

Circular Guiding Issuance of Permits to and Management of Foreign Contractors

Background

On 8 May 2012 the Ministry of Construction (“**MOC**”) issued Circular 01/2012/TT-BXD (“**Circular 01**”) providing guidelines on issuing foreign contractor permits and managing foreign contractors in the construction sector in Vietnam.

Circular 01 guides the implementation of Decision 87/2004/QD-TTg (19 May 2004), amended by Decision 03/2012/QD-TTg (16 January 2012) (“**Decision 87**”). Decision 87 regulates the management of foreign contractors conducting construction activities in Vietnam.

Circular 01 will come into force on 26 June 2012 and will replace Circular 05/2004/TT-BXD (15 September 2004).

Circular 01 introduces a number of new provisions, including changes that simplify and shorten the process of issuing contractor permits and clarifications of the requirements for establishing an operating office.

These and other salient parts of the new legislation will be discussed below.

Contractor permit

Decision 87 defines a foreign contractor as a foreign organisation or individual with civil legal capacity who acts as a head contractor, general contractor, or sub-contractor for a construction project in Vietnam. In the case of an individual, the contractor must also have capacity for civil acts in order to enter into and perform contracts. A foreign contractor’s civil legal capacity and capacity for civil acts are determined pursuant to the law of the contractor’s country of nationality.

A contractor permit is a permit issued by the MOC, or in some cases by the provincial-level Department of Construction (“**DOC**”) to a foreign contractor. A permit is specific to a particular project for which the contractor has won a tender, or has been awarded a contract pursuant to Vietnamese law.

Application file for issuance of contractor permit

The application for a contractor permit must be in Vietnamese. Any documents and data in a foreign language must be translated into Vietnamese, and the translations must be notarised and certified in accordance with Vietnamese law.

The contractor will personally lodge or send by post one original set and one photocopy set of an application file. The contents of the file depend on whether the applicant is an organisation or an individual.

If the contractor is an organisation, the application file will contain:

- request for issuance of a contractor permit on a standard form;
- certified copy of the report on tendering results, or the decision selecting the contractor, or the contract legally appointing the contractor;
- certified copy of the certificate of incorporation (or business registration certificate of the organisation) and practising certificate (if any) issued in the contractor’s country of nationality;
- a report summarising the contractor’s operational experience relevant to the project in Vietnam, and reports on its audit results for the last three years;
- a partnership contract with a Vietnamese

contractor or an undertaking to engage a Vietnamese subcontractor to perform the contract work in Vietnam; and

- if the applicant is not the legal representative of the contractor, a notarised power of attorney.

If the contractor is an individual, the application dossier will contain:

- request for issuance of a contractor permit on a standard form;
- certified copy of the report on tendering results, or the decision selecting the contractor, or the contract legally appointing the contractor;
- certified copy of the operating licence or consultancy practising certificate issued by the contractor's country of nationality, and a copy of the individual's passport;
- professional curriculum vitae prepared by the contractor, together with copies of contracts on relevant projects performed by the contractor within the last three consecutive years.

Time-limit for issuance of contractor permit

A contractor permit will be issued within 15 working days of submission of a complete and valid application file. In comparison, the timeframe under Circular 05 was 20 working days. If the Ministry or Department of Construction rejects the application, they must provide a written notice to the contractor explaining the reasons for doing so.

Circumstances in which a contractor permit will expire

A contractor permit will expire in the following circumstances:

- The contract for the project has been completed and liquidated;
- The contract for the project is no longer effective due to, for example, suspension of the operations of the foreign contractor or dissolution or bankruptcy of the foreign contractor, or for some other reason pursuant to Vietnamese law or the law of the country of the contractor's nationality.

Circumstances in which a new contractor permit will not be issued

A contractor will not be issued a permit for a new project if they:

- failed to use Vietnamese subcontractors as described in their application dossier for the previous permit;
- failed to fulfil the reporting requirements for three or more reporting terms under the previous permit;
- violated the provisions of relevant law such as those on labour use, labour security, tax payment, and quality of construction work, and were penalised at least twice.

Circumstances in which a contractor permit will be revoked

The contractor permit will be revoked if:

- The contractor failed, on two or more occasions, to remedy breaches after receipt of written requests to do so from the relevant State body.
- The contractor was penalised three or more times for an administrative offence regarding work related to the contractor permit.

Operating office

Once a foreign contractor receives its contractor permit, it must set up an operating office. It may either sign a lease for office space, or establish an operating office at the construction site. It must register the address, telephone numbers, fax numbers, and email address of the operating office with the necessary government agencies.

If the contract is for preparation of construction master-plans, preparation of an investment and construction project, for construction surveys, or for the design execution of building works, the contractor may establish its operating office within the project investor's registered head office.

For a contract that requires construction or supervision of sites in more than one province, a contractor is permitted to establish an operating office anywhere the project works are located.

After registering its operating office, the contractor must provide written notice to the DOC in the locality where the office has been established, as well as to the MOC and other relevant State bodies as stipulated by law. The contractor must also notify these agencies of any changes regarding the operating office.

Provisions on reporting

During the term of their project, foreign contractors must send reports in June and December of each year to the agency that issued the permit. The report must provide an update on the status of implementation of their contracts. Circular 01 provides a standard form for the reports.

Authority to issue, amend and revoke contractor permits

The MOC has the right to:

- issue contractor permits for foreign contractors which are organisations awarded tender packages for Group A projects or other tender packages within the geographical area of two or more provinces;
- amend and revoke contractor permits it has issued;
- request the local DOC to revoke a permit if the contractor is in breach or if the permit issued by the DOC does not comply with the regulations.

The DOC has the right to:

- issue contractor permits for foreign contractors which are organisations awarded tender packages for Group B or C projects and for foreign contractors who are individuals awarded work related to investment and construction consultancy;
- amend and revoke contractor permits it has issued.

Whether a project is considered Group A, B, or C is determined based on criteria set out in Decree 12/2009/ND-CP (amended 15 October 2009), on management of investment projects for construction works.

Conclusion

Circular 01 enhances the legal framework on issuance of contractor permits to, and management of, foreign contractors conducting construction activities. In addition, its simplification of the administrative procedures in this sector will enable more efficient compliance with the regulations.

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