

LAW ON SUBCONTRACTING (n°75-1334)

With the participation of Louis VOGEL, Professor at the University of Paris II

TITLE I

General provisions

Articles 1 to 3

Article 1

(Amended by Law No 98-69 of 6 February 1998, Article 11, Official Gazette of the French Republic of 7 February 1998)

Pursuant to this Law, subcontracting shall be understood to mean the process by which a contractor entrusts, by means of a subcontract, and under their responsibility, all or part of the execution of a works contract or public contract concluded with the client to another person known as the subcontractor.

The provisions of this Law shall apply to transport operations, in which case the contractor shall be considered as the client and the co-contractor of the subcontracting transporter carrying out the transport operations shall be considered as the main contractor.

Article 2

Subcontractors shall be considered as the main contractor with regard to their own subcontractors.

Article 3

Contractors planning to execute a contract using one or more subcontractors must, when the contract is concluded and throughout its duration, have all subcontractors accepted and the conditions of payment for each subcontract approved by the client; the main contractor shall be bound to provide the client with the subcontract(s) upon request.

Should the subcontractor not be accepted or the conditions of payment not be approved by the client under the conditions laid down in the previous subparagraph, the main contractor shall nevertheless be obligated to the subcontractor but shall not be able to invoke the subcontract with regard to the subcontractor.

TITLE II

Direct payment

Articles 4 to 10

Article 4

This Title shall apply to contracts concluded by the State, the local authorities and public corporations and undertakings.

Article 5

Without prejudice to the acceptance laid down in Article 3, the main contractor must, at the time of submission, indicate to the client the nature and value of each service they plan to subcontract.

Article 6

(Amended by Ordinance No 2000-916 of 19 September 2000, Article 5 V, Official Gazette of the French Republic of 22 September 2000 in force on 1 January 2002)

Subcontractors who have been accepted and whose conditions of payment have been approved by the client shall be paid directly by the latter for the part of the contract executed by the former.

However, the provisions of the previous paragraph shall not apply when the value of the subcontract is below a threshold which, for all the contracts laid down in this title, shall be set at 600 euro. This threshold may be raised by Conseil d'Etat Decree according to variations in the economic situation. Below this threshold, the provisions of Title III of this Law shall apply.

With regard to industrial contracts concluded by the Ministry of Defence, a different threshold may be set by Conseil d'Etat Decree.

This payment shall be mandatory even if the main contractor is in liquidation, receivership or temporary suspension of proceedings.

Article 7

Any waiver of direct payment shall be considered invalid.

Article 8

The main contractor shall have a period of fifteen days from receipt of the supporting documents upon which the direct payment is based to accept them or indicate to the subcontractor the reasoned non-acceptance.

At the end of this period, the main contractor shall be considered to have accepted the supporting documents or parts of the supporting documents they have not expressly accepted or refused to accept.

The notifications laid down in subparagraph 1 shall be sent by registered letter.

Article 9

The main contractor shall only be able to guarantee the part of the contract executed by them personally.

When the contractor plans to subcontract a guaranteed part of a contract, the acceptance of the subcontractors laid down in Article 3 of this Law shall be subject to a reduction in the charge to the part to be subcontracted by the contractor.

Article 10

This Title shall apply:

To invitations to tender issued more than three months after the publication of this Law;

To private offering contracts whose signature is notified more than six months after the publication of this Law.

TITLE III

Direct action

Articles 11 to 14-1

Article 11

This Title shall apply to all subcontracts that do not fall within the scope of Title II.

Article 12

(Amended by Law No 94-475 of 10 June 1994, Article 5 II, Official Gazette of the French Republic of 11 June 1994 in force by 1 October 1994 at the latest)

Should the main contractor fail to pay the monies due by virtue of the subcontract, one month after notice to pay is given, the subcontractor shall be able to take direct action against the client. A copy of this notice to pay shall be sent to the client.

Any waiver of direct payment shall be considered invalid.

This direct action shall apply even if the main contractor is in liquidation, receivership or temporary suspension of proceedings.

The provisions of the second subparagraph of Article 1799-1 of the Civil Code shall apply to subcontractors who fulfil the conditions laid down in this article.

Article 13

Direct action shall only concern the payment corresponding to the services stipulated by the subcontract and provided to the client themselves.

The obligations incumbent upon the client shall be restricted to the amount they still owe the main contractor on the date of receipt of the copy of the notice to pay laid down in the previous article.

Article 13-1

(Amended by Law No 84-46 of 24 January 1984, Article 63, Official Gazette of the French Republic of 25 January 1984)

The main contractor may only assign or guarantee claims arising from the contract concluded with the client for the sum due to them for work carried out by them personally.

They shall, however, be able to assign or guarantee the claims in their entirety provided that they obtain, in advance and in writing, the personal joint guarantee cited in Article 14 of this Law, with regard to the subcontractors.

Article 14

In order for the subcontract to be valid, the payment of all monies due to the subcontractor by the contractor pursuant to the subcontract shall be guaranteed by a personal joint guarantee obtained by the contractor from a qualified establishment, approved under conditions laid down by Decree. However, the guarantee shall not be provided if the contractor has delegated payment of the subcontractor to the client pursuant to Article 1275 of the Civil Code, up to the amount of the services executed by the subcontractor. On a temporary basis, the guarantee may be obtained from an establishment on the list laid down by the Decree implementing Law No 71-584 of 16 July 1971 on guarantee reductions.

Article 14-1

(Inserted by Law No 86-13 of 6 January 1986, Article 13, Official Gazette of the French Republic of 7 January 1986)

For contracts concerning building works and public works:

- should the client be aware that a subcontractor who has not been the subject of the requirements laid down in Article 3 is present on site, they should give the main contractor the opportunity to fulfil their obligations;

- should payment of a subcontractor who has been accepted, and whose conditions of payment have been approved by the client under the conditions laid down by Conseil d'Etat Decree, not be delegated to the client, the latter must require the main contractor to prove that they have obtained the guarantee.

The provisions above regarding the client shall not apply to natural persons building a home for themselves, their spouse, their own ascendants or descendants or those of their spouse.

TITLE IV

Miscellaneous provisions

Articles 15 to 17

Article 15

Any clauses, stipulations and arrangements counter to the provisions of this Law, whatever their form, shall be null and void.

Article 15-1

Amended by Law No 94-638 of 25 July 1994, Article 33, Official Gazette of the French Republic of 27 July 1994.

This Law shall apply within the territorial authority of Mayotte. It shall apply to subcontracts concluded as of the first day of the twelfth month following the publication of Law No 94-638 of 25 July 1994 aiming to improve employment, integration and economic activity in the overseas departments, Saint-Pierre-et-Miquelon and Mayotte.

With regard to the application of the Law to the territorial authority of Mayotte, the first subparagraph of Article 14

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should read: "approved under the conditions laid down by Order of the Government representative in Mayotte", instead of "approved under the conditions laid down by Decree".

Nota – Law No 2001-616 2001-07-11, Article 75: In all the legislative and regulatory texts in force in Mayotte, references to the "territorial authority of Mayotte" shall be replaced by references to "Mayotte", and references to the "territorial authority" shall be replaced by references to the "departmental authority".

Article 15-2

(Inserted by Law No 96-609 of 5 July 1996, Article 7, Official Gazette of the French Republic of 9 July 1996)

This Law shall apply to the territorial authority of Saint-Pierre-et-Miquelon. It shall apply to subcontracts concluded as of 1 January 1997.

With regard to the application of the Law to the territorial authority of Saint-Pierre-et-Miquelon, the first subparagraph of Article 14 should read: "approved under the conditions laid down by Order of the Prefect" instead of: "approved under the conditions laid down by Decree".

Article 15-3

(Inserted by Law No 96-609 of 5 July 1996, Article 7, Official Gazette of the French Republic of 9 July 1996)

This Law, with the exception of the final subparagraph of Article 12, shall apply to the territories of New Caledonia and French Polynesia subject to the following provisions:

I – The first subparagraph should read: "approved under the conditions laid down by Order of the High Commissioner of the Republic" instead of: "approved under the conditions laid down by Decree".

II – It shall apply to subcontracts concluded as of 1 January 1997.

Article 222 IV of Organic Law No 99-209 of 19 March 1999 on New Caledonia stipulates that:

"In all legislative and regulatory provisions in force:

1. References to the territory of New Caledonia shall be replaced by references to New Caledonia;
2. References to the Territorial Assembly of New Caledonia shall be replaced by references to the Congress of New Caledonia;
3. References to the Executive of New Caledonia shall be replaced by references to the Government of New Caledonia."

Article 16

Conseil d'Etat Decrees shall lay down the conditions for the application of this Law.

Miscellaneous

Law entry into force on 3 January 1976

By the President of the French Republic: VALÉRY GISCARD D'ESTAING

The Prime Minister: JACQUES CHIRAC

The Keeper of the Seals, Minister for Justice, JEAN LECANUET

The Minister for Economic Affairs and Finance, JEAN-PIERRE FOURCADE

The Minister for Defence, YVON BOURGES

The Minister for Equipment, ROBERT GALLEY

The Minister for Industry and Research, MICHEL D'ORNANO

The Minister for Commerce and Craft Trades, VINCENT ANSQUER

Preparatory work: Law No 75-1334

French National Assembly:

Proposal for a Law No 1449:

Report by Mr Lauriol, on behalf of the Committee on Laws (No 1817) and supplementary report (No 2038);

Discussion of 28 June and 5 December 1975;

Adoption of 5 December 1975;

Senate:

Proposal for a Law, adopted by the French National Assembly, No 100 (1975-1976);

Opinion of the Committee on Economic Affairs, No 144 (1975-1976);

Discussion and adoption of 18 December 1975.

French National Assembly:

Proposal for a Law, amended by the Senate (No 2094).

Report by Mr Lauriol, on behalf of the Committee on Laws (No 2104).

Discussion and adoption of 19 December 1975).

Senate:

Proposal for a Law, adopted with amendments, No 186 (1975-1976).

Oral report by Mr Jean Sauvage, on behalf of the Committee on Laws.

Discussion and adoption of 19 December 1975.

French National Assembly:

Proposal for a Law, amended by the Senate (No 2127).

Report by Mr Marc Lauriol, on behalf of the Joint committee comprised of mixed representatives (No 2129).

Discussion and adoption of 20 December 1975).

Senate:

Report by Mr J Sauvage, on behalf of the Joint committee comprised of mixed representatives, No 190 (1975-1976).

