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1. Novelties on guiding the Bidding Law on contractor selection

On 27 February 2024, the Government issued Decree 24/2024/ND-CP (“**Decree 24/2024**”) detailing a number of articles and the implementation of the Bidding Law on contractor selection, with some notable points as follows:

1.1 Adding some incentives in bidding

Compared to previous regulations, Decree 24/2024 provides detailed regulations and added many incentives in contractor selection, specifically:

(i) *For goods of Vietnamese origin*, basically, incentive levels with separate incentive coefficients will be applied depending on the ratio of domestic production costs for goods of Vietnamese origin.

- *For goods of Vietnamese origin with a ratio of domestic production cost less than 50% and no goods with a domestic production cost of 50% or more*, depending on the evaluation method for bids, goods that **are not eligible for incentives** will have their prices increased by an amount equal to 7.5% of the bidding prices, or **goods eligible for incentives** will have some incentive points added to the overall points according to the particularly prescribed formula specified in Article 5.1(c) of this Decree.
- *For goods of Vietnamese origin with a ratio of domestic production cost of 50% or more*, depending on the evaluation method for bids, goods that **are not eligible for incentives** will have their prices increased by an amount equal to 10% of the bidding prices, or **goods eligible for incentives** will have some incentive points added to

the overall points according to the particularly prescribed formula specified in Article 5.2(c) of this Decree.

When falling into the cases of being eligible for incentives as stipulated by law, for goods of Vietnamese origin (*with a ratio of domestic production cost respective to each case listed in Decree 24/2024*) which are manufactured by factories with at least 50% of the workers being the disabled, war invalids, or ethnic minorities and working under labor contracts of 3 months or more and still effective at the time of bid closing, those goods will be eligible for incentive coefficients better than the basic coefficients mentioned above.

- (ii) *For innovative start-up enterprises*, incentives will be applied with priority on the basis of evaluating capacity and experience.
- (iii) *For domestic contractors receiving technological transfers to manufacture goods of Vietnamese origin*: incentives will be applied with priority on the basis of evaluating capacity and experience and they are allowed to use testing documents and results provided by the technology transferring parties to prove the verifiability and suitability of the goods with respect to the technologies transferred under the technology transfer contract.
- (iv) *Products and services with eco-labels, green labels, energy labels and*

equivalent labels are entitled to incentives in accordance with Article 10.3 of the Law on Bidding.

- (v) *For domestic bidding*: Decree 24/2024 adds regulations on incentives for procurement packages, and the competent person to decide on bidding packages with a bidding price of less than VND 500 million, with respect to procurement packages in which it is only allowed to use contractors with 50% or more of employees being the disabled, war invalids, and ethnic minorities working under labour contracts of 3 months or more.

1.2 Investors can choose the highest quote as the price of a medical bidding package

Quotation is one of the 7 bases for the investor to determine the price of a bidding package in selecting contractors. Accordingly, Article 16.2(d) of Decree 24/2024 stipulates that investors must have at least 1 quotation for goods and services. If there are more than 1 quote, the average price of quotes will be taken. Particularly for bidding packages to purchase drugs, chemicals, testing supplies, medical equipment, components, accessories, and replacement materials used for medical equipment, and if there are 2 or more quotes, investors can choose the highest quote, depending on their financial capacity and professional requirements, as the price of the bidding package.

1.3 Investors can select many winning contractors

Article 89 of Decree 24/2024 adds regulations allowing the selection of more than 1 winning contractor in case of the first-ranked contractor refusing to

sign the contract or no longer being able to perform the contract, then the investor may promptly sign a contract with the next contractor.

When more than one winning contractor are selected for a part of or an undivided bidding package, the investor can call for bids in one of 2 ways:

- (i) Select contractors based on their supply capability, that is, contractors are offered bids based on their capability to provide goods and services without being required to quote the full quantity or volume in the bidding invitation dossiers; or
- (ii) Select contractors based on the bidding volume, that is, the contractor offers bids according to the volume and quantity required in the bidding dossiers and the selection of contractors will be based on the evaluation standards stated in the bidding invitation dossiers.

1.4 Regulations on online bidding in bidding

Online bidding is a new form of bidding specified in Article 2.1 and from Article 98 to Article 101 of Decree 24/2024. Accordingly, online bidding is understood as a repeated process in which contractors use electronic means to offer new prices or new values for non-price factors that can be quantified according to the evaluation standards in bidding dossiers, as a basis for ranking or re-ranking bids on the National Bidding Network System. With online bidding, investors can choose to bid according to the normal process, or bid according to the shortened process.

Regarding the principle of online bidding, the investor is not allowed to offer a price higher than the bid package price and not higher than the lowest offer price in cases where price is the only factor being offered from bidders. During the online bidding period, the bidder can continuously change the price and non-price factors (if any) and the deadline of an online bidding must be in business hours. In case the bid price is the only factor to be offered and contractors are selected according to the lowest price method, and there are many bidders offering the lowest price, then the first bidder offering the lowest price will win the bid. In case the lowest price method is not used, the National Bidding Network System automatically ranks contractors according to the evaluation standards in the bidding documents and if there are many contractors ranked first, then the earliest first-ranked contractor will win the bid.

1.5 Some cases where it is allowed to refer to a specific brand and origin of goods in the bidding documents

According to Article 24.9 of Decree 24/2024/ND-CP, it is not allowed to refer in bidding documents to the requirements on a specific brand or origin of goods. However, in the following cases, the investor is allowed to refer to a brand or origin of goods when preparing bidding documents:

- (i) For procurement packages with domestic bidding where there are at least 3 manufacturers for 1 domestic product that meet the technical, quality and price requirements, the investor will decide to require contractors to offer prices for this type of domestic product.
- (ii) In case the bidding package is eligible to apply the form of contractor appointment but the competent person decides to apply the form of open bidding, limited bidding, or competitive bidding to select the contractor, it is allowed to regulate in the bidding documents the brand and origin of the goods.
- (iii) For types of drugs that can be produced by at least 3 domestic companies that meet the technical criteria according to the regulations of the Ministry of Health on quality and price, the investor decides to request the contractor to offer prices for this domestic drug.
- (iv) For types of drugs announced by the Ministry of Health and which can be produced by at least 3 domestic manufacturers on production lines that meet EU-GMP principles and standards or equivalent standards and meet the technical criteria as prescribed by the Ministry of Health in terms of quality, price, and supply capacity, it must be required in the bidding documents that contractors can only offer prices for drugs of domestic origin.
- (v) If the bidding documents regulate the origin of goods by group of countries or territories but not including Vietnamese origin, goods of Vietnamese origin will still be considered and evaluated.

Decree 24/2024 will take effect from the date of signing, i.e. 27 February 2024 and replace Decree 63/2014/ND-CP.

2. Novelties on selecting investors to implement projects which require bidding

On 27 February 2024, the Government issued Decree 23/2024/ND-CP (“**Decree 23/2024**”) detailing a number of articles and measures to implement the Bidding Law on selecting investors to implement projects that require bidding as prescribed by the laws governing such particular industry or field. Decree 23/2024 will take effect from the date of signing, i.e. 27 February 2024, with the following notable contents:

2.1 Projects that require bidding to select investors

Article 1.4 of Decree 23/2024 lists specific projects that require bidding to select investors as prescribed by the laws governing such particular industry or field, including:

- (i) International football betting business project as prescribed by the law on the business of betting on horse racing, greyhound racing and international football;
- (ii) Investment projects to construct domestic solid waste treatment works as prescribed by the law on environmental protection;
- (iii) Dredging projects in seaport waters and inland waterways combined with product recovery as prescribed by the law on maritime traffic and inland waterways;
- (iv) Projects for aviation services at airports and aerodromes as prescribed by the law on civil aviation, except for aviation operating centres owned by domestic airlines at airports and aerodromes;
- (v) Motorway traffic service projects as prescribed by the law on motorway traffic, including complex works serving public and commercial purposes;
- (vi) Investment projects to renovate and rebuild apartment buildings as prescribed by the housing law;
- (vii) Investment projects to build water supply works, investment projects to build water supply systems as prescribed by the law on production, supply and consumption of clean water;
- (viii) Projects that require bidding, with 2 or more interested investors registering for implementation, including: projects in the fields of education, vocational training, health care, culture, and sports, and environment as prescribed by the law on encouraging socialisation (*except for investment projects to build domestic solid waste treatment works, investment projects to build water supply works, investment projects to construct water supply system*); investment projects to construct horse and greyhound racing courses, including the business of betting on horse racing and greyhound racing as prescribed by the law on business of betting on horse racing, greyhound racing and international football; investment projects to build social housing as prescribed by the housing law.

Projects that require bidding as mentioned above and use land must fully meet the following conditions:

- Fall into one of the cases where the State recovers land as prescribed by the land law;
- Not eligible to attend the auction of land use rights as prescribed by the land law, not eligible for auction of public assets as prescribed by the law on management and use of public assets.

2.2 Incentive levels in investor selection

Article 5 of Decree 23/2024 stipulates 2 incentive levels when evaluating investors' bids as follows:

- (i) Incentive level of 5%: applicable to investors with solutions of applying advanced technology, high technology, environment-friendly technology, and the best available techniques to minimise environmental pollution for projects with a high risk of adverse impact on the environment as prescribed by the law on environmental protection; and
- (ii) Incentive level of 2%: applicable to investors who are committed to transferring technology in the List of technologies prioritised for investment and development as prescribed by the law on high technology or in the List of technologies encouraged for transfer as prescribed by the law on technology transfer.

When bidding, investors must, in order to receive incentives, submit documents proving technology application solutions, technology transfer and the lawful rights to use technology.

2.3 Sequence and procedures for selecting investors

The sequence and procedures for selecting investors are specified in Article 8 of Decree 23/2024 (from project announcement and bidding organization to contract signing and project implementation stage, as appropriate for each industry and field) based on (i) the bidding forms applied to the project (*including: open bidding, limited bidding according to the one-phase, one-envelope and two-envelope bidding method; open bidding according to the two-phase, one-envelope bidding method, as appropriate for each specific project*); and (ii) the project must determine the number of interested investors as prescribed by law.

Regarding project announcement procedures, the competent authority is responsible for organising the posting of the investment in-principle approvals on the National Bidding Network System within no later than 5 working days of issuing the investment in-principle approvals. In case the project is not required to obtain investment in-principle approvals, the competent authority is responsible for organising the posting of the information of business investment projects within no later than 5 working days of issuing written approvals.

Regarding publicising investor selection results and contract information: the bidding party is responsible for organising the posting of the information about investor selection results/key details of the contract on the International Bidding Network System within 5 working days of issuing the investor selection results, or of the effective date of the investment project contract.

2.4 The winning investor is allowed to establish an enterprise to implement the project

According to Article 49 of Decree 23/2024, the winning investor may establish an enterprise to implement a business investment project or directly implement the project. Particularly for foreign investors who win the bid, they must establish an enterprise to implement the project.

Enterprises established by investors must have 100% of charter capital held by the winning investor; inherit the rights and obligations to implement the

investment project that the winning investor has committed to in the bids and contracts; have the right to contribute capital and increase the charter capital of the enterprise to implement other business investment projects (if any) but must not affect the committed rights and obligations. However, investors will not be allowed to transfer business investment projects without meeting the conditions prescribed in Article 76.2 of the Bidding Law and the conditions prescribed by investment laws, the laws governing their industries and business lines, and must fully fulfill financial obligations to the State in case of income generation.

3 Amend and supplement regulations on management of vehicles serving water-based entertainment and recreation

On 23 February 2024, the Government issued Decree 19/2024/ND-CP (“Decree 19/2024”) amending and supplementing a number of articles of Decree 48/2019/ND-CP (“Decree 48/2019”) on the management of vehicles used for water-based entertainment and recreation activities. Decree 19/2024 will take effect from 10 April 2024 with some notable points as follows:

3.1 Change in management authority and operating procedures for vehicles used in water-based entertainment and recreation

Authority/procedure	Region 1	Region 2
Regarding the authority to approve/negotiate and announce the opening and closing of operating areas	Department of Transport (previously, depending on the route of operation, the authority to approve operation belonged to the Vietnam Inland Waterways Department, or the Department of Transport, or the Vietnam Maritime Administration).	District-level People's Committee (previously the authority to negotiate and announce the opening and closing of operating areas belonged to the Provincial People's Committee).
<i>Documents</i>	Submit paper or electronic copies of documents (previously only paper copies were allowed).	
<i>Document submitting method</i>	Submit in person or send via postal service or submit via online public service system (previously only submit in person or send via postal service).	
<i>Place to submit documents</i>	Department of Transport (previously, submit to the Vietnam Inland Waterways	District-level People's Committee (previously, submit to

Procedures		<i>Department, or Department of Transport, or the Vietnam Maritime Administration).</i>	<i>the Department of Transport).</i>
	Processing deadline for invalid documents	1 working day (<i>previously, 2 working days</i>).	2 working day.
	The Department of Transport seeking opinions	Add a step to seek opinions from the Local Inland Waterway Sub-Department, the Local Maritime Administration, before issuing approvals.	
	Deadline for issuance of approvals	No later than 2 working days from the date of receiving written responses from the local Inland Waterway Sub-Department or the Local Maritime Administration, or upon expiration of consulting time (<i>previously, 5 working days</i>)	No later than 5 working days of receipt of valid documents.

3.2 Add the cases where vehicles are exempt from registration

According to current regulations, before being used for water recreation and entertainment activities, vehicles must be registered in the Vehicle Registration Book and granted a Certificate of registration of water-based recreation and entertainment vehicles by the competent authority. However, Article 1.6 of Decree 19/2024 adds that in the case of non-motorised vehicles with a carrying capacity of not more than 5 people, they are exempt from registration.

3.3 Change the vehicle registration authority

Article 1.7 of Decree 19/2024 stipulates that district-level People's Committees shall implement and manage the registration and management of water recreation and entertainment vehicles that must be registered. Commune-level People's Committees shall manage water-based recreation and entertainment vehicles that are exempt from registration (*previously this power belonged to the Provincial People's Committee*).

GV Lawyers would like to introduce our valued readers to an article by Lawyer Nguyen Gia Huy Chuong, Lawyer Nguyen Thi Hang, and Ms. Vu Nguyen Thanh Luong titled **“The right for foreign-invested economic organisations to access and use land in Vietnam under the Land Law 2014”** published on **The Legal 500** site on 15 March 2024.

Foreign-invested economic organisations (“**FI economic organisations**”) are one of the seven groups of organisations/individuals using land (“**Land Users**”) in Vietnam.[1] On the basis of inheritance from and development of the regulations in previous land laws, the Land Law 2024 regulates the right for FI economic organisations to access and use land in a manner more expanded and equally accessible as to domestic economic organisations, ensuring the potential of the land is exploited the most in the market economy.

1. The subject using land is re-defined to be FI economic organisations

(a) The concept of “*FI economic organisations*” is defined in the Land Law 2024 by way of re-determining the subjects “*foreign-invested enterprises*” in the Land Law 2013 and “*foreign organisations and individuals making investments in Vietnam*” in the Land Law 2003. Accordingly, the Land Law 2024 defines a FI economic organisation by making reference to its definition in the applicable Investment

Law[2] in that “*an economic organisation, in order to perform projects using land, must meet the conditions and implement investment procedures for foreign investors as stipulated by the Investment Law.*”[3]

(b) The phrase “*an economic organisation must meet the conditions and implement statutory investment procedures for foreign investors*” as stated in Article 23.1 of the Investment Law 2020 can be analysed as follows:

“*Article 23. For investing activities of FI economic organisations*
 1. *Economic organisations must meet the conditions and implement statutory investment procedures for foreign investors when they establish other economic organisations; contribute capital to, subscribe for shares of, or purchase capital contributions from other economic organisations; invest in the form of business cooperation contract, if they fall into one of the following cases:*

- a) Have foreign investors holding more than 50% of charter capital or for partnerships, the majority of partners must be foreigners;*
- b) Have an economic organisation as specified in point a) above holding more than 50% of charter capital;*
- c) Have a foreign investor and an economic organization as specified in point a) above holding more than 50% of charter capital.”*

Thus, it can be understood that FI economic organisations as defined in the Land Law 2024 are only the subjects prescribed in Article 23.1 of the Investment Law 2020, that is, they are FI economic organisations with over 50% of charter capital directly held by (i) foreign investors, (ii) economic organisations in which foreign investors hold over 50% of charter capital; or (iii) foreign investor and the economic organisation referred to in cases (i) above.

(c) Of note, the Investment Law 2020 simply defines a FI economic organisation as “*an*

economic organisation with foreign investors acting as members or shareholders.”[4] According to this definition, as long as an enterprise has a foreign investor holding its capital (regardless of the amount of capital), such an enterprise can be considered a FI economic organisation.

Thus, by comparing the definitions of “FI economic organisation” in the Land Law 2024 to the Investment Law 2020, we see that the scope of FI economic organisations as defined under the Land Law 2024 is narrower, and includes only FI economic organisations that can be grouped into the cases analysed in Section 1(b) above.

- (d) The following question: the Land Law 2024 classifies those FI economic organisations that **do not** fall into the cases in Section 1(b) above (in which including economic organisations with foreign investors holding **50% of charter capital or less**) into which group of land users?

According to the Land Law 2024, an “economic organisation” is “one that is defined in the Investment Law, except

for the cases specified in Clause 7 of this Article” and being one of “Domestic organisations.”[5] Meanwhile, Article 4.7 of the Land Law 2024 is referring to a FI economic organisation that is analysed in Section 1(a) above. As such, the Land Law 2024 is using the rule of elimination, that is, economic organisations that are not FI economic organisations (as defined in the Land Law 2024, instead of the Investment Law 2020) will be considered Economic organisations.

In short, it can be understood that the Land Law 2024 classifies economic organisations in which foreign investors hold 50% or less of charter capital as Domestic economic organisations.

- (e) Thus, in our opinion, the Land Law 2024 and the Investment Law 2020 are not completely consistent regarding the definition of “FI economic organisations.”

2. LURs obtained by FI economic organisations

To receive LURs, FI economic organisations can choose to receive LURs (i) from the State via land allocation or

land lease; (ii) from the market via LUR transfer transactions; or (iii) by other ways such as on the basis of successful results of conciliation on land disputes, effective Court decisions, awards of commercial arbitrations in Vietnam, etc.

2.1 How to access land from the State

FI economic organisations can obtain LURs from the State in one of the following ways:

- (a) The State allocates land to implement housing projects for sale or for combined sale and lease; or access land from the transfer of real estate projects by the law on real estate business, in which the State allocates land and collects land use levies.[6]
- (b) The State leases land and collects annual land rent, or collects land rent in one-off payment for cases other than land allocation with or without collection of land rent according to the Land Law 2024.[7]
- (c) The State allocates land to FI economic organisations in compensation for land recovery.[8]

2.2 How to access land from the market

To access land from the market, FI economic organisations can achieve this in one of the following ways: [9]

- (a) receive the transfer of investment capital in the form of LURs;
- (b) receive capital contribution in the form of LURs;
- (c) receive transfer of LURs in industrial parks, industrial clusters, and high-tech parks.

In addition to the ways above, for commercial and service land, and land for non-agricultural production premises, FI economic organisations can also access land via such forms as (i) leasing land, subleasing land from Vietnamese economic organisations or people who are residing abroad; (ii) subleasing land attached to infrastructure from FI economic organisations.[10]

2.3 Other ways to access land

FI economic organisations can obtain LURs under a decision or award of the Vietnamese Commercial

Arbitration, which is a new point recognised in the Land Law 2024, in addition to inheriting other ways of access to land use rights stipulated in the Land Law 2013: (i) according to successful results of conciliation of land disputes, recognised by the competent People's Committee; (ii) agreement in a mortgage contract to pay debts; (iii) decisions of competent state agencies on resolving land disputes, complaints and denunciations about land, judgments, and decisions of a Court, executed decisions of judgment enforcement agencies; (iv) written confirmation of the auction results of LURs consistent with law; (v) for groups of land users sharing common LURs, documents on division and separation of LURs consistent with the law.[11]

3. Rights and obligations of FI economic organisations

In the Land Law 2024, the rights of FI economic organisations go hand in hand with the obligations they must fulfill, which are prescribed from Article 41 to Article 43. In addition to the general rights for all land users,

the Land Law 2024 also stipulates the rights particularly applicable to FI economic organisations depending on the form of land use, land use purpose, etc.

3.1 Some general rights and obligations of FI economic organisations are similar to other land users

(a) General rights and obligations of land users

Without consideration of the type of subject, forms of land use, or purpose of land use, FI economic organisations, similar to other land users, also have general rights of a land user, such as:[12] (i) be granted a LURC when meeting all conditions stipulated by land law; (ii) enjoy the profits from labor and investment on the land; (iii) enjoy benefits from State investments to protect, improve and develop agricultural land; and other general rights.

In addition, FI economic organisations also have general obligations of a land user, such as:[13] (i) using land for the right purpose and within its boundaries; (ii) making land declaration and

registration; fully performing procedures for converting, transferring, leasing, subleasing, inheriting, donating LURs, mortgaging, contributing capital in form of LURs; (iii) fulfilling financial obligations related to land; and other obligations as stipulated by law.

(b) Right to select the form of paying land rent

Demonstrating the State's respect for the right to freely choose the form of land rent payment depending on financial capacity of land users, the Land Law 2024 inherits and develops the right to choose and convert the form of land rent payment for FI economic organisations. Accordingly, (i) FI economic organisations which are leasing land from the State with annual land rent payment but fall into the case of lease land with a one-off payment of rent for the entire lease period can **convert to the form of land lease with a one-off payment of rent for the remaining lease period**; [14] or vice versa, (ii) FI economic organisations which are leasing land from the State with a one-off

payment of rent for the entire lease period can **convert to the form of land lease with annual land rent payment**. Land rent already paid will be deducted from the payable annual land rent as stipulated by the Government. [15]

With the regulation that when a FI economic organisation switches from a land lease with a one-off payment of rent for the entire lease period to the form of the land lease with annual land rent payment, *"the land rent already paid will be deducted from the payable annual land rent"* can be interpreted that the paid land rent is still retained by the State (without refunding the difference to enterprises) to gradually set off against annual land use levies for the remaining lease term. If in the coming time guiding documents of the Land Law 2024 provide guidelines that align with the aforementioned interpretation, enterprises (including FI economic organisations) may have their flexibility compromised in terms of investment cash flows for their business plans.

3.2 Rights and obligations of FI economic

organisations using land to implement projects in Vietnam

Based on the origin or form of land use, the Land Law 2024 specifically stipulates the rights for FI economic organisations with respect to land and assets attached to the land, particularly:

(a) **For FI economic organisations leasing land from the State with annual land rent payment**

As land users have not paid rent for LURs for the entire land lease period, the rights of land users, in this case, are therefore limited, and users do not have additional rights to land as when they lease land with a one-off payment of rent or use land via paid allocation (*except for subleasing land use rights for land plots attached to completed infrastructure in industrial parks, industrial clusters, and high-tech zones.*) Accordingly, FI economic organisations leasing land from the State with annual land rent payments have the following rights to **assets attached to leased land**: [16]

(i) Mortgage the land-attached assets that

- they own at credit institutions licensed in Vietnam;
- (ii) Contribute capital in the form of land-attached assets during the land lease term; The recipient of capital contribution in the form of assets will be entitled to lease land from the State for the intended purpose for the remaining term;
 - (iii) Sell land-attached assets, or sell the assets that they own and are attached to land and land lease rights under land lease contracts^[17] provided that the legal conditions are met.^[18]
 - (iv) Lease out the assets that they own and are attached to land and land lease rights under land lease contracts; and
 - (v) Sublease land use rights in the form of annual land rent payment for land plots with completed infrastructure for the cases where it is allowed to construct and exploit infrastructure on land in industrial parks, industrial clusters, and high-tech parks; The sublessee of land use rights must use the land for the right purpose and fulfill financial obligations as stipulated by law.
- (b) For FI economic organisations that are **land leased by the State with one-off land rent paid for the entire lease period**; or eligible for a **land allocation by the State with land use levies collected to implement the project**
- Upon meeting the respective conditions according to the land law,^[19] FI economic organisations that are land leased by the State with one-off land rent paid for the entire lease period, or eligible for State land allocation with land use levies collected to implement the project, will have the rights to **LURs and land-attached assets**, including:^[20]
- (i) Transfer LURs and land-attached assets under their ownership during the land use term;
 - (ii) Lease or sublease LURs, land-attached assets under their ownership during the land use term;
- (iii) Mortgage their LURs and land-attached assets at the credit institutions with operation licence in Vietnam; and
 - (iv) Contribute capital in the form of LURs and land-attached assets under their ownership.
- (c) FI economic organisations that use the **land formed by foreign investors purchasing shares or capital contributions** also have the rights specified in Section (a) or Section (b) above respective to their form of paying land use levies and land rent. ^[21]

3.3 Rights and obligations of FI economic organisations that use land by receiving capital contributions in the form of LURs

- (a) In case a FI economic organisation **receives a capital contribution in the form of LURs where the State allocates the land with the collection of land use levies, or the land is leased with a one-off land rent paid for the entire lease period**, it will have the rights and obligations similar to the case of FI economic organisation that is land leased by the State with one-off land

rent paid for the entire lease period; or eligible for a land allocation by the State with land use levies collected to implement the project, as analysed in Section 3.2(b) above. [22]

- (b) FI economic organisations are converted from **joint venture enterprises** in which the Vietnamese party contributes capital in the form of LURs:

We believe that the use of the term “**joint venture enterprise**” [23] in the Land Law 2024 is inherited from previous Land Laws and the history of forming land-use enterprises in the past, even though the investment law and enterprises no longer use this term for the time being. According to the Land Law 2024, FI economic organisations converted from joint venture enterprises to which the Vietnamese party contributes capital in the form of LURs have the following rights and obligations:

- (i) In the case where LURs received from previous capital contributions are not used to implement commercial housing investment projects and FI economic organisations are

land leased by the State with annual land rent collected according to the Land Law 2024, the rights and obligations of FI economic organisations are similar to those analysed in Section 3.2(a) above (*in case of the State leasing land with annual land rent collection*); [24]

- (ii) In the case of (A) where LURs received from previous capital contributions are **not** used to implement commercial housing investment projects and FI economic organisations are **land leased by the State with a one-off land rent paid for the entire lease period** according to regulations; [25] or (B) where LUR received from previous capital contributions are used to implement commercial housing investment projects and FI economic organisations are **eligible for land allocation** by the State **with the collection of land use levies** according to regulations [26], then the right and the obligations of FI

economic organisations are similar to those analysed in Section 3.2(b) above (*in case of the State leasing land with one-off land rent paid for the entire lease period; or the State allocating land with collection of land use levies to implement the project*).

3.4 Rights and obligations of FI economic organisations that are land leased or subleased in industrial parks, industrial clusters, and high-tech zones

- (a) In case FI economic organisation pays one-off land rent for the entire lease period, or pays one-off land sub-rent for the entire sublease period, it has the same rights and obligations as in case of being eligible for a land allocation by the State with the collection of land use levies, or a land lease with one-off land rent paid for the entire lease period outside of industrial parks, industrial clusters, and high-tech zones. [27]

- (b) In case FI economic organisation pays annual land rent or sub-rent, it has the rights and obligations as in case of that it is land leased by

the State with collection of annual land rent outside of industrial parks, industrial clusters, and high-tech zones. [28]

4. Conclusion

The said regulations have basically contributed to establishing more equality and narrowing the gap related to the

right to access the land and LURs of FI economic organisations as opposed to domestic economic organisations, creating favorable conditions for stable, long-term land use to implement investment projects of this group of subjects. However, the land law and related legislation (especially foreign investment law) still need to create a

synchronous, uniform, and stable legal environment for the activities related to LURs of FI economic organisations. The Land Law 2024 will take effect from 1 January 2025, so the Government needs to soon issue the documents guiding the Land Law 2024 in a clear, consistent, and appropriate manner in all current legal systems.

[1] Article 4.7 of the Land Law 2024

[2] Investment Law 2020, passed by the National Assembly on 17 June 2020, effective from 01 January 2021

[3] Article 3.46 of the Land Law 2024

[4] Article 3.22 of the Investment Law 2020

[5] Article 4.1(b) of the Investment Law 2020

[6] Articles 28.1(i) and 119.3 of the Land Law 2024

[7] Article 28.1(k) and Article 120 of Land Law 2024

[8] Article 119.4 of the Land Law 2024

[9] Articles 28.1(c), (d) and (dd) of the Land Law 2024

[10] Article 206.3 of the Land Law 2024

[11] Article 28.1(m) of the Land Law 2024

[12] Article 26 of the Land Law 2024

[13] Article 31 of the Land Law 2024

[14] Article 30.1 of the Land Law 2024

[15] Article 30.2 of the Land Law 2024

[16] Article 41.2 of the Land Law 2024

[17] Article 3.37 of the Land Law 2024

[18] Article 46 of the Land Law 2024

[19] Article 45 of the Land law 2024

[20] Article 41.3 of the Land law 2024

[21] Article 41.4 of the Land law 2024

[22] Article 42.1 of the Land law 2024

[23] According to Article 2.7 of the Law on Foreign Investment in Vietnam 1996, "A joint venture enterprise is an enterprise

established in Vietnam by two or more parties cooperating on the basis of a joint venture contract or an agreement signed between the Government of the Socialist Republic of Vietnam and that of a foreign country or an enterprise formed through the cooperation between a foreign invested enterprise and a Vietnamese enterprise or a joint venture enterprise cooperating with foreign investors on the basis of a joint venture contract."

[24] Article 42.2(a) of the Land Law 2024

[25] Article 42.2(b) of the Land Law 2024

[26] Article 42.2(c) of the Land Law 2024

[27] Articles 43.2(a), 33.1 and 33.3 of the Land Law 2024

[28] Article 43.2(b) of the Land law 2024

1. Tax policy for foreign contractors

In case a foreign organisation provides goods in Vietnam in the form of on-site import and export and generates income in Vietnam on the basis of a contract signed with an enterprise in Vietnam (except for processing contracts), it will then be subject to tax application to foreign contractors as prescribed in Article 1.2 of Circular 103/2014/TT-BTC. In case the foreign contractor does not meet one of the conditions as prescribed in Article 8 of Circular 103/2014/TT-BTC, the Vietnamese party - the organisation purchasing goods in the form of on-site import and export, is responsible for deducting and paying on behalf before making payment to foreign contractors as prescribed in Article 4.2 and Article 11 of Circular 103/2014/TT-BTC.

Ha Noi City Tax Department replies to the question of Nam Phong Green JSC. in Official Letter No. 10831/CTHN-TTHT dated 6/3/2024.

2. Instructions on the content of the invoice

In case the Company sells goods under a contract with a foreign partner that is not present in Vietnam and is designated to deliver goods to an enterprise in Vietnam as on-site exports, and if the goods are transported to the border gate, or to the place where export procedures are carried out, the enterprise will issue the stock-out/ internal transportation slip according to regulations. The column of buyer's name represents the recipient of the goods, the buyer's address represents the warehouse location to receive the goods; the seller's name represents the person delivering the goods; the seller's address represents the location of the delivering warehouse and means of transportation; does not show taxes, tax rate, total payment amount as prescribed in Article 10.14 of Decree 123/2020/ND-CP.

Ha Noi City Tax Department replies to the question of Nippo Mechatronics (VietNam) Co., Ltd. in Official Letter No. 10480/CTHN-TTHT dated 4/3/2024.

3. Export tax on type of exported products

According to Article 12 of Decree 134/2016/ND-CP (amended by Article 1.6 of Decree No. 18/2021/ND-CP), on-spot exporters register on-spot export customs declarations and declare and pay export tax according to the tax rate and value of on-spot exported products as prescribed at the time of registering on-spot export customs declarations. In case an enterprise uses raw materials and supplies of domestic origin to produce exported products, when exported products that are not exempt from export tax, the enterprise must declare and pay export tax on exported products as prescribed.

General Department of Customs replies to the question of Lechenwood Vietnam Co., Ltd. in Official Letter No. 651/TCHQ-TXNK dated 19/2/2024.

4. Corporate income tax incentives for interest on term bank deposits

In case the Company is enjoying corporate income incentives thanks to meeting preferential conditions for the area (high-tech zone), the income eligible for corporate income tax incentives is all income arising from production and business activities in preferential areas, except for the incomes as prescribed in Article 18.3 of Circular 78/2014/TT-BTC (amended and supplemented in Article 10.1 of Circular 96/2015/TT -BTC). In case the Company has income from interest on term bank deposits arising outside the preferential area, it is not eligible for corporate income tax incentives.

Ha Noi City Tax Department replies to the question of ICT VINA Co., Ltd. in Official Letter No. 1098/CTDAN-TTHT dated 30/1/2024.

1. Proposing a specific mechanism for piloting offshore wind power

According to the National Power Development Plan (Power Plan VIII) by 2030, offshore wind power will reach about 6,000 MW by 2030, which can increase further in case of rapid technology development, reasonable electricity prices and transmission costs. But up to now, no policy on any project has been decided and assigned to an investor.

At the meeting on 13 March 2024, the representative of the Steering Committee for key projects in the energy sector said that this pilot project has problems related to investigation, survey, exploration, measurement at sea and assignment of sea areas. The project also encountered difficulties with investment issues, such as investment in-principle approval, investor selection, conditions for foreign investors, and planning according to planning laws. Inadequacies are related to regulations in the Law on Investment, Bidding, Natural Resources and Environment of Sea and Islands, and some plans and resolutions of the National Assembly.

Therefore, Deputy Prime Minister Tran Hong Ha requested the Ministry of Industry and Trade to soon complete

the review of regulations and legal basis to implement the Pilot Project. In case of necessity, the Ministry of Industry and Trade needs to request the competent authority to develop a draft Resolution of the National Assembly, so that it can be implemented immediately pending the amended law.

This specific mechanism has been proposed by many corporations and enterprises at previous meetings with Government leaders and ministries. They believe that there needs to be a policy from the competent authority on a specific mechanism to remove problems not yet regulated by law when implementing offshore wind power projects.

In addition to pilot offshore wind power projects, LNG power projects also encounter many problems when deployed. At the Nhon Trach 3 and Nhon Trach 4 Thermal Power Plant projects, there are regulations on unifying the power output committed to long-term purchase in power purchase contracts and determining the price frame for LNG power generation.

By vnexpress.net

2. New proposal on piloting commercial housing projects

The Ministry of Natural Resources and Environment (NRE) has just sent a report to Deputy Prime Minister Tran Hong Ha on the development and submission of the National Assembly Resolution on "Piloting commercial housing projects through agreements on receiving

land use rights or having land use rights on other land".

According to the Ministry of NRE, the draft resolution has 2 policies. Firstly is the policy that allows real estate enterprises to receive transfer of land use rights as prescribed in

Article 9 of the Law on Land 2024 that are eligible to transfer land use rights to carry out commercial housing project.

Secondly is the policy that allows real estate enterprises that have land use rights to carry out commercial housing projects on other types of land other than residential land as prescribed in Article 9 of the Law on Land 2024.

Regarding the type of land to be implemented, the draft stipulates that the types of land that can receive transfer of land use rights to implement commercial housing projects including land types as prescribed in Article 9 of the Law on Land 2024 that are eligible for

transfer of land use rights. Types of "other land" allowed for commercial housing projects for real estate enterprises that have land use rights including types of "non-residential land" as prescribed in Article 9 of the Law on Land 2024.

Subjects of application are enterprises with real estate business functions, land users as prescribed by the Law on Land and State agencies and organisations that are managing unallocated, and unleased land or leased land allocation.

The project will be piloted for a period of 5 years, from 1 January 2025 to 1 January 2030.

By diendandothi.lanhtedothi.vn



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No.	Document title	Issuance date	Effective date
GOVERNMENT			
1	Decree 63/2014/ND-CP detailing a number of articles of the Bidding Law on contractor selection.	27/2/2024	27/2/2024
2	Decree 23/2024/ND-CP detailing a number of articles and measures to implement the Bidding Law on selecting investors to implement projects in the case where bidding must be organised as prescribed by the law on industry and field management.	27/2/2024	27/2/2024
3	Resolution 25/NQ-CP on Proposal to develop the Law on Special Consumption Tax (amended).	27/2/2024	27/2/2024
4	Decree 20/2024/ND-CP amending and supplementing a number of articles of Decree 05/2021/ND-CP on the management and operation of airports and aerodromes, and Decree 64/2022/ND-CP amending and supplementing a number of articles of the Decrees regulating business activities in civil aviation.	23/2/2024	10/4/2024
5	Decree 19/2024/ND-CP amending and supplementing a number of articles of Decree 48/2019/ND-CP on the management of vehicles for water-based recreation and entertainment activities.	23/2/2024	10/4/2024
PRIME MINISTER			
1	Decision 215/QD-TTg on approving Vietnam's National Energy Development Strategy to 2030, with vision to 2045.	1/3/2024	1/3/2024
2	Decision 209/QD-TTg on approving the Plan to reduce and simplify regulations related to business activities within the scope of management functions of the Ministry of Industry and Trade in 2024.	29/2/224	29/2/2024
MINISTRY OF PLANNING AND INVESTMENT			
1	Circular 03/2024/TT-BKHDT regulates the form of bidding documents to select investors to implement projects in the case where bidding must be organised as prescribed by the law on industry and field management.	06/3/2024	06/3/2024
2	Circular 01/2024/TT-BKHDT providing guidance on the provision and posting of information on contractor selection and bidding-related dossier forms on the Vietnam National E-Procurement System	15/2/2024	15/2/2024
MINISTRY OF LABOUR, INVALIDS AND SOCIAL AFFAIRS			
1	Circular 02/2024/TT-BLDTBXH amending and supplementing a number of articles of Circular 21/2021/TT-BLDTBXH detailing a number of articles of the Law on Vietnamese Guest Workers.	23/2/2024	15/5/2024



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