

AMENDMENTS TO REGULATIONS ON ENVIRONMENTAL IMPACT ASSESSMENT: SOME EFFECTS ON INVESTMENT PROJECT OWNERS

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On January 6, 2025, the Government promulgated Decree 05/2025/ND-CP, amending and supplementing several articles of Decree 08/2022/ND-CP (**Decree 08**) dated January 10, 2022 on elaboration of certain articles of the Law on Environmental Protection 2020 (**EP Law**) (**Decree 05**). Decree 05 took effect on January 6, 2025 with several amended and supplemented regulations related to environmental impact assessment (**EIA**). According to the EP Law, EIA is the process of analyzing, evaluating, identifying, and forecasting environmental impacts of an investment project and proposing measures to minimize adverse environmental impacts. The amendment and supplementation of EIA regulations in Decree 05 will affect a number of projects for which EIA must be conducted, including:

(i) Group I investment projects which *pose a high risk of adverse environmental impacts* as prescribed in clause 3, Article 28 of the EP Law, for example: Projects requiring conversion of land use purposes of medium scale at least with environmentally sensitive factors; Large- or medium-scale projects using land, land with water surface, sea areas with environmentally sensitive factors, and so on (The list of these investment projects is specified in *Appendix III, Decree 08*).

(ii) Some Group II investment projects which *pose the risk of adverse environmental impacts* as prescribed in points c, d, dd, e, clause 4, Article 28 of the EP Law, for example: Medium- or small-scale projects using land, land with water surface, sea areas with environmentally sensitive factors; Small-scale projects requiring conversion of land use purpose with environmentally sensitive factors, etc. (The list of these investment projects is prescribed in *Appendix IV, Decree 08*).

As an important new point in Decree 05, *the projects subject to EIA are modified and supplemented in the List of Group I investment projects and the List of Group II investment projects (specified in Appendix III, Appendix IV of Decree 08), typically:*

- **For the List of Group I investment projects with a high risk of adverse environmental impacts:** Decree 05 removes some projects from the List such as Group A projects with construction components classified according to criteria prescribed by law on public investment, construction and subject to the type of production, business and services with a risk of causing environmental pollution; projects with sea



encroachment activities; projects that generate wastewater.

- **For the List of Group II investment projects with the risk of adverse environmental impacts:** the projects that generate wastewater are removed from the List.

In addition, Decree 05 amends and supplements several regulations on consultation in EIA to strengthen this activity. Specifically, for consultation activities of the residential community and individuals directly affected, instead of merely requiring the investment project owner to coordinate with the Communal People's Committee of the locality where the project is implemented to notify the time and place of the consultation meeting as before, Decree 05 mandates the investment project owner to coordinate with the Communal People's Committee to send invitations to the entire residential community and individuals directly affected to attend the consultation meeting. In the case where they do not attend the consultation meeting, their opinions must be collected in writing through sending ballots instead of organizing an in-person meeting as prescribed in Decree 08 previously. Decree 05 also adds a requirement that the number of people attending the consultation meeting and having been consulted through sending ballots must be at least two-thirds of the total number of directly affected people.

In addition, Decree 05 amends and supplements the regulations on responsibilities of project owners to implement EIA during the preparation and execution of investment project before operation upon any change as compared to the decision on approval of EIA report appraisal result. Compared to Decree 08, Decree 05 defines the cases where EIA is required more clearly. For example, Decree 05 stipulates (i) specific cases with an increase by 30% or more in the scale of and capacity for production, business, or services; (ii) the consequences of their adverse impacts on the environment (increasing total wastewater flow or total dust and emission volume discharged to the environment when the project officially comes into operation; increasing adverse impacts on biodiversity or biodiversity loss, etc.). Moreover, in the case where there is a change in the project but no need to undergo EIA, Decree 05 has added the responsibility of the investment project owner in updating and self-assessing the environmental impact to adjust and supplement the project's EIA report, thereby serving the environmental inspection, supervision, and licensing of competent state agencies.

Decree 05 is issued to create more favorable conditions in implementing new policies of the EP Law, contributing to improving the investment and business environment, and supporting businesses' recovery after the Covid-19 pandemic. During implementation of Decree 05, investors with projects subject to EIA as prescribed in this Decree should pay attention to the transitional regulations on EIA in Article 5 to ensure compliance and protect their legitimate rights and interests. In the case that you have any queries or concerns regarding the new regulations of Decree 05 as well as EIA-related investment issues, contact NHQuang&Associates for advice and assistance.