

January 2, 2025

NOTEWORTHY LEGISLATION IN VIETNAM IN OCTOBER 2024

October 2024 observed the promulgation of certain regulations across sectors of land, investment, trade promotion, and energy.

I. NEW DECREE ON ADMINISTRATIVE PENALTIES IN LAND LAW FIELD

Decree 123/2024/ND-CP ("**Decree 123**") regulating detailed administrative penalties in land law field promulgated by the Government officially took effect from October 04, replacing Decree 91/2019/ND-CP ("**Decree 91**").

Notable changes under Decree 123 are elaborated as follows:

A. New remedial measures

In addition to the remedies inherited from Decree 91, several new and notable remedial measures have been added by Decree 123 to address certain new points introduced by Land Law 2024¹:

- Compulsory undertaking of procedures for approval for large-scale concentrated livestock projects;
- Compulsory establishment of agricultural land use plan for organizations receiving agricultural land use rights transfer; and
- Compulsory establishment of economic organizations and rice land use plan for individuals who do not directly engage in agricultural production and receive rice land use rights transfer exceeding the land area limit.

B. Notable violations and applicable sanctions

Some notable land-related violations and respective sanctions outlined in Decree 123 are listed as follows:

- Act of using land for improper purposes can be subject to monetary fine of up to VND800,000,000, forced land restoration and confiscation of illicit benefit². This maximum level of punitive damage is reduced compared to that prescribed in Decree 91 (under which a similar violation could result in a maximum monetary fine of up to VND1,000,000,000).
- Act of land destruction can lead to a monetary fine of up to VND400,000,000 plus forced land restoration³. The penalty level is elevated compared to VND300,000,000 under Decree 91.

¹ Article 4 of Decree 123

² Articles 8 through 12 of Decree 123

³ Article 14 of Decree 123

- Act of acquiring land through agreement⁴ for project development without approval by province-level people's committees can expose investors to monetary fine of up to VND400,000,000 and forced undertaking of formality for approval from province-level people's committee for the land acquisition through agreement for project development. The equivalent was up to VND450,000,000 as prescribed in Decree 91 which was applicable only to unapproved acquisition of agricultural land through agreement for non-agricultural project development⁵.

C. Violation information disclosure

Despite not completely new⁶, Decree 123 ascertains obligations of land-related violation sanctioning bodies related to reporting and disclosing information in land violations and handlings thereof. Specifically, cases of administrative violations related to land and cases which have completed the implementation of the decision on sanctioning violations will be published on the Ministry of Natural Resources and Environment Portal⁷.

II. NEW PROVISIONS ON TRADE PROMOTION

On October 10, 2024, the Government officially issued Decree 128/2024/ND-CP ("**Decree 128**"), amending and supplementing Decree 81/2018/ND-CP ("**Decree 81**") on trade promotion. Decree 128 took effect on December 01, 2024. The new changes mainly focus on reducing filing burden, with the aim of creating a more streamlined mechanism for trade promotion activities in Vietnam. Hereunder are certain highlights from Decree 128:

A. Expanded scope of trade promotions exempted from material value limit

Decree 81 limits the material value used for promoting a unit of merchandise or service to no more than 50% of price of the promoted merchandise or service immediately before the trade promotion execution. Still, certain expressly excluded types of trade promotion activities (including organizing cultural, artistic, entertainment programs or other events for customers for the purpose of trade promotion, product sampling or service trial, gifting of goods or services, luck-based programs, loyalty programs, etc.) are free of such limit.

Besides the above, Decree 128 further exempts "trade promotions of other kinds" (not elsewhere classified and subject to approval by industry and trade authorities)⁸ from the application of this 50% limit.

⁴ As clarified by Article 60 of Decree 102/2024/ND-CP, land acquisition through agreement for project development means agreement with existing land users for transfer of land use right, land lease, or in-kind capital with land use right.

⁵ For clarity, before Land Law 2024, only acquisition of agricultural land through agreement for non-agricultural project development was subject to approval from province-level people's committee. However, from August 2024, such approval is mandatory for this kind of land acquisition irrespective of the type of land to be acquired.

⁶ The matter of disclosure of information related to land violations and handling thereof has been stipulated by Articles 14 and 15 of Decree 43/2014/ND-CP as amended guiding the old Land Law 2013.

⁷ Article 33.3 of Decree 123

⁸ Article 92.9 of Law on Commerce 2005

B. Reduced trade promotion filing obligation

Starting from December 01, 2024, merchants with the following trade promotion activities shall no longer be mandated to adhere to trade promotion notification requirement:

- Organizing cultural, artistic, entertainment programs or other events for customers for the purpose of trade promotion;
- Product sampling or service trial;
- Gifting of goods or services;
- Discount promotions; and
- Sale of goods or services accompanied with coupons.

Furthermore, trade promotion programs carried out solely on e-commerce trading apps and e-promotion apps (besides e-commerce trading platform websites and e-promotion websites) are also explicitly exempted from this trade promotion trading obligation.

C. Miscellaneous

According to Decree 128, late announcement of prize-winning results for prize-winning and luck-based trade promotion programs⁹ due to force majeure events is explicitly excused.

For luck-based trade promotion programs with no winner, the time limit for remitting 50% of the prize value to the State budget is extended from 15 to 45 days. In addition, the time limit for reporting such remittance is abolished.

Furthermore, filing trade promotion via emails to Departments of Industry and Trade will no longer be permitted.

III. NEW PROVISIONS ON FOREIGN COOPERATION AND INVESTMENT IN EDUCATION

Decree 124/2024/ND-CP, which was passed by the Government on October 05, 2024 (“**Decree 124**”), amends and supplements several provisions of Decree 86/2018/ND-CP on foreign collaboration and investment in education industry (“**Decree 86**”). Hereunder are notable changes provided in Decree 124:

A. Conditions for foreign investment in education through M&A

It is explicitly stipulated by Decree 124 that, in the case a local-invested educational institution turns into foreign-invested through capital contribution and/or capital acquisition by foreign investors, it shall be subject to the same market-access conditions for foreign investors, and conditions for establishment of foreign-invested educational institutions¹⁰.

⁹ Beyond 45 days following the ending date of the same programs.

¹⁰ Article 1.3 of Decree 124

B. New permissible form of foreign-invested educational institutions

In addition to existing 05 forms of commercial presence in Vietnam of foreign investors in education field, Decree 124 further permits establishment of branch campuses of foreign higher education institutions in Vietnam, subject to similar establishment and operation registration requirements as those applicable to foreign-invested higher education institutions¹¹.

In order to be granted Investment Registration Certificate for establishing branch campuses in Vietnam, foreign higher education institutions must be in good standing and ranked among the top 500 of prestigious higher education institutions globally in one of the past three years¹².

C. Elevated requirements for foreign investment in education industry

Investment capital implementation schedules

In addition to foreign-invested higher educational institutions and branch campuses of foreign-invested higher educational institution¹³, foreign-invested general education schools will also be required to implement more than 50% of the total investment capital by the time of the appraisal for educational operation approval, and fully implement the rest within 05 years from the educational operation approval. This same rule applies to those foreign-invested educational institutions not constructing new facilities but obtaining the same via leasing or in-kind capital contribution from Vietnamese partners¹⁴.

Furthermore, investment projects for establishment of branch campuses in Vietnam of foreign higher education institutions must meet a minimum investment capital of VND500 billion (exclusive of land use right expenses), out of which more than VND250 billion (50%) must be implemented by the time of appraisal of educational establishment approval.

Educational program requirements

Foreign educational programs to be implemented in Vietnam must be recognized or accredited by a competent authority for meeting the quality standards of the host country and be directly taught in such country for at least 05 years as of the date of submission of the operation registration dossier¹⁵.

In addition, Decree 124 provides in more detail physical facilities and personnel requirements applicable to different types of foreign-invested educational institutions.

¹¹ Article 1.12 and Article 1.14 of Decree 124

¹² Article 1.16.b of Decree 124

¹³ For these types of foreign-invested educational institutions, Decree 86 already provides specific investment capital implementation schedules applicable thereto.

¹⁴ Article 1.18 of Decree 124

¹⁵ Article 1.20 of Decree 124

IV. NEW DECREE ON MECHANISMS AND POLICIES OF SELF-PRODUCED AND SELF-CONSUMED ROOFTOP SOLAR POWER

On October 22, 2024, the Vietnam Government promulgated Decree 135/2024/ND-CP stipulating mechanisms and policies for encouraging development of self-produced and self-consumed rooftop solar power ("**Decree 135**"). The Decree took effect on its date of issuance and is presumed to supersede respective regulations of Decision 13/2020/QD-TTg ("**Decision 13**") of the Prime Minister on rooftop solar power development¹⁶. Critical highlights made by Decree 135 could be noted as follows:

A. Scope of governance

Compared to Decision 13, the scope of application has been specified to explicitly cover rooftop solar power developed on rooftops of construction works including residential units, offices, industrial parks, industrial clusters, export processing zones, hi-tech parks, economic zones, manufacturing establishments, and trading establishments.

B. Excluded direct power purchase

Decree 135 clearly carves out activities related to direct power purchase from its scope of governance and refers these activities to Decree 80/2024/ND-CP recently enacted by the Government on direct power purchase agreement (DPPA) scheme ("**Decree 80**"). This leads to rooftop solar power generators wishing to sell electricity directly to consumers (in lieu of or a part from Vietnam Electricity Group ("**EVN**") and its authorized member units) being compelled to adhere strictly to requirements outlined in Decree 80 for participating in DPPA scheme, including the "large electricity consumers" requirement¹⁷. This might hinder the viability of certain DPPA models in practice as a vast majority of electricity consumers might not meet that stringent minimum consumption capacity.

Whereas, Decision 13 allowed rooftop solar power generators to sell a part or all of the energy generated from their systems to either EVN (or its authorized member units) or other individuals and organizations without limiting purchasers to only "large electricity consumers." In the cases of energy purchasers that are not EVN, the electricity purchase price and other terms related to sale of solar power were to be mutually agreed by the relevant parties¹⁸. Decision 13 only governed rooftop solar energy projects with capacity not exceeding 1MW (for those projects exceeding this capacity, no legal mechanism for

¹⁶ Decree 135 itself does not stipulate the repeal of respective section of Decision 13 on rooftop solar power development. Yet, according to Vietnam laws on legislation promulgation, Decree 135 being the normative document of higher hierarchy would prevail as the matter of law. For clarity, Decision 13 does not only govern the development of rooftop solar power but also solar power projects of other types namely grid-connected solar power projects.

¹⁷ Under Decree 80, not all electricity consumers, but only "large electricity consumers," are permitted to directly purchase electricity from rooftop solar power generators. "Large electricity consumers" are defined as those electricity consumers having an electricity consumption capacity of at least 200,000 kWh per month as of the time of applying for participating in DPPA scheme.

¹⁸ Articles 8.1 and 8.3 of Decision 13

direct electricity sale was provided).

C. Ownership of rooftop solar power systems

Decree 135 does not explicitly compel rooftop solar power systems to be under the ownership of their respective solar power developers. This sparks controversy as to whether it is permissible for developers of rooftop solar power for self-consumption to “procure”¹⁹ through leasing or borrowing rooftop solar equipment from third parties.

D. Surplus solar power sale

Decree 135 permits organizations or individuals developing self-produced and self-consumed rooftop solar power projects interconnected to the national grid (grid-connected systems) to choose whether or not to sell surplus electricity (i.e., electricity generated by rooftop solar power system for self-consumption but not fully used) to the national grid. The sole permissible purchaser is EVN (or its authorized member units).

For self-produced and self-consumed rooftop solar projects with a capacity of 1 MW or higher subject to national electricity planning (and electricity operation license requirement, as discussed below), no limit on the volume of surplus electricity that may be sold to EVN is set out. Whilst, for others (such as grid-connected rooftop solar power projects with capacity in line with the power planning or plans, and household’s or individuals’ projects with a capacity of less than 100 kW), the maximum amount of surplus electricity to be sold is limited to 20% of the actual installed capacity²⁰.

Surplus electricity generated from systems installed on rooftops of government offices or construction works classified as public assets is not permitted to be sold to the national grid.

E. Licensing requirements

Decree 135 lays down multiple filing, certification and license requirements for development of rooftop solar energy projects and for the sale of surplus power generated to EVN. These include:

- Rooftop solar power project installment notification²¹:

Prior to installing rooftop solar power systems without interconnection to the national grid (off-grid systems) or grid-connected systems with a capacity of less than 1 MW, the developers must notify in writing to competent authorities²².

- Rooftop solar power development registration certification²³:

¹⁹ Articles 15 and 16 of Decree 135 obligate rooftop solar power developers for self-consumption to “procure” equipment in conformity with regulations of Decree 135, other national technical standards and technical regulations. Still, it remains uncertain what kinds of equipment “procurement” are permissible.

²⁰ Articles 3.6, 3.7, 7.2, and 8.7 of Decree 135

²¹ Articles 6, 7.5 and 7.6 of Decree 135

²² These include Department of Industry and Trade, local electricity unit, construction and firefighting authorities.

²³ Article 9 of Decree 135

For grid-connected systems with a capacity of 1 MW or higher, the developers are mandated to register for self-produced and self-consumed rooftop solar development and get certified by the local Department of Industry and Trade, regardless of sale of surplus electricity to the national grid.

- Electricity operation license registration²⁴:

In addition to the above rooftop solar power development registration certification, for grid-connected systems with a capacity of 1 MW or higher, developers who choose to sell surplus electricity to the national grid are required to obtain electricity operation license pursuant to electricity law.

F. Encouragement policies and incentives

Decree 135 provides a wide array of promoting and incentivizing policies for self-produced and self-consumed rooftop solar power energy. These include²⁵:

- Electricity operation license requirement is exempted in the following cases:
 - (i) off-grid systems (irrespective of capacity);
 - (ii) grid-connected systems but equipped with Zero Export²⁶ (irrespective of capacity); or
 - (iii) households and individual residences generating rooftop solar power for self-consumption with a capacity of less than 100 kW.
- Self-produced and self-consumed rooftop solar power is entitled to tax incentives under prevailing law.
- Unlike traditional power generation projects (including solar power generation projects) in relation to which the land and construction works to be used for power generation must be designated power land and power construction works in accordance with land use planning and construction regulations, construction works or land used for production of self-produced and self-consumed rooftop solar power (e.g., manufacturing facilities or residential units located on manufacturing or residential land) are not required to be in line with approved power land planning or to be converted to power construction works for power generation purposes.
- Households and individual residences developing rooftop solar power are exempt from business registration requirement.

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For any inquiry or questions regarding the content of this newsletter, please contact us.

²⁴ Articles 8.2 and 17.2(b) of Decree 135

²⁵ Article 8 of Decree 135

²⁶ Reverse current protection system to prevent feeding to the national grid.

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