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Vietnam

**New Tendering Regulations for Selection of Investor to Implement a Project That Uses Land in Vietnam**

社会主義国であるベトナムにおいては、憲法上土地は全人民のもものとされている一方、不動産開発など土地を使用するプロジェクトを行う場合に、その投資家を定める手続として入札が実施されるケースはこれまで限られてきた。しかしながら、昨今、不透明な土地取引に対する社会的な批判が強まり、投資法、土地法、入札法など関連する法律が改正され、入札が義務づけられる場合が拡大された。本稿においては、こうしたプロジェクトの入札や土地の競売に関するこれまでの規制の枠組みと、昨今の法改正によって導入された規定の概要について説明する。

**Introduction**

Under Vietnamese law, an investor may acquire land for developing a project by one of the following methods: (A) participating in a land auction, (B) participating in a tender to select investors, (C) obtaining land allocation or lease from the State without auction or tendering, or (D) receiving transfer of land use rights from existing land users.

Recently, the National Assembly of Vietnam has enacted several new/amended laws (including Investment Law (“LOI”) 2020, Tendering Law (“LOT”) 2023 and Land Law (“LOL”) 2024) to reflect new policies that auction and tendering methods (i.e., methods (A) and (B) above) are the two principal ways to obtain land allocation or lease from the State, in which tendering method is anticipated to be the most common for large projects. The basic differences between auction method and tendering method are that in the auction method, the State offers a vacant land and a detailed master plan to the investor, whereas in the tendering method, the land clearance and the detailed master plan may not be completed, but the State undertakes to handle or support these tasks.

In this article, we give an overview of the history of previous laws and then discuss some key contents of the new/current tendering procedure for selection of investors to implement a project that uses land as set out under current law.

**The History of Previous Laws**

The legal concept of “tendering for selection of investor for a project” was stipulated as early as 2000 under Decree 04 dated 11 February 2000 on the implementation of the LOL 1993 (as amended 1998), although only built transfer (“BT”) projects were the subject of the tendering regulations under this decree.

The tendering scope was expanded to include residential development projects, industrial park development projects, economic zone development projects and business/production projects (beside the BT projects) under

the LOL 2003. However, the LOL 2003 and its implementing decrees did not fully provide specific tendering regulations for selection of investors. Likewise, the LOT 2005 and its implementing decrees were also silent on the same.

In the absence of the tendering regulations, the Ministry of Planning and Investment (“MPI”) issued Circular 03 dated 16 April 2009<sup>1</sup> regarding the manner of selecting investors for implementing certain important projects which needed to use land. But there seem to be only a few cases where the investors were successfully selected for development of projects in the country through tendering process.

In the period of 2010-2020, thanks to the enactment of the LOL 2013, the LOT 2013 and their implementing decrees, the regulations on tendering for selection of investor started to develop. Yet, there were still certain complaints about the ambiguous provisions under these laws and regulations (especially provisions on scoring and referenced land prices) and as a result, the selection of investor through the tendering process was still difficult and uncommon at the time.

### **Key Contents under the Current Laws**

In an attempt to push the tendering for selection of investor as one of the main methods for granting land allocation or lease to the investors (together with the auction method), Vietnam has enacted the LOI 2020, the LOT 2023, the LOL 2024, and their implementing decrees. Notably, the Vietnamese government has recently issued Decree 115/2024 dated 16 September 2024 on tendering for selection of investor to implement a project that uses land (“**Decree 115**”) to perfect the tendering regulations.

The key contents of the tendering procedures and mechanism set out under these laws and regulations comprise:

**Forms of bidding:** The LOT 2023, which regulates both tendering for selection of contractor of a project/work and tendering for selection of an investor of a project, provides that the tender may be organized in the form of either “open bidding” or “limited bidding” depending on the technical/technological requirements or characteristics of the relevant projects. As a major change, the LOT 2023 and Decree 115 make clear that foreign investors (individuals or organizations) may participate in an international bidding.

**International bidding:** International bidding may apply for cases other than the following cases<sup>2</sup>: (i) projects in the list of industries and trades that are not yet accessible to foreign investors according to the provisions of the investment law; (ii) projects that need to be bid on domestically due to the requirements for ensuring national defense, security, social order and safety; (iii) projects implemented in areas with restricted land use, sea areas with restricted use for foreign investors, economic organizations with foreign investment capital according to the provisions of the land law and relevant laws; (iv) projects with a total investment capital of less than VND800 billion (equivalent to approximately USD32 million); and (v) projects that have been announced and notified to invite interest in organizing international bidding, but no foreign investors have participated.

**The National Bidding Network System (“NBNS”):** NBNS is an information technology system managed and operated by the MPI for bidding activities with the aim of unifying the management of bidding information and conducting bidding online. The bidding information (including details of project) must be posted on the NBNS except for projects or bidding packages containing information classified as State secrets. Notably, according to the LOT 2023, as from 1 January 2025, online bidding shall apply to all bidding packages, except for cases where bidding is not conducted on the NBNS as prescribed by the Vietnamese government. However, Article 62 of Decree 115 limits the online bidding to domestic bidding only and makes clear that online bidding shall not apply to international bidding.

**Scoring system:** Investors may be approved as winning the bid when they have the highest overall scores on capacity, experience, business investment plan, land use efficiency, and/or investment efficiency in developing industries, fields, and localities<sup>3</sup>. According to Article 45 of Decree 115, the total scores (ensuring a total proportion

<sup>1</sup> Circular 03 provides a broad category of projects subject to the tendering process for the selection of the investor, including residential development for sale or lease and other commercial developments at favorable locations.

<sup>2</sup> Article 11.2 of the LOT 2023.

<sup>3</sup> Article 63 of the LOT 2023.

of 100%) are built based on the combination of the following three scores: (i) capacity and experience scores, (ii) business investment plan scores, and (iii) land use efficiency scores or investment efficiency scores for industry, sector and local development (depending on the category of projects), for example:

Scoring system	Development of urban area projects or rural housing projects	Development of public use facilities with profit-making purpose projects, social housing projects, re-construction of apartment buildings, etc.	Development of energy projects
	Percentage (%) of total scores		
Capacity and experience scores	20% to 30%	30% to 40%	5% to 10%
Investment and business plan scores	20% to 30%	30% to 50%	5% to 10%
Land use efficiency scores	40% to 60%	N/A	N/A
Investment efficiency scores for industry, sector and local development	N/A	10% to 40%	80% to 90%
<b>Total scores</b>	<b>Max. 100%</b>	<b>Max. 100%</b>	<b>Max. 100%</b>

Notably, the land use efficiency is only applicable to urban area projects or rural housing projects, whereas the investment efficiency is applicable to other projects that require tendering for selection of investors.

In respect of land use efficiency, Article 48 of Decree 115 stipulates that the competent authority shall determine a “minimum ratio of contribution to the state budget” (called “m”), which is the average increase ratio after auction of land use rights calculated per unit of land area (m2) of qualified referenced land plots, land funds, and land parcels<sup>4</sup> and is calculated according to a sophisticated formula set out under Article 48.3 of Decree 115. The investor then proposes a “ratio of contribution to the state budget” in the bidding documents (called “M”) which is based on “m” specified in the bidding invitation, in which M must be equal to or higher than m. The winning investor shall contribute to the state budget an amount being the result of M multiplied by the amount of land use fee or land rent and this contribution amount shall be made at the same time with the payment of land use fee or land rent.

With respect to the investment efficiency for industry, sector and local development, Article 49 of Decree 115 contemplates several criteria for evaluation. The criteria for evaluation varies depending on the types of projects. In particular, the evaluation is built on the basis of one of the following criteria: (i) the minimum value in cash paid to the state budget; (ii) the minimum revenue ratio paid to the state budget; (iii) the price frame, maximum price

<sup>4</sup> Under Article 48.4 of Decree 115, the referenced land plots, land funds, and land parcels must have the same land use purposes and similar locations, and the successful auction prices in the most recent years. As to the similar locations, it is deemed as within one district; however, if the referenced land plots cannot be found within such a district, land plots in neighboring districts or even in the same province may be used. Likewise, with respect to the time limits, the standard limit is 3 preceding years; however, if such limit is not available, the limit can be extended to 4 – 7 years.

according to the provisions of the law on prices, the law on management of sectors and fields; (iv) the minimum number of public works without business purposes based on the list of projects and works requiring investment of the locality where the project is implemented; (v) the minimum value of social assistance activities or other social welfare activities for social protection beneficiaries, determined by the value in cash or the number of people supported based on the list of social protection beneficiaries or social assistance activities of the locality where the project is implemented; (vi) the maximum threshold of type, level of toxicity and total amount of pollutants discharged into the environment according to the provisions of the law on environmental protection; and (vii) the land use area, maximum land use coefficient.

**Project contract:** The winning investor and the competent authority shall sign a “project contract” which shall include the following key contents<sup>5</sup>: (i) project implementation progress; scale and total investment capital; conditions for land use and other resources (if any); (ii) responsibility for implementing land clearance and compensation and organizing the construction of auxiliary works (if any); (iii) contract term (i.e., from the time the project contract takes effect until the investor completes its obligations to perform the commitments proposed in the bidding documents and other obligations as agreed upon by the parties in the project contract); and (iv) performance guarantee (e.g., performance bond of 1% to 3% of total investment capital).

**Settlement of petition:** When the investors consider its/his/her legitimate rights and interests are affected, the investors may submit a petition requesting the relevant authority (or the bid inviting party) to review the matters arisen in the process of selecting investors (including the results of selecting investors). However, the investors may choose to submit either the petition to the relevant authority or complaint/denunciation to a competent authority or initiate a lawsuit. If the investors file a lawsuit, complaint, or denunciation while in the process of resolving their petition, the resolution of the petition shall be terminated immediately.

### **Conclusion**

The recent developments on the tendering regulations for selection of investors to implement projects which use land indicate the determination of the Vietnamese government in making this method more transparent and workable. However, the regulations are still new to the market and therefore practical feasibility is yet to be determined. In any case, since the tendering method is mainly designed for using uncleared land for projects and allows the winning investors to advance fund to the relevant authority for land clearance, it should become a common method of acquiring land for development of investment projects in Vietnam in the future, in addition to the auction method.

[Author]



**Hoai Tran** (Nagashima Ohno & Tsunematsu HCMC Branch)

hoai\_tran@noandt.com

Hoai Tran is a Vietnamese qualified attorney in the Ho Chi Minh City office. His areas of practice include mergers and acquisitions, joint ventures and real estate transactions. Hoai has extensive experience working in Vietnam related matters and this includes acquisition and sale of private companies and businesses, establishment of project companies, project transfers, land acquisitions, real estate developments, leases and sales.

<sup>5</sup> Articles 71 through 76 of the LOT 2023. In addition, Appendix III of Decree 115 provides the components of a project contract (which comprises of contract document, general conditions, specific conditions and contract appendices).

## Thailand

## New Draft Notification Imposes Additional Obligations on Specific Digital Platform Operators

2023年8月に施行された勅令によって、デジタルプラットフォームサービス事業者に対して届出義務等を課す規制が導入されているが、この度、関連の下位規則案が公表され、パブリックヒアリングが実施された。当該規則案においては、一定の要件を充たす事業者（デジタルマーケットプレイスプラットフォームサービス事業者）に対して、タイ法に基づいて登録された法人であること、出店者に関する本人確認義務等の、追加的義務や要件が課されている。

### Introduction

Following our previous [article](#) (“Thailand’s Royal Decree on Digital Platform Services - Update from the Draft to the Recently Enacted Law”, NO&T Asia Legal Review No.55 (January, 2023)) discussing the implementation of the Royal Decree on Digital Platform Services B.E. 2565 (2022) (the “**Royal Decree**”), over 1,800 digital platform service providers have notified the Electronic Transaction Development Agency of Thailand (“**ETDA**”) of their business operations.

The Royal Decree imposes different obligations on platforms of different sizes and characteristics, whereby certain digital platform service operators are subject to more stringent obligations as outlined in the Royal Decree and further specified by the Electronics Transaction Committee because of, among other things, the risks they pose to financial and commercial security, reliability and credibility in data messaging systems or the public and the high level of potential impact the operation of their platforms may have. In this regard, the Electronics Transaction Committee has issued a new draft notification that outlines further obligations for certain digital marketplace platform service providers.

### Key Provisions of the Draft

Under the draft Notification of the Electronics Transaction Committee re: Additional Obligations Imposed on Digital Marketplace Platform Service Providers with Specific Characteristics in accordance with Section 18(2) of the Royal Decree on Digital Platform Services B.E. 2565 (2022) B.E. .... (the “**Draft**”), a “Digital Marketplace Platform Service” is defined as a digital platform service which acts as an intermediary for the purchase, sale or exchange of goods which also provides services to facilitate sales, such as chat messaging systems for products inquiries, product baskets, delivery arrangements or payment systems. Digital Marketplace Platform Service providers that meet the criteria to be subsequently prescribed in a notification of ETDA issued under Section 18(2) of the Royal Decree (the “**Platform Service Providers**”) will be subject to the additional obligations imposed under the Draft, which may be summarized as follows:

1. **Domestic registration:** Platform Service Providers are required to register as a juristic person under Thai law.
2. **Identity verification for registration of Merchants:** Prior to authorizing the sale or advertisement of products which are regulated by the Thai Industrial Standards Institute (“**TISI**”) or the Food and Drug Administration (“**FDA**”) (the “**Controlled Products**”) by merchants on the Digital Marketplace Platform Service (the “**Merchants**”), Platform Service Providers are required to verify the identity of Merchants either by using (i) an identity proofing system with an identity assurance level of at least IAL2, or (ii) collection of certain information from the Merchant (e.g., name, address, telephone number, email, copy of identity card, bank account in Thailand, etc.).

Once the Platform Service Providers have received the information above from the Merchants, the Platform Service Providers are required to consider whether such information is reliable, complete and current by inspecting the database of relevant governmental authorities or requesting that the Merchants submit credible information to supplement their consideration.

Platform Service Providers shall be required to retain such information for the term of the service agreement and for 10 years thereafter.



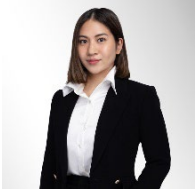
3. **Provision of Merchant information:** Platform Service Providers are required to either (i) maintain a registry of Merchant information for periodic submission to ETDA or (ii) cooperate with the TISI, FDA or other relevant governmental authorities in providing Merchant information.
4. **Terms and Conditions:** Platform Service Providers must stipulate policies relating to the sale or advertisement of products in the digital marketplace platform, including measures in the case of non-compliance, in the terms and conditions for the use of the platform. The terms and conditions must require Merchants to:
  - (a) Obtain the legally necessary certificates, licenses or other documents from the relevant governmental authorities prior to sale or advertisement of the Controlled Products on the platform, regardless of whether the product was manufactured in Thailand or abroad; and
  - (b) Not sell or advertise products which are legally prohibited from being sold or advertised on digital platforms or which infringe on intellectual property rights.

In the case of non-compliance with the requirements imposed for Merchants under the Draft, the Platform Service Providers may take certain actions including the termination or suspension of services.
5. **Regulation of sale or advertisement of Controlled Products:** Platform Service Providers must require Merchants to:
  - (a) Submit the notification, certification, license or other documents required under applicable laws to verify that the Controlled Product meets legal standards. The Platform Service Providers must verify the legitimacy of such documents from the database of the TISI and FDA before allowing such products to be sold or advertised on the digital marketplace platform;
  - (b) Display the prescribed details of Controlled Products on the digital marketplace platform, (e.g., product name, image, description, standard mark, registration number, information on the manufacturer or importer, etc.). Platform Service Providers must inspect whether the Merchant has displayed all required details of the Controlled Products and procure a channel for users of the digital marketplace platform to (“Users”) verify certain information against the database of the TISI and FDA; and
  - (c) Display a sign or statement to indicate that certain products are Controlled Products while displaying such products for sale or advertisement on the digital marketplace platform.
6. **Notice-and-takedown mechanism:** Platform Service Providers are required to implement notice-and-takedown mechanisms to allow Users to notify Platform Service Providers of products which are illegal. Such mechanisms must at least include notifications of issues relating to: (i) sale or advertisement of Controlled Products, (ii) products which are prohibited from being sold on digital platforms and (iii) products which infringe intellectual property rights. Platform Service Providers are required to display the steps and measures taken to protect Users, remedy any damage, inspect, filter and report the results of inspection of User notifications to the notifying User and the relevant Merchant within 24 hours. The Platform Service Provider must allow the Merchant to appeal the notification within 3 days from the date the Merchant is notified.
7. **Annual compliance reports:** Platform Service Providers are required to report their compliance with this Draft in the form prescribed thereunder annually, together with their annual report regarding digital platform operations under the Royal Decree.

### **Conclusion**

Since the Draft was subject to public hearings during the period from 30 October 2024 to 30 November 2024, further revisions may be made before the final draft is approved. Digital Marketplace Platform Service operators are advised to follow updates on the Draft and the notification of ETDA to be issued under Section 18(2) of the Royal Decree to review and assess whether they fall under the scope of Platform Service Providers, and to ensure they are prepared to comply with any additional obligations once the Draft is enacted.

[Authors]



**Salin Kongpakpaisarn** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

salin\_kongpakpaisarn@noandt.com

Salin Kongpakpaisarn is a Thai-qualified lawyer based in the Bangkok office. She is experienced in a wide range of projects and commercial transactions, with an emphasis on corporate/M&A, competition law and general commercial law.



**Pundaree Tanapathong** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

pundaree\_tanapathong@noandt.com

Pundaree graduated with First Class Honors from Thammasat University's International LL.B. Program in Business Law. She has represented local and multinational companies in a wide range of projects and commercial transactions. Her main practice areas include corporate M&A, competition law and general commercial laws.

## [EDITORS' PROFILES]



**Nobuo Fukui** (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

nobuo\_fukui@noandt.com

Nobuo Fukui is a partner at Nagashima Ohno & Tsunematsu and a representative of its Singapore Office (Nagashima Ohno & Tsunematsu Singapore LLP). He has been stationed in Singapore since 2013 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries.

He is a graduate of the University of Tokyo (LL.B., 2001) and Duke Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Widyawan & Partners (Jakarta) from 2010 to 2013, focusing on Indonesian legal practice, and he has extensive legal experience in the Indonesia related transactions.



**Motohisa Nakagawa** (Nagashima Ohno & Tsunematsu HCMC Branch Partner)

motohisa\_nakagawa@noandt.com

Motohisa Nakagawa is a partner at Nagashima Ohno & Tsunematsu and a representative of its Ho Chi Minh City office. He has been stationed in Vietnam since 2011 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries, especially Vietnam.

He is a graduate of Keio University (LL.B., 1999) and Stanford Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Allens (Ho Chi Minh City) from 2011 to 2014, focusing on Vietnamese legal practice, and he has extensive legal experience in the Vietnam related transactions.



**Shohei Sasaki** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd. Partner)

shohei\_sasaki@noandt.com

Shohei Sasaki is a partner at Nagashima Ohno & Tsunematsu and the head of Bangkok office. He has been stationed in Bangkok since 2011 and supporting Japanese and other multinational corporate clients. His practice includes corporate, M&A, joint venture, corporate finance, restructuring, real property development, energy, infrastructure, data protection, compliance and crisis management. He also represents Thai and multinational corporate clients in their investments in Japan, particularly on renewable energy and real property projects.



**Rashmi Grover** (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

rashmi\_grover@noandt.com

Rashmi Grover is an attorney in the Singapore Office. She is qualified in India and the UK. Her areas of practice include mergers and acquisitions, private equity and general corporate. She has extensive experience working in the Indian market and advising clients on corporate commercial and finance transactions including transactions involving mergers, acquisitions, formation of joint ventures, private equity investments, business/asset acquisition transactions, regulatory filings and debt issuances.



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[www.noandt.com](http://www.noandt.com)

## NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan

Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: [info@noandt.com](mailto:info@noandt.com)



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### Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41  
Singapore 049909  
Tel: +65-6654-1760 (general)  
Fax: +65-6654-1770 (general)  
Email: [info-singapore@noandt.com](mailto:info-singapore@noandt.com)

### Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhiraj Tower at EmQuartier  
689 Sukhumvit Road, Klongton Nuea  
Vadhana, Bangkok 10110, Thailand  
Tel: +66-2-302-4800 (general)  
Fax: +66-2-302-4899 (general)  
Email: [info-bangkok@noandt.com](mailto:info-bangkok@noandt.com)

### HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower  
29 Le Duan Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84-28-3521-8800 (general)  
Fax: +84-28-3521-8877 (general)  
Email: [info-hcmc@noandt.com](mailto:info-hcmc@noandt.com)

### Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building  
16 Phan Chu Trinh, Hoan Kiem District  
Ha Noi City, Vietnam  
Tel: +84-24-3266-8140 (general)  
Fax: +84-24-3266-8141 (general)  
Email: [info-hanoi@noandt.com](mailto:info-hanoi@noandt.com)

### Jakarta Office (\*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401  
Jalan Jenderal Sudirman Kav. 40-41  
Jakarta 10210, Indonesia  
Tel: +62-21-25098080 (general)  
Fax: +62-21-25098090 (general)  
Email: [info-jakarta@noandt.com](mailto:info-jakarta@noandt.com)

### Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road  
Xuhui District, Shanghai 200031, China  
Tel: +86-21-2415-2000 (general)  
Fax: +86-21-6403-5059 (general)  
Email: [info-shanghai@noandt.com](mailto:info-shanghai@noandt.com)

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