

Foreign Contractor

Foreigners can take part in biddings for doing projects and other business undertakings in Vietnam. However, it is quite confused for them to do business in Vietnam because of the absence of general regulations on this matter.

Legislation

At the moment, Decree No.59/2015/ND-CP dated 18 June 2015 of the Government, on the management of construction projects, replacing Decision No.87/2004/QĐ-TTg dated 19 May 2004 of the Prime Minister, promulgating the regulation on management of operations of foreign contractors in the construction domain in Vietnam, as amended and supplemented by Decision No.03/2012/QĐ-TTg dated 16 January 2012 of the Prime Minister; Circular No. 12/2009/TT-BXD dated 24 June 2009 of the Ministry of Construction (“MOC”), detailing the issuance of construction practice certificates (to be replaced by Circular No. 17/2016/TT-BXD dated 30 June 2016 of the MOC providing guidelines on the capacities of organizations and individuals involved in construction activities as from 1 September 2016); Circular No.14/2016/TT-BXD dated 30 June 2016 of the MOC providing guidelines for the issuance of construction licenses and the management of foreign construction contractors in Vietnam; Circular No. 53/2015/TT-BCT dated 30 December 2015 of the MOIT, detailing the registration of imported goods and temporarily-imported goods of foreign construction contractors in Vietnam; and Circular No.103/2014/TT-BTC dated 6 August 2014 of MOF, providing guidelines for fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam, are the most reference legal documents. Subject to the nature of business, the contractor activities shall be subject to the specific sectorial regulations, including technology transfer, construction, etc. Below are some regulations on foreign construction contractors and sub-contractors.

Requirements

To become a foreign construction contractor or sub-contractor in Vietnam, an applicant must satisfy the following criteria:

- (i) Having posted information on the website of the MOC and provincial-level Department of Construction (“DOC”) in charge;
- (ii) Having won biddings or having been selected by the owner

for contracting and having full capability suitable to contracted works according to Vietnamese laws on construction if bidding packages not subject to Vietnamese laws on tendering; and

(iii) Setting up a partnership with a Vietnamese contractor or employing Vietnamese sub-contractors, unless the Vietnamese contractor is not qualified to execute any tasks of the bidding package.

Applications

For a construction license, 1 set of application file must be submitted directly or by post to the licensing agency (including the specialized construction authority directly under the MOC or the DOC of the locality where the project is conducted).

Each set of application file applicable to organizations must contain the following papers:

(i) Application for licence made in Vietnamese according to set form;

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

(iii) A legalized copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) and Vietnamese translation of the establishment license (or the business registration certificate of organizations) and the professional practice certificate (if any) granted by the country of which the foreign contractor bears the nationality or by the country where the construction project is conducted;

(iv) A digital file containing a color copy of the original which is an image or other format (*.pdf) of a report on experiences in construction activities related to the contracted job, made according to a set form and the audited financial report for the latest 3 years (for cases where the contractors undertaking bidding packages not subject to the compulsory application of the provisions of Vietnamese bidding legislation);

(v) A digital file containing a color copy of the original which is an image or other format (*.pdf) of the partnership contract with a Vietnamese contractor or a contract with Vietnamese sub-contractor (already included in the bids or

bidding dossiers), which specifies the tasks of the Vietnamese contractor;

(vi) Lawful authorization letter, for persons other than the contractor's representative at law according to set form; and

(vii) 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.

Each set of application file applicable to individuals must contain the following papers:

(i) Application for licence made in Vietnamese according to set form;

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

(iii) A legalized copy or a digital file containing a color copy of the original which is an image or other format (*.pdf) and Vietnamese translation of the operation license or professional practice certificate granted by the country of which the foreign contractor bears the nationality or by the country where the construction project is conducted, and a notarized/certified copy and Vietnamese translation of passport;

(iv) 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.

Application files for contracting licenses arising in the same year are not necessary to include the documents referred to in (iii).

Subject to the nature and scale of the bidding projects, construction contractor license shall be issued by either the specialized construction authority directly under MOC or provincial-level DOC, within 20 working days from the receipt of the satisfactory file.

Foreign construction contractor shall pay a fee of VND2 million when receiving the license.

Permitted Activities

Once being licensed, foreign construction contractors have the following obligations:

(i) To set up their executive offices (to have office lease contracts or executive offices at the localities where the projects exist, where the owners' offices are headquartered or where a part of the work is located, subject to the awarded contracts); and to register the addresses, communications meansphone number, fax number, email address, transaction seal, accounts and tax codeplaces where they open transaction accounts of their work executive offices and representatives for contract performance at the concerned agencies according to the regulations of the People's Committees of the provinces where the contracted projects exist. 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.

After registering the above-mentioned information about the Executive officet the same time, the foreign contractor shall send to a written notify notice such information directly or by post to the Pprovincial-level MoCDOC of the locality where the Executive office is located, the specialized construction authority directly under the MOC and relevant agencies using the standard formthe Ministry of Public Security, the Ministry of Finance ("MoF"), the Ministry of Trade (now Ministry of Industry and Trade – MoIT), State Bank of Vietnam ("SBV"), and the People's Committees of the provinces and centrally-run cities where construction works are located. If any information about the executive office is modified, the foreign contractor shall notify such agencies;

(ii) To register the use of seals of their work executive offices at the Police Offices of the provinces and centrally-run cities where construction works are located. Foreign contractors shall only use these seals for affairs in service of contract performance in Vietnam according to the provisions of their contracting licenses. Upon the expiry of contracts, foreign contractors must return their seals to the agencies which have granted them;

(iii) To register and pay taxes according to Vietnamese law provisions; to observe the accounting regime, open accounts and make payments as guided by the MOF and the SBV in service of business activities under contracts;

(iv) To recruit and employ Vietnamese and foreign workers according to the Vietnamese labour legislation. To register only economic managerial and technical experts and highly skilled workers whom Vietnam lacks for entry into Vietnam;

(v) To carry out the procedures for exporting or importing supplies, machines and equipment related to the contracts in Vietnam according to Vietnamese law provisions and the MOIT's guidance, including:

- Registration for temporary import for re-export of construction supplies, machines and equipment;
- Registration of the list of import raw materials, fuels, materials, complete and synchronous equipment for works under the contracts;

(vi) To perform partnership contracts already signed with Vietnamese contractors or use Vietnamese subcontractors determined in the application file for the issuance of a construction licence;

(vii) To purchase insurance according to Vietnamese law provisions for contractor's works, including: insurance for professional liability of contractors providing investment and construction consultancy; insurance for assets and goods for procurement contractors; insurances of various kinds for construction contractors and other insurance regimes according to Vietnamese law provisions;

(viii) To register for inspection of the quality of supplies and equipment imported and supplied under the contracts;

(ix) To register the safety of construction equipment and transport means related to business activities of foreign contractors according to Vietnamese law provisions;

(x) To observe the regulations on norms, standards, management of quality of construction works, labour safety and environmental protection as well as other relevant Vietnamese law provisions;

(xi) To send the periodical reports according to standard form on the project implementation situation (on 20 December every year) to the license issuing agency and the provincial-level DOC of the locality where the contracted projects exist; and

(xii) Upon the completion of works, foreign contractors shall have to compile dossiers on work completion; provide warranty; make the settlement of imported supplies and equipment; handle unused supplies and equipment in work construction contracts

according to the regulations on export and import; re-export construction supplies and equipment already registered for temporary import – re-export; and liquidate the contracts. And at the same time, to notify the concerned State management agencies of the expiry of the contracts, terminate operation of their executive offices.

Taxation

Taxes applicable to foreign contractors and sub-contractors in Vietnam are well described in the [Section 16](#) hereunder.

Processing Activities

Foreigners can hire local companies and foreign-invested companies for processing of goods of all kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the lists of goods the import and export of which is subject to issuance of a permit, business entities may only enter into processing contracts after they have been issued with a permit by the MMOIT. The processing contract must be in writing or in another form with equivalent legal validity in accordance with the Commercial Law, and must minimally include certain prescribed terms.

Legislation

Local processing for foreigners are being governed by the Commercial Law dated 14 June 2005; Decree No.187/2013/ND-CP dated 20 November 2013 of the Government making detailed provisions for implementation of the Commercial Law with respect to international purchases and sales of goods, and agency for sale and purchase, processing and transit of goods involving foreign parties, as amended and supplemented by Decree No.77/2016/ND-CP dated 1 July 2016 of the Government);

and Circular No.38/2015/TT-BTC dated 15 August 2011 of the MOF on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods.

Contents of the Contract

Having the similar contents of a formal economic contract, a processing contract must include: Names and addresses of contracting parties and of the party directly conducting the processing; name and quantity of processed products; price for processing; time-limit for and method of payment; list, quantity and value of imported raw materials, sub-materials and supplies and domestically produced raw materials, sub-materials and supplies (if any) for processing; levels of use of raw materials, sub-materials and supplies; level of consumption of supplies and wastage rate of raw materials in processing; list and value of machinery and equipment leased, lent or donated for the purpose of processing (if any); measures to treat scrap and discharged waste and principles for dealing with leased or borrowed machinery and equipment and with left-over raw materials, sub-materials and supplies upon termination of the processing contract; location and time of goods delivery; trade mark of goods and origin appellations of goods; and duration of validity of contract. Trademark and the origin of goods in relation to the processing activities are normally falling within the responsibilities of the foreign principals.

As a matter of fact, a list defining quantities and values of input raw materials, auxiliary materials and supplies for processing activities with a defined rate of consumption and waste, and a list defining values of the machinery and equipment leased, borrowed or donated for processing service, should be present in the contract. Dealings on relevant equipment are also contracted due to the fact that equipment are often leased to local processors from foreign principals in most cases. Both input materials and equipment can be imported into Vietnam on the basis of temporary import and re-export.

Permitted Activities

Foreign principals are entitled to receive and remit abroad finished products, surplus input materials and leased equipment. To supervise the local processing activities and guide on technical issues, foreign experts can be seconded to Vietnam by foreign principals.

Taxation

Input materials and equipment serving for the local processing activities are in principle, being exempted from taxes prevailing in Vietnam.

Agent Activities

Foreigners can request for local agent for sale and purchase of goods of various kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the list for which import or export is subject to issuance of a permit, the business entity shall only be permitted to sign an agency contract after the competent agencies have issued a permit. The agency contract must be in writing or in another form with equivalent legal validity. Under the Commercial Law, agent activities vary by the following forms: commission agent, package agent, exclusive agent and general agent.

Legislation

The same legal basis applicable for the processing for foreigners is effective to the agent activities for foreigners in Vietnam.

Contents of the Contract

A sale and purchase agent contract is requested to contain quite simple contents in comparison to the other types of commercial or economic contracts. Only the following are compulsory present therein: the description about both principals and agents; the contractual goods: name, specifications, quality, quantity, volume; Time-limit for, method and place of goods delivery; Price; Commission rate and costs; Method and time of payment; Bonuses, penalties and indemnity; and duration of validity of contract.

Permitted Activities

Amongst others, foreign principals can decide at their own discretion the selling or purchasing price and service charge to customers, and the price which the principal fixes for the agent; request the agent to implement security measures; receive deposits or documents on mortgaged assets from the agents, and request the agents to make payment or deliver goods in accordance with the signed contracts. To inspect and supervise the contract performance, foreign principals can second their people to agents' facilities in Vietnam.

As a matter of fact, the following actions are often carried out by local agents instead of foreign principals, which include the dealing with the import/export procedures, the declaration and payment of relevant taxes on behalf of foreign principals.

Taxation

Contractual goods are likely subject to the import/export duties of Vietnam.

Holding Company Stakes

Foreign investors irrespective of individual or institutional ones, may hold or acquire, in theory, up to 100% stake in all

types of local companies, except for some special cases where the investment is made in specific business sectors (e.g. banking) or in public companies operating in a sector where business is conditional for foreign investors and detailed provisions on foreign ownership are not yet available (up to 49%), or the listed or public company's charter limits foreign ownership and the State Securities Commission of Vietnam ("SSC") has been reported thereon. The current laws recognize and treat the foreign-invested companies (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of less than 51% of the charter capital similar to entirely Vietnamese-invested companies.

Legislation

The Law on Enterprises and the Law on Investment, both dated 26 November 2014 and effective from 1 July 2015, constitute the principal legal base for foreigners to buy stakes or shares of local enterprises. This right is further detailed in a number of implementing regulations, including Decree No.96/2015/ND-CP, dated 19 October 2015; Circular No.131/2010/TT-BTC dated 6 September 2010 guiding the Regulation on capital contribution to or purchase of shares by foreign investors in Vietnamese enterprises ("Circular 131"); Circular No.19/2014/TT-NHNN dated 11 August 2014 of the State Bank of Vietnam providing guidelines on the foreign exchange control for foreign direct investments in Vietnam ("Circular 19"); v.v. Covering all service sectors and as a supplementation to the national laws and regulations as mentioned above, is the commitments of Vietnam when accession to the WTO, which is particularly reflected in the specific service commitments, which was effective from 11 January 2007.

Requirements

At present, and in general, all types of companies in Vietnam, including SOEs, joint stock companies, limited liability companies, and partnerships are entitled to offer stakes to foreign investors, who can buy, in theory, up to 100% of the charter capital of the company; however, in particular, the maximal or ceiling rates of less than 100% are still in existence and applicable, from time to time, to a number of specific cases, e.g. banking sector in which foreign investment is now permitted to have maximally 30%, or in

public companies operating in the industries or trades in which business investment is conditional in respect of foreign investors, and detailed guidelines on foreign ownership are not yet available foreign stakes cannot exceed 49%.

According to the prevailing regulations, foreigners can purchase stakes and remit abroad dividends and principals, directly or indirectly through local and foreign banks licensed and operating in Vietnam. To facilitate these transactions, foreign stake holders are entitled to open their indirect investment accounts at banks licensed to operate in Vietnam, except where Vietnamese company was now granted by competent authorities with investment certificate/ investment registration certificate, such company must open a direct investment account, which is a payment account denominated in foreign currencies or Vietnam, in a bank licensed to carry out transactions relating to the activities of foreign investors in Vietnam.

The laws confirm that the legal rights and benefits of foreign stake holders in Vietnam are protected by the laws and the State of Vietnam.

Permitted Activities

Being stake holders, foreigners can:

- (i) Involve or not involve in the company management and administration;
- (ii) Convert their dividends and all others receipts from local into foreign currency before remitting abroad;
- (iii) Mortgage and pledge by using stakes in hands for their credit transactions;
- (iv) Be exempted from corporate income tax imposed on incomes derived from the activities of capital contribution, joint venture or partnership with domestic companies, after the concerned enterprises have paid corporate income tax;
- (v) Be granted with single entry or multiple entries visas of DT category, of which the duration of validity shall not exceed 5 years, residence certification and temporary residential cards to for entry and exit of, and residence in

Vietnam; and

(vi) Enjoy the equal rights and benefits as given to local stakeholders.

Procedures for Purchase of Shares or Portion of Capital Contribution

Much simpler than it was in the past when any buying/ selling capital by local companies to foreign investors was subject to the prevailing laws of Vietnam, the recent regulations allow the owners or top management team of the local companies or cooperatives to have the right to decide in accordance with the company charters or regulations. With respect to the equitized SOEs having the demand of selling capital to foreign investors, the State agencies who decide the equitization shall be the decision makers.

An investor shall carry out the procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company in the following circumstances:

(i) Foreign investors contribute capital to, purchase the shares or portion of capital contribution in a local company operating in the industries or trades in which business investment is conditional in respect of foreign investors;

(ii) The capital contribution or purchase of shares or portion of capital contribution shall result in the fact that the foreign investor or economic organization that foreign investors have control over more than 51% of its charter capital holds 51% or more of the charter capital of a local company.

Foreign investors will submit file for registration of capital contribution or purchase of shares or portion of capital contribution at the Department of Planning and Investment ("DPI") of the province or centrally-run city where the local company is headquartered. Where the capital contribution or purchase of shares or portion of capital contribution by the foreign investor satisfies the conditions prescribed, the DPI shall, within a period of 15 days from the date of receipt of the complete file, notify in writing the investor for the latter to carry out the procedures for change of a shareholder or member in accordance with law.

Investors not within the cases required to carry out procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company shall carry out the procedures for change of a shareholder or member in accordance with law upon capital contribution or purchase of shares or portion of capital contribution to the local company.

Taxation

No further withholding tax shall be applicable to any abroad remittance of legal income by foreign investors in Vietnam, provided that all tax and financial obligations related thereto have been cleared off by foreign investors, in accordance with the laws of Vietnam. For other taxes, please refer to the [Section 16](#) hereunder.