



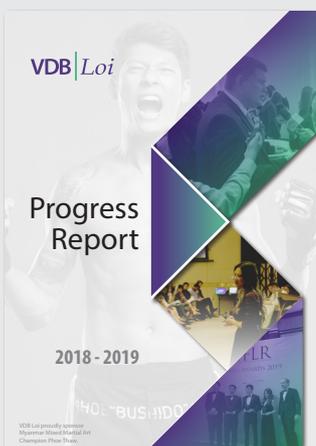
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THE IMPACT OF THE 2019 CONSTRUCTION LAW ON PROPERTY DEVELOPMENT IN CAMBODIA

In the wake of the tragic and fatal building collapse in Sihanoukville June this year, the new and hotly debated Construction Law has come into force on 2 November 2019 and is now set to become a real factor which will take into account in a wide range of investment projects in Cambodia.

In this note, we examine how existing and planned real estate and other investment projects are going to be affected going forward.

1. The new "Occupancy Permit" ("OP")

First of all, a new OP must be obtained by all new and existing buildings to permit the use, lease, or conduct business on the construction site. According to Article 44 of the 2019 Construction Law, the construction owner has the obligation to apply for the OP.

Moreover, a renewal of this OP is required in the following cases:

- Construction uses for residential purposes: at least every 10 years;
- Construction beside for residential purposes: at least every 5 years.

In case of failure to apply for the OP, the construction owner or the co-owner will face penalties for non-compliance. Penalties are the following: an imprisonment of a term of 1 to 3 years and a fine from 20 million riels to 40 million riels if there is a cause of injuries or harms on other people's wellbeing (Article 102), or imprisonment of a term of

5 to 10 years for any cause of permanent disability (Article 103), or imprisonment of a term of 7 to 15 years for causes of death (Article 104) which occurred by the use of a building without an OP.

2. Requirements for construction contracts

Furthermore, construction contracts must from now on meet certain requirements. The 2019 Construction Law has set out the standard requirements to regulate the constructor contract and has stipulated other regulations which the contractors are required to follow. For instance, the Article 67 of the 2019 Construction Law states that construction or demolition contracts should be in writing and should have minimum provisions such as identity of the contract parties, location of the work, contract price, technical and safety terms, etc.

Pursuant to the existing practice regarding the insurance policy, the 2019 Construction Law requires the contractors to issue an insurance policy to ensure that any misfortunate events do not occur during the construction period, except for real estate development project where insurance is required to be issued by the real estate developer.

3. Strengthening of the permitting conditions

Another point to note is that the

permitting conditions during the construction phase are strengthened as the existing practice has now been incorporated in the 2019 Construction Law. The following permits are required before or during construction:

- Construction permit and demolition permit: the construction owner has to apply before commencing the construction or the demolition.
- Opening site permit: a progress report of the construction or demolition work should be made by the constructor and agreed upon by the construction owner. The constructor shall submit it to the competent authorities.
- Closing construction: the law required that the competent authority should inspect the construction site and certify its compliance. After inspection, a compliance certification shall be issued by the inspectors who received the license or the approval from the MLMUPC.
- Harmful construction equipment inspection: a certificate valid 1 year is conducted by the government construction inspector or the construction inspection and the certification personnel with license issued by the MLMUPC (Article 47 and 49).

4. Responsibilities and liability

In regard to the responsibilities and liability of contractors or owners in connection with construction work, the contractor has various obligations including the issue of an insurance policy during the construction work, the issue of a guarantee on the construction after the delivery date and the issue of a progress report.

In addition, the contractor has joint liability with the construction owner for any damage to the third party which occurred during the construction phase (Article 40 71 72 & 77).

With respect to the construction owner, he is required to obtain all of the necessary approvals and permits. In addition, he is liable for any harm or damage which might be caused by any defects in the construction building which is due to mismanagement.

Moreover, the construction owner has joint liability with the builder or the contractor for any damage to the third party which occurred during the construction phase (Article 79 & 77).

5. The new definition of “construction owners”

Furthermore, the 2019 Construction Law has an interesting new development on the rights of persons building and using constructions while not owning the underlying land, for example because they are lessees. The 2019 Construction Law provides in what looks like a new category of property owner, named “construction owners”. It is defined in the law as:

“The owner of the construction or the real estate developer who has constructed the construction on their own land or on other people land with the permission or the approval from the land owner; or the perpetual lessee who has constructed the construction on the perpetual leased land of the lessor.”

The above definition clarifies the intended purpose of the 2019 Construction Law with the aim of differentiating between the construction owners and the land owners. It is quite interesting to see this development, which is functional to this law but which undeniably points towards a confirmation of the rights of for example, lessees of land who also build houses, villas or installations. However, the distinction of the construction

owners and the land owners under this law operates to clarify the responsibility and liability for the affected individuals.

6. The entry into force of this new Construction Law

Following ratification by the National Assembly, this law enters into force upon the date of the King’s signing being 2 November 2019.

For existing constructions, with a scale requiring construction permits, construction owners are required to apply for the OP within 2 years after the new Construction Law enters in force.

However, the practicality of the 2019 Construction Law is somewhat questionable due to the growing development of construction in Cambodia. Are there enough resources available to cope with the significant volume of new buildings while at the same time catching up the backlog of literally every single building in the country? The implementing of this new Law will probably be challenging, perhaps done gradually by the authorities.



Photo: Bangkok post
A building collapsed in Sihanoukville



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