

Technical Update

October 2023

1. Decree amending and supplementing a number of articles stipulating conditions on security and order for a number of conditional business lines and management, usage of seals

On 24 July 2023, the Government issued Decree No. 56/2023/ND-CP (“**Decree 56**”) amending and supplementing a number of articles of Decree No. 96/2016/ND-CP stipulating conditions on security and order for a number of conditional business lines (“**Decree 96**”) and Decree No. 99/2016/ND-CP on management and usage of seals (“**Decree 99**”). Decree 56 shall come into force starting from 15 August 2023 with notable changes as follows:

1.1. Amendments to Decree 96 stipulating conditions on security and order for a number of conditional business lines

- a. Abolishing the regulation that the person in charge of security and order of a pawnshop services business must have at least 5 years of registered permanent residence at the commune/ward/commune-level town where the business establishment is registered.
- b. Amending and supplementing the licensing procedures for issuance and re-issuance of Certificate of Satisfaction of Conditions on Security And Order (the “**SO Certificate**”) as follows:
 - i. Adding a provision that the SO Certificate can be issued in the form of either a physical document or electronic document with equal validity. Both forms of the SO Certificate can be granted upon request of business establishments.
 - ii. Re-naming documents proving the satisfaction of fire preventing and fighting safety conditions in the application dossier for issuance of the SO Certificate to ensure the consistency and uniformity of the legal system.
 - iii. Clarifying that the online administrative procedures through the National Public Service Portal or Public Service Portal of the Ministry of Public Security shall be in compliance with Decree No 45/2020/ND-CP dated 08 April 2020 of the Government on administrative procedures in the electronic environment.
 - iv. Changing the authority of issuing the SO Certificate:
 - (1) Decentralizing the authority from the Police Department for Administrative Management of Social Order under the Ministry of Public Security to the Police Office for Administrative Management of Social Order under Police authority of central-affiliated cities or provinces (the “**Police Office**”) in respect to the issuance of the SO Certificate for business establishments in the fields of trading pyrotechnics; providing transport services of industrial explosive; providing transport services of explosive precursor; having business lines using industrial explosive materials, including exploration and exploitation of minerals, oil and gas within Vietnam’s continental shelf.
 - (2) Decentralizing the authority from the Police Office to the district and communal police authority in respect to the issuance of the SO Certificate for business establishments providing accommodation services with fewer than 20 rooms.
 - (3) Decentralizing the authority from the district police authority to the communal police authority in respect to the issuance of the SO Certificate for gas business establishments that are households.

1.2. Amendments to Decree 99 on management and usage of seals

- a. Issuing the new form of the Certificate of Seal Sample Registration (the “Seal Certificate”).
- b. Adding the provision that the Seal Certificate can be issued in the form of either a physical document or an electronic document with equal validity. Both forms of the Seal Certificate can be granted upon request of agencies, organizations or state titles.
- c. Adding the method for submitting application dossier through the public postal service and clarifying that online administrative procedures through the National Public Service Portal or Public Service Portal of the Ministry of Public Security shall be in compliance with Decree No 45/2020/ND-CP dated 08 April 2020 of the Government on administrative procedures in the electronic environment.
- d. Adding the requirement on submission of written letter(s) indicating the reason and the authorized contact person when returning the seal and the Seal Certificate under the cases stipulated by laws to the competent authority .
- e. Abolishing the requirement that the authorized contact person for submitting the application dossier must present a valid Citizen identification card or Identity card or Passport.

2. Decree amending and supplementing a number of articles stipulating management of construction investment projects

On 06 July 2023, the Government issued Decree No. 35/2023/ND-CP amending and supplementing 12 Decrees, annulling a Decree completely, and annulling a Decree partially in the field of state management of the Ministry of Construction (“**Decree 35**”), among of which is Decree 15/2021/ND-CP detailing a number of contents on management of construction investment projects (“**Decree 15**”). Decree 35 shall come into force starting from its sign date (20 June 2023). Notable changes and supplementations to Decree 15 are set out below:

2.1. Regarding formulation and appraisal of Feasibility Study Report or Economic – Technical Report for approval of construction project

- a. Decentralizing the authority for appraisal from the Specialized Construction Agency under the Ministry of Construction to the Specialized Construction Agency under People’s Committee on the provincial/city level in respect of Feasibility Study Report for Group B projects (including projects funded by public investment capital, projects funded by state capital excluding public investment capital, projects funded by other sources of capital) without works Class Special or I.
- b. Inclusion of provisions on the authority for appraisal of the Feasibility Study Report in cases where the construction project is separated into sub-projects and implementation stages under investment phases, and clarifying requirements for separation into sub-projects at the time of making investment decisions, specifically:
 - i. The specialized construction agency’s authority for appraising the Feasibility Study Report shall be determined based on the group of the sub-project and the class of the works under the sub-project. If a sub-project consists of works of different types and classes, the specialized construction agency’s authority in respect to the sub-project shall be determined in accordance with Clause 5, Article 12 of Decree 15.
 - ii. In cases where the separation of sub-projects is determined at the time of making investment decisions, the investor shall prepare and submit the overall Feasibility Study Report for (1) all technical infrastructure works to ensure the connectivity and operation of the project; and for (2) other construction works (if any). The overall Feasibility Study Report for all technical infrastructure works and other construction works (if any) must contain an explanation for the separation of sub-projects for the remaining works which shows that the conditions for the separation of sub-projects are met and progress is ensured in accordance with the construction plan for each sub-project.
- c. Clarifying the provision on formulation in the Feasibility Study Report that construction investment costs do not include equipment costs to ensure the consistency with provisions on management of construction costs stipulated in Decree 10/2021/ND-CP and its guiding circulars.
- d. Adding the provision on amendment of construction investment projects which were previously subject to the Economic-Technical Report as below:
 - i. The amendment causes the total construction investment to exceed the 10% limit for formulation of the Economic-Technical Report, then the investor must prepare an adjusted Feasibility Study Report. If the amendment only alters the total investment rather than altering the construction design, the investor may use the construction design (not required to formulate a basic design) in the Economic-Technical Report to prepare the adjusted Feasibility Study Report and proceed with next steps.
 - ii. The adjustment only alters the design of construction sketches rather than both altering the contents prescribed in Clause 2 Article 19 Decree 15 and increasing the total investment, then after the decision-maker of the investment approves the adjustment, the investor shall conduct appraisal and approval process for adjusted contents.

2.2. Regarding Construction Permit

- a. Supplementing and clarifying the conditions on compatibility with the planning in respect to an area with and without a master plan as the basis for consideration of issuance of COP, specifically:
 - i. With regard to an area with a master plan where the construction investment project must be compatible with planning with other technical and specialized features as required by laws, such master plan and the planning with these technical and specialized features shall be the basis for consideration of issuance of a construction permit;
 - ii. With regard to an area without a master plan, either a planning with relevant technical and specialized features or a urban design or a regulation on architectural management or a document of a competent authority approving the location and the complete layout (for non-linear works to be built outside urban areas) shall be the basis for consideration of issuance of a COP.
- b. Adding the provision on principals for determining the authority for issuance of a construction permit in the following cases:
 - i. For projects comprising works of different types and classes, the authority for issuance of COP shall be determined based on the work with the highest class of the project;
 - ii. In case of amendment of construction design or repair or renovation of a work that results in a change to the class of the work, the authority issuing a contract permit shall be determined based on the class of the work after amendment of construction design or repair or renovation of the work
- c. Adding additional required documents to the application dossier for a construction permit for non-linear works: (1) A valid land lease contract (applicable when the investors lease land for construction investment); (2) Documents proving the ownership of the existing work or work component/ A valid contract for leasing work or work component (applicable for the construction investment in a work attached to the existing work or work component).
- d. Adding the provision for revocation of a construction permit is when the issued construction permit fails to meet with conditions for issuance of construction permit as prescribed by laws.

2.3. Regarding Construction Practicing Certificate of individual (“CPC”)

- a. Adding 2 cases where individuals are not required to have CPC, which are: (i) Supervision of interior construction and (ii) Participation in construction activities for individual houses; concurrently requiring that individuals must have CPC when participating in construction activities for Level IV works.
- b. Adding the provision that the authority for amending, supplementing and reissuing CPC shall belong to the governmental or regulatory authority that previously granted the CPC .
- c. Increasing the term for extension of the CPC from 3 months to 6 months before the expiry date of the CPC.
- d. Expanding the authority of organizing qualification tests for CPC issuance, specifically, all authorities having the authority of issuing the CPC (including: Authority specialized in construction under the Ministry of Construction, Department of Construction, recognized Socio-professional Organizations) are allowed to organize qualification tests for the purpose of issuing the CPC Level I, II and III; Allowing the competent authorities to decide the test method and issue regulations for online qualification tests; Increasing the validity term for qualification test’s result from 6 months to 12 months.

2.4. Regarding the Certificate of Construction Capability of organization (“COCC”)

- a. Adding 2 cases where organizations are not required to have COCC; which are: (i) Supervision and execution of interior works and (ii) Participation in construction activities for individual houses; Concurrently requiring the organizations to have COCC when participating in construction activities for Level IV works.
- b. Clearly stipulating that recognized Socio-professional Organizations can only grant the COCC Classes II and III to organizations that are their members.
- c. Adding the provision that the authority of amending, supplementing and reissuing the COCC shall belong to the authority that previously granted the COCC .
- d. Increasing the term for extension of COCC from 3 months to 6 months before the expiry date of the COCC; Adding the provision that the statutory timeline for the competent authority to extend the COCC is 20 days upon receipt of a complete and valid application dossier.

2.5. Regarding the Construction Operation Permit of foreign contractor (“COP”)

- a. Decentralizing the entire authority of issuing and amending the COP from the Specialized Construction Agency under the Ministry of Construction to the local Department of Construction.
- b. Adding the provision on procedures and orders for amendment of COP.

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