

# SOME NEW REGULATIONS ON CONSTRUCTION CONTRACTS

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On March 3, 2023, the Ministry of Construction issued Circular 02/2023/TT-BXD guiding some contents of construction contracts (**Circular 02**), replacing Circular 07/2016/TT-BXD, Circular 08/2016/TT-BXD, Circular 09/2016/TT-BXD and Circular 30/2016/TT-BXD. Circular 02 will take effect from April 20, 2023 with some notable contents as follows:

*Firstly*, regulating adjustments to unit prices and prices of construction contracts. Accordingly, the adjustments to unit prices of construction contracts shall comply with Article 38 Decree 37/2015/ND-CP amended and supplemented by clause 14 Article 1 Decree 50/2021/ND-CP. If the adjustments to prices of construction contracts result in amendment and supplement to contracts, appendices must be signed as the basis for adjusting the prices of such contracts. Simultaneously, investors shall be responsible for approving or submitting for approval of amended and incurred estimates pursuant to the regulations of management of work construction investment expenses and construction contracts so as to create the basis for signing appendices to such contracts. In addition, adjustments to prices of construction contracts shall comply with the methods for adjusting prices as prescribed in Appendix I, Circular 02.

*Secondly*, regulating adjustments to construction contract performance progress. Accordingly, the adjustments to construction contract performance progress shall comply with Article 39 Decree 37/2015/ND-CP. Specifically, in case of adjusting construction contract performance progress as a consequence of any earthquake, storm, flood, tsunami, conflagration, enemy-caused disaster or other force majeure events, contracting parties and contractors shall be responsible for evaluating the impacts of these force majeure events on the construction contract performance for determining and deciding adjustments accordingly. When there are requests for suspension from contract performance by competent authorities without the contracting parties' fault, some tasks must be performed as follows:

i. Contracting parties and contractors, on the basis of the competent authorities' requests, shall evaluate the



impacts on the construction contract performance to determine and reach agreements on adjusting the schedule of such contracts.

ii. If there are incurred expenses due to an extension of contract period, the contracting parties and contractors shall, based on the terms of their contracts and instructions by competent authorities regarding the events resulting in suspension from construction contract performance, reasonably determine and agree on the incurred expenses.

*Thirdly*, regulating some details of payment and temporary payment for construction contracts. Accordingly, in addition to the guidance on payments for construction contracts pursuant to Article 19 Decree 37/2015/ND-CP, Circular 02 also stipulates the payment in specific cases. For example, in the case that production of structural elements and semi-finished products with great values and building materials reserved by season is advanced for contract performance as prescribed in clause 7 Article 18 Decree 37/2015/ND-CP, upon payment, the value of the completed work volume which is inspected and accepted must be deducted by an amount corresponding to the value advanced under the contract. With regard to temporary payment, there are some specific cases of temporary payment as follows: (i) For contracts with adjusted unit prices, when the payment period is due but data on adjustments to unit prices and contract prices are not yet available, the unit prices stated in the contract shall be used for temporary payment; (ii) For products, works or tasks which are in progress or unfinished as agreed in the contract, temporary payment shall be made depending on the proportion of completion in particular case and detailed unit prices of such products, works and tasks as specified in the contract.

Besides, Circular 02 also addresses other contents such as components of the dossier for temporary payment of construction contracts, adjustments to

workload in construction contracts, instructions for using and applying contract templates. The Circular also promulgates some new templates of construction contracts, namely: (i) Consulting contract (applied to consulting contracts for preparation of feasibility study reports, construction surveys, construction designs and construction supervision), (ii) Construction commissioning contract and (iii) Engineering - Procurement - Construction contract (applied to lump-sum contracts), etc.

## **COMMENTS AND RECOMMENDATIONS**

The promulgation of Circular 02 aims at reducing the number of circulars guiding construction contracts, thereby facilitating the parties in the progress of researching, signing and implementing such contracts. For construction contracts signed and executed before the effective date of this Circular (April 20, 2023), the regulations on construction contracts applicable before that date shall apply. For construction contracts that are under negotiation and have not been signed, any provisions that are not conformable with this Circular should be reported to the competent persons making investment decision for consideration and decision on the principle of ensuring the quality, progress and efficiency of construction investment projects without any prejudice over legitimate rights and interests of the parties. In addition, contents of construction contracts in bidding invitations and documents of request which are approved but not issued must be adjusted to conform to the contents of this Circular. If these bidding invitations or documents of request have been issued, any adjustments to these contracts must be notified to all contractors who have purchased the bidding invitation dossier and documents of request to adjust such documents. Given the complexity and difficulty of formulating, signing and implementing construction contracts, organizations and individuals should take into consideration the provisions of Circular 02 and develop implementation plans in order to ensure compliance as soon as possible.