



LEGAL NEWSLETTER

NOVEMBER 2024

 **TNTP & ASSOCIATES INTERNATIONAL LAW COMPANY LIMITED**

Website: [/dsvc.com.vn/](https://dsvc.com.vn/) & [/tntplaw.vn/](https://tntplaw.vn/)

Contact: (+84) 93 179 8818

LIST OF CONTENTS

Key Points of Decree 115/2024/ND-CP detailing some articles of and measures for implementing law on bidding regarding selection of investors executing investment projects involving land use

1. New provisions on investors selection
2. Reforming the investor selection procedure
3. Changes in the investor selection process
4. Incentives for investor selection

Highlights of the Government's Decree No. 123/2024/ND-CP dated October 4, 2024 on regulations on sanctioning administrative violations in the field of land

1. Scope of adjustment
2. Statute of limitations for administrative sanctions in the field of land
3. Penalties in case of transfer of rights, lease, sublease or capital contribution of land use rights
4. Regulations on Illegal Profit Sharing between Violating Parties in the field of land
5. Supplementing the sanctioning authority of the Chairman of the commune-level People's Committee
6. Regulations on Information Disclosure and Transparency in Land Administrative Sanctions under Decree 123/2024/ND-CP

Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision

1. Contents of the case
2. Comments of the Court
3. Comments on Case law

Key Points of Decree 115/2024/ND-CP detailing some articles of and measures for implementing law on bidding regarding selection of investors executing investment projects involving land use

On September 16, 2024, Decree 115/2024/ND-CP was issued, marking an important step in guiding and regulating bidding activities related to land-use projects. This decree not only ensures transparency in the bidding process but also fosters fair competition and protects the interests of the parties. In this article, TNTP's lawyers will delve into the new points in the Decree and their impact on investors, government agencies, and other relevant parties.

1. New provisions on investors selection

Decree 115/2024/ND-CP ("Decree 115") details the process and criteria in selecting investors for land-use investment projects. One significant new point is the introduction of clearer and more transparent criteria in evaluating investors' capabilities, including financial capacity, experience, and project implementation capacity.

Decree 115 stipulates that land-use investment projects must select investors through bidding. Article 4 of Decree 115 provides that the following types of projects must be subject to bidding:

- (i) Investment projects for constructing urban areas with mixed functions and rural residential areas for which the Provincial People's Council decides on land allocation or lease through bidding.
- (ii) Projects in which the State reclaims land for socio-economic development, environmental protection, and cultural heritage conservation.

Authorized state agencies are responsible to public information about investor selection results, ensuring transparency, and preventing exploitation or fraud during the bidding process.



Key Points of Decree 115/2024/ND-CP detailing some articles of and measures for implementing law on bidding regarding selection of investors executing investment projects involving land use

2. Reforming the investor selection procedure

Decree 115/2024/ND-CP has implemented important reforms in the bidding and investor selection process. One notable point is the simplification of procedures, reducing time and costs, thus making the investor selection process faster and more efficient. Specifically, Decree 115 has adopted measures such as:

Provisions related to the preparation, appraisal, and approval of the investor selection plan have been removed in Decree 115. At the same time, the appraisal of the Expression of Interest (EOI) and the list of technically qualified investors have been simplified. Additionally, Decree 115 allows for the simultaneous preparation of tender documents and EOIs with procedures for planning, and investment policy approval, thus reducing duplication and saving time for stakeholders.

The decree provides more detailed provisions on the bidding process and project document appraisal. Decree 115 requires that competent agencies closely coordinate in appraising the bidding documents, ensuring objectivity and efficiency in evaluating tender submissions. The appraisal steps must be conducted in a specific and strict manner to avoid overlooking or inadequately evaluating crucial project elements.

Removing the acquisition of feedback from the Ministry of Planning and Investment: Under previous regulations, in certain special cases, the authority would need to obtain the Ministry of Planning and Investment's feedback on investor approval documents for projects under the jurisdiction of the Prime Minister. However, Decree 115 removes this requirement, granting more autonomy and responsibility to local authorities in the bidding process, thus promoting the proactive and timely execution of public investment projects.

These changes not only help reduce bureaucratic procedures but also create favorable conditions for investors to participate in public investment projects and at the same time enhance transparency and fairness in bidding and promote a fair competition among investors.

3. Changes in the investor selection process

One important new regulation in Article 59 of Decree 115 concerns how to handle situations where fewer than three investors participate in bidding. The competent agency has two options: (i) Allowing an extension of the bidding deadline and adjusting the tender documents to attract more investors, or (ii) Opening the bids if the number of investors is insufficient. This provision helps prevent "fixed" bidding and protects the interests of investors and society.

By changing the investor selection process to be more open, transparent, and inclusive, Decree 115 creates a more flexible and effective legal mechanism, promoting public investment projects and contributing to the sustainable development of the economy.

Key Points of Decree 115/2024/ND-CP detailing some articles of and measures for implementing law on bidding regarding selection of investors executing investment projects involving land use

4. Incentives for investor selection

Decree 115 not only simplifies bidding procedures but also provides clear incentives to encourage investors to participate in public projects, especially land-use projects. Specifically, Article 6 of Decree 115 stipulates two categories of investors who are eligible for incentives when participating in bidding:

Investors applying advanced and eco-friendly technologies: For projects with significant environmental impact, investors who apply advanced technology to reduce negative effects will be granted a 5% advantage during the evaluation process.

Investors commits to carry out technology transfer: Investors who implement advanced technology transfer, which is within the government's priority list, will receive a 2% advantage.

To qualify for these incentives, investors must submit complete documentation proving their use of advanced, high-tech, environmental-friendly solutions, or the best available technologies, and documents proving their legal rights to use technology in accordance with laws on high-tech, technology transfer, and environmental protection.

These incentives enhance competitiveness and provide investors with the necessary motivation and financial capacity to participate in large-scale projects, contributing to economic and social development.

These changes will have far-reaching effects on both investors and government agencies. For investors, the Decree creates a fair competitive environment, encouraging investors to undertake high-quality projects. At the same time, investors will have more access to full and transparent information, reducing risks during the bidding process.

Decree 115/2024/ND-CP marks an important step in improving the legal framework for bidding, especially for land-use projects. The new regulations will ensure transparency, efficiency, and fairness in the investor selection process while fostering a fair bidding environment and protecting the interests of stakeholders.

Highlights of the Government's Decree No. 123/2024/ND-CP dated October 4, 2024 on regulations on sanctioning administrative violations in the field of land

On October 4, 2024, the Government promulgates Decree 123/2024/ND-CP on sanctioning administrative violations in the field of land ("**Decree 123/2024/ND-CP**"). Compared to the Government's Decree No. 91/2019/ND-CP dated November 19, 2019 on sanctioning administrative violations related to land, Decree 123/2024/ND-CP has updated and supplemented a number of important regulations to improve the efficiency in managing and handling administrative violations in the field of land. Notable contents include:

1. Scope of adjustment

Decree 123/2024/ND-CP has expanded its scope, including completed administrative violations as well as ongoing violations in the field of land. In addition, this Decree also supplements specific regulations on subjects that can be sanctioned in order to ensure clarity and effectiveness in the handling of violations.

2. Statute of limitations for administrative sanctions in the field of land

Decree 123/2024/ND-CP and Decree 91/2019/ND-CP both determine the statute of limitations for sanctioning administrative violations in the field of land is 2 years. The specific method of calculating the statute of limitations is as follows:

For completed violations The statute of limitations will be counted from the time the violation ends.

For ongoing violations: The statute of limitations will be counted from the time the competent authority found out the violation.

However, Decree 123/2024 adds new regulations, according to which households and individuals who used land before October 15, 1993 and have not been sanctioned for violations by competent agencies before the Land Law 2024 takes effect will not be handled according to the provisions of this Decree.

3. Penalties in case of transfer of rights, lease, sublease or capital contribution of land use rights

Decree 123/2024/ND-CP not only inherits provisions from Decree 91/2019/ND-CP but also supplements regulations on sanctioning administrative violations for transactions of land use right transfer, lease, sublease and capital contribution with land use rights. Specifically, if the violation occurs before the transfer of land use rights, and the transferor is an organization that has been dissolved or bankrupt or an individual has passed away without an heir, or has moved to another place but at the time of detection of the violation, the commune-level People's Committee cannot identify the address of the transferor (and the land is not subject to revocation), the transferee will not be administratively sanctioned. However, the transferee must still take remedial measures caused by the transferor's violations.

Highlights of the Government's Decree No. 123/2024/ND-CP dated October 4, 2024 on regulations on sanctioning administrative violations in the field of land

4. Regulations on Illegal Profit Sharing between Violating Parties in the field of land

Decree 123/2024/ND-CP inherits the provisions of Decree 91/2019/ND-CP on how to calculate illegal profits in case of acts of encroachment, change of land use purpose, or other land-related violations. However, Decree 123 adds an important new regulation, which is when violations are committed by many organizations and individuals on the same land plot, the illegal profits will be divided equally among the violating parties.

The provision has impact in ensuring fairness in the handling of administrative violations. When many organizations and individuals committed land violations, the equal distribution of illegal profits will prevent the situation where one party bears the responsibility on for other parties. It also enhances transparency and fairness in sanctions, and prevents the violating parties from seeking to evade responsibility by pushing the responsibility to other parties.



Highlights of the Government's Decree No. 123/2024/ND-CP dated October 4, 2024 on regulations on sanctioning administrative violations in the field of land

5. Supplementing the sanctioning authority of the Chairman of the commune-level People's Committee

Decree 123/2024/ND-CP supplements an important measure in overcoming the consequences of administrative violations in the field of land. The regulation assigns specific responsibilities to the Chairman of the commune-level People's Committee in implementing remedial measures. The Chairman of the commune-level People's Committee may request violating individuals or organizations to restore the boundary marker to its original state, helping to restore administrative order and land in the locality.

6. Regulations on Information Disclosure and Transparency in Land Administrative Sanctions under Decree 123/2024/ND-CP

Decree 123/2024/ND-CP clearly stipulates the responsibilities of sanctioning agencies in making administrative violations in the field of land transparent through information disclosure. Particularly:

Notify the violations and the compliance with sanctions: The Decree requires sanctioning agencies to notify in writing of violations, and individuals and organizations that have completely served the sanctioning decisions to provincial-level land management agencies. This is to ensure that violations and compliance with sanctioning decisions are documented and easily accessible to relevant parties.

Public posting on the web portal: After receiving the notice, the provincial-level state management agency in charge of land, including the provincial-level People's Committee and the Department of Natural Resources and Environment, is responsible for publicizing these cases on their web portal. This will help to increase transparency, fairness, and deterrence, thereby improving the efficiency of land management.

Report to the Ministry of Natural Resources and Environment: The Department of Natural Resources and Environment will compile a list of cases of administrative violations and cases that have completely served the sanctioning decision, and then report to the Ministry of Natural Resources and Environment. The ministry will publish this list on its website, expanding publicity on a national level.

Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision

In judicial practice, there are still different views on the right to re-initiate a case when the Court has issued a decision to suspend the resolution of a civil case. Case law no. 50/2021/AL is an example of the Court determining whether the involved parties have the right to re-initiate the case. This is a case where a legally effective judgment or decision of the Court resolves the division of property, but this judgment or decision has not been enforced because the judgment creditor has not requested enforcement of judgment and has not received real property. When the statute of limitation for requesting enforcement of judgment expires, the person to whom the Court delivered the new property has a dispute to reclaim the delivered property according to the judgment or decision that has been issued. Hereinafter, TNTP will analyze the Court's judgment more clearly in this case.

1. Contents of the case

a) In the petition dated January 4, 2005, the plaintiff Mr. Nguyen Van N presented: He and Ms. Nguyen Thi T got married in 1963 and they have a house located on a plot of land in village B, Commune X (house no. 04 H street, area A, ward C, Hue city) with the area of 1,490m². In 1968, Mr. N departed to the North. In 1975, Mr. N returned home, and Ms. T had another husband, so they divorced.

b) In Civil Court of Appeal No. 43/DSPT dated May 13, 1977, the People's Court of Binh Tri Thien province granted Mr. N and Ms. T a divorce. Regarding the separation of property, Mr. N has the right to use a part of the land within the above land plot, which contains the grave of Mr. N's father, with a boundary drawing drawn up by the Court attached to the judgment. After the appeal judgment took effect, Mr. N fulfilled his child support obligation, and the authorities divided the land according to the Court's drawings.

c) In 2001, Mr. N returned to his hometown to build an ancestral house but Ms. T obstructed, so he sued to request that Ms. T return the property, which is land use rights according to the judgment, and restore the current state of the boundary as divided by the judgment.

d) The defendant, Ms. Nguyen Thi T, admitted to being married to Mr. N, then divorced according to Judgment No. 43 dated May 13, 1977. In 1968, Mr. N went to the North. In 1969, there was Mr. N's death notice, so Ms. T married another husband. From the date of the judgment, the judgment creditor, Mr. N, did not file a request application for enforcement of the judgment, so Ms. T did not accept returning the land to Mr. N because she believed that the land was left to her by Ms. T's father.

e) In First Instance Civil Judgment No. 08/2006/DSST dated June 21, 2006, the People's Court of Hue City, Thua Thien Hue province decided:

Accept Mr. Nguyen Van N's request to force Ms. Nguyen Thi T to return the land use rights of an area of 452.85m² (with sides 37.5; 38.55; 36.14) which is the property established under Judgment No. 43/DSPT dated May 13, 1977, on which there is the grave of Mr. N's father in plot number 42, cadastral map sheet number 28, with an area of 1,997.06m² at house number 04, H street, area A, ward C, Hue city (location of Mr. N's plot of land is attached in the drawing).

Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision



f) After the first instance trial, Ms. T appealed.

g) The Appellate Judgment No. 55/2006/DSPT dated December 11, 2006 of the People's Court of Thua Thien Hue province decided:

Vacate the First Instance Civil Judgment No. 08/2006/DSST dated June 21, 2006 of the People's Court of Hue City, Thua Thien Hue Province on the dispute over property rights and land use rights between the plaintiff, Mr. Nguyen Van N and the defendant, Ms. Nguyen Thi T. Suspended the resolution of the case. Return the petition to Mr. Nguyen Van N.

h) After the appeal trial, Mr. N complained.

i) In Appeal Decision No. 708/2009/KN-DS dated December 10, 2009, the Chief Justice of the Supreme People's Court protested against Civil Appeal Judgment No. 55/2006/DSPT dated December 11/ 2006 of the People's Court of Thua Thien Hue province, commented:

Mr. N's land use rights were determined in Appeal Judgment No. 43/DSPT dated May 13, 1977. Mr. N has the right to sue for the property in a new civil case. The Court of Appeal determined that Mr. N did not have the right to sue and returned the lawsuit to Mr. N, which was unreasonable.

-Requesting the Civil Court of the Supreme People's Court to conduct a cassation trial to vacate the above-mentioned civil appeal judgment and vacate the First Instance Civil Judgment No. 08/2006/DSST dated June 21, 2006 of the People's Court of Hue city, Thua Thien Hue province; delivering the case file to the People's Court of Hue city, Thua Thien Hue province for re-trial under the provisions of law.

j) At the cassation trial, the representative of the Supreme People's Procuracy agreed with the appeal of the Chief Justice of the Supreme People's Court.

Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision

2. Comments of the Court:

Based on the documents in the case file, there is a basis for concluding that Mr. Nguyen Van N and Ms. Nguyen Thi T got married in 1963. Mr. N and Ms. T have a house located on the plot of land in Village B, Commune X (now house number 04, Street H, Area A, Ward C, Hue City) area of 1,490m². In 1968, Mr. N departed to the North. When Mr. N returned home in 1975, Ms. T had another husband, so they consented to a divorce.

In Appellate Judgement No. 43 dated May 13, 1977, the People's Court of Binh Tri Thien province granted Mr. N and Ms. T a divorce and decided on the responsibilities of raising children and dividing property. According to the decision in the judgment, Mr. N was entitled to a part of the land within the above land plot (with a boundary division diagram drawn up by the Court attached to the judgment). Due to working conditions far from home, Mr. N left the land in its original state. In 2001, Mr. N returned to his hometown to build an ancestral house, but Ms. T obstructed, neither side did not agree on the land boundary and Ms. T did not agree to return the land to Mr. N. Therefore, Mr. N sued to request Ms. T to return the land according to the legally effective Court of Appeal.

Up to now, Ms. T is still the manager and user of the land that the People's Court of Binh Tri Thien province assigned to Mr. N. According to Ms. T, Mr. N had not filed a request for execution of the judgment and the Appellate Judgment mentioned above had not been enforced. The statute of limitation for the enforcement of the judgment had expired according to the provisions of the law.



Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision

Key point of Case law: According to the law, Mr. N's land use rights to the disputed land were determined in Appellate Judgment No. 43 dated May 13, 1977 of the People's Court of Binh Tri Thien Province. The Court must not resolve the relationship between who is the legal landowner, but suing to reclaim property is a different legal relationship. If the statute of limitation for the enforcement of the judgment is still available, Mr. N has the right to request the judgment enforcement agency to force the land delivery according to Judgment No. 43 dated May 13, 1977 of the People's Court of Binh Tri Thien province. However, now that the statute of limitation for requesting the enforcement of the judgment has expired, Mr. N has the right to sue to reclaim his property through a new civil case. In this case, if there is no basis to determine that Mr. N has given up his property rights, Mr. N's request for a lawsuit must be accepted.

The Court of Appeal determined that Mr. N did not have the right to sue and returned the lawsuit to Mr. N is unfounded. On the other hand, the Courts at all levels have not yet verified and reviewed land management and use, tax declaration and payment; Opinion of the competent State agency on whether or not to recognize the legal use rights for this land.

The Court of First Instance accepted Mr. N's request to force Ms. Mr. N's father, but not taking the effort to preserve and repair the land for Ms. T as well as the amount of land tax Ms. T paid into account is not appropriate. The Court of Appeal vacated the first instance judgment of the People's Court of Hue City to suspend the resolution of the case; returned the petition to Mr. N is not consistent with the law.

Therefore, the appeal of the Chief Justice of the Supreme People's Court has the ground for acceptance.

3. Comments on Case law:

Regarding the prescriptive periods for requesting execution of the civil judgment:

– In Clause 1, Article 30 of the Law on Enforcement of Civil Judgments 2008 (“**Law on ECJ**”) stipulates: “Within 5 years after a judgment or ruling takes legal effect, the judgment creditor and judgment debtor may request a competent civil judgment enforcement agency to issue a judgment enforcement decision.”

– Thus, the statute of limitation for the enforcement of the judgment is 05 years. After this time, if the judgment creditor does not request the competent civil judgment enforcement agencies to issue a decision to execute the judgment, the judgment will be considered invalid, unless the judgment creditor can prove that he or she has a reason for not being able to request to execute the judgment on time (Clause 3, Article 30 of the Law on ECJ 2008).

Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision

In this case, Civil Court of Appeal No. 43/DSPT was issued on May 13, 1977, but until 2001, Mr. N returned to his hometown to build the ancestral house. According to the regulation, the final time that Mr. N has the right to request execution of a civil judgment is in 1982, which means the statute of limitation for the enforcement of the Civil Appellate Judgment No. 43/DSPT has expired.

Regarding the right to sue to reclaim property through a new civil case:

– According to the Civil Appellate Judgement No. 43/DSPT dated May 13, 1977, the Court decided that Mr. N had the right to use a part of the land within the plot of land containing Mr. N's father's grave, which means this Judgement only records the separate of the land plot for Mr. N upon divorce. This is completely different from Mr. N suing to claim Ms. T when Mr. N was prevented by Ms. T from building an ancestral house, which means that suing to reclaim property – is a completely new lawsuit and is not related to the request to initiate a lawsuit to resolve a civil dispute (divorce).

– Article 256 of the Civil Code 2005 reads: "Lawful owners and/or possessors shall have the right to request the persons possessing, using or receiving benefits from the property under their lawful ownership or possession rights without a legal basis to return such property..."

The request to sue for the return of property is a request that Mr. N has not submitted to the Court in previous cases. Therefore, it is unreasonable for the Appellate Court to vacate the first instance judgment and suspend the case resolution. At the same time, we also found that Mr. N returned to his hometown to build an ancestral house, which is a basis to consider and determine that Mr. N did not waive his property rights. Therefore, there is a well-founded basis to accept Mr. N's request to sue for the return of property.

Above is TNTP's article on "*Case law No. 50/2021/AL regarding the right to initiate a lawsuit to reclaim the property of the person to whom the property is delivered according to a legally effective judgment or decision*". We hope this article will be helpful to our readers.

Sincerely,

LEGAL NEWSLETTER NOVEMBER 2024

TNTP & ASSOCIATES INTERNATIONAL LAW COMPANY LIMITED

Ho Chi Minh Office:

Suite 1901, 19th Floor, Saigon Trade Building, 37 Ton Duc Thang Street, Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam

Contact: (+84) 903 503 285 - (+84) 282 220 0911

Email: tra.nguyen@tntplaw.com

Ha Noi Office:

No. 2, Alley 308, Tay Son Street, Nga Tu So Ward, Dong Da Dist, Hanoi City, Vietnam

Contact: (+84) 931 798 818


Email: ha.nguyen@tntplaw.com

Da Nang Office:

31 Tran Phu Street, Hai Chau District, Da Nang, Vietnam

Contact: (+84) 903 503 285

Email: tra.nguyen@tntplaw.com

 /dsdc.com.vn/ & /tntplaw.vn/

 Dispute Settlement And Debt Collection