

LAW

**AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE LAWS
CONCERNING CAPITAL CONSTRUCTION INVESTMENT**

(No. 38/2009/QH12)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;

The National Assembly promulgates the Law Amending and Supplementing a Number of Articles of Construction Law No. 16/2003/QH11, Bidding Law No. 61/2005/QH11, Enterprise Law No. 60/2005/QH11. Land Law No. 13/2003/QH11 and Housing Law No. 56/2005/QH11 Concerning Capital Construction Investment.

Article 1. To amend and supplement a number of articles of the Construction Law.

1. To amend and supplement Article 7 as follows:

"Article 7. Construction activity capability and construction practice capability

1. Organizations and individuals that meet all conditions on construction activity capability and construction practice capability may participate in the following activities:

a/ Consultancy on construction planning designing, formulation and evaluation of investment projects, construction designing, construction valuation, construction supervision, and management of work construction investment projects;

b/ Work construction survey;

c/ Work construction;

d/ Specialized construction testing;

e/ Quality inspection of construction works;

f/ Certification of force-bearing safety of construction works and certification of quality conformity of construction works.

2. To conduct construction activities, individuals must possess construction practice capability which is ranked based on their professional qualifications certified by a professional training institution, and professional experience and ethics, except special cases as prescribed by the Government.

To provide consultancy on construction planning designing, construction designing, construction supervision or work construction survey, individuals must possess relevant practice certificates and take personal responsibility for their jobs.

3. Construction activity organizations must possess construction activity capability which is ranked based on the construction practice capability of their individual members, and their construction activity experience, financial capacity, equipment and managerial capacity.

4. To conduct construction activities within the territory of the Socialist Republic of Vietnam, foreign organizations and individuals must possess full capability as specified in Clauses 2 and 3 of this Article and have activity permits issued by a competent state management agency.

5. The Government shall specify construction activity capability of organizations, construction practice capability of individuals and issuance of construction practice certificates to individuals."

2. To amend and supplement Article 40 as follows:

"Article 40. Adjustment of work construction investment projects funded with 30% or more of state capital

1. A work construction investment project funded with 30% or more of state capital shall be adjusted in any of the following cases:

a/ The project is affected by an earthquake, storm, flood, tsunami, fire, enemy sabotage or mother force majeure event;

b/ There appear elements that bring about higher efficiency to the project;

c/ A change in construction planning directly affects the project's location, size and objectives;

d/ Other cases as prescribed by the Government.

2. When a project adjustment will result in relocation or a change in the size and objectives of the project and in an increase in its approved total investment, the investor shall report it to the investment decider for decision. The investor may him/her/itself decide to adjust a project if such adjustment does not result in relocation or a change in the size and objectives of a project and in an increase in the approved total investment.

3 Project adjustments must be evaluated before making decision."

3. To add the following Article 40a to Article 40:

"Article 40a. Supervision and assessment of work construction investment projects

1. A work construction investment project must be supervised and assessed, depending on the kind of its funding source:

a/ For a project funded with 30% or more of state capital, the competent state agency shall supervise and assess the whole investment process based on approved contents and criteria;

b/ For a project funded with capital of other sources, the competent state agency shall supervise and assess the project's objectives, conformity with relevant plannings, land use, investment progress and environmental protection.

2. The Government shall specify supervision and assessment contents and the organization of supervision and assessment of work construction investment projects."

4. To amend and supplement Article 43 as follows:

"Article 43. Management of expenses of work construction investment projects

1. The management of expenses of work construction investment projects must ensure the projects' investment objectives and effectiveness and suit used funding sources and investment stages.

2. The State shall manage expenses of work construction investment projects and guide methods of formulating and managing expenses of work construction investment projects. Construction state management agencies shall publicize econo-technical norms and criteria and relevant information- for reference by investors when determining investment expenses.

3. Work construction investors shall manage expenses of work construction investment projects from the stage of investment preparation to the time works are put into operation and use.

Investors may hire institutional or individual consultants to formulate, verify and control expenses of work construction investment projects, depending on used funding sources and practical conditions of construction works."

5. To amend and supplement Article 54 as follows:

"Article 54. Steps of work construction designing

1. Work construction designing covers basic designing, technical designing, working drawing designing and other designing steps in line with international practice. A basic design shall be made at the stage of formulating a work construction investment project; subsequent designing steps shall be performed at the stage of implementing a work construction investment project.

2. Depending on the size, nature and complexity of a work, work construction designing may be conducted through different steps. The investment decider shall decide on designing steps upon approving a project.

3. The Government shall specify designing steps for each kind of work."

6. To amend and supplement Article 55 as follows:

"Article 55. Competition for and selection of architectural designs of construction works

1. Competition for or selection of architectural designs must be organized for large public works with special architectural requirements; invest-ment deciders shall decide on the organization of competition for or selection of architectural designs of these works. Investors shall decide on the organization of competition for or selection of architectural designs of other works.

2. Expenses for the organization of competition for or selection of architectural designs of a construction work shall be included in the total investment of that work.

3. Authors of winning or selected architectural designs of works may have their copyright protected and be selected with priority for formulating work construction investment projects and making construction designs if they fully satisfy capability conditions as prescribed.

4. The Government shall specify the organization of competition for or selection of architectural designs of construction works."

7. To amend and supplement Article 59 as follows:

"Article 59. Appraisal and approval of work construction designs

1. A construction design must be appraised and approved. The design appraiser and approver shall take responsibility before law for his/her/ its appraisal and approval results.

2. The investment decider shall take accountability for the appraisal of the basic design and other contents of a work construction investment project when appraising it before approval. When

necessary, the investment decider shall consult in writing concerned agencies on the basic design.

A project approval must clearly indicate basic design solutions to be observed and basic design solutions the investor may change in subsequent designing steps.

3. The investor shall appraise and approve subsequent designing steps in conformity with the approved basic design.

4. The Government shall specify contents of appraisal and approval of work construction designs."

Article 2. To amend and supplement a number of articles of the Bidding Law.

1. To amend and supplement Clauses 30 and 39, Article 4 as follows:

"30. Evaluation price means a price determined on the same ground of technical, financial and commercial elements and shall be used for comparing and rating bids with regard to procurement, construction and installation or EPC bidding packages. Evaluation prices cover bid prices proposed by contractors to undertake bidding packages after correcting errors and necessary expenses for operation and maintenance and other expenses related to the progress, quality or origin of goods or works within bidding packages through their use duration."

"39. Bidding appraisal means the inspection and assessment of bidding plans, bidding dossiers and contractor selection results by agencies or organizations with the appraising function, which serves as a basis for competent persons or investors to consider and make decision in accordance with this Law. The appraisal of contractor selection results does not mean re-assessment of bids."

2. To amend and supplement Article 11 as follows:

"Article 11. Assurance of competitiveness in bidding

1. Contractors participating in bidding for bidding packages under projects specified in Article 1 of this Law must satisfy the following requirements on competitiveness:

a/ The bidding contractor must be organizationally independent and not dependent on the same managing agency of and be financially independent from the contractor providing consultancy on making bidding dossiers and assessing bids;

b/ The contractor providing supervision consultancy on contract performance must be organizationally independent from and not dependent on the same managing agency of and be financially independent from the contract-performing contractor;

c/ The contractor participating in bidding for bidding packages under a project must be organizationally independent from and not dependent on the same managing agency of and be financially independent from the project investor.

2. The Government shall specify assurance of competitiveness in bidding."

3. To add the following Clauses 18 and 19 to Article 12:

"18. The bid solicitor's failure to sell bidding dossiers to contractors within the time limit specified in bid invitation notices or bid invitation letters.

19. Employing foreign laborers while local laborers are capable of and satisfy requirements for performing bidding packages."

4. To amend and supplement Points c and e, Clause 1, and Clause 3, Article 20 as follows:

"1. Contractor designation is applicable to the following:

c/ Bidding packages classified as national secrets: bidding packages under urgent projects in the national interests:

e/ Bidding packages valued within the limit permitted for contractor designation or having other special requirements as prescribed by the Government."

"3. Before designating contractors for bidding packages specified at Points b, c, d and e, Clause 1 of this Article, cost estimates for these bidding packages must be approved in accordance with law; for bidding packages specified at Point e, contractor designation must also be more effective than bidding."

5. To amend and supplement Clauses 1 and 3, Article 29 as follows:

"1. Bid-evaluating methods must be reflected through evaluation criteria in bidding dossiers. Bid-evaluating criteria include criteria for evaluating capability and experience in case pre-qualification selection is not applied: criteria for technical evaluation; criteria for general evaluation of consultancy service bidding packages or contents for determining evaluation prices on the same technical, financial and commercial grounds in order to compare and rate bids for procurement, construction and installation or EPC bidding packages."

"3. For procurement, construction and installation and EPC bidding packages, the marking method or method of evaluation using the "satisfactory" or "unsatisfactory" criterion will be applied for technical evaluation. When formulating technical evaluation criteria in the form of a point scale, prescribed minimum technical requirements must not be lower than 70% of total technical points, or not lower than 80% for bidding packages with high technical requirements. Bids which have passed technical evaluation shall be compared and rated based on evaluation prices on the same technical, financial and commercial grounds. The bid of a contractor having the lowest evaluation price on the same ground will be ranked first.

The Government shall specify the evaluation of bids."

6. To amend and supplement Clause 5, Article 31 as follows:

"5. The maximum duration for evaluating a bid is forty five days, for domestic bidding, or sixty days, for international bidding, from the bid-opening date to the date the bid solicitor submits bidding results to the investor for approval."

7. To amend and supplement Point a, Clause 1, Article 32 as follows:

"a/ Based on the nature and size of a bidding package, the pre-qualification selection of contractors shall be conducted before an open bidding is organized in order to select fully capable and experienced contractors as required by the bidding package to participate in the bidding."

8. To amend and supplement Clause 2, Article 33 as follows:

"2. Receipt and management of bids

Bid solicitors shall receive and manage bids submitted as required by bidding dossiers under regulations on management of "secret" dossiers. Bids submitted after the bid closing will be regarded as improper and shall be rejected."

9. To amend and supplement Point b, Clause 2, Article 35 as follows:

"b/ For procurement, construction and installation or EPC bidding packages, evaluation prices on the same technical, financial and commercial grounds shall be determined to compare and rate bids. For consultancy service bidding packages, general evaluation shall be conducted to compare and rate bids: particularly, consultancy service bidding packages with high technical requirements, financial proposals of the contractors technically ranked first shall be considered."

10. To amend and supplement Clause 4, Article 38 as follows:

"4. Offering the lowest evaluation price on the same ground;"

11. To amend and supplement Article 39 as follows:

"Article 39. Submission of bidding results for approval and appraisal

1. The bid solicitor shall make a report on bidding results and submit it to the investor for consideration, decision and further sending to a responsible agency or organization for appraisal.

2. The appraising agency or organization shall, based on the bid solicitor's report, make an evaluation report on bidding results and submit it to the investor for consideration and decision."

12. To amend and supplement Clause 1, Article 40 as follows:

"1. Investors shall consider and approve bidding results on the basis of reports on bidding results and evaluation reports on bidding results."

13. To amend and supplement Clause 1, Article 41 as follows:

"1. Bidding results shall be announced right after obtaining investors' decisions approving bidding results."

14. To amend and supplement Clause 3, Article 42 as follows:

"3. In case of unsuccessful negotiation and finalization of a contract, the investor shall consider and select next-ranked contractors. If the next-ranked contractors still fail to meet requirements, the case shall be considered and handled under regulations."

15. To amend and supplement Clause 2, Article 43 as follows:

"2. Based on investors' decisions, bid solicitors shall notify bidding contractors of the cancellation of bidding."

16. To amend and supplement Article 46 as follows:

"Article 46. Contract formulation principles

1. A contract must be formulated in accordance with this Law and other relevant laws.

2. For contractors forming a partnership, the contract signed with the investor must be signed by all partners.

3. The contractual price must not exceed the winning bid price."

17. To amend and supplement Clauses 2 and 3, Article 57 as follows:

"2. The adjustment of a signed contract may be made only in the contract performance duration and must be considered and decided by the investor. The adjusted contractual price must not

result in an increase in the approved total investment, unless it is permitted by a person with investment-deciding competence.

3. In case reasonable jobs arising beyond those indicated in a contract do not result in a change in the investment objective or total investment, the investor shall reach agreement with the contractor that has signed the contract on additionally calculating arising jobs and sign a contract annex. If they cannot reach such agreement, those arising jobs will constitute a new bidding package for which contractors shall be selected in accordance with this Law."

18. To amend and supplement Article 60 as follows:

"Article 60. Responsibilities of competent persons

1. To decide on forms of contractor selection, including contractor designation specified in Clause 1, Article 20 of this Law.

2. To approve bidding plans.

3. To settle petitions related to bidding.

4. To handle violations of the bidding law in accordance with Article 15 of this Law and other relevant laws.

5. To cancel or terminate biddings or refuse to recognize contractor selection results upon detecting acts of violating the bidding law or other relevant laws.

6. To take responsibility before law for their decisions."

19. To add the following Clauses 13,14 and 15 to Article 61:

"13. To approve bidding dossiers.

14. To approve contractor selection results.

15. To decide on the handling of bidding circumstances."

20. To amend and supplement Point c, Clause 1, Article 70 as follows:

"c/ Investors shall decide on the handling of bidding circumstances and take responsibility before law for their decisions."

21. To amend and supplement Points a and c, Clause 1, Article 75 as follows:

"a/ Caution shall be imposed on organizations and individuals that violate this Law. except cases specified in Article 12 of this Law; successful bidders that intentionally fail to negotiate and finalize contracts or have negotiated and finalized contracts but do not sign them; contractors that have signed contracts but intentionally fail to perform part or the whole of the contracts; or contractors that perform consultancy service, procurement, construction and installation or EPC bidding packages but fail to ensure their quality and progress as agreed in the contracts;"

"c/ Organizations and individuals that violate Article 12 of this Law or have committed three or more acts of violation and been cautioned under Point a of this Clause shall be banned from participation in bidding activities."

Article 3.

To amend and supplement Point a. Clause 2. Article 170 of the Enterprise Law as follows:

"a/ To re-register and manage and operate under this Law and other relevant laws: re-registration shall be made within five years from the effective date of this Law;"

Article 4.

To amend and supplement a number of articles of the Land Law.

1. To amend and supplement Clause 20, Article 4 as follows:

"20. Certificates of land use rights and ownership over houses and other assets attached to land are certificates issued by competent state agencies to persons with land use rights and ownership over houses and other assets attached to land in order to protect their lawful rights and interests."

2. To amend and supplement Clause 1, Article 10 as follows:

"1. The State will issue certificates of land use rights and ownership over houses and other assets attached to land to persons with land use rights and ownership over houses and other assets attached to land."

3. To amend and supplement Article 48 as follows:

"Article 48. Certificates of land use rights and ownership over houses and other assets attached to land

1. Certificates of land use rights and ownership over houses and other assets attached to land shall be issued to persons with land use rights and ownership over houses and other assets attached to land and made according to a form provided by the Ministry of Natural Resources and Environment. For houses and other assets attached to land, competent state agencies shall certify ownership over these houses and assets in certificates of land use rights and ownership over houses and other assets attached to land under this Clause only at the request of their owners.

2. Land use right certificates, house ownership and residential land use right certificates, house ownership certificates or construction work ownership certificates already issued under the land law, housing law, construction law or civil law before August 1, 2009, remain valid and are not required to be renewed into certificates of land use rights and ownership over houses and other assets attached to land under this Law. Holders of old certificates that wish to have their certificates renewed may do so under this Law without having to pay a fee.

Upon transferring land use rights or ownership over houses and other assets attached to land, transferees will be issued certificates of land use rights and ownership over houses and other assets attached to land under this Law.

Those who have not yet been issued any of the certificates specified in this Clause will be issued certificates of land use rights and ownership over houses and other assets attached to land under this Law.

3. The Government shall specify dossiers, order and procedures for the issuance of certificates of land use rights and ownership over houses and other assets attached to land."

4. To add the following Clause 10 to Article

"10. Other cases as prescribed by the Government."

5. To amend and supplement Article 52 as follows:

"Article 52. Competence to issue certificates of land use rights and ownership over houses and other assets attached to land

1. People's Committees of provinces and centrally run cities may issue certificates of land use rights and ownership over houses and other assets attached to land to organizations, religious establishments and overseas Vietnamese that are allocated or leased land to implement investment projects, and foreign organizations and individuals.

2. People's Committees of rural districts, urban districts, towns and provincial cities may issue certificates of land use rights and ownership over houses and other assets attached to land to households, individuals, population communities and overseas Vietnamese that own houses associated with the right to use residential land.

3. Agencies competent to issue certificates of land use rights and ownership over houses and other assets attached to land defined in Clause 1 of this Article may authorize such issuance to natural resources and environment management agencies of the same level.

The Government shall specify conditions for authorization for the issuance of certificates of land use rights and ownership over houses and other assets attached to land.

4. Provincial- and district-level natural resources and environment management agencies shall act as focal points in receiving dossiers and carrying out procedures for submission to People's Committees of the same level defined in Clauses 1 and 2 of this Article to issue certificates of land use rights and ownership over houses and other assets attached to land."

6. To replace the phrase "Land use right certificates" in the title of Section 5. Chapter II; Clause 3. Article 4: and Articles 6, 42, 43, 46, 47, 49, 50, 51, 90, 105, 106, 119, 122, 124 thru 131, 136, 144 and 146 of the Land Law with the phrase "certificates of land use rights and ownership over houses and other assets attached to land."

7. To annul Article 123 of the Land Law.

Article 5. To amend and supplement a number of articles of the Housing Law.

To amend and supplement Clause 1. Article 132 as follows:

"1. Having been issued certificates of land use rights and ownership over houses and other assets attached to land under law."

2. To replace the phrase "House ownership certificates" in Articles 10, 21, 22, 36, 57, 78, 93, 95, 125 and 139: Clause 2, Article 66: and Point b, Clause 2, Article 106, of the Housing Law with the phrase "Certificates of land use rights and ownership over houses and other assets attached to land."

3. To replace the phrase "any of the papers specified in Article 15 of this Law" in Clause 3, Article 66 of the Housing Law with the phrase "papers evidencing lawful establishment."

4. To replace the phrase "in the order specified in Article 16 of this Law" in Clause 5, Article 93 of the Housing Law with the phrase "as prescribed by the Government."

5. To remove the phrase "in accordance with this Law" in Clause 6, Article 21; Clause 1, Article 22: Point b, Clause 2, Article 106; and Clause 2, Article 125, of the Housing Law.

6. To remove the phrase "under Article 16 of this Law" in Clause 3. Article 105 of the Housing Law.

7. To annul Articles 11 thru 20.127.128.130, 138 and 152 of the Housing Law.

Article 6. The Government shall guide the uniform application of terms which have the same meaning but are expressed in different ways in the laws concerning capital construction investment.

Article 7.

1. This Law takes effect on August 1, 2009.

2. The Government shall detail and guide articles and clauses as assigned in the Law, and guide other necessary contents of this Law to meet state management requirements.

This Law was passed on June 19, 2009, by the XIIth National Assembly of the Socialist Republic of Vietnam at its 5th session.

**CHAIRMAN OF THE NATIONAL
ASSEMBLY**

Nguyen Phu Trong