

NEW CONTENTS OF THE CIRCULAR GUIDING COMPULSORY INSURANCE IN CONSTRUCTION INVESTMENT

TUE DANG

On August 11, 2022, the Ministry of Finance promulgated Circular 50/2022/TT-BTC guiding Decree 119/2015/ND-CP on compulsory insurance in construction investment and Decree 20/2022/ND-CP amending Decree 119/2015/ND-CP regulating compulsory insurance in construction investment (**Circular 50**). This Circular takes effect from October 1, 2022 and replaces Circular 329/2016/TT-BTC guiding the implementation of Decree 119/2015/ND-CP regulating compulsory insurance in construction investment activities (**Circular 329**). Here are some remarkable contents of Circular 50:

Firstly, amending the provisions on exclusions of insurance liability. Circular 50 revises and restructures the cases of general and specific insurance liability exclusions for each type of compulsory insurance in construction activities as follows:

- Circular 50 stipulates **7 general insurance liability exclusions** including:
 - i.** Loss arising from wars, riots, strikes, acts of hostile forces, rebellions, malicious acts on behalf of or in connection with political organizations, confiscation, escheat, requisition, expropriation or destruction or damage by order of a competent governmental authority;
 - ii.** Loss arising from acts of terrorism;
 - iii.** Loss arising from nuclear reaction, nuclear radiation, radioactive contamination;
 - iv.** Loss arising from the willful violation act of the law of the policy owner or the insured;
 - v.** Loss arising in the event that the policy owner does not have an insurable interest;
 - vi.** Loss arising from cessation of construction work or loss resulting from such cessation construction work (whether partial or complete cessation of construction work); and
 - vii.** Loss to data, software and computer programs.



Previously, Circular 329/2016/TT-BTC classified **insurance liability exclusion into 5 groups** including: (i) loss arising from willful acts, (ii) non-random loss, (iii) loss that cannot be quantified as an amount of money, (iv) catastrophic loss, and (v) loss incurred in the case that the policy holder has no insurable interest. Except for the case of "Loss arising in the case where the policy holder has no insurable interest", Circular 50 has a different classification from Circular 329 by listing the detailed exclusions of insurance liability instead of classifying them into 5 insurance liability exclusion groups as in Circular 329.

- Circular 50 details the individual exclusions of liability insurance for each type of compulsory insurance in construction activities. Accordingly, in addition to the application of general insurance liability exclusions as mentioned above, each insurance type will have its individual exclusions in accordance with its characteristics:
 - *Compulsory insurance of works during construction period* excludes insurance liability in some cases such as: loss arising due to the consulting contractor's design faults for construction works; such phenomenon as corrosion, abrasion, oxidation; decay that takes place under normal temperature and pressure conditions, etc.;
 - *Compulsory professional liability insurance for construction investment consultancy* excludes insurance liability in some cases such as: loss due to the consulting contractor's intentional selection of methods of construction, calculation, measurement, design, use of untested materials, loss caused by mold, related to asbestos or any material containing asbestos, loss arising from infringement of intellectual property rights, etc.;

- *Compulsory insurance for construction workers on site* excludes insurance liability in case of loss related to asbestos or any material containing asbestos;

- *Compulsory third-party civil liability insurance* excludes insurance liability in some cases such as: loss arising from pollution or contamination; loss to property on the ground, health or life caused by displacement or weakening of load-bearing parts and geology of works; loss resulted from an accident caused by motor vehicle or vessel, barge or aircraft for which civil liability insurance of the vehicle owner to a third party has been covered, etc.

Secondly, amending and supplementing several regulations on fees, principles of compulsory civil liability insurance compensation for third party, and parties' responsibilities when a third-party claim arises, specifically:

- Amending the regulations on premiums of compulsory civil liability insurance for third party. Accordingly, this fee equals 5% of compulsory insurance premium for works during the construction period, instead of basing on the premium schedule actively developed by the insurance company as specified in Circular 329. Based on the risk level of the subject matter insured, the insurance company may increase or decrease the premium by up to 25%.
- Supplementing the principle of insurance compensation related to the compensation amount paid to policy holders and the coordination mechanism in settlement of insurance claims. When a third party suffers non-contractual damage in terms of health, life, property directly arising during construction process under the insurance liability, the insurance company will be responsible for paying the policy holder the compensation for health/life and property/accident damage and related legal costs (if any).
- Supplementing the regulations on policy holders and insurance companies' liabilities when there is a third-party claim, in which the policy holder and the insurance company are obliged to coordinate as follows:
 - The policy holder (i) immediately notifies the insurance company by means of communication; then notifies the insurance company in writing within 14 days from the date of receipt of the third party's claim, (ii) takes all measures within its capacity to limit the losses at the lowest

level, (iii) provides the insurance company with the insurance claim file as specified in Article 34 of Circular 50 and facilitates the insurance company in verifying such documents, (iv) carries out, coordinates, permits the insurance company to take the necessary actions and measures or as required by the insurance company to protect the insurance company's interests after paying the damages under the insurance policy.

- The insurance company (i) assesses the damage in accordance with the law and makes a survey report of the cause and extent of the damage, (ii) guides, coordinates with the policy holder and other relevant agencies, organizations and individuals to collect all documents to prepare the claim file, (ii) coordinate with the policy holder to settle the third party's claim under the insurance liability scope when the insured event occurs, and (iv) issues a written notice of insurance compensation if the insurance claim is accepted or a written explanation of the reasons for refusal of the insurance claim.

Thirdly, stipulating that the payment of compulsory insurance premiums will comply with the provisions of Circular 50/2017/TT-BTC instead of the payment deadlines/procedures in Circular 329/2016/TT-BTC. With regard to (i) insurance contracts for construction works and (ii) civil liability insurance contracts for third parties under construction investment projects specified in Decree 50/2021/ND-CP, the insurance company and policy holder shall agree on the time limit for premium payment stated in the insurance contract, being not later than the payment schedule of the construction contract. In no event shall the premium payment term exceed the period of insurance.



Comments and recommendations

Circular 50 is promulgated to (i) overcome some difficulties when applying the law in insurance (such as stipulating general exclusions and specific exclusions for each type of compulsory insurance liability in construction investment), (ii) ensure the consistency with the provisions of other insurance-related legal documents (i.e. stipulating that insurance premium payment is implemented in accordance with Circular 50/2017/TT-BTC), (iii) ensure that the regulations on insurance premium payment are consistent with the actual insurance implementation in construction works using public investment capital, state-owned capital out of public investment and construction contracts between PPP project enterprises and construction contractors implementing bidding packages under public-private partnership investment projects. Enterprises should pay attention to update and study the provisions of Circular 50 to ensure the implementation of compulsory insurance-related activities in construction investment in accordance with the law.