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Introduction

Due to strong economic growth, several sectors in Cambodia have seen rapid development, with notably the construction industry now booming, on the back of high demand. Referring to the annual report on work Implementation, and the Ministry of Land Management's, (MLMUPC) 2016 Working Plan, the construction industry has created between 200,000 and 250,000 jobs, at all skill levels.

During this period, the MLMUPC also noted an increase in the number of building license requests, as shown below:

- Delivery of construction permits:

Construction permits, worth US\$3,338 million granted for 2,305 projects, covering a total area of 7,686,112 square meters

- Delivery of renovation, opening, and closing building permits:

- 111 opening permits
- 55 closing permits
- 10 renovation permits

With this increase in numbers, the government has been working to adopt appropriate legal instruments governing the construction sector, with particular emphasis on safety measure. Until now, sub-decree 86 has been the principal legal instrument deployed in the granting of construction permits. In the following paragraphs, details of this decree are examined, together with several other legal instruments, and construction permit information for building owners.

What kind of construction requires a permit?

A question often posed is whether renovation, re-construction, or modifications to an existing building requires the owner to obtain

a construction permit. This raises the issue of whether these works are considered as "construction". Without a legal instrument defining "construction", there is no distinction between construction, reconstruction, expansion, or floor additions. Consequently, details in article 2 of the sub- decree state that a building owner is required to obtain a construction permit for any of these activities, and that any construction must be carried out, in compliance with relevant laws and regulations, and in the interest of public safety and well-being. Although, some types of modification to a building may require a construction permit, this does not apply to all construction activities.

Some construction projects do not require a permit. For example, dwellings located in rural areas, or places far from highways, railroads, tourism resorts, national heritage sites or protected areas. Sub -decree # 86 provides details concerning constructions that are not subject to a permit.

As building activities affect public safety and well-being, construction permit requests involve the following documents and procedures:

How long does it take to apply for a construction permit?

Deciding what procedures, and which competent authorities, to address when applying for a construction permit, will depend on the size of the construction project, (refer to decision No. 5, relating to 'Procedures of construction permit application review and approval', dated 06 February 2006).

The Provincial and Municipal Administration is the competent authority for the issue of construction permits for the area under its authorization. These are then duly signed either by a government delegate, the provincial or municipal governor, or an appointed vice governor.

The standard MLMUPC application form, along with the supporting documents, must be completed in Khmer, and submitted at Sangkat Level, Khan Level, and to the Phnom Penh Municipal Department of Land Management. This may take 30 days, although according to current practice, around 4 to 6 months is more likely.

In accordance with article 5 of sub Decree No. 86, some constructions have come under the jurisdiction of the government authority. These applications take an additional 15 days for



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MLMUPC's review and approval.

For example, industrial and commercial buildings over 3,000 square meters, hotels that are considered as commercial buildings, or building used for agricultural exploitations over 500 hectares.

How long is the construction permit valid for?

Although a construction permit shall cease to be valid, if works have not been undertaken within a period of one year from the date of signing on the construction permit, it can be renewed once.¹

This means that either construction starts within one year from the permit signing date, or the building owner renews the permit validity, if the work has not been undertaken within that period. Otherwise, the owner is required to re-apply for a new permit.

Construction is considered to have begun once the foundation bases are completed. For floor additions, the construction shall be deemed begun when the first pole is completed. In cases where construction has been suspended for more than one year, the permit holder can be required to either, complete the construction, or demolish the constructions at a determined date, and bear any expenses incurred.

What other requirements are necessary to comply with construction regulations?

To fully comply with construction regulations requires not only prior to construction, but also during the construction as well as construction completion.

a. Prior to construction

i. Legitimacy of Architect and Engineer

All enterprises and companies of architectural design and construction, having activities throughout the Kingdom of Cambodia, shall be placed under the competence of the Ministry of Land Management, Urbanization and Construction.²

Architectural design enterprises and companies are divided into four categories, and classified as enterprises, companies or natural persons.³

Construction enterprises and companies are divided into four categories, with a classification as enterprise, company or group of constructors.⁴

All enterprises and companies planning to carry out architectural or construction activities shall submit a business license application to the MLUC, whilst natural persons and groups of constructors

1. Article 16 of the Sub Decree No. 86 on Construction Permits, dated 19 December 1997

2. Article 1 of Prakas No. 75 on Management of Blueprint Design and Construction Companies and Entreprises, dated 02 September 1999

3. Article 2 of Prakas No. 75 on Management of Blueprint Design and Construction Companies and Entreprises, dated 02 September 1999

4. Article 2 of Prakas No. 75 on Management of Blueprint Design and Construction Companies and Entreprises, dated 02 September 1999

apply to the Department of Urbanization and Construction and the provincial/municipal land office.⁵

The MLUC has the competence to issue business licenses, close and suspend a business, and to check and follow up all business activities. Whereas the Department of Land Management, Urbanization and Construction is in charge of coordinating to make request to the Ministry for decision on the issuing of letter of authorization to open, close or suspend the business activities of Architectural design and construction enterprises and companies. These offices also follow up and check construction activities on site, and may submit reports to the Ministry for examination or settlement.

Letter of authorization to operate as an architectural design business

This authorization letter is valid for 3 years from the day of issue. Should a renewal be required, the enterprises or company shall apply 30 days before the expiration date.

ii. Location Site

The location, type, and size of the construction need to be taken into consideration to ensure the well-being, and safety of the public, and to avoid any environmental nuisance or potential disaster. Dangerous places such as landslide, wet region, which are not firm enough for building and any construction, are prohibited, as well as construction sites causing noise pollution.⁶

Besides the construction site itself, other factors such as suitable access and parking need to be taken into account. It must also be noted that resorts and historical heritage sites are preserved from any construction. In fact, construction activities are required have appropriate land access, both public and private roads, paths or cross roads, in proportion to the size, or use, of the building.

However, construction will be not permitted, despite respecting the conditions above, if the activity is likely to affect the preservation, or beauty, of a natural, historic heritage site, or antique vestiges.

iii. Construction Conditions

Any construction must respect the border between plots; meaning that construction will be made either next to the border, with a common wall, or a minimum of two meters away from the border. Moreover, this two meters space shall be left vacant without any construction.⁷

Furthermore, any construction requiring a construction permit is required to make available a supply of clean water and a sewage drainage system.

5. Article 1 of Prakas No. 75 on Management of Blueprint Design and Construction Companies and Entreprises, dated 02 September 1999

6. Article 27 of the Sub-Decree No. 86 on Construction Permits, dated 19 December 1997

7. Article 34 of the Sub Decree No. 86 on Construction Permits, dated 19 December 1997

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A supply of clean water shall be ensured to all construction plots, and if there is not a mains connection to the anticipated construction area, the applicant shall show evidence that it is able supply sufficient cleaning water to its buildings.

In cases where there is no connection to a main sewage system, the construction owner has the obligation to make provisions to treat and evacuate sewage water through a septic tank and a subterranean filtering system.

A construction permits shall be denied if it does not present sufficient assurance of hygiene and health of the projected construction and surrounding existing constructions.

iv. Construction Start up Permit

In order to be legally compliant, along with the construction permit, the building owner needs to take obtain all the other relevant permits. Within one month, after receiving the construction permit (article 3 of Prakas No. 32 construction management), the construction owner must apply for a construction site start up permit, prior to opening the construction site.

Applications need to be submitted at the MLMUPC, or the Municipal/Provincial Department of Land Management, Urban Planning, Construction and Cadastral.

b. During the Construction

Control and inspection by relevant authorities

During the construction period, the municipal and provincial administration can at all time to visit and control worksites and inspect the approved plans. In case that they observe any irregularities, they shall notify them in writing to the contractor and requested that they are remedied within a determined period. In the event of non-compliance or incomplete compliance with the orders received, an immediate work suspension shall be ordered by the Municipal or provincial administration.

c. Construction Completion

i. Certificate of Compliance

The construction permit recipient must notify completion of works to the chief of "Khan, or Srok", so that the competent authorities can ascertain the conformity between the finished construction and the construction as specified in the authorized construction permits. After that, the construction owner must apply for the certificate of compliance. Such certificate shall be mandatory as per provision of the article 21 of the Sub Decree No. 86.

ii. Construction Closing Permit

As per circular No. 01, after certifying the construction, the construction owner must apply for a construction-closing permit, at the MLMUPC or the Municipal/Provincial Department of Land Management, Urban Planning, Construction and Cadastre. It may take 6 days for reviewing and approval on the application of the construction-closing permit.

Conclusion

Due to rapid construction growth, we note that in practice, once construction is completed, some construction owners do not apply for a construction-closing permit, as officials do not fully control these issues. We note that, although according to law, construction sites shall be inspected and controlled for compliance to the permit, the effectiveness of this inspection by officials is still a concern.

We refer to the letter dated April 19, 2016 written by the Secretary of State of the MLMUPC, addressing the current challenging issues in the construction sectors, namely the lack of the management, technical inspection on the implementation at the site, the lack of the management on the construction professionals, and the lack of the technical officials. These issues shall be considered and settled in the ministerial strategic plans.

8. Article 31 of the Sub Decree No. 86 on Construction Permits, dated 19 December 1997

9. Article 20 of the Sub Decree No. 86 on Construction Permits, dated 19 December 1997