

LEGAL UPDATE (March 07th, 2022)

In this issue, we would like to bring to your attention to the following:

- New regulations on management and use of revenues and expenditures in the process of investor selection in Circular No. 08/2022/TT-BTC.
- New regulations guiding investment supervision and assessment for foreign investment activities in Vietnam in Circular No. 02/2022/TT-BKHĐ.

1. **New regulations on management and use of revenues and expenditures in the process of investor selection in Circular No. 08/2022/TT-BTC**

On February 9th, 2022, the Ministry of Finance issued Circular No. 08/2022/TT-BTC guiding on the management and use of revenues and expenditures in the process of investor selection (hereinafter referred to as “**Circular 08/2022**”) with the following notable matters:

a. **Supplementing regulations on funding sources in investor selection bidding:**

Circular 08/2022 stipulates the source of funding for investor selection bidding (hereinafter referred to as “**bidding fund**”) suitable to the essence of each type of project. Accordingly, for the PPP projects, the bidding fund shall be allocated from the public investment capital of the competent authorities. While the projects are subject to bidding, the bidding funding shall be allocated from the regular budget of the party calling for tenders.

b. **Supplementing regulations on setting, approving and complying with estimates of recurrent expenditures:**

Circular 08/2022 has fully supplemented regulations on competence, order, procedures, dossiers, approval and compliance with regular cost estimates for bidding work to the projects requiring bidding to select investors. The new regulation creates a legal basis for relevant agencies and units to apply in the process of setting, approving and complying with estimates of recurrent expenditures for investor selection bidding.

c. **Supplementing regulations on management and use of funds in investor selection bidding:**

Circular 08/2022 has supplemented regulations on management and use of funds in investor selection bidding in accordance with the organizational model of the party calling for tenders, including the case that the party calling for tenders is the Management Board of the project, a specialized unit under a competent authority (for PPP projects) or a public non-business unit, an administrative unit (for projects subject to bidding).

d. Supplementing regulations on management and use of funding sources to settle investors' petitions:

According to the provisions of Circular 08/2022, the petitioning investor's funding for petition settlement shall be submitted to the assisting section of the Advisory Council in accordance with regulations. The management and use of the funds for payment of petitions shall comply with the estimate approved by the Chairman of the Advisory Council. At the end of the case, if the actual spending is less than the fee paid by the investor, the assistance department shall be refunded the difference to the investor.

If the petitioning of the investor is concluded to be correct, the party calling for tenders have responsible for allocating from the estimate of the unit's recurrent expenditures of the units (administrative unit, public non-business unit) or from the operating funds of the unit to return the part of the funding that the investor has paid.

Circular 08/2022 takes effect from March 25th, 2022.

2. New regulations guiding investment supervision and assessment for foreign investment activities in Vietnam in Circular No. 02/2022/TT-BKHĐT

On February 14th, 2022, the Ministry of Planning and Investment enacted Circular No. 02/2022/TT-BKHĐT guiding the supervision and investment assessment of foreign investment activities in Vietnam (hereinafter referred to as “**Circular 02/2022**”) with some significant issues as follows:

a. Contents of inspection of economic organizations and foreign-invested projects

According to Circular 02/2022 stipulating the inspection contents of economic organizations and foreign-invested projects, including: charter capital contribution progress, disbursement progress of registered investment capital, legal capital contribution situation (for industries and fields with regulated capital); total investment capital used and ratio to total registered investment capital; project deployment progress; the implementation of the project's investment objectives; the application of technology to projects subject to appraisal and opinions on technology (applied technology compared to technology already appraised or commented by a

competent authority; installation of machinery, equipment and technological lines of the investment project); technology transfer, the projects involving technology transfer (objects, contents, methods of technology transfer, results of technology transfer as agreed between the parties); technology transfer, for projects involving technology transfer (objects, contents, methods of technology transfer, effects of technology transfer as agreed between the parties); the implementation of commitments and meeting investment conditions, market access conditions, conditions for enjoying investment incentives, investment support of investors when the operational projects.

In addition, it also examines the implementation of financial obligations towards the State; the execution of legal provisions on labour, foreign exchange control, environment, land, construction, fire prevention and fighting and other specialized legal regulations; the financial situation of the foreign-invested economic organization; other contents related to the implementation of investment projects.

b. Regarding the assessment of foreign investment activities

Circular 02/2022 stipulating the content of the final assessment, including the charter capital contribution progress of economic organizations with foreign investment capital, legal capital (for industries requiring legal capital), investment capital contribution of foreign-invested projects, the mobilization and use of mobilized capital following the provisions of law; the project implementation progress compared to the schedule specified in the Decision approving the investment policy or the Investment registration certificate; The use of land and labour of the project; Compliance with legal regulations on environmental protection; the fulfilment of financial obligations to the State; the results of the implementation of the objectives, the mobilized resources, the implementation progress, the project benefits.

Circular 02/2022 takes effect from April 1st, 2022.

We hope this Monthly Newsletter would bring you useful information.

Best regards.

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