

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 DQC, 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.