

A photograph of a business meeting in progress. Several people, seen from behind, are seated at a table. They are wearing dark blue suits. Their right hands are raised, palm facing forward, in a gesture of agreement or participation. The background is a bright, out-of-focus window showing greenery outside.

Decree 115/2024/ND-CP - Bidding Requirements  
Focus on Power Projects

Legal Update | September 2024

The Government has recently adopted and issued Decree 115/2024/ND-CP regarding the detailed regulations on a number of articles and measures for implementing the Law on Bidding 2023 on the selection of investors to implement investment projects using land (**Decree 115**).

This is regarded as a crucial piece of legislation regarding the selection of investors to promote the development of projects. In accordance with this legislative document, the following types of investment projects involving land must be put out for bidding when selecting investors: (i) projects related to urban construction, rural residential; and (ii) projects under the law on management of specific sectors and fields (including the energy industry).<sup>1</sup>

We will cover in this legal update the key guidelines and advancements made to the recently adopted Decree 115, which primarily impacts Vietnam's power generation projects. In the past, power generation or infrastructure projects were typically developed and carried out through stand-alone proposals by interested investor(s). However, it now appears likely that the selection of investors for these projects will mandatorily be undertaken through bidding in accordance with the revised Law on Electricity, which is currently being reviewed and will soon be adopted.

### **Bidding Requirements**

If two or more investors express interest in developing an energy project that is subject to bidding requirement as provided for under the Law on Electricity, Article 4.2.i) of Decree 115 makes it clear that a bidding process will be used to select the investors for such project.

The decree also amends the present Decree 137/2013/ND-CP guiding the Law on Electricity (as amended) by adding a crucial point on the bidding process for the selection of investors for certain power generation projects. In particular, when there are two or more investors expressing interest in an energy-related construction project to develop the following energy sources that involves non-state budget capital (either in conjunction with or apart from synchronous grid connection):

- (a) renewable energy sources;
- (b) power sources using natural gas; and
- (c) power sources using LNG;

the selection of investors for such project will be subject to bidding process.

It would be interesting to note that the bidding for investor selection will exclude and not be applicable to offshore wind power projects, self-consumption power source, or extended hydropower projects pursuant to this regulation.

With a strong connection to the Law on Electricity, it appears that the Government is making efforts to build a consistent policy for the selection of investors for power projects throughout various legislations, which highlight the significant role of the bidding requirement in the development process of power projects, in both power infrastructure and power production sectors. It is expected that the Law on Electricity (as amended), being the most important and relevant piece of legislation regarding electricity, will be adopted and put into effect soon.

### **Bidding conditions and implementation**

Decree 115 also lays out two requirements for holding a bidding process: (i) the land funds must be in situations where the State recovers land in accordance with Article 79 of the Law on Land 2024; and (ii) the land areas must be on the list of land areas that the Provincial People's Council has determined to be subject to bidding.<sup>2</sup>

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<sup>1</sup> Article 4 of Decree 115.

<sup>2</sup> Article 4.3 of Decree 115

As a general note furthermore, an in-principle approval, a pre-feasibility study (or feasibility study, if available), and a draft power purchase agreement for a specific project would have to be completed and made available before the bidding. This regulation appears to be in line with the current draft revision of the Law on Electricity.

In addition to other general criteria outlined in Decree 115 to assess the bidding documents, there are also additional criteria for assessing the effectiveness of the proposed project from the perspectives of the relevant industries, fields and locations (*Tiêu chuẩn đánh giá về hiệu quả đầu tư phát triển ngành, lĩnh vực, địa phương*). Particularly with respect to a power project, the two criteria that would be taken into consideration are (i) the proposed ceiling price of electricity being below the ceiling price frame issued by the Ministry of Industry and Trade; and (ii) the pricing principle as agreed upon with the electricity buyer (i.e. EVN).<sup>3</sup>

### Project implementation

While the establishment of a project company is optional for domestic developers, it is mandatory for the winning foreign investor to establish one upon the execution of the project contract after being awarded the project.<sup>4</sup> This requirement would come about as a result of the requirements set forth by the Vietnamese Law on Land for entities to obtain the land use rights.

### Project transfer

Decree 115<sup>5</sup> stipulates that the winning investor's transfer of shares and capital contributions in a project company prior to the project's operation must fulfill several requirements. These conditions may include:

- (i) approval by a competent authority;
- (ii) the transferee having the same level of experience and capacity as the transferring investor; and
- (iii) the transferee undertaking all the transferring investor's rights and obligations regarding the project's implementation, as stated in the bidding documents and project contract, which project contract is signed mainly for the purpose of binding the winning investor to comply with their commitments as proposed in their bidding documents.

No additional transfer limitations will apply to the transfer of shares and capital contributions once the project is operational; instead, they will follow the rules of corporate law.

### Overall observation

In conjunction with Decree No. 23/2024/ND-CP guiding the Law on Bidding, Decree 115 harmonises and enhances the legal framework for investor selection across all social infrastructure sectors, particularly the energy industry. Decree 115 also bridges legal gaps from the previous Decree 25/2020/ND-CP (guiding the same matter) which have not provided for a procedure for selecting investors for projects in accordance with the specific laws. Once the revised Law on Electricity is promulgated, the legal framework regulating the bidding process for investor selection vis-à-vis power projects would be completed for the parties' implementation.

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<sup>3</sup> Article 49.2 of Decree 115

<sup>4</sup> Article 51 of Decree 115

<sup>5</sup> Article 52.4 of Decree 115

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