

Briefing

22 March 2016

National Contract for Constructions to replace FIDIC for projects involving public funds

A steering committee within the Romanian Ministry of European Funds is currently working on a draft national contract for constructions to be used by public or private beneficiaries for constructions financed partially or totally from public funds (the "**National Contract for Constructions**").

The National Contract for Constructions will replace the existing FIDIC contracts used for projects in transport infrastructure of national interest, financed from public funds (as approved through Government Decision no. 1405/2010).

The FIDIC contracts currently in force and applied in Romania are:

- (i) Contract for equipment and constructions including design of electrical and mechanical equipment, and for buildings and engineering works designed by the contractor YELLOW;
- (ii) RED FIDIC Contract for construction of buildings and engineering works designed by the beneficiary.

The draft of the National Contract for Constructions is currently subject to public debates and, according to public statements, it is intended to reach a final version of the draft of the National Contract for Construction by the end of March 2016.

The National Contract for Constructions has the declared purpose of ensuring the balance between the contractor and the beneficiary and addresses the particularities of the Romanian market. However, certain provisions from the draft dated 23 February 2016 may question the declared purpose of the National Contract for Constructions, as listed below:

- a) the obligation to hire a Consultant Engineer to supervise the works is eliminated, the risk management being shifted directly on the contractor;
- b) the beneficiary can unilaterally rescind the contract at any moment before the completion of the works and for reasons independent from the contractor, based on a simple 7 days prior notice. In this case the contractor must cease its activity and the contracts with the subcontractors and, apparently, there is no indemnity or compensation due to the contractor;
- c) the beneficiary can suspend partially or totally the works, without justification, at any moment. If the suspension exceeds 3 months, any party can unilaterally terminate the contract;
- d) subcontractors must be approved by the Beneficiary and the works subcontracted cannot exceed 75% of the value of the contract;
- e) the warranty period for constructions/fittings will be of 48 months;
- f) the agreed prices cannot be changed during the performance of the contract, irrespective of an increase of the costs for salaries, materials, machines or services;
- g) disputes between the parties will be deferred firstly to the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, then to the Romanian courts.

Given that the relevant stakeholders have publicly complained about unfair terms of the draft of the National Contract for Constructions from 23 April 2016, it is expected that the final draft will be materially changed. Upon official enactment of the National Contract for Constructions, it will likely apply not only to transport infrastructure projects, but also to other constructions involving public finance or subsidies, such as agriculture, energy and environment.



Draft of the National Contract for Constructions and general terms and conditions dated 23 February 2016, as proposed by the Ministry of European Funds, can be accessed at the following links:

http://media.hotnews.ro/media_server1/document-2016-02-23-20818506-0-contract-antrepriza-15-02-2016.pdf

http://media.hotnews.ro/media_server1/document-2016-02-23-20818507-0-ccg-varianta-lucru-15-02-2016.pdf

This material is for general information only and is not intended to provide legal advice. For further information on this topic please contact us at: office@volciucionescu.com. The Volciuc-Ionescu website can be accessed at www.volciucionescu.com.