

LEGAL NEWSLETTER



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Notable Activities in September 2024

V-Med - Vietnam Mediation Moot is a commercial mediation competition in Vietnamese to promote and disseminate knowledge and skills of mediation as a resolution to resolve commercial disputes. V-Med 2024 is co-organized by the Vietnam International Commercial Mediation Center (VICMC) and the University of Law, Hue University (HUL). **NHQuang&Associates** supports the competition as an Accompanying sponsor, mediation mentor, and competition judge. This is the third consecutive year that NHQuang&Associates has sponsored the contest.

Mr. Nguyen Hung Quang - Managing Partner and Mr. Phung Quang Cuong, Partner of NHQuang & Associates are members of the Judge committee for the Final round, which took place from September 28 to September 30, 2024. The two lawyers highly appreciated the competing teams' mediation skills and the calm and confident spirit. They also affirmed that V-Med was a great success and created a useful program for students from Vietnam's universities, academies, and institutions.

SOME HIGHLIGHTS OF THE DECREE ELABORATING CERTAIN ARTICLES OF THE LAW ON REAL ESTATE BUSINESS

KIEU TRINH

On July 24, 2024, the Government promulgated Decree 96/2024/ND-CP (**Decree 96**) to elaborate certain articles of the Law on Real Estate Business, replacing Decree 02/2022/ND-CP (**Decree 02**). Decree 96 takes effect from August 1, 2024 with some notable points regarding real estate business (**REB**) activities as follows:

Firstly, providing several detailed regulations on the disclosure of information on real estate and real estate projects to be put into business as follows:

- (i) Regarding the time to disclose information, enterprises engaged in REB are responsible for fully disclosing information on real estate, and real estate projects to be put into business before signing contracts for the sale, transfer, lease, or lease purchase of real estate, or transfer of real estate projects.
- (ii) Regarding the information to be disclosed, its content shall comply with the provisions of clause 2, clause 3, clause 4, and clause 5, Article 6 of the Law on REB. In terms of the information stipulated in point c clause 2, and points b and d clause 3, Article 6 of the Law on REB, enterprises are subject to disclose the following documents: (a) The decision approving the detailed planning or the decision approving the master layout planning of real estate projects; (b) Notification of the appraisal result of the feasibility study report for construction investment or Notification of the basic design appraisal result; (c) Written commitment for guarantee issue by domestic commercial banks or foreign bank branches legally operating in Viet Nam in case of sale or lease-to-hold of off-plan houses.
- (iii) Regarding the methods and forms of information disclosure, enterprises doing REB must fully, honestly, and accurately disclose information on the information system for the housing and real estate market and on their website.
- (iv) Regarding the deadline for updating information,



enterprises engaged in REB are responsible for updating the disclosed information within 05 working days from the date the information is changed.

Secondly, supplementing some rules when enterprises engaged in REB draw up, sign, and execute model contracts used in REB. Accordingly, compared to Decree 02, Decree 96 has clarified many rules in the case of drawing up, signing, and executing REB contracts of enterprises doing REB as follows:

- (i) They may use REB contracts to sign after the disclosure;
- (ii) They must comply with and observe the inspection and supervision by the competent authorities managing REB regarding the implementation of regulations and rules on the disclosure, use, draft, signing, and execution of REB model contracts;
- (iii) They are obliged to strictly comply with and must not change the contents of REB model contracts. Any additional content in the model contracts, if permitted, must conform to the principles of not violating the law, and social ethics, and not changing or contradicting available contents in the model contracts;
- (iv) In the event that the disclosed REB contracts are amended or supplemented, the enterprises engaged in REB must disclose the modified or supplemented contracts before signing them;
- (v) In the case where the REB contracts used by enterprises to sign with their customers are inconsistent with the model contracts, or different from the disclosed model contracts, or fail to comply with the rules mentioned herein, the enterprises shall be handled for violation and be responsible to compensate for any damage incurred by their customers. The dispute settlement shall be in

accordance with relevant legal regulations.

Thirdly, providing detailed regulations on registration and conditions for operating real estate trading floors, in which:

(i) Article 14 of Decree 96 has specified the components of the dossier registering for operation of real estate trading floors: (a) An application registering for operation of a real estate trading floor; (b) A certificate of enterprise registration; (c) Documents proving the right to use the headquarters of the real estate trading floor; (d) Copy of the certificate for completion of training course for real estate trading floor management and operation of its manager or operator; (e) List of real estate brokers having practicing certificates for real estate brokers.

(ii) Regarding conditions for operating a real estate trading floor, besides fully satisfying the conditions as prescribed in Article 55 of the Law on REB 2023, the real estate trading floor must have a specific name and address with stably continuous operation for more than 12 months; have technical equipment meeting the requirements corresponding with operations of the real estate trading floor, and be responsible for implementing anti-money laundering measures as well as submitting reports on anti-money laundering. The legal representative of the real estate trading floor might be also the trading floor's manager or operator.

COMMENTS AND RECOMMENDATIONS

Decree 96 has provided some detailed regulations for the Law of REB 2023, ensuring compliance with the practice to create the grounds for local government as well as organizations and individuals in managing REB activities. It should be noted that if certain contents of other decrees, decisions by the Prime Minister, and legal documents in effect, as issued by ministries, central authorities, and provincial people's committees before the effective date of Decree 96, are within the governance scope of but are different from the regulations of this Decree, the later shall be applied. In the case that a Vietnamese citizen has been granted a personal identification number and the national population database, databases on investment registration, and business registration have been connected and operated, he/she will be allowed to use his/her personal identification number instead of documents related to personal identity (ID card (old type), Citizen ID Card, ID card (new type), Passport and other personal identification documents as prescribed by relevant law) when implementing procedures related to REB activities.

SOME NEW REGULATIONS ON THE SELECTION OF INVESTORS TO IMPLEMENT LAND-USING INVESTMENT PROJECTS

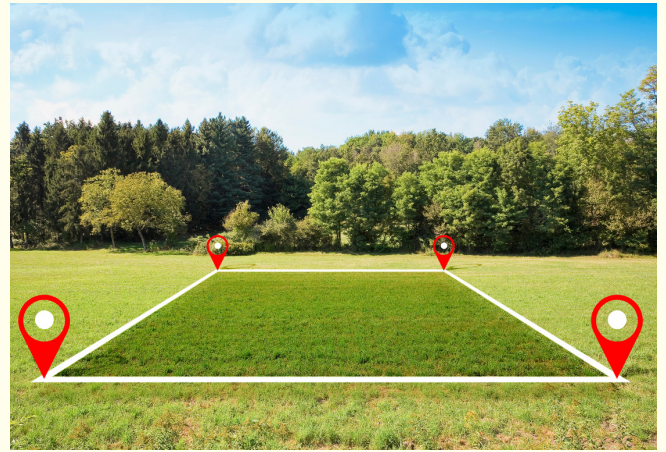
QUOC DZUNG

On September 16, 2024, the Government issued Decree 115/2024/ND-CP stipulating details for a number of articles and providing implementation measures for the Law on Bidding concerning the selection of investors to implement land-using investment projects (**Decree 115**). Decree 115 is issued to improve the legal framework for bidding in the selection of investors to implement investment projects in accordance with the new regulations of the Law on Bidding 2023 and the Law on Land 2024. Decree 115 takes effect from September 16, 2024, and contains several key highlights as follows:

First, stipulating the land-using investment projects that are subject to bidding for investor selection, including:

- (i) Projects with the land fund planned for project implementation included in the list of land areas subject to bidding for land-using investment projects, for which land allocation or land lease is decided by the provincial People's Council through bidding for investor selection to implement land-using investment projects, in particular: (a) Investment projects for construction of urban areas with mixed functions, synchronizing technical and social infrastructure systems with housing in accordance with construction laws to develop new or renovated urban areas; (b) Rural residential projects;
- (ii) Projects required to undergo bidding for investor selection according to sectoral management laws, including those subject to land recovery under Article 79 of the Law on Land 2024 (including 10 project groups).

Second, providing conditions for transferring shares or capital contribution in economic organizations established by the successful bidding investors. When members or shareholders of such economic



organizations wish to transfer shares or capital contributions before project exploitation, operation, the following conditions must be met:

- (i) The transfer is approved by the competent authority;
- (ii) The transferee must have legal status and meet operational conditions under applicable laws for each type of economic organization; laws on investment, enterprise, land, real estate business, and sectoral management; must possess the capacity and experience commensurate with the shares or capital contribution to be received from the transfer (in case of partial transfer), or equivalent or superior to that of the transferor (in case of full transfer); and must inherit the rights and obligations of project implementation as committed by the transferor in the bids and the project contract.

Additionally, in case of transferring shares or capital contribution of a consortium member, the minimum equity contribution ratio of each consortium member must be maintained as prescribed in point a, clause 1, Article 46 of Decree 115. Specifically, the leading consortium investor must contribute at least 30% of the equity, while each consortium member must contribute at least 15%.

Third, regulating the handling of situations where fewer than three investors submit bids by the time of bid closing. Within no more than 24 hours from the time of bid closing, the bid inviting party must report the situation to the competent authority for consideration and resolution in one of the following ways:

- (i) Allow to extend the bid closing time and, at the same time, review and amend the invitation for expressions of interest or the bidding dossier (if

necessary) to increase the number of investors registering to participate in the project and the bidding process. In this case, the new bid closing time and corresponding deadlines must be specified to provide investors sufficient time to amend or supplement their submitted project registration dossier or bids.

In case of amendment to the invitation for expressions of interest or the bidding dossier, investors who have already submitted project registration dossier or bids are entitled to amend, replace, or withdraw their submitted dossier;

(ii) Allow immediate opening of bids to proceed with evaluation.

SOME COMMENTS AND RECOMMENDATIONS

Decree 115 has contributed to simplifying the procedures, reducing time and costs in the investor selection process, as well as addressing difficulties and obstacles in the bidding process to select investors for land-using investment projects. Furthermore, Decree 115 has provided solutions for handling special situations in the investor selection process to prevent the lack of transparency in bidding activities previously. In addition to the contents mentioned, businesses should also pay attention to the provisions on implementation of Decree 115 and continuously update and study its regulations to ensure their full rights and interests under the law.

NEW POINTS IN THE DRAFT LAW ON HEALTH INSURANCE

MAI PHUONG

The Law on Health Insurance 2008 is a significant step forward in the legal system of health insurance, which is a mechanism to ensure financial resources for people's medical examination and treatment needs, contributing to social security and international integration. However, the 15-year implementation of the Law on Health Insurance 2008 has shown certain obstacles, inadequacies, and limitations that must be addressed. In order to perfect the regulations on health insurance in accordance with the Party's policies and orientations, in line with the practice and the compatibility with the health insurance laws of other countries, the Ministry of Health is drafting a Law amending and supplementing a number of articles of the Law on Health Insurance 2008 (**Draft Law**) with a number of noteworthy points as follows:

Expanding the scope of people participating in health insurance

The Draft Law has supplemented a number of groups of people participating in health insurance (the premium to be paid by both employees and employers) such as:

- (i).** Employees working under a fixed-term employment contract of at least one month, including cases where the employee and the employer make an agreement under a different name but with contents recognizing paid work, salary, and the management and supervision by one party;
- (ii).** Controllers, representatives of the state capital, representatives of enterprise capital; members of the board of directors, general directors, directors, members of the board of controllers or controllers and other elected management positions of cooperatives and cooperative unions under the Law on Cooperatives *receiving salaries*.
- (iii).** Enterprise executives, controllers, representatives of the state capital, representatives of enterprise capital; members of the board of directors, general directors, directors, members of the board of controllers or controllers and other elected management positions of cooperatives and cooperative unions under the Law on Cooperatives *not receiving salaries*.
- (iv).** Employees who are foreign citizens working in Viet Nam under a fixed-term employment contract with



a term of 12 months or more with an employer, except for cases of internal transfer within an enterprise, and have reached retirement age at the time of signing the employment contract under clause 2, Article 169 of the Labor Code or other relevant provisions of international treaties to which Viet Nam is a member;

(v). Employees working under indefinite-term employment contracts, and the employees specified in item (i) working part-time with monthly salaries equal to or higher than the lowest salary used as the basis for compulsory social insurance payment and being subject to mandatory social insurance participation.

These groups of subjects are supplemented to ensure consistency with the provisions of the Law on Social Insurance 2024 (effective from July 1, 2025). The Draft Law also amends and supplements some other subjects to be consistent with the Law on Officers of the Viet Nam People's Army 2014, the Law on People's Public Security 2018, the Law on Forces Participating in Protecting Security and Order at the Grassroots Level 2023, the Law on Militia and Self-Defense Forces 2019, the Law on Social Insurance 2024, etc.

Amending and supplementing regulations on health insurance contribution rates and responsibilities to pay health insurance premiums

The contribution rates for some groups of health insurance participants supplemented in the Draft Law are as follows:

- The monthly contribution level of the subjects specified in items (i), (ii), (iv), and (v) above is a maximum of 6% of the monthly salary, of which

the employer pays 2/3 and the employee pays 1/3.

- The monthly contribution level of the subjects specified in item (iii) above is a maximum of 6% of the monthly salary used as the basis for compulsory social insurance payment and paid by the employee.

The Draft Law also specifically recognizes that during the time the subjects specified in items (i), (ii), (iv), and (v) above take maternity leave for 14 working days or more in a month or take sick leave for 14 working days or more in a month according to the laws on social insurance, the maximum monthly contribution is equal to 6% of the employee's monthly salary before maternity leave/sick leave, and is paid by the social insurance organization.

In addition, the Draft Law has recognized the groups of subjects in items (i), (ii), (iv), and (v) above in the provisions on determining the order of health insurance payment in the case where a person simultaneously belongs to many different health insurance participant groups. Specifically, in the case that the subjects specified in items (i), (ii), (iv), and (v) above have one or more indefinite-term employment contracts or employment contracts with a term of one month or more, they shall pay health insurance according to the employment contract with the highest salary at the time of payment.

Supplementing regulations on late payment and evasion of health insurance contribution

The Draft Law has supplemented the definitions of late payment and evasion of health insurance contribution, and at the same time recognized that these acts will be strictly prohibited in health insurance. Accordingly, the Draft Law describes the acts of late payment and evasion of health insurance contribution as follows:

(a) Late payment of health insurance is one of the following acts of the employer:

- Not paying or not paying in full the amount of health insurance premiums after the deadline for health insurance premium payment as prescribed in Article 15 (Methods of health insurance premium payment), Article 17 (Issuance of health insurance cards) of the Law on Health Insurance, except for the cases prescribed in clause 10, Article 2 of the Law on Health Insurance (Evasion of health insurance premium payment);
- Not registering or not registering the full number of people required to participate in health insurance within 60 days from the deadline as prescribed in Article 17 of the Law on Health Insurance;
- Subject to a case that is not considered as evasion of health insurance premium payment as prescribed in clause 10, Article 2 of the Law on Health Insurance.

(b) Evasion of health insurance payment is the act of an employer in one of the following cases to prevent paying or paying in full health insurance premiums for employees (except for cases with legitimate reasons as prescribed by the Government):

- After 60 days from the expiry date of the prescribed period for health insurance engagement according to Article 17 of the Law on Health Insurance, the employer fails to register or register the full number of people required to participate in health insurance;
- Registering the salary used as the basis for paying health insurance lower than the amount stipulated by the laws on health insurance;
- Not paying or not paying in full the amount registered for health insurance or not registering the full number of people required to participate in health insurance after 60 days from the expiry date of the period stipulated in Article 17 of the Law on Health Insurance or point b, clause 9, Article 2 of the Law on Health Insurance (Delayed payment of health insurance).

To ensure compatibility with the above definition, the Draft Law also supplements the final deadline for employers' payment of health insurance in Article 15, which is:

- The last day of the following month for the monthly payment method;
- The last day of the following month immediately following the payment cycle for quarterly or biannual payment methods.

In addition, the Draft Law amends the related sanctions to be compatible with the regulations on late payments

or evasion of health insurance payments. Specifically, agencies, organizations, and employers held responsible for delaying or evading health insurance payment must *"pay the full amount of the payment delayed/evaded; pay an amount equal to 0.03%/day calculated on the amount of payment delayed/evaded and the number of days of delaying or evading payment to the health insurance fund; [be] imposed with administrative sanctions or prosecuted for criminal liability according to the provisions of law for acts of evading health insurance payment; [be] not considered in being awarded emulation titles or forms of commendation"*.

The proposals in the Draft Law, especially the provisions on expanding the scope of people participating in health insurance, as well as delaying and evading health insurance payment, will further improve the health insurance policy, ensuring that people can participate in health insurance according to appropriate groups while creating compatibility in the legal system. The National Assembly is expected to discuss and approve the Draft Law at the 8th session (October 2024). Enterprises need to study the content and continue to pay attention to the development of the Draft Law to promptly update amendments and supplements upon its promulgation and effectiveness.

AUTHOR TEAM



NGUYEN THI KIEU TRINH
Legal Consultant



NGUYEN QUOC DUNG
Legal Consultant



LE MAI PHUONG
Legal Consultant

EDITORIAL TEAM



LE HAI LINH
Legal Consultant



DANG HUYEN THU
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 Khắc 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