

COMMENTS ON DRAFT DECREE REPLACING DECREE 50/2016/ND-CP ON SANCTIONING ADMINISTRATIVE VIOLATIONS IN THE FIELD OF PLANNING AND INVESTMENT

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During nearly 5 years of implementation, Decree No. 50/2016/ND-CP on sanctioning administrative violations in the field of planning and investment (**Decree 50**) has set forth specific and comprehensive regulations, creating a legal basis for the management in this field. However, this Decree is no longer appropriate when many new relevant legal documents have taken their effect, including the Law on Planning 2017, the Law on Public Investment 2019, the Law on Public-Private Partnership Investment 2020, the Law on Investment 2020, the Law on Enterprises 2020. To ensure consistency between regulations on sanctions for handling administrative violations and other legal documents in the field of planning and investment and simultaneously enhance the efficiency of state management in this field, the Draft Decree to replace Decree 50 (**Draft Decree**) is currently under consultation and will be promulgated soon. In this Legal Newsletter, NHQuang will introduce some notable contents of the Draft Decree, which have direct impacts on enterprises in business investment, as follows:

Supplementing new violation acts and increasing penalty levels for some violation acts

The Draft Decree supplements some new administrative violation acts, for example: investing in business lines prohibited by law; establishing enterprises for the purpose of money laundering; contributing capital, buying shares, buying capital contribution from economic organizations that do not satisfy the prescribed conditions, transferring investment projects that do not satisfy the prescribed conditions. Simultaneously, the Draft Decree also increases the penalty levels for most administrative violation acts, such as:

- A fine of VND 15-20 million shall be imposed for one of the following acts: Intentionally reporting or providing incorrect information affecting the process of making, appraising, or deciding a plan, program, or project; intentionally reporting or providing incorrect information affecting the supervision, assessment, inspection, and handling of violations in implementing a plan, program, or project; this fine is VND 5 million higher than that stipulated in Decree 50.
- A fine of VND 50-70 million shall be imposed on the act of using public capital for improper purposes, improper subjects or beyond the approved limit; this fine is VND 40-50 million higher than that stipulated in Decree 50.
- A fine of VND 30-40 million shall be imposed for the provision of inaccurate and untruthful information to enjoy investment incentives; this fine is VND 15-20 million higher than that stipulated in Decree 50.

Compared to Decree 50, the penalty levels for administrative violations in the Draft Decree are suitable to the nature, extent of the violation acts and also ensure conformity with the current market economy. Because investment projects are often

large-scale ones with large investment capital, if there is no appropriate fine, no deterrent could be generated and violations cannot be prevented. When a violation occurs, it will affect the investors, state revenue, and some subjects will even take advantage of regulations to cause loss and waste of state capital for public investment projects if the fine is low. In addition, the provision of new violation acts in the Draft Decree also solves the shortcomings in Decree 50 such as violations are detected without being sanctioned because there is no appropriate penalty or a number of prohibited acts under the Law on Bidding, the Law on Investment, the Law on Enterprises have not been specifically stipulated as violations in Decree 50. Moreover, the increase of the penalty levels and the supplement of new violation acts will also affect the behavior of enterprises, whereby they have to be more careful when implementing business and investment activities because the high fine levels will be a huge expense for enterprises if there is any violation act.

Supplementing 3 new fields to the scope of governance and abolishing the regulations on sanctioning some acts related to business registration

The Draft Decree expands the scope of governance with 3 new fields, including: (i) public-private partnership (PPP) investment, (ii) bidding to select investors to perform investment projects with land use and (iii) planning. The revised scope of the Draft Decree is consistent with the changes of the aforementioned Laws, creating the legal basis for state authorities to follow. Simultaneously, the Draft Decree has abolished the regulations on sanctioning the acts related to announcing the corporate seal before using, shortening the notice period before business suspension, reporting the change of information of the business manager. The abolition of these provisions is to ensure the compatibility with the new provisions of the Law on

Enterprises 2020 when this Law has abolished the above procedures.

Supplementing provisions to determine limitation periods for sanctioning administrative violations

Article 5 of the Draft Decree clearly stipulates: (i) for administrative violation acts which have ended, the limitation period shall be counted from the termination of violation acts; (ii) for administrative violation acts which are ongoing, the limitation period shall be counted from the time of detecting the violation acts; (iii) within the time limit specified above, if the sanctioned individuals or organizations intentionally evade, hinder, the above-mentioned limitation periods shall be calculated from the time when the actions of evading, hindering stop. These supplements aim to accurately determine the limitation period for handling violations, creating favorable conditions for law search and application, timely handling of violation acts, and ensuring the lawful rights and interests of subjects. This is a new provision in the Draft Decree that was not addressed in Decree 50.

At the time of this Legal Newsletter, the second Draft Decree is still in the process of consultation and will continue to have other important revisions. Businesses should pay attention to updating to comply with regulations and avoid unnecessary legal risks. We will continue with further update and information when the new Decree officially takes effect. The full text of the Draft Decree is currently posted for comments until June 29, 2021. Organizations and individuals who are interested can find the full text of the Draft Decree at <http://www.mpi.gov.vn/Pages/tinbai.aspx?idTin=49921&idcm=140> and send comments to the Ministry of Planning and Investment.

