

OUTSTANDING POINTS ON SEA ENCROACHMENT ACTIVITIES

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On April 16, 2024, the Government issued Decree No. 42/2024/NĐ-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/NĐ-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/NĐ-CP and clause 21, Article 1 of Decree 148/2020/NĐ-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/NĐ-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.