

SOME NEW REGULATIONS ON PRELIMINARY ENVIRONMENTAL IMPACT ASSESSMENT

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On May 21, 2021, the Government issued Decree 54/2021/ND-CP on preliminary environmental impact assessment (**Decree 54**) to replace Article 12 of Decree 40/2020/ND-CP. This Decree came into force from the date of signing and provided the following contents:

Firstly, the subjects of preliminary environmental impact assessment are investment projects specified in Appendix II, Section I attached with Decree 40/2019/ND-CP. These projects are subject to (i) public investment projects (except for the cases specified at Point a, Clause 1, Article 3, Decree 54), (ii) Public Private Partnership projects, (iii) investment projects that require in-principle approval of investment as prescribed by investment laws, and (iv) projects subject to issuance of investment certificates (except for issuance of investment registration certificates at the request of investors).

Secondly, Decree 54 regulates the contents of preliminary environmental impact assessment, including: (i) Assessing the conformity of the investment project location with the national environmental protection strategy and planning, for each region, province and other relevant plannings, (ii) Identifying and forecasting the main environmental impacts of the project based on factors of scale, production technology and implementation location, (iii) Identifying sensitive environmental factors of the investment project area according to the plans on location (if any), (iv) Analyzing, evaluating, selecting the plan regarding scale, production technology, waste treatment technology, project implementation location and solutions for reducing environmental impacts, and (v) Determining the main environmental issues and scope of impact on the environment to be noted in



the process of implementing environmental impact assessment.

Thirdly, preliminary environmental impact assessment will be carried out in the process of making pre-feasibility study report, investment in-principle proposal report, application dossier for in-principle approval of investment, application dossier for investment registration certificate. Accordingly, the governmental authorities will consider the contents of preliminary environmental impact assessment during their review and appraisal of investment and construction dossiers.

COMMENTS AND RECOMMENDATIONS

Firstly, preliminary environmental impact assessment is a tool for governmental authorities to filter investment projects with potential risks of environmental pollution right from the stage of investment consideration and approval. Decree 54, hence, contributes to better completion of the "initial filtering tool". Thereby, governmental authorities can assess the impact of investment projects on the environment more accurately.

Secondly, the Law on Public Investment, the Law on Investment, the Law on amendment to the Construction Law all govern preliminary environmental impact assessment but there is not yet a specific guidance for preliminary environmental impact assessment while implementing investment projects. This leads to inconsistent contents of preliminary environmental impact assessment in investment projects and makes it difficult for investors in initial investment procedures. After the effective date of Decree 54, investors can base on the Decree to develop the contents of their investment report related to preliminary environmental impact assessment.

Enterprises with projects subject to preliminary environmental impact assessment need to update and research the provisions of Decree 54 to have appropriate implementation plans ensuring the project schedule.