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Hanoi, June 30, 2016

CIRCULAR

GUIDING THE ISSUANCE OF CONSTRUCTION LICENSES AND THE MANAGEMENT OF FOREIGN CONSTRUCTION CONTRACTORS IN VIETNAM

Pursuant to the Law on Construction No. 50/2014/QH13 dated 18/6/2014;

Pursuant to the Decree No. 62/2013/ND-CP dated June 25, 2013 by the Government defining the functions, tasks, entitlements and organizational structure of the Ministry of Construction;

Pursuant to Decree No. 59/2015/ND-CP dated 18/6/2015 by the Government on construction project management;

At the proposal of Director of Construction operation management department,

The Minister of Construction hereby promulgates the Circular guiding the issuance of the construction licenses and the management of foreign construction contractors in Vietnam.

Article 1. Scope of regulation and regulated entities

1. Scope of regulation: This Circular guides the issuance of the construction license and the management of foreign construction contractors in Vietnam.

2. Regulated entities: This Circular applies to foreign contractors carrying out construction activities in Vietnam, including: formulation of construction planning, formulation of construction investment project, construction survey, construction design, construction, construction supervision, construction project management, selection of contractors, pre-acceptance test, handover of the work for exploitation or use; its warranty and maintenance; supply of technological materials and equipment accompanying technical services related to construction work and other activities related to its construction.

Other provisions related to the operation of foreign contractors according to regulations of the Law on Construction 2015, Decree No. 59/2015/ND-CP dated 18/6/2015 by the Government on construction project management (hereinafter referred to as Decree No. 59/CP) and other relevant law provisions.

3. In cases where an international treaty to which Vietnam is a signatory has a provision contrary to this Circular, such international treaty shall prevail.

Article 2. Rules for management of foreign contractors' operation

1. A foreign contractor is permitted to carry out construction activities in Vietnam only when it has obtained a construction license from a Vietnamese regulatory body.

2. The operation of the foreign contractor in Vietnam must comply with Vietnamese laws and relevant international treaties that Vietnam concluded or acceded.

Article 3. Requirements for issuance of the construction license

Requirements for issuance of the construction license are specified in Article 71 of Decree No. 59/CP.

Article 4. Application for issuance of the construction license submitted by an organization

The foreign contractor shall send an application directly or by post to the issuing agency. The application shall include:

1. An application form for the construction license using the form prescribed in Annex 1 of this Circular.

2. A copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) of a report on the bid results or the decision on lawful contract award.

3. A copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) of the establishment license (or the Certificate of Business registration of the organization) and the practice certificate (if any) issued by the country being the home country of the foreign contractor or by the country where the construction project is conducted.

4. A digital file containing a color copy of the original which is an image or other format (*.pdf) of a report on experience in contract execution using the form in Annex 2 of this Circular and a report on finance auditing within 3 (three) latest years (applicable to cases where the contractor executes a bidding package not subject to regulations of law on bidding of Vietnam).

5. A digital file containing a color copy of the original which is an image or other format (*.pdf) of the joint-venture contract with the Vietnamese contractor or a contract with the Vietnamese sub-contractor (available in the bid-envelopes) which specifies the tasks of the Vietnamese contractor.

In cases where the sub-contractor was not determined during the selection of contractor, the application for the construction license shall include the contract with the Vietnamese sub-contractor enclosed with the written approval of the investor and a copy of the Business registration certificate of the Vietnamese sub-contractor.

6. A lawful power of attorney held by the person who is not the legal representatives of the contractor using the form in Annex 3 of this Circular.

7. A digital file containing a color copy of the original which is an image or other format (*.pdf) of the decision to invest in the project or the investment certificate or the written approval for the investment policies.

The application form for a construction license shall be made in Vietnamese. The establishment license or the Certificate of Business registration issued by a foreign authority shall be consularly

legalized, unless an international treaty to which Vietnam and the relevant country are signatories contains provisions on consular legalization exemption. Papers and documents made in foreign languages must be translated into Vietnamese and the translations must be notarized/authenticated according to Vietnamese laws.

Applications for construction licenses submitted in the same year by the same applicant may not include the documents specified in clauses 3 and 4 of this Article.

Article 5. Application for issuance of the construction license submitted by an individual

The foreign contractor being an individual shall send an application directly or by post to the issuing agency. The application shall include:

1. An application form for the construction license using the form prescribed in Annex 4 of this Circular.
2. A copy or a document file containing a color copy of the original in the format of image or other format (*.pdf) of the report on the bid results or the decision on lawful contract award.
3. A copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) of the operation license or the practice certificate issued by the country being the home country of the foreign contractor or by the country where the construction project is conducted and a copy of his/her personal passport.
4. A digital file containing a color copy of the original which is an image or other format (*.pdf) of the decision to invest in the project or the investment certificate or the written approval for the investment policies.

The application form for a construction license shall be made in Vietnamese. A copy of an operation license or a practice certificate issued by a foreign authority shall be consularly legalized, unless an international treaty to which Vietnam and the relevant country are signatories contains provisions on consular legalization exemption. Papers and documents made in foreign languages must be translated into Vietnamese and the translations must be notarized/authenticated according to Vietnamese laws.

Applications for construction licenses submitted in the same year by the same applicant may not include the documents specified in clauses 3 of this Article.

Article 6. Procedures for issuance of the construction license

1. Within 05 working days from the day on which the application is received, the issuing agency shall check the documents in the application. If the application is unsatisfactory, a notification and a writing containing guidelines shall be sent to the applicant so that the applicant can complete the application.
2. Within 20 working days from the day on which the satisfactory application is received, the issuing agency shall consider issuing the construction license to the contractor. If the application is rejected, the issuing agency shall notify the applicant of the refusal.

3. The construction license issued for the applicant shall be in accordance with the form provided in Annex 5, applicable to contractors being organizations, or Annex 6, applicable to contractors being individuals, of this Circular.

4. The contractor shall pay charges when receiving the construction license or the modified construction license according to regulations of the Ministry of Finance.

Article 7. Modification of the construction license

1. After receiving the construction license, if the foreign contractor wishes to make any modification of name or address of the contractor or change of a party of the joint venture or a sub-contractor or other contents of the obtained construction license, such foreign contractor shall submit an application for modification of the construction license directly or by post to the issuing agency.

The template of a modified construction license is provided in Annex 7 of this Circular.

2. An application for modification of the construction license shall consist of:

a) An application form for modification of the construction license using the form provided in Annex 8 of this Circular.

b) Documents proving the information to be modified. Documents made in foreign languages must be translated into Vietnamese and translations must be authenticated according to Vietnamese laws.

3. The modification of the construction license shall be made within 20 working days as from the day on which the satisfactory application is received.

Article 8. Regulations regarding the reports

1. Periodically on December 20 of every year, the foreign contractor shall send the reports on the execution of the contract using the form in Annex 9 of this Circular to the issuing agency and the Department of Construction of the area where the project is located.

2. Periodically on December 27 of every year, the Department of Construction shall report to construction authority affiliated to the Ministry of Construction the issuance, modification and revocation of the construction licenses and the operation of foreign contractors in local areas using the form in Annex 10 of this Circular.

Article 9. Reporting to the Executive office

1. After receiving the construction license, the foreign contractor shall establish an Executive office at the place where the project is conducted and register the name, phone number, fax number, e-mail address, seal, bank account and tax code of the Executive office.

Regarding contracts pertaining to the formulation of construction planning, formulation of construction investment project, construction survey or construction design, the foreign contractor may establish an Executive office at the place where the office of the project owner is headquartered.

Regarding contracts pertaining to the construction and supervision of construction of work involving multiple provinces, the foreign contractor may establish the Executive office in an area where a part of the work is located.

2. After registering information about the Executive office, the foreign contractor shall send a written notification directly or by post to the Department of Construction of the area where the executive office is located, the construction authority affiliated to the Department of Construction and relevant agencies using the form in Annex 11 of this Circular. If any information about the executive office is modified, the foreign contractor shall notify such agencies.

Article 10. Cases of revocation of the construction license

A foreign contractor shall have its construction license revoked in any of the following cases:

1. The foreign contractor fails to rectify its violation after receiving the written requests of relevant authorities twice or more.

2. The foreign contractor has incurred two or more penalties for administrative violations pertaining to the issued construction license.

Article 11. Rights and obligations of foreign contractors

Any foreign construction contractors in Vietnam shall have rights and obligations specified in Article 74 of Decree No. 59/CP.

Article 12. Responsibilities of investors or project owners towards foreign contractors

The investors or the project owners shall have responsibilities specified in Article 75 of Decree No. 59/CP. To be specific:

1. Regarding applications for issuance of the construction licenses without a contract, within 30 days from the date of conclusion of the contract, if the foreign contractor fails to present a construction license issued by a competent authority, the execution of the contract shall be suspended until the license is available. The investor shall instruct the foreign contractor to comply with regulations in Decree No. 59/CP, this Decree and other relevant law provisions; assist the foreign contractor to prepare documents relevant to the construction work that the foreign contractor declares in the application for construction license and other relevant procedures as prescribed in Vietnamese laws. Register the export/import of materials, machinery and equipment related to the contract execution in company with the foreign contractor as prescribed in Decree No. 59/CP.

2. Supervise the foreign contractor executing the joint-venture contract with the Vietnamese contractor or the contract with Vietnamese sub-contractors as prescribed in Article 71 of Decree No. 59/CP.

3. Consider the capacity of supply of domestic construction equipment before negotiating about the list of construction machinery and equipment of foreign contractor applying for temporary import - re-export.

4. Consider the capacity of technical labor supply in Vietnam before negotiating with the foreign contractor about the list of foreigner employees working for the contractor who apply for entering Vietnam to work under the contracts with the foreign contractor.

5. Certify the statement of imported materials/equipment of the foreign contractor upon the completion of construction.

6. Send written notification of functions and tasks of the foreign contractor carrying out the project management consultancy and supervising construction quality on behalf of the investor or the project owner to other contractors and agencies in charge of construction quality management.

Article 13. State management regarding construction license

1. The Ministry of Construction shall be in charge of state management pertaining to construction activities of foreign contractors in Vietnam, including:

a) Guiding and supervising the implementation of this Circular.

b) Imposing penalties for violations or revoking the construction license.

c) Assigning construction authorities affiliated to the Ministry of Construction to conduct activities specified in this Circular.

2. The Ministry of Construction shall assign the Department of Construction to carry out the following tasks:

a) Periodically every year conducting inspection of the operation of foreign contractors nationwide; conducting irregular inspection of the operation of a foreign contractor when any violation against laws on construction is discovered.

b) Requesting the Ministry of Construction to impose penalties for violations or revoke the construction license.

c) Conducting online issuance of the construction license.

3. Local Departments of Construction shall:

a) Preside over and cooperate with relevant bodies in monitoring, supervising and conducting periodic inspection of the operation of foreign contractors under their management;

b) Conduct irregular inspection of the operation of a foreign contractor under their management when any violation against laws on construction is discovered.

c) Periodically, before December 15 of every year, or irregularly report to construction authorities affiliated to the Ministry of Construction about the issuance of the construction license and the management of the operation of foreign contractors within their management.

Article 14. Effect

1. This Circular comes into effect from 15/8/2016 and replaces the Circular No. 01/2012/TT-BXD dated 08/5/2012 by the Ministry of Construction guiding the contractual licensing procedures and management of foreign construction contractors in Vietnam.

2. Any contractual license issued according to regulations in the Law on Construction 2003, the Decision No. 87/2004/QĐ-TTg dated 19/5/2004 by the Prime Minister, the Decision No. 03/2012/QĐ-TTg dated 16/01/2012 by the Prime Minister and the Circular No. 01/2012/TT-BXD dated 08/5/2012 by the Minister of Construction shall be kept effective until the contract award agreement is terminated.

3. Agencies, organizations and individuals that are relevant shall be responsible for implementing this Circular./.

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**P.P. THE MINISTER
THE DEPUTY MINISTER**

Bui Pham Khanh