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Wiki Legal Limited Liability Company

**Legal update
No. 01 – April 2021**

(01 April 2021 – 15 April 2021)

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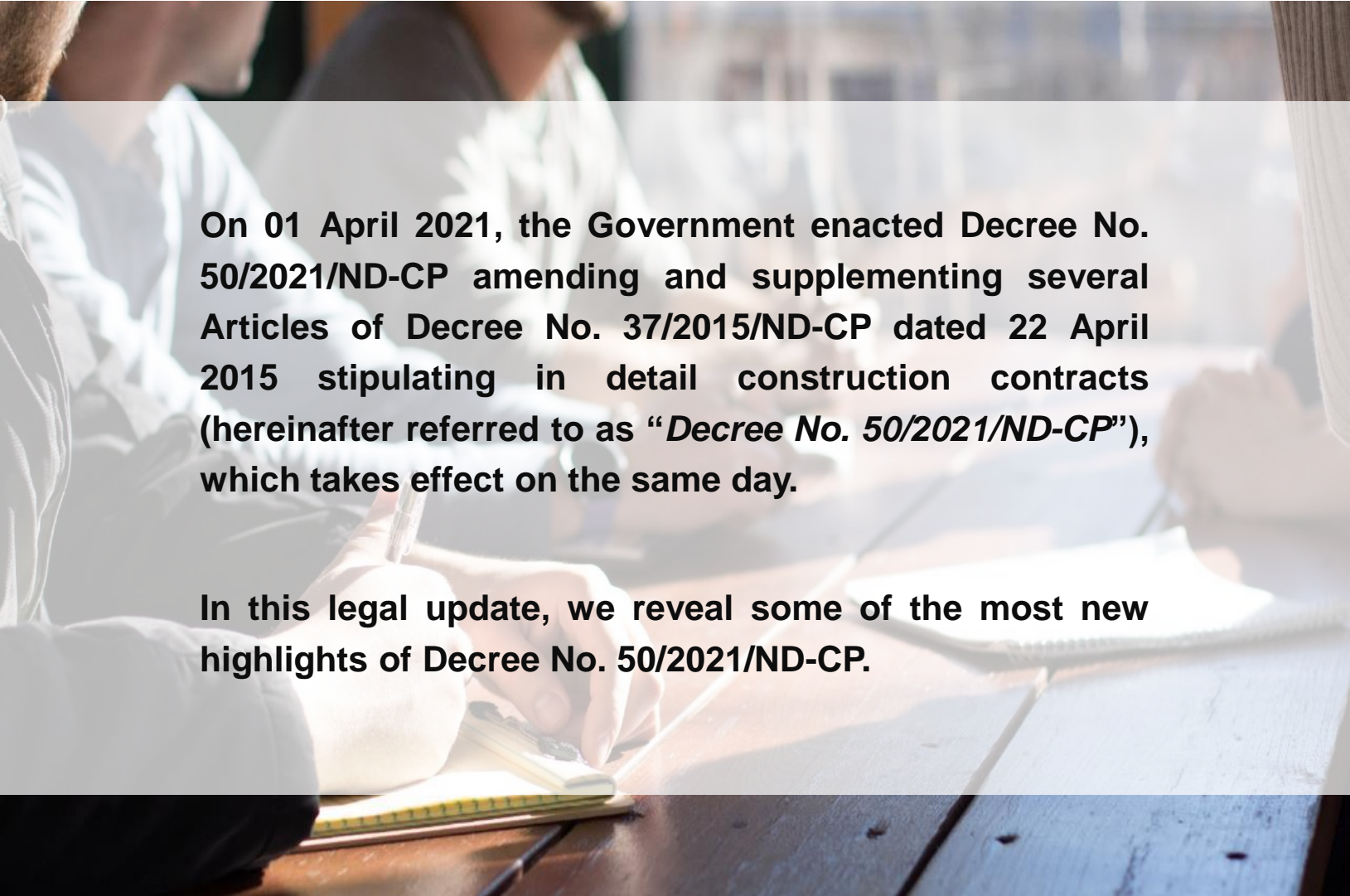
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01

NEWS IN FOCUS

Highlights of new Decree stipulating construction contracts



On 01 April 2021, the Government enacted Decree No. 50/2021/ND-CP amending and supplementing several Articles of Decree No. 37/2015/ND-CP dated 22 April 2015 stipulating in detail construction contracts (hereinafter referred to as “*Decree No. 50/2021/ND-CP*”), which takes effect on the same day.

In this legal update, we reveal some of the most new highlights of Decree No. 50/2021/ND-CP.

1. Scope of regulation and subjects of application

Decree No. 50/2021/ND-CP adjusts in accordance with the legal frame of the Law on public investment 2019, Law on investment 2020 and Construction Law 2014 (amended, supplemented in 2020).

This Decree applies to organizations, individuals relating to the establishment and management to implement:

- construction contracts of construction investment projects using public investment capital, foreign public investment capital; and
- construction contracts between PPP project enterprises and construction contractors implementing bidding packages of investment projects under the public-private partnership form (PPP project).



2. EPC Contract

Decree No. 50/2021/ND-CP has some new regulations on EPC Contract in comparison with Decree No. 37/2015/ND-CP:

- EPC Contracts are prioritized for projects that are complicated, have high technical-technological requirements and must strictly comply with the synchronization and unity from designing to providing equipment, engineering and technology transfer training.
- Before deciding to apply EPC contract, one who decides to invest the project is responsible for evaluating the technical-technological requirements; shortening the project's performance time; complying with the synchronization from designing, providing equipment, engineering to operational training, transferring the construction to meet the goals and requirements of the approved project and to ensure the feasibility of applying EPC contract in comparison with other types of contracts.
- Before signing EPC contract, the Parties must reach an agreement on the contents specified in Clause 3 Article 1 of Decree 50/2021/ND-CP.



3. Simple and small-scale contract

This is a new type of contract which has not been regulated in Decree No. 37/2015/NĐ-CP.



- Is a construction contract to implement bidding packages;
- Its value must not exceed the limit of a small-scale bidding package in accordance with the laws on bidding:
 - Bidding packages providing non-consulting services and goods procurement with the value not exceeding VND 10 billion;
 - Construction and mixed bidding packages with the value not exceeding VND 20 billion;
- The contents of the work within the scope of the contract have simple technical nature and are easy to perform.

4. Regulation on advances for simple and small-scale contracts



These regulations are performed in the spirit of reducing unnecessary procedures:

- Making advances or not shall be considered and agreed by the principal and the contractor according to the request of the contractor to ensure to comply with the requirements of a bidding package;
- The investor considers and decides on the performance of advances guarantee to ensure to comply with the nature of the work of the contract.

5. Regulation on adjusting the unit price of construction contracts

- The Parties agree to determine the unit price according to the principle agreed in the contract in case:

- The actual performed workloads increase or decrease more than 20% of the corresponding workloads stated in the contract;
- Make the change of over 0.25% of the contract value and over 1% of the unit price of that job or the arising workload has not had the unit price.

- The new unit price is applied to the actual performed workloads which exceed 120% of the workloads specified in the contract in case:

- The actual performed workloads increase more than 20% of the corresponding workloads stated in the contract.

- The new unit price is applied to the whole actual workloads completed and accepted in case:

- The actual performed workloads decrease more than 20% of the corresponding workloads stated in the contract.



6. Principles for adjustment of construction contracts

- a. The adjustment is only applied during the contract performance including the extended period in accordance with the laws.
- b. For contracts with fixed unit price, the unit price is only adjusted in cases specified in point b, c, d Clause 2 Article 143 of the Construction Law 2014.
- c. For all-in contracts, the contract may be adjusted only for the additional workloads outside the scope of work under the signed contract and the cases regulated at point b, c, d Clause 2 Article 143 of the Construction Law 2014.



6. Principles for adjustment of construction contracts

- d. The contract price after adjustment does not exceed the price of bidding package or the approved estimate bidding package (including backup costs for these bidding package), the investor is entitled to decide the adjustment.
- In case of exceeding the price of bidding package or the approved estimate bidding package:
 - The policy of adjusting the contract price must be approved by the competent person to decide on investment, the Minister of Industry Management or the Chairman of the Provincial People's Committee; and; và
 - The capital must be sufficient to pay the contractor in accordance with the agreement in the contract.
 - The adjustment of estimate costs of construction and bidding package, bidding package's price shall perform in accordance with the laws on management of construction investment cost and the laws on bidding.

02

WEEKLY NEW
LEGAL DOCUMENTS



INVESTMENT

- Prime Minister's Decision No. 548/QD-TTg in 2021 regarding the policy of investment Project in construction and infrastructure business of Century industrial park
(Effective date: 06 April 2021)

TRAFFIC – CONSTRUCTION

- Decree No. 50/2021/ND-CP amending Decree No. 37/2015/ND-CP stipulating in detail construction contracts
(Effective date: 01 April 2021)
- Circular No. 06/2021/TT-BGTVT about the National technical regulation on emissions level 5 for manufactured, assembled and imported cars
(Effective date: 01 January 2022)
- The Government office's Official Dispatch No. 2442/VPCP-CN in 2021 deploying a non-stop electronic road toll collection system
(Effective date: 07 April 2021)

FINANCE – BANKING

- The State Bank of Vietnam's Circular No. 04/2021/TT-NHNN regulating on refinancing capital towards credit institutions after the credit institutions give loan to Vietnam Airlines Corporation – JSC, and the rescheduling of debt repayment terms, keeping intact debt groups, provisioning risks towards debts of Vietnam Airlines Corporation – JSC due to the effect of Covid-19 pandemic
(Effective date: 05 April 2021)
- General Department of Taxation's Official Dispatch No. 944/TCT-CS in 2021 about refund of input value-added tax for new investment projects
(Effective date: 01 April 2021)

ENTERPRISES

- Decree No. 47/2021/ND-CP guiding the Law on Enterprises
(Effective date: 01 April 2021)
- Ministry of Finance's Circular No. 26/2021/TT-BTC guiding the accounting work while converting public non-business units into Joint-stock companies
(Effective date: 01 June 2021)



Thank You!

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