

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

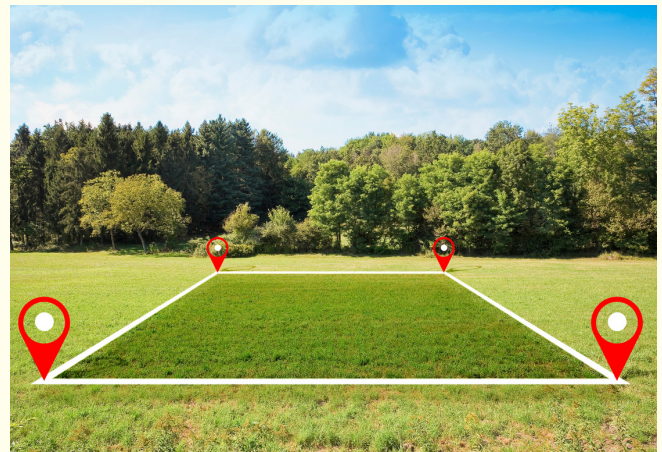
QUOC DZUNG

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.