrastructure for employees in high-tech parks*: Decree 10 regulates that investment projects, which are buildings of houses, service works, and public utilities directly serving employees in high-tech parks, are entitled to enjoy preferential and supporting policies in accordance with the regulations on social housing construction and other relevant laws. The Decree also stipulates the subjects who are allowed to rent, buy, or lease-purchase houses and accommodation facilities for employees working in high-tech parks (purchasing and renting houses only apply for housing areas built outside high-tech parks), in particular: (a) organizations being investors, individuals being experts, and employees working in the high-tech parks are allowed to rent houses during the working period in the high-tech parks; and (b) employees working in the High-Tech Park Management Board, experts and employees signing indefinite-term employment contracts with investors in high-tech parks are given priority in consideration for purchasing houses;



- *Policies for research activities on the development of high technology, high-tech incubation, high-tech business incubation, and high-tech human resource training*: Decree 10 provides several preferential policies for investment projects to build high-tech research and development facilities, high-tech incubation facilities, and high-tech business incubation facilities such as exemption from land rent, refund of compensation and site clearance under regulations on land rent collection in high-tech parks. In addition, high-tech incubators and high-tech business incubators, etc. shall receive grants, loan support, and loan guarantees from the National Technology Innovation Foundation and the Small and Medium-sized Enterprise Development Fund and other legal funds and sponsorship sources to perform activities under the law;

- *Policies for export processing enterprises in high-tech parks*: Besides preferential and supporting policies for investment promotion under Decree 10, export processing enterprises in high-tech parks specified in this Decree that meet (i) the conditions on custom inspection and supervision, and (ii) regulations applicable to non-tariff zones stipulated in the laws on import and export tax will be entitled to apply specific regulations on export processing enterprises operating in industrial zones, economic zones under the regulations on industrial zones and economic zones.

COMMENTS AND RECOMMENDATIONS

In summary, the specific determination of policy groups for the development of high-tech parks, including the preferential and support policies for investment promotion, is expected to create a favorable legal background to attract investment in high-tech park development in Viet Nam. Decree 10 has summarized and systematized preferential mechanisms and policies to help investors conveniently research and access the policies on development and investment in high-tech parks. Several preferential contents have also been supplemented to be more beneficial for investors such as land rent exemption for investment projects on construction and business of infrastructure, exemption from compensation and site clearance for investment projects to build high-tech research and development facilities, etc. Decree 10 will take effect from March 25, 2024. Individuals and organizations need to study this document to develop appropriate production and business plans and to ensure their rights when carrying out investment activities related to high-tech parks.

SOME OUTSTANDING REGULATIONS ON FEES FOR APPRAISAL AND ASSESSMENT OF MINERAL RESERVES AND CHARGES FOR LICENSING MINERAL ACTIVITIES

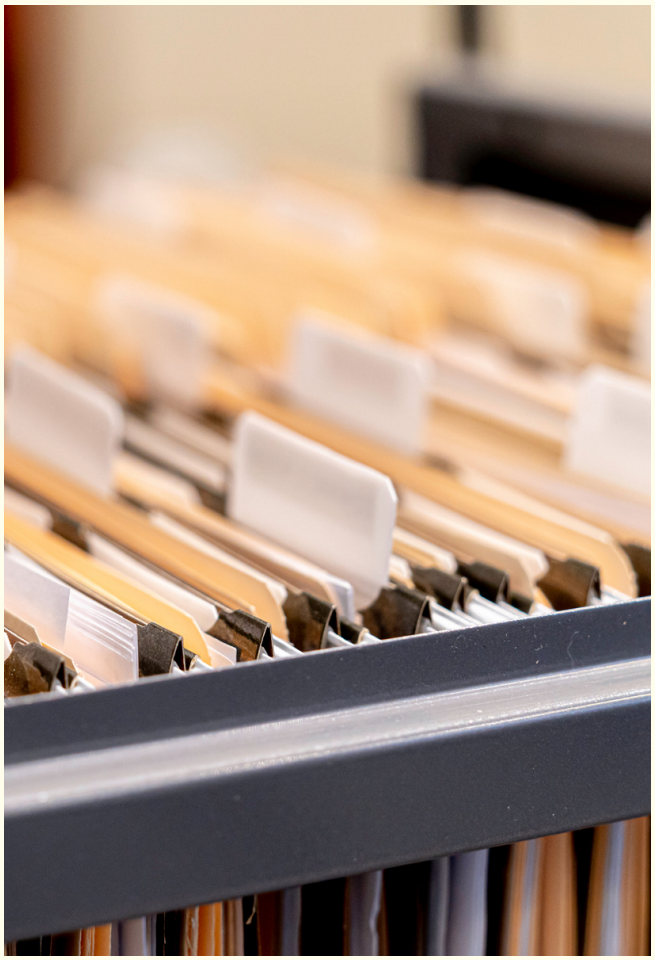
KIEU TRINH

On February 5, 2024, the Ministry of Finance promulgated Circular 10/2024/TT-BTC stipulating the collection rate, regime of collection, payment, management and use of the fees for appraisal and assessment of mineral reserves and charges for licensing mineral activities (**Circular 10**), replacing Circular 191/2016/TT-BTC and Circular 91/2021/TT-BTC (amending and supplementing Circular 191/2016/TT-BTC). Basically, Circular 10 does not change significantly compared to the previous documents, and many regulations are adjusted toward referring to specialized laws. Circular 10 takes effect from March 21, 2024 with some notable contents as follows:

Firstly, inheriting the regulations of Circular 191/2016/TT-BTC on payers of appraisal and assessment fees for mineral reserves and charges for licensing mineral activities. Accordingly, Circular 10 stipulates that charge payers are organizations or individuals granted licenses for mineral activities by competent state agencies under mineral laws. Fee payers are organizations or individuals submitting proposals for approval of mineral reserves to the competent state management agency for appraisal and approval of mineral reserves in mineral exploration report in accordance with the provisions of mineral laws.

Secondly, supplementing guidelines for payment of fees and charges, and adjusting the name of fee and charge collectors. Accordingly, fee and charge payers must pay charges when the licenses for mineral activities are granted, and pay fees based on notifications by fee collectors in the form prescribed in Circular 74/2022/TT-BTC of the Ministry of Finance. Moreover, pursuant to Circular 10, the name of fee and charge collectors has been adjusted towards generalizing and referring to specialized laws (without listing the name of collectors as before) to ensure the coherence of legal regulations. Particularly, Circular 10 stipulates that the charge collector is the state agency authorized to license mineral activities in accordance with the provisions of mineral laws. The fee collector is the competent state agency for the appraisal and approval of mineral reserves in mineral exploration reports in accordance with the provisions of mineral laws.

Thirdly, adjusting the fees for appraisal and assessment of mineral reserves and charges for granting licenses for mineral activities. Accordingly, these fees and charges will be applied based on the Schedule of fees and charges enclosed with Circular 10. Compared to Circular 191/2016/TT-BTC, there are no changes in the fees for appraisal and assessment of mineral reserves and the charges for granting mineral exploration licenses in Circular 10. The only difference lies in the charge for granting licenses for mining activities. Specifically, the charge for granting licenses for exploiting minerals for cement raw materials under Circular 191/2016/TT-BTC varies between VND 30,000,000 and VND 40,000,000 per license. Meanwhile, Circular 10 fixes this charge at VND 40,000,000/license.



Comments and recommendations

The promulgation of Circular 10 aims at replacing several contents on the collection rate, the regime of collection, payment, management, and use of fees for appraisal and assessment of mineral reserves, and charges for licensing mineral activities specified in Circular 191/2016/TT-BTC and Circular 91/2021/TT-BTC in the context that some legal documents guiding the above Circulars have been amended, supplemented or replaced. It should be noted that other contents related to the collection, payment, management, use, receipts, and disclosure of the collection regime of the fees and charges not mentioned in Circular 10 shall comply with the provisions of such documents as the Law on Fees and Charges 2015; Decree 120/2016/ND-CP; Decree 82/2023/ND-CP; the Law on Tax Administration 2019; Decree 126/2020/ND-CP; Decree 91/2022/ND-CP; Decree 11/2020/ND-CP; Decree 123/2020/ND-CP; Circular 78/2021/TT-BTC. In the case that any of the legal documents mentioned in Circular 10 is amended, supplemented, or replaced, the new documents shall be applied accordingly.

AUTHOR TEAM

NGUYEN HUNG QUANG

Managing Partner of NHQuang&Associates

TRAN THI THUY MAI

Legal Consultant

NGUYEN THI KIEU TRINH

Legal Consultant

EDITORIAL TEAM

LE MAI PHUONG

Legal Consultant

DANG HUYEN THU

Legal Consultant

NGUYEN THUY DUONG

Senior Associate

DESIGNER

NGUYEN HOANG AN

Please visit us at:

VNLawFind

Ha Noi Office:
Villa B23, Trung Hoa - Nhan Chinh
Nguyen Thi Dinh Street, Nhan Chinh Ward
Thanh Xuan District, Ha Noi, Viet Nam
Tel: 84 24 3537 6939
Fax: 84 24 3537 6941
Web: www.nhquang.com

Ho Chi Minh City Branch:
First floor, Harmony Tower, No. 47-49-51
Phung Khac Khoan Street, Da Kao Ward
District 1, Ho Chi Minh City, Viet Nam
Tel: 84 28 3822 6290
Fax: 84 28 3822 6290
Email: contact@nhquang.com