

Legal news

April 2015

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HIGHLIGHTED

1. New detailed guidelines on construction contracts

On 22 April 2015, the Government issued Decree No. 37/2015/ND-CP, detailing the construction contracts (“Decree 37”).

Decree 37 provides detailed regulations on the construction contracts, applicable to organizations and individuals in relation to the elaboration and implementation management the construction contracts under the following construction and investment projects (including the construction contracts between investors performing BOT, BTO, BT and PPP projects, and contractors performing packages of the projects): (i) Construction and investment projects of the State authorities, political organizations, political – social organizations, social – professional and political organizations, social – professional organizations, social organizations, units of the people’s armed forces, public non-business professional units; (ii) Investment projects of State-owned enterprises; (iii) Other construction and investment projects funded by State capital or State-owned enterprise’s capital as to 30% or more, or under 30% but greater than VND 500 billion in total investment capital of the project.

According to the new Decree, the principles on signing the construction contracts must comply with Clause 2, Article 138 of Law No.50/2014/QH13 on Construction and guarantee the following principles:

Firstly, at the time of signing the contract, the contractor must satisfy the conditions of professional capacity and operational capacity in accordance with the laws on construction. Regarding partnership contractor, the distribution of workload in the partnership agreement must comply with operational capacity of each member in the partnership. With respect to foreign main contractor, there must be a commitment on hiring domestic subcontractor(s) to carry out the work(s) under the contract, which is/are contemplated for subcontracting when domestic contractor(s) satisfies/satisfy the requirements of the package.

Secondly, the investor or the investor’s representative is allowed to enter into the contract(s) with one or more main contractor(s) to perform the works. In case where the investor enters into the contracts with several main contractors, the contents contained in these contracts must guarantee the unification and synchronization in the process of performing the work(s) under the contracts to ensure the progress, quality, and investment efficiency of the construction and investment project.

Thirdly, the general contractor or main contractor is allowed to enter into the contract(s) with one or more subcontractors, but such subcontractors must be accepted by the investor, and these subcontracts must be unified and synchronized with the main contract signed with the investor. The general contractor or main contractor must take the responsibilities to the investor for

progress and qualities of the agreed works, including the works carried out by the subcontractor.

Fourthly, the contract price of the signed contract must not exceed the tender-winning price or result of discussions about and negotiations on the construction contract, unless the volume of work, which is beyond the scope of works under the package, is allowed by the person competent for deciding the investment.

Another remarkable point in Decree 37 is provision on the advance level of the contract. Accordingly, the minimum advance level is specified as follows: (i) Regarding the consultancy contract: 15% of the contract price for contracts, which have value of more than VND 10 billion, or 20% of the contract price for contracts, which have value of VND 10 billion and below (25% as previously provided for); (ii) Regarding contracts for construction of building works, the minimum advance stays at the same old rate: 10% of the contract price for contracts, which have value of more than VND 50 billion, 15% of the contract price for contracts which have value of VND 10 billion to VND 50 billion, and 20% of the contract price for contracts which have value of under VND 10 billion; (iii) Regarding technical equipment providing contracts; EC, EP, PC or EPC contracts; turnkey contracts; and other construction contracts: 10% of the contract price. In case where the parties agree to advance at a level higher than the above-mentioned minimum level, no adjustment in price shall be made on the contract value corresponding to the difference between the exceeding advance level and the minimum advance level as from the time of make advance. The advance amount shall be gradually collected through the instalments, and the amount of each instalment shall be unanimously agreed by two parties and recorded in the contract but they must guarantee that the advance amount shall be fully collected before the payment value reaches 80% of the signed contract's contract price.

This Decree shall take effect on 15 June 2015.

1. New regulations on the management of wastes and scraps

On 24 April 2015, the Government issued Decree No. 38/2015/ND-CP, providing for the management of wastes and scraps ("Decree 38").

Decree 38 provides for the management of wastes, including hazardous wastes, domestic solid wastes, ordinary industrial solid wastes, liquid waste products, wastewater, industrial waste gases, and other characteristic wastes; environmental protection in import of scraps. Collection and transport of wastes from duty free zones, export processing zones, and export processing companies to the interior shall be performed as those of wastes outside of duty free zones, export processing zones, and export processing companies in accordance with Decree 38; the provisions in Chapter 8 of Decree 38 shall not apply to scraps from the duty free zones, export processing zones, and export processing companies.

Decree 38 applies to domestic authorities, organizations, households, and individuals, as well as foreign organizations and individuals (hereinafter referred to as organizations and individuals) conducting activities in relation to imported waste and scraps within the territory of the Socialist Republic of Vietnam, including land, islands, seas and sky.

According to the new Decree, organizations and individuals have the responsibilities to classify the wastes at source for the purpose of promoting reuse, recycling, co-treatment, treatment and recovery of energy. Organizations and individuals generating wastes have the responsibilities to pay fees and service charges for the waste collection, transportation and treatment activities in accordance with the laws. In addition, the investments in construction of waste treatment centres must comply with relevant laws on construction and laws on environmental protection.

Regarding the management of hazardous wastes, Decree 38 provides for the classification of hazardous wastes, which shall be performed in accordance with hazardous waste codes, categories and levels. The hazardous wastes must be classified by hazardous waste code to be stored in packing or suitable storage equipment. Using the same packing or storage equipment for the hazardous waste code, which has the same nature, without capability of mutual reaction or interact and can be treated by a same method, is allowed. The hazardous wastewater, which is treated in the wastewater treatment system at the generating facility to satisfy the technical regulations on environment, shall be managed in accordance with provisions on the management of wastewater in Chapter V of Decree 38. The hazardous waste must be classified from the time of being stored or transported for treatment. The collection and transport of hazardous wastes are only performed by organizations or individuals granted with Licenses for hazardous waste treatment.

Decree 38 also provides for the delimitation, classification and storage of ordinary industrial solid wastes. Accordingly, the ordinary industrial solid wastes are separately delimited and classified with hazardous wastes, in case of being unclassifiable, such wastes must be managed in accordance with the provisions on hazardous wastes. The delimitation, classification, and storage of ordinary industrial solid wastes must satisfy the technical requirements and management progress as stipulated.

Regarding wastewater management, Decree 38 provides that wastewater must be managed through minimization, recycling, collection, and treatment activities in compliance with the technical regulations on environment. The discharge of wastewater must be managed in a combination of administrative boundaries and valleys. Organizations and individuals discharging wastewater must pay fees and service charges for wastewater treatment service in accordance with the laws. The activities aiming at minimization and reuse of wastewater is encouraged.

According to Decree 38, the registration, inventory, and setting up of a database on industrial waste gases is provided for as follows: Owner of project or facility falling under the category of high volume emission sources

of industrial waste gases as particularly specified in Appendix of Decree 38 must be registered as the waste generator of industrial waste gases, unless the waste generator who has activities related to co-treatment of wastes falls within subjects licensed for hazardous waste treatment, or subjects certified to have ensured the environmental protection requirement imposed on facilities treating domestic solid wastes or ordinary industrial solid wastes. The registration of waste generator of industrial waste gases must be performed when the production facility officially operates or such facility plans to change the emission source of industrial gases (increase of volumes of waste gases, number of emission source of waste gases). The Ministry of Natural Resource and Environment receives registration dossier of waste generator, performs the inventory of industrial waste gases, and sets up the database on industrial waste gases.

According to Decree 38, organizations and individuals importing scraps from foreign countries into Vietnam must pay guarantee deposit for imported scraps as stipulated to ensure that organizations and individuals importing scraps take the responsibilities to deal with risks and potential environmental pollution, which may arise from the batch of imported scraps. Organizations and individuals importing scraps pay deposit at Vietnam Environment Protection Fund or commercial banks where such organizations or individuals open their main transaction accounts. The deposit amount is paid and returned in Vietnamese Dong and gains demand interest as from the date of payment.

The Decree shall take effect on 15 June 2015.

Other Sectors

Finance

- On 20 April 2015, the Ministry of Finance issued Decision No. 719/QD-BTC, promulgating the Regulation on rotation, alternation, secondment and periodical change of the working positions of public officials of the Ministry of Finance.
- Circular No. 52/2015/TT-BTC dated 17 April 2015 of the Ministry of Finance, providing guidelines on a number of characteristic financial policies applicable to agriculture or forestry companies after the completion of equitization.
- On 17 April 2015, the Ministry of Finance stipulated Circular No. 51/2015/TT-BTC, providing guidelines on the financial handling when arranging, innovating and developing, and improving the operational efficiency of the agriculture or forestry companies.

Taxation

- Decision No. 788/QD-BTC dated 27 April 2015 of the Ministry of Finance, announcing the newly-issued administrative procedures for the export of jewellery items, industrial items and other products in gold under the headings 71.13, 71.14, and 71.15 in the field of tariff under the settlement authority of Ministry of Finance.
- On 14 April 2015, the Ministry of Industry and Trade issued Decision No.3491/QD-BCT, supplementing the list of machines, equipment, supplies, and raw materials that can be domestically produced.
- Circular No. 61/2015/TT-BTC dated 27 April 2015 of the Ministry of Finance, amending the preferential import tax rates applicable to a number of oils and gasoline products under the heading 27.10 of Preferential Import Tariff.
- On 13 April 2015, the Ministry of Finance stipulated Circular No. 48/2015/TT-BTC, amending and supplementing goods and preferential import tax rates applicable to a number of oils and gasoline products under the heading 27.10 of Preferential Import Tariff.

Trade

- Resolution No. 31/NQ-CP dated 25 April 2015 of the Government, on the execution of Protocol amending the Agreement on rice trading between the Government of the Socialist Republic of Vietnam and the Government of Republic of the Philippines.
- On 22 April 2015, the Government issued Resolution No. 29/NQ-CP, approving the Investment Treaty under the Framework Agreement on Comprehensive

Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations.

- Resolution No. 24/NQ-CP dated 6 April 2015 of the Government, approving the Trade Agreement between the Government of the Socialist Republic of Vietnam and the Government of the People's Democratic Republic of Laos.
- On 17 April 2015, the Government stipulated Decree No. 36/2015/ND-CP, providing the criteria for establishment of Customs Departments of provinces, inter-provinces and centrally-run cities; organization, and tasks and operations of Customs authorities at all levels.
- Decision No. 4099/QD-BCT dated 25 April 2015 of the Ministry of Industry and Trade, promulgating the List of traders selected for participating in pilot process of issuing certificates of origin via the Internet.
- On 25 April 2015, the General Department of Customs issued Decision No.1200/QD-TCHQ, promulgating the Regulation on consultations among Customs authorities, enterprises and relevant parties.
- Decision No. 08/2015/QD-UBND dated 14 April 2015 of the People's Committee of Hanoi, promulgating a number of regulations on the State management of prices in Hanoi.
- On 8 April 2015, the Hanoi People's Committee stipulated Decision No.06/2015/QD-UBND, promulgating the Regulation on co-ordination in the management of advertisements and information on newspapers, radio, television and electronic information networks of agencies, organizations and individuals under the management authority of Hanoi.
- Circular No. 49/2015/TT-BTC dated 14 April 2015 of the Ministry of Finance, providing for the customs procedures for letters, packages, and parcels of exported and imported goods sent using postal services of appointed enterprises.
- On 7 April 2015, the Ministry of Finance issued Circular No. 46/2015/TT-BTC, providing for the collection rates and regime on collection, payment, management and use of assessment and appraisal fee for business of pangasius trading.

Labour

- Decision No. 519/QD-LDTBXH dated 17 April 2015 of Ministry of Labour, War Invalids and Social Affairs, on the assignment of works among the Minister and Deputy Ministers.
- On 15 April 2015, the People's Committee of Hanoi stipulated Decision No.1605/QD-UBND, on the authorization for the Director of Department of Labour, War Invalids and Social Affairs to decide on accepting the enterprises'

employment of foreign employees in accordance with Decree No. 102/2013/ND-CP.

- Decision No. 528/QD-BHXH dated 14 April 2015 of Vietnam Social Insurance, promulgating the Regulations on electronic transactions in the implementation of procedures for the employees' participation in social insurance, health insurance and unemployment insurance; and issuance of social insurance books and health insurance cards.
- On 9 April 2015, the People's Committee of Hanoi issued Decision No.07/2015/QD-UBND, providing for the policies on contracted employees working as cooking staff in public kindergartens in Hanoi.
- Decision No. 508/QD-BHXH dated 6 April 2015 of Vietnam Social Insurance, promulgating the Regulations on management and use of digital signatures and specialized digital certificates of Vietnam Social Insurance.
- On 22 April 2015, the Ministry of Labour, War Invalids and Social Affairs stipulated Circular No. 16/2015/TT-BLDTBXH, providing guidelines for the implementation of a number of articles of Decree No. 75/2014/ND-CP dated 28 July 2014, detailing the implementation of a number of articles of Labour Code on the recruitment and management of Vietnamese employees working for foreign organizations and individuals in Vietnam.
- Inter-ministerial Circular No. 01/2015/TTLT-BNV-BTC dated 14 April 2015 of Ministry of Home Affairs and Ministry of Finance, providing guidelines for a number of articles of Decree No. 108/2014/ND-CP dated 20 November 2014, on the redundancy policy.

Education

- On 21 April 2015, the Ministry of Education and Training issued Circular No.08/2015/TT-BGDĐT, amending and supplementing a number of articles of the Regulations on bridging education of junior college and college degrees accompanying Circular No. 55/2012/TT-BGDĐT dated 25 December 2012 of the Minister of Education and Training.
- Circular No. 07/2015/TT-BGDĐT dated 16 April 2015 of the Ministry of Education and Training, promulgating the Regulations on the minimum volume of knowledge and required capacity that learners have to achieve after being graduated for each level of college education and process of development, assessment and appraisal, and promulgation of training programs at college, master and doctorate levels.

Health

- On 14 April 2015, the Ministry of Health stipulated Decision No. 1360/QD-BYT, on the establishment of the Centre of mentally forensic in Ho Chi Minh City under the Ministry of Health.
- Circular No. 07/2015/TT-BYT dated 3 April 2015 of the Ministry of Health, detailing the conditions and procedures for the application of new techniques and methods in medical examinations and treatments.

Construction

- On 22 April 2015, the People's Committee of Hanoi issued Decision No.1715/QD-UBND, on the establishment of Inspection Team to inspect the compliance of investors in the process of implementation of projects, and management and use of social housing in Hanoi.
- Decision No. 20/2015/QD0-UBND dated 15 April 2015 of the People's Committee of Tay Ninh Province, promulgating the Regulations on issuance of Definite-term construction permits in Tay Ninh Province.
- On 14 April 2015, the Minister of Government stipulated Decision No.497/QD0TTg, approving the task of Overall planning for Hoa Lac urban area, Hanoi until 2030, at scale of 1/10.000. Location: Hanoi.
- Decision No. 1577/QD-UBND dated 14 April 2015 of the People's Committee of Hanoi, on the establishment of City Interdisciplinary Working Group to inspect the land management, architectural planning, issuance of construction permits, construction order management, handling of land failing to meet the conditions of site plan in combination with two-sided urban embellishment in new roads in Hanoi.
- On 9 April 2015, the People's Committee of Tay Ninh Province issued Decision No. 18/2015/QD-UBND, promulgating the Regulations on management of building works' quality in Tay Ninh Province.
- Circular No. 02/2015/TT-BXD dated 2 April 2015 of the Ministry of Construction, providing guidelines on the method for valuation of drainage service.

Transport

- On 21 April 2015, the People's Committee of Ho Chi Minh City stipulated Decision No. 20/2015/QD-UBND, on the organization of collecting road use charge per vehicle for motorcycles in Ho Chi Minh City.
- Decision No. 12/2015/QD-TTg dated 16 April 2015 of the Prime Minister, on the mechanisms and policies to attract socialized investments in and exploitation of

bus stations.

- On 21 April 2015, the Ministry of Finance issued Circular No. 53/2015/TT-BTC, amending and supplementing Circular No. 127/2013/TT-BTC dated 6 September 2013 of the Ministry of Finance, providing for the collection, payment, management and use of fees for issuance of registration certificates and motor vehicles' number plates.
- Circular No. 11/2015/TT-BGTVT dated 20 April 2015 of the Ministry of Transport, providing for the inspection of signal devices at the end of trains replacing cabooses of freight trains.
- On 15 April 2015, the Ministry of Transport stipulated Circular No. 10/2015/TT-BGTVT, providing for the responsibilities and dealing with violations in motor vehicle transport activities.
- Circular No. 08/2015/TT-BGTVT dated 14 April 2015 of the Ministry of Transport, providing for the rescue work and norms for the budget of rescue work on highways.
- On 10 April 2015, the Ministry of Finance issued Circular No. 47/2015/TT-BTC, providing for the pilot implementation of the provisions on customs surveillance agents to implement the Road transport agreement between the Government of the Socialist Republic of Vietnam and the Government of the People's Republic of China.
- Circular No. 07/2015/TT-BGTVT dated 7 April 2015 of the Ministry of Transport, providing for maritime signalling and maritime notification.
- On 7 April 2015, the Ministry of Finance stipulated Circular No. 45/2015/TT-BTC, providing for the collection rates and regime on collection, payment, management and use of road use fees applicable to Phap Van – Cau Gie route, Hanoi.
- Circular No. 06/2015/TT-BGTVT dated 2 April 2015 of the Ministry of Transport, providing for operating zones of cargo vessels in the Gulf of Tonkin.

Natural Resources - Environment

- On 7 April 2015, the People's Committee of Ho Chi Minh City issued Decision No. 19/2015/QD-UBND, promulgating the price units of products of topography and cadastre database creation in Ho Chi Minh City.
- Circular No. 19/2015/TT-BTNMT dated 23 April 2015 of the Ministry of Natural Resources and Environment, detailing the assessment and appraisal of conditions of eligibility for provision of environmental monitoring services and certificate form.
- On 6 April 2015, the Ministry of Natural Resources and Environment stipulated

Circular No. 17/2015/TT-BTNMT, providing for the setting up and implementation of projects in accordance with the General credit mechanism in the framework of co-operation between Vietnam and Japan.

- Circular No. 04/2015/TT-BXD dated 3 April 2015 of the Ministry of Construction, providing guidelines for a number of articles of Decree No.80/2014/ND-CP dated 6 August 2014, on the drainage and waste water treatment.

Information - Communications

- On 24 April 2015, the Ministry of Information and Communications issued Circular No. 10/2015/TT-BTTTT, providing for charges for message service connection to National humanitarian electronic portal (Portal 1400).
- Circular No. 09/2015/TT-BTTTT dated 24 April 2015 of the Ministry of Information and Communications, providing for the management and organization of support operations via National humanitarian electronic portal.

Administration - Judiciary

- On 23 April 2015, the People's Committee of Ho Chi Minh City stipulated Decision No. 1918/QD-UBND, repealing documents.
- Decision No. 1493/QD-UBND dated 9 April 2015 of the People's Committee of Hanoi, announcing newly-supplemented, amended or repealed administrative procedures in the field of co-operative registration under the settlement authority of the People's Committees at district level in Hanoi.
- On 21 April 2015, the Ministry of Finance issued Circular No. 54/2015/TT-BTC, providing for test charges for appointment of notaries public; fee for issuance of notary public cards and operation registration certificates of Notary public offices.
- Circular No. 04/2015/TT-BTP dated 15 April 2015 of the Ministry of Justice, providing guidelines for the probation of notaries public.
- On 1 April 2015, the Ministry of Justice stipulated Circular No. 03/2015/TT-BTP, providing for conditions for, order of, and procedures for Vietnam naturalization and the registration of births and marriages in favour of free migrants in Vietnam's districts adjacent to Laos.

Agriculture - Forestry

- Decree No. 40/2015/ND-CP dated 27 April 2015, amending and supplementing a number of articles of Decree No. 157/2013/ND-CP dated 11 November 2013, providing for the sanctioning of administrative violations in the management,

development and protection of forests; and management of forest products.

- On 13 April 2015, the Government issued Decree No. 35/2015/ND-CP, on the arable land management and use.
- Decision No. 1513/QD-UBND dated 9 April 2015 of the People's Committee of Hanoi, announcing administrative procedures and repealed administrative procedures in the field of investment in agriculture and rural areas under the settlement authority of Hanoi Authority for Planning and Investment.
- On 8 April 2015, the People's Committee of Hanoi stipulated Decision No.1484/QD-UBND, promulgating amended and supplemented administrative procedures under the settlement authority of Department of Agriculture and Rural Development of Hanoi.
- Inter-ministerial Circular No. 17/2015/TTLT-BNNPTNT-BTC dated 22 April 2015 of the Ministry of Agriculture and Rural Development and Ministry of Finance, providing guidelines on methods for determining the value of production forest, which are planted forest or garden, to implement the arrangement and transform of agricultural and forestry companies.
- On 10 April 2015, the Ministry of Agriculture and Rural Development issued Circular No. 16/2015/TT-BNNPTNT, promulgating the National technical regulations on conditions for aquaculture breeding.

Miscellaneous

- Decision No. 524/QD-TTg dated 20 April 2015 of the Prime Minister, approving the Scheme on consolidating and developing the network of social support establishments in the period from 2016 to 2025.
- On 17 April 2015, the Prime Minister stipulated Decision No. 507/QD-TTg, approving the Planning for development of credit rating services until 2020, with orientation to 2030.
- Decision No. 662/QD-BKHCH dated 7 April 2015 of the Ministry of Science and Technology, announcing the List of wholly or partly-expired legal documents in the fields under the Ministry of Science and Technology' State management in 2014.
- On 3 April 2015, the Prime Minister issued Decision No. 11/2015/QD-TTg, providing for the exemption from and reduction of land use levies when recognizing the households or individuals' land use rights, and ownership over houses and other assets attached to land regarding residential land incompetently allocated (granted) prior to 15 October 1993 in the areas with difficult or extremely difficult socioeconomic conditions, and frontier or island areas.
- Circular No. 56/2015/TT-BTC dated 23 April 2015 of the Ministry of Finance,

amending and supplementing a number of articles of Circular No. 150/2012/TT-BTC dated 12 September 2012 of the Ministry of Finance, providing guidelines on annual updates of knowledge for auditors registered to practise the audit profession.

- On 16 April 2015, the Ministry of Planning and Investment stipulated Circular No. 02/2015/TT-BKHDT, providing guidelines for the announcement of information of State-owned one member limited liability companies.

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