

LEGAL NEWSLETTER



IN THIS LEGAL NEWSLETTER

OUTSTANDING POINTS ON SEA ENCROACHMENT ACTIVITIES

Page 2

NEW REGULATIONS ON INVESTOR SELECTION FOR IMPLEMENTATION OF PROJECTS SUBJECT TO BIDDING

Page 4

SOME NEW POINTS IN THE DRAFT OF LAW ON EMPLOYMENT

Page 6

Notable Activities in April, 2024

On April 23, 2024, the Vietnam Confederation of Commerce and Industry (VCCI) coordinated with the Ministry of Natural Resources and Environment to organize a workshop of **“Comments on the Draft Decree detailing some provisions of the Law on Land and the Draft Decree regulating land prices”**. Participated by representatives of enterprises, business associations, and experts, the workshop aimed to promote the drafts’ reasonableness and feasibility, facilitating investment project implementation.

At the workshop, Mr. Nguyen Hung Quang, founder and managing lawyer of NHQuang&Associates, presented opinions on two drafts. The opinions focused on (i) the need to clarify the scope and regulations on “vicinity areas” for relevant policies on land recovery and land price in the vicinity to be applied; (ii) the method for determining land prices for underground works (Article 216, the Law on Land), (iii) more specific regulations on “valueable area”, which are consistent with the concept of “vicinity area” (or TOD area) so that the State has grounds to develop urban railways in big cities, etc.

See workshop documents and the presentation by Mr. Quang at: https://vibonline.com.vn/su_kien/hoi-thao-gop-y-du-thao-nghi-dinh-quy-dinh-chi-tiet-thi-hanh-mot-dieu-luat-dat-dai-va-du-thao-nghi-dinh-quy-dinh-ve-gia-dat

OUTSTANDING POINTS ON SEA ENCROACHMENT ACTIVITIES

HAI LONG

On April 16, 2024, the Government issued Decree No. 42/2024/ND-CP providing detailed regulations on sea encroachment activities (**Decree 42**). This Decree is formulated and promulgated with the aim of providing detailed guidelines for Article 190 of the Law on Land 2024 and applies to agencies, organizations, and individuals involved in sea encroachment activities, except for activities serving national defense and security purposes. Taking effect from the date of signing, Decree 42 covers several outstanding contents related to sea encroachment activities as follows:

Firstly, regulating the decision of investment policy, approval of investment policy, and selection of investors for investment projects involving sea encroachment activities. Decree 42 specifies as follows:

- (i) The approval of investment policy and the decision on investment policy for investment projects involving sea encroachment activities shall be implemented in accordance with the provisions of laws on investment, public investment, and public-private partnership investment.
- (ii) The selection of investors to implement investment projects involving sea encroachment activities with non-state budget capital shall be carried out in accordance with the provisions of laws on investment, bidding, land, and public-private partnership investment.
- (iii) Sea encroachment activities in investment projects involving sea encroachment may be established as a sea encroachment investment project or a sea encroachment item of the investment project as prescribed in Article 6 of Decree 42.

Thus, in general, the licensing and the procedures for investment policy approval and investor selection for investment projects involving sea encroachment activities must comply with the provisions of relevant laws, particularly the Law on Investment 2020, the Law on Public Investment 2020, the Law on Bidding 2023, and the Law on Land 2024. Accordingly, organizations



and enterprises must ensure full and comprehensive compliance with the requirements for conditions, dossier, and procedures when implementing investment projects involving sea encroachment activities.

Secondly, regulating the land allocation, land lease, and allocation of marine areas for sea encroachment. Decree 42 provides specifically as below:

- (i) For sea encroachment investment projects or investment projects with sea encroachment categories funded by public investment capital: The order and procedures for land allocation and the land lease shall be implemented in accordance with clause 3, Article 68 of Decree 43/2014/ND-CP (stipulating the order and procedures for land allocation and land lease in cases where land is allocated or leased without land use rights auction). In the case where a sea encroachment investment project or an investment project with a sea encroachment category is aimed at developing land funds, after the sea encroachment is completed and accepted as prescribed, the project investor must hand over the entire sea encroachment area and construction works (if any) to the competent state agency for land allocation and lease to organizations and individuals for use in accordance with the provisions of land law.
- (ii) For sea encroachment investment projects or investment projects with sea encroachment categories funded by non-public investment capital and other capital sources, the order and procedures for land allocation and land lease are regulated as follows:

- In case of land allocation and land lease by auction of land use rights, the order and procedures shall follow clause 5, Article 68 of Decree 43/2014/ND-CP and clause 21, Article 1 of Decree 148/2020/ND-CP (providing regulations on the order and procedures of land allocation and land lease for cleared land areas

in cases where the land is allocated or leased through auctioning land use rights);

- In case of land allocation and land lease for cases where investors are selected through bidding in accordance with the provisions of laws on bidding, cases where investor approval is conducted in accordance with the provisions of clause 3, Article 29 of the Law on Investment 2020, or cases where the land is allocated or leased without auctioning land use rights, the order and procedures for land allocation and land lease shall comply with clause 3, Article 68 of Decree 43/2014/ND-CP.

Thirdly, regulating the determination of land use fees and land rent. Decree 42 provides that the determination of specific land prices for calculating land use fees and land rent shall comply with the provisions of land laws. In the case where the surplus method is applied to determine specific land prices (calculated by taking the estimated total development revenue minus the estimated total development cost of the land parcel or land area), the estimated total development cost must include the sea encroachment cost approved by the competent state agency; in the case that the total development cost is greater than the total development revenue, the difference shall be included in the cost of the sea encroachment investment project or the investment project with sea encroachment categories.

Within no more than 180 days from the date of completing the sea encroachment, the investor of the sea encroachment investment project or the investment project with sea encroachment category must prepare a dossier to request for settlement of sea encroachment costs and submit it to the provincial-level construction specialized agency for appraisal. Within no more than 90 days from the date of receiving the complete dossier for cost settlement from the investor of the sea encroachment investment project or the investment project with sea encroachment category, the provincial-level construction specialized agency shall settle the sea encroachment costs and submit to the Provincial People's Committee for approval.

The handling of the difference between the settled sea encroachment cost and the sea encroachment cost included in the total development cost when determining specific land prices in the circumstance of surplus method application shall be implemented as follows:

- (i) If the settled sea encroachment cost is smaller than the sea encroachment cost included in the total development cost, the investor must pay the difference.
- (ii) If the settled sea encroachment cost is higher than the sea encroachment cost included in the total development cost, the difference shall be included in the cost of the sea encroachment investment project or the investment project with the sea encroachment category.

COMMENTS AND RECOMMENDATIONS

Decree 42 has established a relatively clear and detailed legal framework for sea encroachment activities, aiming at ensuring sustainable development and compliance with the regulations on environment, construction, investment, and related fields. The clear delineation of the scope and subjects of application in the Decree assists agencies, organizations, and individuals in easily following and implementing sea encroachment activities in accordance with legal requirements. In addition to the contents analyzed above, individuals and organizations should study and grasp other new points of Decree 42, such as the regulations on conducting acceptance upon completion of sea encroachment, which is an important factor in ensuring legality and compliance with legal regulations in the implementation of investment projects related to sea encroachment activities.

NEW REGULATIONS ON INVESTOR SELECTION FOR IMPLEMENTATION OF PROJECTS SUBJECT TO BIDDING

PHUONG NAM

On February 27, 2024, the Government issued Decree 23/2024/ND-CP providing details for several articles and measures for implementation of the Law on Bidding on investor selection for implementation of projects subject to bidding as prescribed by specialized laws (**Decree 23**). Decree 23 is issued to complete the legal framework on investor selection to implement business investment projects in accordance with new regulations of the Law on Bidding 2023. The following are some new regulations of Decree 23 that may affect related enterprises:

Firstly, detailing the projects subject to bidding for investor selection as prescribed by specialized laws, some of which include:

- (i)** Investment projects for the construction of domestic solid waste treatment works under the laws on environmental protection;
- (ii)** Investment projects for renovation and reconstruction of apartment buildings as prescribed by the laws on housing;
- (iii)** Investment projects for the construction of water supply source works, and water supply systems as prescribed by the laws on the production, supply, and consumption of clean water;
- (iv)** Projects with two or more interested investors registering for implementation, including projects in the fields of education, vocational training, health, culture, sport and environment under the law on promotion of private sector involvement (*except investment projects for construction of domestic solid waste treatment works, water supply source works, and water supply systems*); investment projects for construction of social housing.

It is noticeable that the projects within the governance of Decree 23 must be subject to the cases where the project land is recovered by the State or belongs to the



land managed and used by the State as prescribed by the laws on land and is not eligible for auction of land use rights and public properties as prescribed by the laws on land as well as the laws on management and use of public properties.

Secondly, detailing the procedures for investor selection in Article 46 of the Law on Bidding 2023 (from project announcement, and bidding organization to contract signing and project implementation). The procedures applied to several forms of bidding in Decree 23 include:

- For projects applying open bidding, limited bidding according to the single-stage, one-envelope method and open bidding according to the single-stage, two-envelope method: the procedures for investor selection include (1) Announcing business investment projects; (2) Preparing bidding for investor selection; (3) Organizing bidding for investor selection; (4) Evaluating bids; (5) Submitting, appraising, approving, and publishing the investor selection result; (6) Negotiating, finalizing and signing contracts.
- For projects applying open bidding according to the two-stage, one-envelope method: In accordance with the Law on Bidding 2023, this method applies to business investment projects with specific sectoral, regional, or local socio-economic development requirements but of which specific and complete technical requirements for bidding packages have not yet been accurately determined at the time of bidding. The investor selection procedures in this case consist of (1) Announcing business investment projects; (2) Preparing bidding for investor selection in the first stage; (3) Organizing bidding for investor selection in the

first stage; (4) Preparing and organizing bidding for investor selection in the second stage; (5) Evaluating bids in the second stage; (6) Submitting, appraising, approving, and publishing the investor selection result; (7) Negotiating, finalizing and signing contracts.

Among the above steps, step 1 (Announcing business investment projects) is regulated by Decree 23 to ensure compatibility with the Law on Bidding 2023 (this step is supplemented in this law, as compared to the Law on Bidding 2013). Procedures to announce project information are applied in 2 cases: (i) projects subject to investment policy approval and (ii) projects not subject to investment policy approval. Specifically, for case (i), the competent authority shall post the decision on investment policy approval on Vietnam National E-Procurement System within 5 working days from the date of the approval decision. For case (ii), the competent authority shall post the business investment project information (e.g., project name, project implementation location) in accordance with relevant regulations within 5 working days from the date of the document approving the project. The announcement of the business investment projects will serve as a basis for the competent authority to organize and prepare the documents to call for expression of interest and bidding documents for investor selection.

Thirdly, regulating the method and criteria for evaluation of bids. Decree 23 specifies Article 62 of the Law on Bidding 2023 on investors' bids evaluated according to the method of social and state interests. Accordingly, this method is applied to evaluate and rank investors' bids on a general scale of 100 or 1,000 with specific standards including:

- Capacity and experience, including (i) evaluation criteria for financial capacity and capital financing capability, (ii) evaluation criteria for experience in implementing similar projects based on the field, investment scale, duration and level of completion of works and projects, ratio of equity held by the investors in similar projects.
- Business investment plans, including (i) technical evaluation criteria, (ii) social evaluation criteria, and (iii) environmental evaluation criteria.
- Investment efficiency in developing the industries, fields, and localities, including (i) value in the sum paid to the state budget for projects dredging seaport waters and inland waterways combined with product recovery, (ii) minimum value in the amount paid to the state budget based on specific requirements and criteria specified in specialized laws, and (iii) price bracket and maximum price as prescribed by the law on prices and specialized laws, etc.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 23 has contributed to completing the legal framework on bidding with the aim of removing obstacles and improving the quality of investor selection bidding activities. Individuals and organizations need to continue to research and update the provisions of this Decree to ensure compliance with the law while participating in investor selection for implementing projects subject to bidding. In addition, as of the effective date of Decree 23 (February 27, 2024), Decree 25/2020/ND-CP's regulations related to investor selection as prescribed by specialized laws, laws on promotion of private sector involvement, which are amended and supplemented by Decree 31/2021/ND-CP, shall no longer be effective.

SOME NEW POINTS IN THE DRAFT OF LAW ON EMPLOYMENT

HUYEN THU

The Law on Employment 2013 is the first law that fully and comprehensively regulates the employment relationships and labor market in Viet Nam. However, after over nine years of implementation, the Law on Employment 2013 has shown several inadequacies that are no longer suitable for the current practice and socio-economic context. Therefore, the Ministry of Labour - Invalids and Social Affairs (**MOLISA**) is developing a Draft of Law on Employment (amended) (**Draft Law**) to implement new orientation and policies of the Party, ensure the synchronization, consistency, and suitability of the legal system and international commitments that Viet Nam participates in.

Compared to the Law on Employment 2013, the amendments and supplements in the Draft Law are various, which expands favorable conditions for all employees, including employees without labor relationships, to enjoy interests from state policies and regimes. Some major changes in the Draft Law are regulations on loan sources for job creation, borrowers to work abroad, labor market information system, labor registration, vocational skill development, unemployment insurance, training regimes for employees, etc. In this Legal Newsletter, NHQuang&Associates would like to introduce some outstanding new points of the Draft Law, focusing on the regulations related to unemployment insurance (regarding subjects of unemployment insurance engagement and payable unemployment insurance rates) and labor registration.

Expanding subjects of unemployment insurance engagement

Resolution 28-NQ/TW on social insurance policy reform issued by the Central Executive Committee in 2018 sets the objective that by 2030, *“about 45% of the working-age workforce will engage in unemployment insurance”*. By 2023, the number of people participating in unemployment insurance only accounts for 31.5% of the working-age workforce. In addition, under the applicable Law on Employment, three groups of subjects are required to participate in



unemployment insurance, namely employees working under (i) indefinite-term labor contracts or working contracts; (ii) fixed-term labor contracts or working contracts; (iii) seasonal or work-specific labor contracts with a term of full three months to less than 12 months.

According to the MOLISA, subjects participating in unemployment insurance under the Law on Employment 2013 do not cover all subjects with labor relations. For example, under the Law on Social Insurance 2014, subjects required to participate in social insurance include *“People working under labor contracts with a term of full one month to less than three months”*. However, the Law on Employment 2013 has not covered this group of people as the subjects to participate in unemployment insurance. To expand the number of people engaged in unemployment insurance, groups of people participating in unemployment insurance as proposed by the MOLISA in the Draft Law include:

- (i) Employees working under indefinite-term labor contracts or fixed-term labor contracts with a term of one full month or more, covering cases where two parties have an agreement in other names but with such contents of paid employment, salary, management, administration, and supervision by one party;
- (ii) Employees in item (i) working part-time, with a total monthly salary equal to or higher than the salary used as the basis for paying the lowest premium of compulsory social insurance, which must equal half of the monthly highest region-based minimum wage as announced by the Government.
- (iii) Employees working under employment contracts;
- (iv) Enterprise managers, controllers, representatives of the state capital, representatives of an enterprise's capital in a company and its parent company, and managers operating cooperatives, and cooperative unions with salary.

Stipulating flexible unemployment insurance contribution rates for employees and employers

Under the Law on Employment 2013, the unemployment insurance contribution rate for employees is fixed at 1% and the rate for employers is fixed at 1% of the monthly salary fund of the employees who are subject to unemployment insurance payment. According to the MOLISA, this regulation is inflexible, especially in cases of natural disasters, pandemics, and economic crises. The Draft Law has amended this rate to be more flexible, specifically: (i) Employees pay *a maximum of 1% of their monthly salary*; (ii) Employers pay *a maximum of 1% of the monthly salary fund* of the employees who are subject to unemployment insurance payment.

It can be seen that the adjustment of unemployment insurance contribution rates according to the Draft Law is more consistent with the Party's policy orientations, especially the Central Executive Committee's orientations to amend regulations on social insurance contribution rates and bases to achieve the objective of expanding social insurance coverage, supporting employees and employers in Resolution 28-NQ/TW in 2018 on social insurance policy reform and Resolution 42-NQ/TW 2023 continuing to reform and improve the quality of social policies, meeting the requirements of developing and protecting the country in the new period.

Supplementing regulations on labor registration

In the Draft Law, the MOLISA proposes to supplement a Chapter on labor registration with several regulations such as subjects for labor registration; labor registration information; labor registration procedures and documents; rights and obligations of employees; and adjustment of employment information. New regulations aim to concretize the Party's tasks set out in Resolution 42-NQ/TW in 2023 on human resource management and labor and employment database development. Also, this new point addresses the limitations of the legal system when there are no regulations on labor registration, which results in many difficulties in labor-management activities.

According to the Draft Law, subjects for labor registration include employees who are Vietnamese citizens of at least 15 years old with working ability and have a need to work, except for minor employees as prescribed by the Labor Code. Labor registration information includes basic information (for example: full name, personal identification number); employment information; professional qualification information; and information about social insurance and unemployment insurance. Employers are responsible for performing labor registration when registering their information on the national insurance database and other databases. In the case where an employee does not have any labor relationship, the employee will submit a labor registration application to the Communal People's Committee of his/her current residence.

The proposals in the Draft Law, especially the regulations on unemployment insurance and labor registration, are expected to further improve the unemployment insurance policy, ensuring further benefits for both employees and employers and improving labor and employment management in Viet Nam. Businesses should study its contents and continue to follow the Draft Law development process to promptly update amendments and supplements of this document once the Draft Law is issued and takes effect.

AUTHOR TEAM



TRAN HAI LONG

Legal Consultant



TRAN PHUONG NAM

Legal Consultant



DANG HUYEN THU

Legal Consultant

EDITORIAL TEAM



LE MAI PHUONG

Legal Consultant



NGUYEN THUY DUONG

Senior Associate

DESIGNER



NGUYEN HOANG AN

Please visit us at:



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