

Technical Update

September 2023

1. New Bidding Law

On 23 June 2023, the National Assembly of Vietnam adopted Law No. 22/2023/QH15 on Bidding (“**Bidding Law 2023**”), which will take effect from 1 January 2024 and supersede the Law No. 43/2013/QH13 on Bidding (as amended from time to time, herein referred to as “**Bidding Law 2013**”). We set out below a number of key changes in the Bidding Law 2023:

a) Expansion and clarification on application scope

- i. In addition to the bidding activities of State-owned enterprises as governed under the Bidding Law 2013, the Bidding Law 2023 has been extended to now include the activities of enterprises which are 100% owned by a State-owned enterprise(s).
- ii. The Bidding Law 2023 provides a clearer scope of regulation for the selection of investors to implement investment projects, which includes (A) investment projects using land which require bidding as prescribed by applicable land laws, and (B) investment projects which require bidding for the selection of investors as prescribed in specialized laws. Notably, the Bidding Law 2023 also provides that for the period commencing 1 January 2024 to the effective date of the amended Land Law, the selection of investors for investment projects using land will be implemented in accordance with the current bidding law (i.e., Bidding Law 2013) and its guiding regulations.

b) Clarification on application scope of international bidding

- i. Similar to the current law, the Bidding Law 2023 sets out two forms of bidding, namely domestic bidding (which only allows domestic bidders or investors to participate) and international bidding (which allows both domestic and foreign bidders or investors to participate).
- ii. For international bidding in investment projects, the Bidding Law 2023 adopts an approach whereby international bidding may be organized for selecting investors for investment projects under the purview and scope of application of the Bidding Law 2023, except falling into the list of circumstances when international bidding is not permitted (“**Exclusion List**”).
- iii. Such Exclusion List contains, inter alia, projects in sectors where foreign investors' access is restricted pursuant to the law on investment, projects that will be implemented in land or sea areas that are limited for usage by foreign investors or foreign-invested enterprises under land law and relevant regulations, and projects which have total investment capital of less than VND800 billion.

c) Expansion of criteria in bids assessment:

- i. The current law provides that the relevant criteria to assess bids and selection of winning investors shall include capacity and experience criteria, technical criteria and financial criteria. The Bidding Law 2023 has stipulated additional criteria for bids assessment, which include:
 - Criteria for assessment of investors' capacity, including financial and funding arrangement capacity, and experience in executing similar investment projects;
 - Criteria for assessment of investors' investment plan, including technical, social and environmental criteria;
 - Criteria for assessment of efficiency in land use and investment in sectoral or local development.
- ii. Bids assessment criteria shall be scored on a scale of 100 or 1,000 points. The total score shall be determined on the basis of scoring the above-mentioned criteria. The investor that achieves the minimum qualifying score for each of the criteria and the highest total score shall be ranked first. Further guidance on the criteria and scoring method will be announced by the Government in due course.

d) New guidance on contents required in investment project contracts and allowable forms of contract performance security

- i. The Bidding Law 2023 sets out the main contents required in investment project contracts, which include, *inter alia*, details of contracting parties, details of investment project (including scale and total investment, conditions and responsibilities for use of land and other resources, requirements on land compensation and relocation, land allocation or land lease, safety and environmental protection requirements, force majeure events and counter-measures), investor's obligations to fulfill commitments proposed, establishment of enterprise for managing the project, contract performance security, rules and conditions for modification and termination of contract, contract transfer, governing law and dispute settlement mechanism.
- ii. The Bidding Law 2023 requires that contract performance security shall be one of the following options: (A) a letter of guarantee issued by a domestic credit institution or foreign bank's branch established under the laws of Vietnam; or (B) a certificate of surety bond insurance issued by a domestic non-life insurer or branch of a foreign non-life insurer established under the laws of Vietnam.

2. New Law on Protection of Consumers' Rights

On 20 June 2023, the National Assembly of Vietnam adopted Law No. 19/2023/QH15 on protection of consumers' rights ("**LPCR 2023**"), which will take effect from 1 July 2024 and replace the Law No. 59/2010/QH12 on protection of consumers' rights, as amended in 2018 ("**LPCR 2010**"). The LPCR 2023 is coming into force with the following notable changes:

a) Expansion and clarification of application subjects

- i. Other than consumers, business organizations and individuals (collectively, "*business entities*"), and agencies, organizations and individuals involved in consumers' rights protection activities in Vietnam's territory as governed under the LPCR 2010, the LPCR 2023 expands the scope of its application to the Vietnam Fatherland Front, socio-political organizations; socio-political-professional organizations, social organizations, and socio-professional organizations participating in protecting consumers' rights.
- ii. The LPCR 2023 also clarifies that the agencies, organizations and individuals required to comply with consumers' rights protection activities include both domestic and foreign subjects.

b) Expansion of list of prohibited acts

The LPCR 2023 supplements a number of prohibited acts for the protection of consumers' rights as follows:

- i. For business entities: *inter alia*, failing to compensate or refund consumers or replace products, goods or services due to the fault of the business entities, or when the products, goods or services are inconsistent with those registered, announced or advertised; and the collecting, storing, using, modifying, updating or destroying personal data of the consumers against the law;
- ii. For organization and individuals engaging in multi-level selling: *inter alia*, forcing consumers to deposit, make payment or buy goods to participate in multi-level selling; providing false or misleading information to consumers and individuals participating in multi-level selling;
- iii. For business entities establishing, operating and supplying digital platform services: *inter alia*, forcing or preventing consumers from registering or using other intermediary digital platforms as a prerequisite for using services; limiting consumers' choices by arranging goods or services among business entities on digital platforms in certain order of priority without disclosing the arrangement criteria.

c) Regulations on protection of consumers' rights in specific transactions

The LPCR 2023 sets out a new Chapter III to regulate specific transactions between business entities and consumers, which cover remote transactions, continuous services provision (i.e., provision of services for a term of 03 months or longer, or for an indefinite term), and direct selling activities. Overall, the LPCR 2023 stipulates the responsibilities of business entities toward consumers in such specific transactions, which include, *inter alia*:

- i. In respect of remote transactions:
 - Business entities are required to provide precisely and fully their identity and contact information, details about goods and services, prices and payment terms, usage guidance, procedures for receiving and handling consumers' feedbacks and requests, etc.; and develop tools and take measures to ensure the provision of accurate and adequate contracts for consumers to review, give opinions and execute.
 - For online transactions, business entities are further required to comply with comprehensive regulations on information disclosure, establish operational policies, and adhere to products labeling and display regulations, data storage plans, advertisement, and reporting obligations.
- ii. In respect of continuous services provision: Business entities providing continuous services in Vietnam must publicly announce their legal representative or authorized representative in Vietnam, and such representatives are required to comply with applicable laws on protection of consumers' rights. Such

representatives are required to comply with applicable laws on protection of consumers' rights. Such business entities are not allowed to request payment from consumers before the provision of services , unless otherwise agreed, or unilaterally terminate contracts or stop providing services to consumers in violation of the contracts or the applicable laws.

- iii. In respect of direct selling activities (including door-to-door selling, multi-level selling, and off-premises selling): Business entities are required to comply with information disclosure, provision of contracts that meet statutory requirements to consumers, and other responsibilities in relation to direct selling activities. With regard to door-to-door selling and off-premises selling, consumers are entitled to consider whether to perform the contracts and unilaterally terminate the signed contracts within 03 working days from entering into the contracts, by providing notice to relevant business entities.

d) Dispute resolution with consumers

Similar to the LPCR 2010, the four methods for resolving consumer disputes remain in the LCPR 2023, namely by way of negotiation, mediation, arbitration and court proceedings. The major change in the LCPR 2023 relates to the regulations on negotiation, in which LPCR 2023 provides more detailed provisions on negotiation procedures, cases where requests for negotiation are not received and processed by business entities, rights and obligations of the parties during negotiation, and executing negotiation results. For court proceedings, civil cases with a transaction value below VND100 million will be subject to simplified court proceedings without having to satisfy the conditions required under the Code of Civil Procedure.

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