

HE GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness

No. 37/2015/ND-CP

Hanoi, April 22, 2015

DECREE

DETAILED REGULATIONS ON CONSTRUCTION CONTRACT

Pursuant to the Law on Government organization dated December 25, 2001;

Pursuant to the Law on Construction dated June 18, 2014;

At the request of the Minister of Construction,

The Government promulgates the Decree detailing construction contract

Chapter I

GENERAL PROVISIONS

Article 1. Scope and regulated entities

1. This Decree provides detailed regulations on construction contract

2. This Decree applies to organizations, individuals concerning formulation and management of the performance of construction contract for construction projects (including construction contract between investors in BOT, BTO, BT and PPP projects and contractors for project packages) as follows:

a) Construction projects by regulatory agencies, political organizations, socio-political organizations, political-social-occupational organizations, socio-occupational organizations, social organizations and units affiliated to People's armed forces and public service providers;

b) Construction projects by state-owned enterprises;

c) Construction projects that are not defined in Points a, b of this Clause but use state capital, corporate capital from 30% and over or from under 30% to over VND 500 billion of total project investment capital;

Relevant organizations, individuals using other capital sources are encouraged to apply provisions set out hereof.

3. As for construction contract for ODA projects, provisions set out in the International Agreement to which Vietnam is a signatory shall be exercised in case they are different from provisions set out hereof.

Article 2. Interpretation of terms

In this Circular, some terms are construed as follows:

1. Construction contract is a civil contract negotiated in writing between the employer and contractor for execution of a part or whole of the construction investment activity.

2. The employer means the investor or its representative, general contractor or main contractor.

3. Contractor means general contractor or main contractor if its employer is the investor; sub-contractor if its employer is general contractor or main contractor. The contractor can be a joint venture among contractors.

4. General provisions of the construction contract refer to the accompanying documents defining rights, obligations and relationship of the parties involved in the contract.

5. Particular provisions of the construction contract refer to the accompanying documents detailing and making a number of supplements to general provisions of the contract.

6. Appendices of the construction contract are the documents attached to the contract that detail amendments and supplements to a number of terms and conditions of the contract.

7. Working days in this Decree mean solar days except Sundays, public holidays, Tet holidays as stipulated by the law.

8. Technical instructions mean a collection of technical requirements based on technical regulations and standards applied to construction works, construction engineering to instruct and define materials, products and equipment used for construction packages and tasks of construction, supervision, inspection and acceptance of construction works.

9. Front End Engineering Design means general design developed in conformity with international practice as the basis for development of detailed design.

10. Scope of work as prescribed in Clause 1, Article 12 hereof;

11. Main contractor means an organization that directly signs the construction contract with the investor.

12. Sub-contractor means an organization that signs the contract with main contractor or general contractor.

13. Foreign contractor means an organization established under foreign law or individuals holding foreign nationality that are involved in the signing and management of the performance of construction contract in Vietnam. Foreign contractor can be main contractor, general contractor or sub-contractor.

Article 3. Types of construction contract

1. Depending on nature, types of construction contracts are as follows:

a) Construction consultant contract (or contract for consultancy) is a type of contract for performance of part or whole of the consulting task in activities of investment and construction;

b) Work construction contract (or construction contract) is a type of contract for the performance of construction of the works, work items or part of construction work by design; General construction contract is a type of contract for the performance of all of the works of an investment project;

c) Technological equipment procurement contract (or procurement contract) is a type of contract for the procurement of technological equipment to be installed to the construction works under technological design; General procurement contract is a type of contract for the procurement of equipment to all of the works of an investment project;

d) Engineering and Construction contract (or EC contract) is a type of contract for the engineering and construction of the works, work items; General EC contract is a type of contract for the engineering and construction of all of the works of an investment project;

dd) Engineering and Procurement contract (or EP contract) is a type of contract for the engineering and procurement of equipment for the installation of the construction works as designed; General EP contract is a type of contract for the engineering and procurement of equipment to all of the works of an investment project;

e) Procurement and Construction contract (or PC contract) is a type of contract for the procurement and construction of the works, work items; General PC contract is a type of contract for the procurement and construction of all of the works of an investment project;

g) Engineering, Procurement and Construction contract (or EPC contract) is a type of contract for the engineering, procurement and construction of the works, work items; General EPC contract is a type of contract for the engineering, procurement and construction of all of the works of an investment project;

h) Turnkey contract is a type of contract for the performance of all the tasks from project establishment, engineering, procurement and construction of the works of an investment project;

i) Contract for supply of human force, working machinery and equipment is a type of contract for the supply of human force, working machinery, equipment and other necessary vehicles for serving the construction of the works, work items, packages or construction work as designed;

k) Other types of construction contract

2. Depending on contractual price manner, construction contracts include the following types:

a) Lump sum contract;

b) Fixed unit price contract;

c) Adjustable unit price contract;

d) Time-based contract:

dd) Combined price contract is a type of contract using the combination of contractual price types as prescribed in Points a – d of this Clause.

3. Depending on relationship of parties involved, construction contracts include the following types:

a) Main contract is a type of contract signed between the investor and main contractor or general contractor.

b) Sub-contract is a type of contract signed between main contractor or general contractor and sub-contract.

c) Fixed rate contract is a type of contract signed between the employer and contractor as an agency or organization.

d) Foreign construction contract is a type of contract signed between a foreign contractor and a domestic contractor or investor.

Article 4. Principles for signing construction contract

Principles for signing construction contract must conform to Clause 2, Article 138 of the Law of Construction No. 50/2014/QH13 and ensure the followings:

1. At the time of signing, the contractor must meet conditions for practice qualification and performance qualification as prescribed in the Law on Construction. As for partnership contractor, division of work quantity in the partnership agreement must be based on performance qualification of each member of the partnership. As for foreign main contractor, an undertaking to hire domestic sub-contractor to perform the tasks under the contract must be included when such sub-contractor is capable of meeting requirements of the bid package.

2. The investor or its representative is permitted to sign a contract with one or more main contractors for the performance of tasks. In case the investor signs contracts with multiple main contractors, the content of these contracts must ensure uniformity and comprehensiveness during the performance of the tasks under the contract to meet schedule, quality and efficiency of the investment project

3. General contractor or main contractor is permitted to sign contracts with one or multiple sub-contractors but such sub-contractors must be accepted by the investor. All these sub-contractors must be in uniformity and agreement with the main contractor signed with the investor. General contractor or main contractor must be responsible to the investor for schedule, quality of the undertaken tasks including the tasks performed by sub-contractors.

4. Contractual price is not permitted to exceed the bid price or result of negotiation on construction contract except the quantity generated outside scope of the bid package permitted by competent persons.

Article 5. Principles for execution of construction contract

When executing the construction contract, the parties must meet the principles for execution of construction contract as prescribed in Clause 3, Article 138 of the Law on Construction No. 50/2014/QH13:

Article 6. Validity and legality of construction contract

1. A construction contract shall become legally effective when it meets the following conditions:

a) Persons who participate in signing a contract must obtain adequate legal capacity;

b) Meet the principles for contract signing as prescribed in Article 4 hereof;

c) Form of a contract is in writing and signed by representative of the parties to a contract according to the law. In case either of the parties is an organization, such party shall sign its name and affix stamp according to the law.

2. The effective date of a contract is the date when it has been signed (affixed with stamp if any) or other specific times as agreed in the contract and the employer has received performance bond issued by the contractor (for a contract with provisions on performance bond being specified).

3. Legality of construction contract:

a) A construction contract that has become effective shall be the highest legal foundation that the employer, contractor and other related parties have the obligations to perform;

b) A construction contract that has become effective shall be the highest legal foundation for settling dispute between the parties. Any dispute that is not yet agreed by the parties to the contract shall be settled on the basis of relevant law provisions;

c) Regulatory agencies and agencies that perform controlling, allocation, provision of capital, investigation and auditing, and other relevant agencies shall perform their functions and duties as defined without encroachment on rights and interests of the parties in reliance on terms and conditions of the effective construction contract.

Article 7. Management of construction contract performance

1. Within one's rights and obligations, the parties need to establish a plan and take appropriate implementation measures in accordance with the signed construction contract to achieve terms and conditions set out in the contract.

2. Depending on construction contract types, management of construction contract performance shall include:

a) Management of contract performance schedule

b) Quality management;

c) Quantity and contractual price management;

d) Management of labor safety, environmental protection and fire & explosion prevention and fighting;

dd) Revision of contracts and other contract-related issues;

3. Both the employer and contractor must appoint and notify other party of its representative who shall manage construction contract performance. Representative of the parties must be fully entitled to decide and take responsibility for its own decision within authority as set out in the contract.

4. All proposals, requests and feedbacks from either party during the management of construction contract performance must be made in writing. Such proposals and request should represent foundations, efficiency (if any) and feedback deadline as agreed in the contract. Upon receipt of a proposal or request from one party, the other party must make a written reply about approval or disapproval of the deadline as agreed in the contract within seven working days since receipt of such proposal or request except otherwise as agreed. After this deadline, if the party that receives proposal or request fails to respond without proper reason and causes damage to the other party shall take full responsibility and pay compensation (if any).

5. Any proposal or request from either party during the management of construction contract performance must be dispatched to the address as agreed by the parties under the contract.

6. For any matter that is not prescribed hereof, the parties shall rely on relevant law provisions for execution.

Chapter II

PARTICULAR PROVISIONS

Section 1: INFORMATION, FOUNDATIONS FOR SIGNING, CONTENT, DOCUMENT, APPLICABLE LAW, AND LANGUAGE USED IN CONSTRUCTION CONTRACT

Article 8. Information about construction contract

Information about a construction contract must be specified in the contract as follows:

1. Contract type and number, name of bid package, project name, construction site and foundations for contract signing;

2. Business name of the parties to the contract, representatives of the parties, registered business address or transaction address, tax codes, business registration certificate, account number, phone number, fax number, email, time and venue for contract execution and other relevant information;

3. In case of a partnership contractor, all the information about the leading member and other individual members of such partnership as prescribed in Clause 2 of this Article must be specified.

Article 9. Foundations for signing construction contract

1. Foundations for signing a construction contract include requirements for performance of the tasks as agreed by the parties, result of selection of contractor, negotiation and completion of the contract and other relevant foundations.

2. As for EPC, EC and EP contracts, in addition to the foundations as specified in Clause 1 of this Article, a feasibility study report or approved FEED is also required.

3. As for Turnkey contracts, in addition to the foundations as specified in Clause 1 of this Article, other foundations such as project performance duties, investment policies, approved feasibility study report are also required.

Article 10. Content, document and order of priority of documents enclosed in a construction contract

Content, documents and order of priority of documents enclosed in a construction contract are instructed in Points 141, 142 of the Law on Construction No. 50/2014/QH13:

Article 11. Applicable law and language used in a construction contract

1. The construction contract must conform to the law system of the Socialist Republic of Vietnam and provisions set out hereof.

2. Language used in a construction contract is Vietnamese.

3. As for a foreign construction contract, the language used is Vietnamese and English as agreed by the parties; in case no agreement on this is reached, English shall be used.

Section 2: CONTENT AND QUANTITY OF WORK, REQUIREMENTS FOR QUALITY AND IMPLEMENTATION PROGRESS

Article 12. Content and quantity of work in construction contract

1. Content and quantity of work in a construction contract are subject matters and quantity of work that the employer signs with the contractor in accordance with scope of work and specified in the contract. Scope of work is determined on the basis of an invitation to bid (ITB) or request for proposals, bid documents, negotiation minutes and other relevant legal documents. Depending on specific construction contract type, scope of work shall be determined as follows:

a) Contract for consultancy: Establishment of planning, investment project; designing and survey; project management; management of construction contract performance; construction supervision; examination and verification of design, cost estimates and other consulting works in activities of investment and construction;

b) Construction contract: Supply of building materials, human force, working machinery and equipment, and construction in accordance with approved design document;

c) Procurement contract: Supply of equipment; instructions on installation, use, trial operation, official operation, training and technology transfer (if any) in accordance with approved design document;

d) EPC contract: Engineering, procurement of materials and equipment, construction; training and instructions on operation, maintenance, repair work; technology transfer; on-load/off-load trial operation; other works in accordance with approved design document;

dd) Turnkey contract: Establishment of investment project; engineering, procurement of materials and construction; training and instructions on operation, maintenance, repair work; technology transfer; on-load/off-load trial operation; handover of the works to the employer for operation; other works in accordance with approved project;

2. Revision of quantity of work in the contract is prescribed in Article 37 hereof;

Article 13. Requirements for product quality, acceptance and handover of works

1. Requirements for construction product quality:

a) Construction product quality must meet requirements under the contract and conform to the quality requirements as prescribed by the law. The parties to the contract must reach a common agreement on national regulations and standards, technical instructions applied to the product.

b) As for imported equipment and goods, in addition to the provisions set out in Point a of this Clause, provisions on origin must be applied.

2. Acceptance and handover of finished works:

a) Agreements on procedures for acceptance and handover of the works by the parties to the contract must conform to the provisions set out in the Law on Construction Quality Control.

b) Works to be accepted and handed over; foundations for acceptance and handover; procedures, date of acceptance and handover of finished works; personnel involved in acceptance and handover; forms; signers, written records, reports must conform to the law provisions and be agreed by the parties to the contract.

c) Only products that meet quality requirements as prescribed in Clause 1 of this Article are accepted and handed over.

d) As for the works to be inspected and accepted before moving on to other works, the contractor must make prior notice to the employer for inspection as prescribed by the Law on Construction Quality Control.

dd) As for defective products (failing to meet requirements as prescribed in the contract), they must be remedied or eliminated otherwise. Any party that commits the fault shall incur the entire cost for remedial work, re-appraisal and implementation progress.

Article 14. Time and progress of construction contract performance

1. Time of construction contract performance is from the effective date of the contract till the parties have fulfilled their obligations under the signed contract.

2. The contractor shall establish a detailed implementation progress and make submission to the employer for approval.

3. The implementation progress must represent milestones of completion and handover of key works and products.

4. As for a construction contract for a large-scale bid package with a long implementation period, the implementation progress may be divided into individual stages.

5. As for a procurement contract, progress of equipment supply must represent milestones of handover of equipment of which quantity and types of equipment in each stage of handover must be specified.

6. As for an EPC contract or turnkey contract, in addition to each stage's implementation progress, progress for each type of work (project establishment, engineering, procurement and construction) must be also established.

7. Speeding up contract implementation progress while product quality is ensured is encouraged. In case such speeding up brings about more efficiency to the project, the contractor shall be considered for rewards as agreed in the contract.

8. Revision of contract implementation progress is prescribed in Article 39 hereof;

Section 3: CONTRACTUAL PRICE, ADVANCES, PAYMENT, FINAL SETTLEMENT AND LIQUIDATION OF CONSTRUCTION CONTRACT

Article 15. Contractual price and conditions

1. Contractual price is an amount of money that the employer undertakes to pay to the contractor for the implementation of the works under the requirements for quantity, quality, progress, payment terms, advances and others as agreed in the contract.

2. Expenses, taxes and other charges (if any) included or not included in contractual price must be specified in the construction contract; contractual price to be revised must conform to contract type, contractual price manner and must be agreed by the parties in the contract. As for a construction contract under which payment in multiple currencies is agreed by the parties, contractual price in proportion to each currency must be specified.

3. Construction contract price includes the following types:

a) Lump sum contract price is the contractual price that is unchanged throughout the implementation period for the quantity of work within the scope of work under the signed contract except force majeure events or compulsory changes to scope of work.

b) Contractual price of fixed unit price is determined by multiplying fixed unit price of each work by respective quantity of work. Fixed unit price is the unit price that is unchanged throughout the implementation period except force majeure events.

c) Contractual price of adjustable unit price is determined by multiplying the unit price subject to adjustment due to slippage in prices as agreed in the contract by respective quantity of work (with the price adjustable). Adjustment to unit price due to slippage in prices are prescribed in Clauses 3, 4, Article 38 hereof;

d) Time-based contract price is determined on the basis of expenses for experts' work, other expenses and work time (quantity) by month, week, day and hour.

- Expenses for experts' works are determined by multiplying their pay rate and other related expenses by the actual work time (on a monthly, weekly, daily and hourly basis).

- Other expenses apart from the expenses for experts' work include travel expenses, working offices and other expenses.

dd) Contractual price of combined price is the contractual price used in combination with other contractual prices as prescribed in Points a – d of this Clause in accordance with each type of work mentioned in the contract.

4. Construction contract price is determined on the basis of bid price or result of negotiation on the construction contract between the parties.

5. Conditions for applying construction contract types are prescribed as follows:

a) Lump sum contract:

Lump sum contract price applied to bid packages at the date of contractor selection and contract negotiation has met conditions for determination of quantity and unit price for the implementation of the works under the construction contract or in some cases, quantity and unit price are not yet determined but the parties are qualified to calculate and determine the lump sum contract price.

When the lump sum contract price is applied, elements related to bid package price or contractual price such as risks to quantity and slippage in prices must be taken into account during the contract implementation period and each party must be responsible for its own risks.

b) Contractual price of fixed unit price:

Contractual price of fixed unit price applied to bid packages at the date of contractor selection and contract negotiation has met conditions for determination of unit price for the implementation of the works under the construction contract but quantity of work is not yet determined. Then, risky elements of unit price such as slippage in prices must be taken into account during the contract implementation period and each party must be responsible for its own risks as well as anticipating provisional budget for risky elements of bid price and contractual price such as slippage in prices and quantity.

c) Adjustable unit price contract applied to bid packages at the date of contractor selection and contract negotiation has not yet met conditions for determination of quantity, unit price and elements of contractual price such as slippage in prices during the contract implementation period and the parties must be responsible for anticipating provisional budget for risky elements of bid price and contractual price such as slippage in prices and quantity.
d) Time-based contract price is usually applied to a number of construction contracts covering consulting work in activities of investment and construction. Contract for consultancy is applied to all contractual prices as prescribed hereof.

Article 16. Guarantee for construction contract performance

1. Measures to guarantee construction contract performance such as payment of deposit, security or performance bond for fulfillment of obligations shall be undertaken by the contractor during the construction contract period.

2. Contract performance guarantee must be submitted to the employer before the contract takes effect as agreed by the parties on value, currency and guarantee method according to the forms accepted by the employer and valid until the contractor has fulfilled its obligations under the contract or after the employer has received maintenance bond with respect to a contract for construction and procurement of equipment. Particularly for a contract for consultancy, fixed rate contract, construction contract for target programs performed by households and construction contracts in the form of self-performing, a performance guarantee is not required.

3. In case the contractor is a partnership contractor, each member of such partnership must submit contract performance guarantee to the employer and level of guarantee value must correspond to part of the contract value undertaken by each member. If the partnership has an agreement on submission of contract performance guarantee made by a leading member, such leading member shall submit the performance guarantee to the employer and each member of the partnership must submit its own performance guarantee to the leading member in proportion to the contract value undertaken by each member.

4. Value of contract performance guarantee and guarantee method are prescribed in the invitation to bid or request for proposals. Level of performance guarantee is determined within 2% - 10% or higher but not exceeding 30% of the contract value and approved by competent person.

5. The contractor shall not be permitted to get back the contract performance guarantee in case of refusal to perform the contract right after the contract takes effect and other violations as prescribed in the contract.

6. The employer must return the contract performance guarantee to the contractor after the contractor has fulfilled obligations under the contract or has transferred to maintenance work and the employer has received maintenance bond with respect to a construction contract covering construction and procurement of equipment.

Article 17. Payment guarantee

1. Construction contract payment guarantees shall be responsibilities of the employer for proving capabilities to perform payment obligations under the signed contract via such forms as approved capital arrangement plan, bank or credit organization guarantee, credit supply contract or loan agreement with financial institutions.

2. Before signing a construction contract, the employer must issue a payment guarantee in accordance with the payment schedule as agreed in the contract. The employer is not permitted to execute a construction contract without approved capital arrangement plan as agreed in the contract except urgent construction works.

Article 18. Advances

1. Advance on a construction contract is an amount of money offered in advance by the employer to the contractor without interest rate for necessary preparations before implementation of the tasks under the contract.

2. Such advance is made only after the construction contract takes effect. Particularly for work execution contract, a site clearance plan must be included in the contract and at the same time the employer has received advance payment guarantee (if any) corresponding to value of each currency agreed by the parties.

3. Level of advance payment, date of payment and recovery of advance shall be agreed specifically in the contract. Level of advance payment and number of advance payments must be specified in the invitation to bid, request for proposals or a draft construction contract dispatched to the contractor as foundation for calculation of bid price, proposal price.

4. Advance payment guarantee:

a) For a construction contract with an advance payment value higher than one billion Vietnam dong, before the employer carry out the advance payment, the contractor must submit to the employer an advance payment guarantee with value and currency equivalent to the advanced amount of money. Any construction contract with value from one billion Vietnam dong and lower, and construction contracts in the form of self-performing including the contract executed by a community under the target programs, advance payment is not obligatory.

b) In case the contractor is a partnership contractor, individual members of the partnership must submit to the employer advance payment guarantee with value equivalent to the amount advanced to each member except all the members of the partnership decide on the leading member for submission of payment guarantee to the employer.

c) Validity period of advance payment guarantee must be extended until the employer has recovered all the advanced amount of money. Value of advance payment guarantee shall decrease gradually in proportion to value of advance payment recovered via each payment made between the parties.

5. Level of advance payment is not allowed to exceed 50% of the contract value at the time of signing. In special cases, this must be approved by a competent person, or the Minister, presidents of People's committees of provinces; President of the Member Council, President of the Board of Directors of the group, corporation in case the competent person is the Prime Minister; minimum level of advance payment is prescribed as follows:

a) Contract for consultancy:

- 15% of the contract value for a contract valued over VND 10 billion.

- 20% of the contract value for a contract valued up to VND 10 billion.

b) Work execution contract:

- 10% of the contract value for a contract valued over VND 50 billion.

- 15% of the contract value for a contract valued from VND 10 to 50 billion.

- 20% of the contract value for a contract valued under VND 10 billion.

c) Procurement contract, EC contract, EP contract, PC contract and EPC contract, turnkey contract and other construction contracts: 10% of the contract value;

d) In case the parties agree on a level of advance payment that is higher than the minimum level as prescribed in Points a, b, c of this Clause, value of the contract in proportion to such level of advance payment shall not be adjusted in price since the date of advance payment.

dd) The advanced amount of money is gradually recovered via payments. The amount recovered from each payment shall be agreed by the two parties in the contract but must ensure that all the advanced amount of money is recovered when 80% of the signed contract value is paid.

6. The contractor must use the advance as intended, planned and effectively. Use of the advance for purposes outside the contract's scope of work is prohibited.

7. As for production of structures, semi-finished products of high value, some materials reserved by season, the two parties must negotiate on advance payment plan and level of advance payment to ensure the contract implementation progress.

Article 19. Construction contract payment

1. Construction contract payment must be in accordance with contract type, contractual price and conditions prescribed in the signed contract. When payment is made under the contract, the two parties do not have to sign the appendices except some supplements are made to the contract.

2. The parties shall negotiate in the contract about number of payments, stage of payment, date of payment, payment term, payment documents and conditions.

3. The employer must pay 100% of each payment value to the contractor after advances and maintenance expenses are subtracted according to agreement under the contract except otherwise as negotiated.

4. If the two parties are not eligible to carry out the payment under the contract during the payment period (no data to adjust price, insufficient time to determine product quality...), temporary payment can be made. When the two parties are eligible to carry out the payment, the employer must make the payment to the contract as prescribed in Clause 3 of this Article.

5. Lump sum contract: payment shall be made on percentage of contractual price or construction works price, work items, quantity of work in proportion to payment stages as agreed in the contract. Confirmation of completed quantity of work is not required when payment is made.

6. Contracts of fixed unit price and adjustable unit price: Payment shall be made on the basis of actual completed quantity (including increasing or decreasing quantity if any) inspected and accepted for each payment, and unit price in the contract or adjustable unit price as agreed in the contract.

7. As for time-based contract, payment shall be made as follows:

a) Expenses for experts' work are determined by multiplying the expert's pay rate and relevant expenses as agreed in the contract by actual accepted work time (on a monthly, weekly, daily and hourly basis).

b) Expenses apart from the expenses for experts' work shall be paid according to provisions of the contract.

8. As for contracts of combined price, payment shall be made according to regulations on contract payment as prescribed in Clauses 5, 6, 7 of this Article.

9. Payment of additional quantity (apart from the contract) without unit price in the contract shall be made according to agreement in the contract or additional agreement and in accordance with relevant law provisions.

10. Payment term as agreed by the two parties in the contract must be in conformity with scale and nature of each contract. Time for payment should not prolong over 14 working days since the employer receives adequate payment documents as agreed in the contract and specifically prescribed as follows:

a) Within seven working days since receipt of adequate payment request from the contractor, the employer must complete procedures and transfer payment request to the bank or State Treasuries to facilitate the payment.

b) Within seven working days since receipt of adequate payment request from the contractor, the employer must complete procedures and transfer payment request to the bank or State Treasuries to facilitate the payment.

c) For contracts of ODA projects, loans from foreign credit institutions, payment term is prescribed in International Agreement. When negotiating about payment term, the parties must rely on provisions of the International Agreement and investment capital payment procedures according to law provisions.

11. The employer's failure to pay or overdue payment to the contractor as agreed in the contract shall not be accepted.

Article 20. Payment documents

1. Payment documents shall be established by the contractor in accordance with contract type, contractual price and other agreement in the contract. Payment documents (including forms) must be specified in the contract and confirmed by the employer. Payment documents include:

a) As for a lump sum contract:

- Inspection and acceptance report on completed quantity with confirmations by the employer's representative or consultant's representative (if any) and by the contractor's representative; such reports are the confirmation on fulfillment of the works, work items, quantity of work in accordance with scope of work to be performed under the contract without requirement for detailed confirmation of completed quantity.

- Table of additional quantity value (if any) apart from the contract's scope of work with confirmations by the employer's representative or consultant's representative (if any) and the contractor's representative;

- Payment request from the contractor should represent the following matters: value of completed quantity under the contract, value of additional quantity (if any), subtraction of advanced amount, value stated in payment request after subtraction of these amounts with confirmations by the employer's and contractor's representatives.

b) As for contracts of fixed unit price:

- Report on inspection and acceptance of actual completed quantity (increasing or decreasing versus the quantity set out in the contract) with confirmations by the employer's representative or consultant's representative (if any) and by the contractor's representative;

- Tabular calculation of value of works without unit price in the contract (if any) of which quantity and unit price for these works must be represented with confirmations from the employer's representative or consultant's representative (if any) and the contractor's representative;

- Payment request from the contractor should represent the following matters: value of completed quantity under the contract, value of additional quantity (if any), subtraction of advanced amount, value stated in payment request after subtraction of these amounts with confirmations by the employer's and contractor's representatives.

c) As for contracts of adjustable unit price:

- Report on inspection and acceptance of actual completed quantity (increasing or decreasing versus the quantity set out in the contract) with confirmations by the employer's representative or consultant's representative (if any) and by the contractor's representative;

- Tabular calculation of unit price adjusted due to slippage in prices (or payment unit price) as agreed in the contract with confirmations by the employer's representative or consultant's representative (if any) and by the contractor's representative;

- Tabular calculation of value of works without unit price in the contract (if any) of which quantity and unit price for these works must be represented with confirmations from the employer's representative or consultant's representative (if any) and the contractor's representative;

- Payment request from the contractor should represent the following matters: value of completed quantity under the contract, value of additional quantity (if any), subtraction of advanced amount, value stated in payment request after subtraction of these amounts with confirmations by the employer's and contractor's representatives.

d) Time-based contract:

- Report on inspection and acceptance of actual work time or timekeeping table (on a monthly, weekly, daily and hourly basis) in proportion to result of performance with confirmations by the employer's representative or consultant's representative (if any) and by the contractor's representative; In case addition of experts to perform the tasks arising during the implementation is required, the two parties must sit down, negotiate and agree on the pay for such experts' work before implementation. Then, the payment documents must include a tabular calculation of value of additional works (if any) beyond the contract's scope of work with confirmations by the employer's representative or consultant's representative (if any) and the contractor's representative;

- Payment request from the contractor should represent the following matters: value of completed quantity under the contract, value of additional quantity (if any), subtraction of advanced amount, value stated in payment request after subtraction of these amounts with confirmations by the employer's and contractor's representatives.

dd) As for a construction contract covering procurement of equipment, the completed quantity of work may be based on invoices, vouchers, bill of lading, reports on inspection and acceptance, handover of equipment and other relevant documents.

e) As for a construction contract covering consulting work that determination of completed quantity of work is difficult, the completed quantity of work shall be determined on the basis of documents, reports or any product confirmed by the employer as conformable with the payment period agreed in the contract.

2. As for a contract of combined price, payment documents for each type of work under the contract shall be prescribed in Clause 1 of this Article.

3. When negotiating about payment document, the parties must rely on scale, nature and used capital source to negotiate required documents among key documents as prescribed in Clause 1 of this Article.

4. In addition to the key documents as prescribed in Clause 1 of this Article, for a contract using ODA, loans of foreign credit institutions, payment documents must be done according to International Agreement.

5. The employer, organizations, individuals relating to contract payment are not permitted to provide requirements for payment documents against agreement in the contract and provisions set out hereof.

Article 21. Currency and payment term

1. Currency used for contract payment is Vietnam dong; use of foreign currency can be negotiated by the two parties but should not be contrary to the regulations on foreign exchange.

2. For a construction contract involving some works that require payment to be made in multiple currencies, the parties must carry out negotiations under the contract but ensure the currency for payment is in conformity with the ITB or request for proposals.

3. Payment may be made in cash, account transfer and other manners as agreed by the two parties in accordance with the law and specified in the contract.

Article 22. Construction contract settlement

1. Contract settlement is the determination of total final value that the employer is responsible for paying to the contractor when the contractor has fulfilled all the works as agreed in the contract.

2. The settlement documents are formulated by the contractor in accordance with contract type and contractual price. Subject matters of the settlement documents must be in accordance with agreement in the contract, including:

a) Report on inspection and acceptance of the entire works within the contract's scope of work and additional works beyond the contract.

b) Tabular calculation of contract settlement value (also called A-B settlement) on which the followings must be specified: value of completed works, value of additional quantity (if any) beyond

the signed contract's scope of work, value of payment or temporary payment and the remaining value that the employer is responsible for paying to the contractor.

c) As-built documents, construction diary for a construction contract covering construction execution.

d) Other documents as agreed in the contract;

3. Time limit for contract settlement is instructed in Clause 2, Article 147 of the Law on Construction No. 50/2014/QH13.

Article 23. Construction contract liquidation

Contract liquidation is instructed in Clauses 3, 4 of Article 147 of the Law on Construction No. 50/2014/QH13.

Section 4: RIGHTS AND OBLIGATIONS OF THE PARTIES TO A CONSTRUCTION CONTRACT

Article 24. Rights and obligations of the employer and contractor

1. Rights and obligations of the parties to a construction contract shall be negotiated by the two parties in the contract ensuring no opposition to the law.

2. Either party must make written notice to the other party about rights and responsibilities of representatives for management of contract performance. When either party changes its representative for management of contract performance, a written notice must be made to the other party. Particularly when the contractor changes its representative or key personnel for management of contract performance, this must be approved by the employer.

3. In case the contractor is an economic group or corporation, it can assign work to its members but must ensure openness, transparency and suitability for qualifications of individual members and this must be approved in advance by the employer.

4. Depending on specific contract type, rights and obligations of the two parties are also prescribed in Articles 25-34 hereof.

Article 25. Rights and obligations of the employer (contract for consultancy)

1. Rights of the employer:

a) Be entitled to ownership and use of consultancy products;

b) Refuse acceptance of consultancy products of non-conformity under the contract;

c) Inspect quality of the work performed by the contractor without hindrance to its normal operation;

d) Other rights as prescribed;

2. Obligations of the employer:

a) Provide requirements for works and documents to the contractor ensuring payment and necessary means for implementation of works as agreed in the contract (if any).

b) Ensure copyright for any copyright consultancy product under the contract;

c) Settle the contractor's proposals on schedule within competence during the implementation of the contract as agreed.

d) Make full payment to the contractor according to the payment schedule agreed in the contract;

dd) Other rights as prescribed;

Article 26. Rights and obligations of the contractor (contract for consultancy)

1. Rights of the contractor:

a) Request the employer to provide information and documents relating to consulting duties and working means as agreed in the contract (if any).

b) Propose changes on conditions for provision of consultancy services for the benefit of the employer or upon detection of factors imposing adverse effects on quality of consultancy products;

c) Refuse performance of inappropriate works beyond the contract's scope of work and unlawful requirements by the employer;

d) Get guarantee of copyright for any copyright consultancy product under the contract;

dd) Other rights as prescribed by the law;

2. Obligations of the contractor:

a) Complete the works that meet schedule and quality as agreed in the contract;

b) For engineering contract: Take part in work acceptance with the investor according to the Law on Construction Quality Control, designer's supervision and answer questions of engineering document at the request of the employer.

c) Preserve and return to the employer documents and working means provided by the employer under the contract after the work is completed (if any);

d) Make written notice to the employer about inadequacy of provided information and poor quality of working means;

dd) Keep confidential information relating to consultancy services as prescribed in the contract or the law;

e) Other obligations as prescribed by the law;

Article 27. Rights and obligations of the employer (contract for work execution)

1. Rights of the employer:

a) Temporarily halt the construction and request remedial work to consequences when the contractor has violated regulations on construction quality, labor safety, environmental protection and fire and explosion prevention and fighting;

b) Inspect quality of the work performed by the contractor, production facilities without hindrance to its normal operation;

d) Other rights as prescribed by the law;

2. Obligations of the employer:

a) In case the employer is an investor, license for construction must be obtained as prescribed.

b) Hand over whole or part of the construction site to the contractor for management and use in accordance with the implementation progress and other agreement in the contract;

c) Appoint and make a written notice to the contractor about key personnel engaging in management of contract performance;

d) Provide design documents, information, means, machinery, equipment and materials as agreed in the contract (if any) and as prescribed by relevant law;

dd) Make full payment to the contractor according to the payment schedule agreed in the contract;

e) Organize construction supervision:

g) Inspect the contractor's measures to ensure labor safety, environmental protection and fire & explosion prevention and fighting;

h) Conduct inspection, acceptance, payment and settlement of contract on schedule as prescribed;

i) If organizations or individuals are hired to provide consultancy services, specify their duties, authority in the management of contract performance and make notification to the contractor;

k) Review and approve in writing the contractor's proposals about engineering and construction during the construction period;

e) Other obligations as prescribed by the law;

Article 28. Rights and obligations of the contractor (contract for work execution)

1. Rights of the contractor:

a) Propose additional quantity of work beyond the contract to the employer; refuse performance of the works beyond the contract without agreement between the two parties or unlawful requirements by the employer;

b) Change construction measures approved by the employer in order to quicken the progress, ensure quality, safety and efficiency of the construction works on the basis of signed contractual price;

c) Be entitled to ask the employer to pay loan interests due to late payment as agreed in the contract; be entitled to ask for compensation for damages caused by late handover of plan layout and other losses caused by the employer.

d) Other rights as prescribed by the law;

2. Obligations of the contractor:

a) Provide human force, materials, working machinery and equipment, other related material conditions with adequate quantity and type under the contract; design shop drawings (in case the contractor performs shop drawing design) for implementation of the works under the contract;

b) Receive and manage site plan, protect borderline markers of the construction site;

c) Carry out construction in accordance with the design, technical instructions, regulations and standards, ensuring quality, schedule, environmental protection safety and fire & explosion prevention and fighting.

d) Keep daily records of construction;

dd) Test materials, equipment and construction product as prescribed in the Law on Construction Quality Control, technical instructions, standards and regulations on construction;

e) Manage workers on the site; ensure safety, order and security and no adverse effect on surrounding residential area;

g) Establish construction measures, as-built dossiers and take part in work acceptance;

h) Take responsibility for quality of the construction undertaken; Take remedial work to any mistake committed during the construction;

i) Cooperate with other contractors on the site;

k) Make regular reports to the employer on construction schedule, human force and main equipment for the construction;

l) Move materials, machinery, equipment, and other properties out of the site within a defined time limit after the works have been accepted, handed over or the contract is terminated according to Article 41 hereof except otherwise as agreed in the contract;

m) Return the site plan as agreed in the contract;

n) Keep confidential information relating to the contract or as prescribed by the law;

o) Other obligations as prescribed by the law;

Article 29. Rights and obligations of the employer (contract for procurement of technological equipment)

1. Provide necessary information, site plan for installation of equipment to the contractor;
2. Cooperate with the contractor during training, technology transfer; provide instructions on installation, use and operation;
3. Refuse acceptance of technological equipment found contrary to the agreement in the contract in terms of quantity, quality, type and origin;
4. In case the employer carries out technological design for the contractor, the employer must take full responsibility for quality and intellectual property rights of this design;
5. Other rights and obligations as prescribed by the law;

Article 30. Rights and obligations of the contractor (contract for procurement of technological equipment)

1. Hand over technological equipment to the employer as agreed in the contract on quantity, quality, location, time, packaging, preservation, origin and other agreement in the contract;
2. Provide to the employer all necessary information about technological equipment; instructions on installation, use, operation, preservation and maintenance of technological equipment; provide training for management staff and operators in using the works (if agreed in the contract);
3. Cooperate with the employer in conducting trial operation of technological equipment;
4. Intellectual property rights of technological equipment:
 - a) Technological equipment provided by the contractor must ensure intellectual property rights. The contractor is not permitted to provide technological equipment that violates intellectual property rights. The contractor shall be responsible for any dispute relating to intellectual property rights of technological equipment provided;
 - b) In case the technological equipment is manufactured according to the design or figures provided by the employer, the contractor shall not be responsible for any complaints relating to violations of intellectual property rights arising from such technological equipment.
 - c) Either party shall be responsible for failing to make immediate notice to the other party about complaints filed by the third party about intellectual property rights of the technological equipment upon notification.
5. Other rights and obligations as prescribed by the law;

Article 31. Rights and obligations of the employer (EPC contract)

1. Rights of the employer:

a) Refuse acceptance of products failing to meet quality as set out in the contract; refuse acceptance of technological equipment found contrary to the agreement in the contract in terms of quantity, quality, type and origin and products that violate intellectual property rights;

b) Inspect the contractor's performance of works as set out in the contract without causing any hindrance to its normal operation;

c) Temporarily halt the works as set out in the contract and request remedial work to the consequences upon finding that the contractor has been in breach of the contract or state regulations;

d) Request the contractor to hand over documents, information relating to the contract products as signed;

dd) Examine and approve the lists of qualified sub-contractors not yet included in the EPC contract as requested by the contractor;

e) Other rights as prescribed by the law;

2. Obligations of the employer:

a) Make full payment to the contractor according to the payment schedule agreed in the contract;

b) Appoint and make a written notice to the contractor about key personnel engaging in management of contract performance;

c) Provide information, documents and necessary means to the contractor for its performance (if agreed in the contract);

d) Conduct inspection, examination and approval of technical design, shop drawing design with respect to the works, work items, or make submission to competent agencies for appraisal and early approval as prescribed;

dd) Apply for license for construction and hand over clean site plan to the contract under the contract implementation progress;

e) Supervise implementation of works as set out in the contract; examine measures to ensure labor safety, environmental protection and fire & explosion prevention and fighting as regulated;

g) Negotiate with the contractor on the ITB for procurement of technological equipment (if agreed in the contract);

h) Conduct inspection, acceptance, payment and settlement of contract on schedule as prescribed;

b) Ensure copyright for any consultancy product under the contract;

k) Organize training for management staff and operators in using the works;

e) Other obligations as prescribed by the law;

Article 32. Rights and obligations of the contractor (EPC contract)

1. Rights of the contractor:

a) Request the employer to provide information, documents and working means (if agreed in the contract) relating to the contract's scope of work.

b) Propose additional quantity of work beyond the contract to the employer; refuse performance of the works beyond the contract without agreement between the two parties or unlawful requirements by the employer;

c) Organize, manage and carry out tasks or activities as set out in the contract;

d) Other rights as prescribed by the law;

2. Obligations of the contractor:

a) Provide adequate human force, materials, machinery, equipment and other necessary means for construction work under the contract;

b) Receive, manage, preserve and return documents and means provided by the employer (if agreed in the contract);

c) Make written notice to the employer about inadequacy of provided information and poor quality of working means that affect execution of tasks or activities under the contract;

d) Keep confidential any contract related information as agreed in the contract or as prescribed by the law;

dd) Carry out tasks under the contract ensuring safety, quality, schedule and other agreement;

e) Establish design (technical design, shop drawing design) of work items, main works of the bid package, project in accordance with approved fundamental design or FEED, and make submission to competent agencies, the investor for appraisal, approval according to the Law on Construction;

g) Organize procurement, manufacture and supply of technological equipment to meet requirements and contract implementation progress; select sub-contractors (if any) via bidding or no-bid contracts and make submission to the investor for approval; negotiate and agree with the investor on intent of the ITB for procurement of technological equipment (if agreed in the contract).

Provide to the employer all necessary information about technological equipment; instructions on installation, use, operation, preservation and maintenance of technological equipment; provide training for management staff and operators (if agreed in the contract);

i) Carry out tests, corrections and trial overall operation of the works and hand over the completed works to the employer as agreed in the contract and as prescribed by the applicable law;

k) Ensure any product provided does not violate intellectual property rights as prescribed by the law;

l) Hand over documents, information relating to the contract product to the employer under the contract;

m) Other obligations as prescribed by the law;

Article 33. Rights and obligations of the employer (turnkey contract)

In addition to rights and obligations as prescribed in Article 31 hereof, the employer shall be also responsible for carrying out inspection and acceptance of the construction project for submission to competent agencies as prescribed by the Law on Construction, or to a person (who is competent to decide investment) for appraisal and approval or for appraisal and approval within competence.

Article 34. Rights and obligations of the contractor (turnkey contract)

In addition to rights and obligations as prescribed in Article 32 hereof, the contractor shall be also responsible for establishing construction project, taking part in protecting the project together with the employer before the competent person's decision to invest to invest and completing the project as requested by the employer in accordance with agreement in the contract.

Section 5. ADJUSTMENT TO CONSTRUCTION CONTRACT

Article 35. Adjustments to construction contract

1. Adjustments made to the contract include adjustments in quantity, unit price, contract implementation progress, contractual price and other matters (if an) as agreed in the contract

2. The contract shall be brought out for adjustment only in the cases as prescribed in Clauses 2, 3, Article 143 of the Law on Construction No. 50/2014/QH13.

Article 36. Principles for adjusting construction contract

1. Adjustments to the contract shall be made only during the contract implementation.

2. As for a lump sum contract, only additional quantity of work beyond the signed contract's scope of work is adjusted (as for the contract for work execution, procurement contract, adjustments are made to additional quantity of work beyond the design's scope of work, requirements of the ITB or request for proposals; and as for the contract for consultancy, adjustments are made to additional quantity of work beyond the scope of consultancy work as agreed in the contract) and other force majeure events.

3. If the adjusted contractual price does not exceed the bid package's price or its approved cost estimates (including contingency cost of such package), adjustments can be made by the investor; if the adjusted contractual price exceeds the bid package's price or its approved cost estimates, it must be approved by the competent person before adjustments are made and must ensure sufficiency of capital for payment to the contractor in accordance with the agreement in the contract.

Article 37. Adjustments in quantity of work to construction contract

1. The parties to the contract must carry out negotiations on specific adjustments in quantity of work, scope, sequence and procedures for adjustments;

2. Adjustments in quantity of work to construction contract are prescribed as follows:

a) As for a lump sum contract: additional quantity of work beyond the signed contract's scope of work are considered as appropriate (as for the contract for work execution, procurement contract, additional quantity of work beyond the design's scope of work; and as for the contract for consultancy, additional quantity of work beyond the scope of consultancy service as agreed in the contract).

In this case, if the adjusted price does not exceed the bid package's price, both the investor and contractor shall carry out calculations, negotiations and sign an appendix to the contract; if the adjusted price exceeds the bid package's price, this must be examined and decided by the competent person; if no agreement is reached, such additional quantity of work shall constitute a new bid package and selection of contractors for the execution of this package shall conform to applicable regulations.

b) As for a fixed unit price contract and an adjustable unit price contract: if the addition of appropriate quantity of work (without unit price in the contract) to the contract does not make the price exceed the bid package's price, both the investor and contractor shall carry out calculations, negotiations and signing an appendix to the contract; if such addition of quantity of work makes its price exceed the bid package's price, it must be examined and decided by the competent person; any quantity of work (with unit price in the contract) shall be determined on the basis of actual completed quantity of work (increasing or decreasing versus the quantity of work set out in the contract).

3. As for additional quantity of work beyond the signed contract's scope of work without unit price in the contract, the parties to the contract must commonly agree on the unit price for this quantity of work before execution.

Article 38. Adjustments in unit price and contractual price

1. The parties to the contract must make specific negotiations on cases subject to adjustments in unit price and contractual price; sequence, scope, method and foundations for adjustments in contractual price; method of adjustment must accord with contractual price type, nature of work in the contract.

2. Adjustments in unit price are prescribed as follows:

a) Adjustments in unit price are made only to adjustable unit price contract and time-based contract as agreed by the two parties.

b) If actual completed quantity of work increases or decreases by more than 20% of the respective quantity of work set out in the contract, or additional quantity of work has not yet unit price established in the contract, the two parties must jointly agree on a new unit price for this quantity of work under the principle as agreed in the contract.

c) If actual completed quantity of work increases or decreases by a maximum of 20% of the respective quantity of work set out in the contract, the unit price as established in the contract shall be applied including the unit price being adjusted according to the agreement in the contract (if any).

d) Adjustments in unit price to the quantity of work that both the employer and contractor have reached an agreement on adjustment in unit price at the date of signing the contract shall be made in accordance with Clause 3 of this Article and the Ministry of Construction's instructions.

3. Method of adjusting unit price and contractual price:

a) Application of price adjustment methods must accord with nature of work, contractual price type, payment currency and must be agreed in the contract.

b) Database inputs for price adjustment must accord with the contract's scope of work. Use of source of information of price or price index from competent state agencies for price adjustment must be specified in the contract, specifically in the following formula:

$$\mathbf{G_{TT} = G_{HD} \times P_n}$$

Where:

- "G_{TT}": Payment price in proportion to completed quantity of work

- "G_{HD}": Contractual price in proportion to completed quantity of work

- "P_n": Adjustment coefficient (increasing or decreasing) applied for payment with respect to completed quantity of work during a period "n".

4. The Ministry of Construction shall provide specific guidance on adjustments to construction contract

Article 39. Adjustments to contract implementation progress

1. In the contract, the parties must negotiate on adjustments to implementation progress. If the period of completion is delayed versus the progress set out in the contract, the parties must define responsibilities of each party for any damages caused by such delay.

2. Contract implementation progress is adjusted in the following cases:

a) Under effects of earthquake, storm, floods, tsunamis, conflagration, enemy-inflicted disaster or other force majeure events;

b) Changes or adjustments made to the project, scope of work, design, construction measures as requested by the employer;

c) Handover of site plan not consistent with agreement in the contract; temporary suspension of contract caused by the employer's fault; other procedures caused by neither party;

d) Temporary suspension of construction work at the request of competent state agencies without the employer's fault;

3. If the adjustments do not prolong the contract implementation progress (including permissible extension as prescribed in the construction contract) both the employer and contractor shall negotiate and agree on the adjustments. If the adjustments prolong the contract implementation progress, the investor must make the report to the competent person for examination and decision.

Section 6: TEMPORARY SUSPENSION, TERMINATION, REWARDS, PENALTIES FOR VIOLATIONS TO CONTRACT

Article 40. Temporary suspension of construction contract performance

1. Situations resulting in temporary suspension of construction contract performance, rights to temporary suspension; procedures for temporary suspension, level of compensation for damages caused by temporary suspension shall be negotiated and agreed by the employer and contractor in the contract;

2. The parties to the contract are entitled to temporarily suspend the contract in the following cases:

a) The employer has the right to temporarily suspend the contract performance when the contractor fails to meet requirements for quality, labor safety and contract progress as agreed in the contract.

b) The contractor has the right to temporarily suspend the contract performance and prolong the contract progress when the employer is in breach of payment terms, specifically no adequate payment is made to the contractor as agreed after 28 days since the payment deadline as prescribed in Clause 10, Article 19 hereof except otherwise as agreed by the two parties; no payment guarantee is made for quantity of work to be executed.

3. Before one party temporarily suspends the contract performance, a written notice must be made to the other party 28 days in advance with reasons for temporary suspension being specified; the employer and contractor shall be responsible for carrying out negotiations to continue to maintain agreements as signed in the contract except force majeure events.

In case one party fails to make a notice about temporary suspension or reasons specified are found contrary to the signed contract, it shall be responsible for making compensation for losses caused to the other party.

Article 41. Termination of construction contract

1. Situations resulting in termination of the contract, rights to terminate the contract; sequence, procedures for termination of the contract, level of compensation for losses caused by termination of the contract must be agreed in the contract and in accordance with the provisions set out hereof and relevant law provisions.

2. Either party has the right to terminate the contract without compensation for losses caused in the cases as prescribed in Clauses 7 and 8 of this Article.

3. In case the default party (party in breach of the contract) fails to correct its mistakes after 56 days since the date of temporary suspension by notice without proper reason except otherwise as agreed, the other party (party ordering suspension temporary) has the right to terminate the contract.

4. In case either party unilaterally terminates the contract without the other party's fault, such party must make compensation for damages caused to the other party.

5. Before terminating the contract, one party must make a written notice to the other party some time in advance but no later than 28 days with reasons being specified except otherwise as agreed in the

contract. If the party that terminates the contract fails to make the notice causing losses to the other party, such party must make compensation for the losses.

6. The contract shall become ineffective since the date of termination and the parties must fulfill the procedures for liquidation with a period of time as agreed in the contract but no later than 56 days since the notice about termination is issued except otherwise as agreed in the contract. After this period, if either party fails to fulfill the procedures for liquidation, the other party is fully entitled to liquidate the contract.

7. The employer has the right to terminate the contract in the following cases:

a) The contractor goes bankrupt, dissolved or transfers the contract to other individuals or organizations without consent of the employer.

b) The contractor refuses to execute the construction work under the contract for 56 straight days that results in violations of the contract progress as agreed in the contract except otherwise as approved by the employer.

8. The contractor has the right to terminate the contract in the following cases:

a) The employer goes bankrupt, dissolved or transfers the contract to other individuals or organizations without approval of the contractor.

b) The construction work has been suspended for 56 straight days by the employer's fault except otherwise as agreed by the two parties.

c) The employer fails to make the payment to the contractor after 56 days since receipt of adequate payment documents except otherwise as agreed by the two parties.

9. Within two working days since the contract is terminated, the contractor must move all the materials, human force, machinery, equipment and other properties in its possession out of the construction site. After this period, if the contractor fails to do so, the employer has the right to settle these properties.

Article 42: Rewards and penalties

Rewards and penalties are instructed in Clauses 1, 2, Article 146 of the Law on Construction No. 50/2014/QH13.

Article 43. Responsibilities for breach of contract

1. Responsibilities for breach of the contract are prescribed in Points 3-7, Article 146 of the Law on Construction No. 50/2014/QH13, provisions set out hereof and relevant law provisions:.

2. In case the employer fails to make timely and adequate payment as agreed in the contract, it must pay interest on late payments at the commercial bank where the contractor opens its payment accounts. Interest on late payments shall be calculated from the first day of late payment until the payment is fully made to the contractor except otherwise as agreed by the two parties.

Section 7: COMPLAINTS AND DISPUTE SETTLEMENT

Article 44. Complaints during contract performance

1. Complaints during contract performance in this Decree mean one party detects the other party malfunctions or fails to perform the obligations as agreed in the contract, it has the right to request the other party to fulfill. Therefore, the detecting party (the party that detects the violation) has the right to lodge a complaint against the other party about this matter.

2. When one party lodges a complaint against the other party, it must give foundations or specific proof to clarify intent of the complaint.

3. Within 56 days since detecting one party fails to perform the contract as agreed, the detecting party must make immediate notice to such party and lodge a complaint. After this period, if neither party makes a complaint, the two parties must continue to perform the contract as agreed.

4. Within 28 days since receipt of a complaint, the receiving party (the party that receives the complaint) must give foundations or proof to prove if such complaint is in accordance with the signed contract. After this period, if the receiving party shows abstention, it is deemed as approved the intent of the complaint lodged by the other party.

5. Complaints made by either party must be dispatched to the address as agreed in the contract. Any complaint that is not settled by the parties shall be settled according to Article 45 hereof.

Article 45: DISPUTE SETTLEMENT

1. When settling disputes arising during contract performance, the parties must comply with principles and procedures as prescribed in Clause 8, Article 146 of the Law on Construction No. 50/2014/QH13.

2. If the two parties agree that dispute settlement is conducted by an agency, organization or one or some expert individuals (commonly referred to as the settlement committee), the settlement via this committee shall be prescribed as follows:

a) The dispute settlement committee can be specified in the contract at the time of signing or can be formed after the dispute arises. Number of members of the dispute settlement committee shall be negotiated by the parties. Members of the dispute settlement committee are required to be highly qualified and experienced in dispute settlement and have good knowledge of the law provisions on construction contract.

b) Within 28 days since the two parties receive result of dispute settlement from the dispute settlement committee, if such result is not accepted by either party, the dispute settlement shall then be brought to arbitrator or court as regulated; after this period, if neither party opposes the result, the result shall be deemed as agreed by the parties. Hence, the two parties must comply with such result.

c) Expenses for the dispute settlement committee's works shall be included in the contract and incurred equally by both parties except otherwise as agreed.

3. Statute of limitations for filing a complaint to the arbitrator or to the court for settlement shall be instructed by relevant law provisions.

Section 8. OTHER SUBJECT MATTERS OF CONSTRUCTION CONTRACT

Article 46. Insurance and maintenance

1. Insurance

a) The investor shall buy insurance for the works during the construction period that may impose adverse effects on community safety, environment or for the works of peculiar technical structures and complicated construction conditions. In case this insurance cost has been included in the contractual price, the contractor must buy the insurance as regulated.

b) The contractor (in case of the contract for consultancy) shall buy professional liability insurance for the tasks of construction survey, construction design of construction works from Grade II and over.

c) The contractor must buy other necessary insurance types (insurance for workers on the site, insurance for equipment, insurance for the third party...) to ensure its activities according to the law provisions.

2. Maintenance

a) The contractor shall be responsible for carrying out maintenance to the works and equipment as agreed in the contract. Agreements by the two parties on period of maintenance, level of maintenance guarantee must accord with the law on construction.

b) Maintenance guarantee can be made in the form of guarantee or other forms as agreed by the two parties but form of guarantee is preferred.

c) Maintenance guarantee shall be refunded to the contractor only after the period of maintenance is completed and confirmation from the investor on completion of maintenance is issued.

d) During the period of maintenance, the contractor must carry out maintenance within 21 days since receipt of repair notice from the employer; during this period, if the contractor fails to carry out maintenance, the employer has the right to use the maintenance cost for hiring other organizations, individuals to do the work.

Article 47. Sub-contractor contract

1. One main contractor contract may have multiple sub-contractor contracts When signing a sub-contractor contract, main contractor, general contractor or foreign contractor must execute the following provisions:

a) Only qualified sub-contractors are permitted to sign the sub-contractor contract:

b) Any foreign contractor executing a construction contract within Vietnam's territory as main contractor must hire domestic sub-contractors that meet requirements of the bid package and is permitted to hire foreign sub-contractors only when domestic sub-contractors do not meet the requirements of the bid package. Materials and equipment temporarily imported for export must be specified in the contract on the principle that use of domestic materials and equipment that meet the requirements of the bid package is prioritized.

c) Any sub-contractor not included in the lists of sub-contractors with contracts enclosed must be approved by the investor.

d) General contractor, main contract must be responsible to the investor for the contract progress, quality, labor safety, environmental protection, its mistakes and other works performed by sub-contractors.

dd) Main contractor, general contractor are not permitted to re-assign all the works as undertaken under the contract to sub-contractors for execution.

2. Sub-contractors as appointed by the investor (if any)

a) Sub-contractors as appointed by the investor are sub-contractors appointed to the main contractor or general contractor by the investor for carrying out some work of high technique or when the main contractor or general contractor fails to meet requirements for safety, quality and progress as requested by the investor.

b) As for a construction contract that engages sub-contractors appointed by the investor, the two parties must carry out negotiations on the situations by which the investor is permitted to appoint sub-contractors.

c) Main contractor or general contractor has the right to reject sub-contractors appointed by the investor if the works performed by main contractor or general contractor, sub-contractor still conform to the contract or have adequate foundations proving that sub-contractors appointed by the investor do not meet the contract's requirements.

3. The investor shall make payment direct to sub-contractors on the basis of payment request issued by main contractor or general contractor except otherwise as agreed.

4. Sub-contractors have all rights and obligations of the contractor as prescribed hereof and other relevant law provisions.

Article 48. Labor safety, environmental protection and fire & explosion prevention and fighting

1. Responsibilities of the parties for labor safety must be agreed in the contract and prescribed as follows:

a) Construction contractor must establish safety measures for people, machinery, equipment and the works on the site including adjacent construction works. In case safety measures are related to multiple parties, they must be agreed by the two parties.

b) Safety measures, rules on labor safety must be made public on the construction site; dangerous positions on the site must be set up with people for guidance and warnings about accidents.

c) Construction contractor, the investor and related parties must frequently examine and supervise labor safety on the site. Upon detection of any violation of labor safety, construction must be suspended immediately. Any person who leaves labor safety violations to happen within his/her management shall be responsible to the law.

d) The construction contractor shall be responsible for training, instructing and disseminating regulations on labor safety among its workers. As for some works of strict safety requirements, workers must obtain certificate of labor safety training.

dd) The construction contractor shall be responsible for providing adequate personal protective equipment to the workers on the site as prescribed.

e) When an incident in labor safety happens, the construction contractor and other related parties shall be responsible for handling and making the report to state management agencies according to law provisions and at the same time taking remedial work and making compensation for the losses caused.

2. Responsibilities of either party for environmental protection must be agreed in the contract and prescribed as follows:

a) The construction contractor must take measures to ensure environmental safety to the workers on the site and surrounding area including measures to control dust, noise and site clean-up; wastewater, solid waste and other types of waste must be collected for treatment to reach technical regulations and standards on environment. As for the construction works in urban area, measures such as screening and transport of scraps to right place must be taken.

b) During the transport of building materials, measures for screening scraps must be taken to ensure safety and environmental hygiene.

c) The construction contract, the investor must be responsible for examining and monitoring the implementation of constructional environmental protection, at the same time being subject to examination and monitoring by state management agencies. In case the construction contractor fails to comply with regulations on environmental protection, the investor and state management agencies have the right to temporarily suspend the construction and ask the contractor to comply with environmental protection measures.

d) Organizations, individuals that leave any harmful act to the environment during the construction shall be responsible to the law and make compensation for losses caused.

3. The parties to the contract must comply with applicable regulations on fire & explosion prevention and fighting.

Article 49. Electricity, water and site security

The two parties must negotiate in the contract on rights and obligations of either party for supply and payment for electricity, water and site security.

Article 50. Transport of technological equipment

1. The contractor must make a notice to the employer for some time in advance as agreed by the two parties but no less than 21 days.

2. The contractor must be responsible for packaging, material handling, transport, storage and preservation of equipment except otherwise as agreed.

3. The contractor must make compensation to the employer for any damage, loss and costs arising during the transport of equipment caused by the contractor.

Article 51. Risks and force majeure

1. Risks are possible negative effects on the implementation of construction contract in the future. Under the contract, either party must be responsible for managing and handling its own risks, carrying out remedial work to consequences on its side in case of risk.

2. Force majeure is an risky event that takes place objectively, unforeseeably and can not be controlled even though all necessary measures and are taken and capabilities are employed such as natural disaster, environmental problem, enemy-inflicted disaster, conflagration and other irresistible factors.

3. When either party meets with the force majeure event, such party must make a written notice to the other party as soon as possible.

4. Under the contract, the parties must carry out negotiations on handling of force majeure such as making written notice about the force majeure event, responsibilities of both parties; termination of contract and payment in case of force majeure (if any).

Chapter III

IMPLEMENTATION

Article 52. Effect

1. This Decree takes effect since June 15, 2015.

2. The Government's Decree No. 48/2010/NĐ-CP dated May 07, 2010 on construction contracts; Decree No. 207/2013/NĐ-CP dated December 11, 2013 amending and supplementing a number of articles of the Decree No. 48/2010/NĐ-CP shall become ineffective since the effective date of this Decree.

Article 53. Transitional handling

1. Any construction contract signed and currently in execution before the effective date of this Decree shall be executed according to the regulations on construction contract before the effective date of this Decree.

2. Any construction contract under negotiation must be reported to the competent person for examination and decision if any subject matter contrary to this Decree is found on the basis of the principle that quality, progress, efficiency of the investment project and no infringement of lawful rights and interests of the two parties must be ensured.

3. Any subject matter of the construction contract as set out in the approved but unreleased ITB, request for proposals must be adjusted appropriately if found contrary to this Decree; Any change to the construction contract as set out in the ITB, request for proposals approved and released must be notified to all the bidders (who already buy the ITB and request for proposals) for making

adjustments to the ITB and request for proposals; in case the bid is closed, provisions set out in Clause 2 of this Article shall be executed.

Article 54. Implementation

1. Any organization, individual that conducts formulation, appraisal and approval of the ITB, request for proposals covering subject matters relating to construction contract and carries out negotiation, signing and management of the contract performance must comply with the provisions set out hereof.

2. The Ministry of Construction shall instruct and monitor the execution of law provisions on construction contract; instruct adjustments to construction contract, method of adjusting contractual price, construction contract types, model construction contracts and other necessary provisions set out hereof to meet state management requirements for construction contract.

3. Use of model FIDIC conditions of contract, model construction contracts for the formulation and implementation of construction contract is encouraged. Adjustments to the contract on the basis of model construction contract employed must be made to suit Vietnamese laws.

4. The Ministers, heads of ministerial-level agencies, heads of governmental agencies, presidents of People's committee of central-affiliated cities and provinces, heads of political organizations, political – social organizations, political-social-occupational organizations, presidents of board of directors of economic groups, corporations and relevant organizations, individuals shall be responsible for executing this Decree./.

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**PP THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Tan Dung