

Investment

New regulations on the bidding process for project investor(s) selection

- ❑ On 23 June 2023, the National Assembly of Vietnam adopted Law No. 22/2023/QH15 on bidding (“**Bidding Law 2023**”), which shall take effect from 1 January 2024. Bidding is used in various sectors to choose a contractor for construction, procure goods, provide services, and select investors. Among these uses, the new law highlights bidding for investor(s) selection.
- ❑ Diverging from Law No. 43/2013/QH13 (“**Bidding Law 2013**”) currently in effect, Bidding Law 2023 excludes bidding processes to select investor(s) for PPP projects (now separately governed by the Law on PPP). Further, more specific details on the bidding process for investor selection are introduced in this Bidding Law 2023.
- ❑ Article 2 of the new law clarifies the cases where bidding is required to select investors, including (i) investment projects using land for which bidding is required under the law and regulations on land; and (ii) investment projects for which bidding for the selection of investors is required under the relevant specialized laws and regulations. With respect to item (i) above, the Vietnam National Assembly is working on a new draft of the Law on Land, expected to take effect as of 1 July 2024 (“**Land Law 2024**”), which will link the process under Bidding Law 2023 and the conditions/requirements for bidding under new Land Law 2024. Therefore, the bidding process under the Bidding Law 2023 for projects using land will not be applied immediately but from the effective date of the Land Law 2024.
- ❑ International bidding for investor selection (i.e., allowing foreign individuals and entities to bid) can be applied for all cases that fall under the scope of the Bidding Law 2023, except for the five circumstances below:
 - The target project involves business(es) not yet accessible to the market by foreign investors in accordance with the law on investment;
 - The target project is subject to mandatory domestic bidding (involves domestic bidders only) to ensure national defense and security;
 - The target project is located in certain land areas or sea zones where participation of foreign investors and FIE are restricted in accordance with the provisions of the land law and relevant

laws;

- The total investment capital of the target project is less than VND 800 billion (approximately USD 35 million); and
 - The target project does not fall into the aforementioned circumstances and has been announced or notified of an invitation of interest to organize international bidding, but no foreign investor participates.
- For the performance of bidding, bidders for the investor selection process are required to deposit, submit bank guarantee, or guarantee insurance with the deposited, guaranteed, or insured amount from 0.5% to 1.5% of the total investment capital of the relevant project, depending on the scale and nature of each project. Deposited, guaranteed, insured amount shall be collected against the bidders in case of bid cancellation due to violations of the bidder, failure of bid winner in performing project agreement or providing performance security thereunder, among other things.
- Bidders will be evaluated/scored based on their (i) financial capability, capacity to arrange capital and experience of bidder; (ii) implementation plan proposed by bidder, including technical, social, and environmental criteria; and (iii) efficiency in land use and development of relevant sectors, fields, and local area.
- The assessment criteria shall be evaluated by grading/scoring (up to 100 or 1,000). The total score of each bid shall be the basis for bids ranking.
 - Higher score/ranking will be awarded to those bidders who can present in their bid technology solution to reduce environment pollution in projects with high-risk negative impacts on the environment; and bidders who commit to transfer technology in the list of prioritized technologies for development or the list of technologies encouraged for transfer.
 - “Fixed-criteria” to assess bids and select the winning investor shall be applicable to investment projects with specific requirements on conditions for investment, management, and development of relevant business sectors. The Government Office is expected to further elaborate this.
- Bid winners shall be announced officially as the selected investor of the target project and shall

sign a project agreement with the bid owner (state authorities). The project agreement should include the mandatory contents provided under the Bidding Law 2023. Current regulations on PPP projects restricted that Vietnam law is the governing law of PPP agreement. For now, it is unclear whether the same restriction will apply for project agreements under Bidding Law 2023. The Government Office is assigned to provide further guidance on project agreement terms and conditions.

- The selected investor shall be required to provide performance security in the form of a bank guarantee or an insurance guarantee in amounting 1% to 3% of the total investment capital based on the project's scale and nature. The investor is required to maintain the validity of the guarantee throughout the project agreement term. Guarantee shall be exercised against the investor in case of the investor's failure to perform the project agreement; or to extend the guarantee when the investor is at fault for delaying the project.
- Notably, the new law provides provisions regulating the conditions for the winning investor (transferor) to transfer the investment project to a third party (transferee). Those conditions are (i) the target project being approved by the head of the authority issuing investment policies approval (IPA); (ii) the transferee satisfying all technical and financial requirements; (iii) the transferee assuming all rights and obligations of the transferor under the project contract; and (iv) if the transfer triggers amendments to the project agreement, the transferee obtaining an amended IPA before such amendment.

Finance & Banking

New guidance for lending activities of credit institutions and foreign bank branches

- On 28 June 2023, the State Bank of Vietnam issued Circular No. 06/2023/TT-NHNN (“Circular 06”) amending Circular No. 39/2016/TT-NHNN on lending activities of credit institutions and foreign bank branches in Vietnam (“Circular 39”), which shall take effect from 01 September 2023.
- On 28 June 2023, the State Bank of Vietnam issued Circular No. 06/2023/TT-NHNN (“Circular 06”)

amending Circular No. 39/2016/TT-NHNN on lending activities of credit institutions and foreign bank branches in Vietnam (“Circular 39”), which shall take effect from 01 September 2023.

- Making saving deposits at credit institutions and foreign bank branches;
 - Making capital contribution or purchasing equity in a limited liability company or a partnership;
 - Making capital contribution or purchasing shares in a joint stock company that are non-listed or has not registered for trading on UPCOM;
 - Making capital contribution under BCC, equity contribution contracts or investment cooperation contracts to implement investment projects that do not satisfy conditions for commercial operation at the time of lending decision;
 - Making financial reimbursements, except where the loans have satisfied the following conditions:
 - The borrowers have advanced their own funds to pay the expenses for project implementation, and these expenses were incurred less than 12 months before the lending decision; and
 - Expenses paid by the borrower based on utilization of the loan from the credit institution/foreign bank branch in accordance with a loan use plan sent to the credit institution/foreign bank branch to be considered for medium and long-term loans to implement such project.
- ❑ Circular 06 incorporates 8 new regulations on lending activities via electronic means, including among others, provisions on lending principles, outstanding balance, Electronic Know Your Customer processes (e-KYC), application and process for lending and means of payment to disburse the loan.
- ❑ Additionally, Circular 06 provides that if the customers are assessed by credit institutions/foreign bank branch as having a transparent and clear financial state, the customer and credit institutions/foreign bank branches can choose a short-term lending interest rate in VND as agreed but not exceeding the maximum lending interest rate decided by the State Bank of Vietnam in order to meet special needs listed in Circular 06 such as exporting, supporting high-

tech enterprises and small and medium-size enterprise, developing supporting industries, etc.

- ❑ Circular 06 also supplements some regulations of Circular 39 such as regulations on debt payment currency; necessary requirements in the credit institution's internal regulations on lending; debt recovery procedures for loans, plan for use of loan.
- ❑ Loan agreements signed and implemented before 1 September 2023 shall continuously be implemented in accordance with previously applicable regulations. In case the loan agreement is amended/supplemented, the amendment and supplementation must comply with Circular 06.

E-Transaction

New regulations on electronic transaction

- ❑ On 22 June 2023, the Law No. 20/2023/QH15 was promulgated by the National Assembly (“**E-transaction Law 2023**”), which will come into effect as of 1 July 2024 and shall replace Law No. 51/2005/QH11 (“**E-transaction Law 2005**”) after 18 years of implementation.
- ❑ This new law sets out a clearer and more specific governing scope than its precursor, with emphasis on transactions being conducted electronically. Meanwhile, their content, conditions, or format should follow requirements of specific laws that it is related to. E-transactions under other laws shall comply with this E-transaction Law 2023, unless otherwise prohibited by such other laws.
- ❑ Despite retaining some terms from the E-transaction Law 2005, there are newly introduced definitions such as: e-signature, digital signature, timestamp, e-contract, electronic data, digital data, and e-environment.
- ❑ E-transaction Law 2023 acknowledges that data messages shall not be denied of their legal validity simply because of their data message form. When satisfying conditions, a data message shall be considered valid as a document, the original, or evidence in procedural laws. In addition, data messages can be converted into paper documents and vice versa. In case there is any error in a data message happening during the data input process in the automatic information system,

the sender is entitled to withdraw such data message provided that he/she (i) must immediately notify relevant parties of such error; and (ii) has not used or received any benefits from any party.

- The information contained in an e-certificate (defined as the license, certificate, confirmation, approval issued under the form of data message by competent agencies and authorities) is deemed legally valid if (i) the e-certificate is issued in accordance with this law; (ii) the information therein can be accessed and used in complete form; and (iii) in case the law requires, such e-certificate must have a timestamp. It is notable that an e-certificate is transferable, and convertible to paper certificate and vice versa. In case the laws dictate that one document can exist only in either form (e-certificate or paper certificate), the pre-converted form will become invalid from the conversion.
- With regard to the e-signature, there are three major types including:
 - Specialized e-signature, created by organizations and will be used specifically for such organizations' activities. This signature does not require a certificate to be used in Vietnam, with the exception of (i) foreign specialized e-signature issued with an abroad certificate that meets the legal standards of Vietnam; and (ii) a specialized e-signature that is certified with guaranteed safety by the Ministry of Information and Communications.
 - Public digital signature, used in public activities and guaranteed with public digital signature certificate.
 - Digital signature for public services use, guaranteed with certificate of digital signature for public services use.
- In connection with the above instruments used in e-transaction, the E-transaction Law 2023 provides a new service named "confidence service" and determines it as a new conditional business line, subject to the issuance of a sub-license by the MIC. The organizations entitled to conduct this business line may provide timestamp provision services, data message certification services, and digital signature certification services.
- E-transactions executed before 1 July 2024 shall continue to be implemented in accordance with E-transaction Law 2005, unless otherwise agreed by the parties. Digital certificate issued under the E-transaction Law 2005 shall still be valid until its expiration date.

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