

Some new points of the Law providing amendments and supplements to some articles of the Law on Construction

Ngoc Ha

*In order to overcome problems and shortcomings in regulations of the Law on Construction 2014, on June 17, 2020, the Law providing amendments and supplements to some articles of the Law on Construction (**Construction Law 2020 (amended)**) passed by the National Assembly with many new regulations on reform and simplification of administrative procedures, especially in the field of construction permit. Construction Law 2020 (amended) has received positive responses from the corporate community, especially enterprises operating in the construction and real estate sectors. In this Legal Newsletter, NHQuang would give some comments on prominent regulations related to the reduction of administrative procedures of the Construction Law 2020 (amended) having a direct impact on the enterprises with the following specific contents:*

Additional objects exempted from construction permits

In addition to those exempted from construction permit under clause 2, Article 89 of the Construction Law 2014, Construction Law 2020 (amended) has supplemented a number of cases exempted from construction permits in order to reduce the quantity of cases requiring construction permit. This is one of the important regulations of the new Construction Law in reducing administrative procedures¹. In fact, the works included in this list of construction permit exemption have met the conditions of construction such as having a construction design, having 1/500² detailed plan or specific projects governed by other specialized laws³. Therefore, the procedure to grant construction permit to these works is considered unnecessary and inappropriate, overlapping with specialized legal regulations. The new regulations of Construction Law 2020 (amended) have created an open environment in business investment for enterprises and reduce enterprises' costs and time in implementing administrative procedures, as well as pressure and burden for

¹ Statement No. 366/TTr-CP dated August 28, 2019 of the Government on project of Law amending and supplementing some articles of the Construction Law, page 2

² Ngan Ha, *Several beneficial regulations for enterprises in the amended Construction Law 2020*, Law Propaganda and Dissemination Portal, August 20, 2020. See further at: https://pbqdpl.hanoi.gov.vn/tin-moi/-/asset_publisher/sxBNLsQSLyY8/content/nhieu-quy-inh-co-loi-cho-doanh-nghiep-tai-luat-xay-dung-sua-oi-nam-2020

³ Statement No. 366/TTr-CP dated August 28, 2019 of the Government on project of Law amending and supplementing some articles of the Construction Law, page 10

specialized agencies. Some cases exempted from construction permits under Construction Law 2020 (amended) include:

- Advertisement works not subject to construction permits under the Law on Advertising; passive telecom infrastructure works as prescribed by the Government. The above regulation is given because Law on Advertising 2012 has exempted construction permits for the construction work of outdoor advertising screens with a single-sided area of less than 20m²; signboards, billboards with a single-sided area of less than 20m² with metal frame structure or similar construction materials attached to available construction works; independent billboards with a single-sided area of less than 40m²;⁴ but Construction Law 2014 has not updated this regulation. Therefore, the supplementation of advertisement works exempted from construction permits are in order to be consistent and united with the applicable advertising laws.
- Construction works notified about construction design appraisal results by construction professional agency after basic design is eligible for construction design approval and meets the conditions for grant of construction permit in accordance with the Construction Law.
- Works under projects using public investment capital, of which the construction investment is decided by heads of central bodies affiliated to political organizations, Supreme People's Procuracy, Supreme People's Court, State Audit, President Office, National Assembly Office, Governmental agencies, central bodies of the Vietnam Fatherland Front and socio-political organizations. The exemption of construction permit for these works is considered necessary and reasonable, ensuring the compatibility in terms of investment decision-making authority of the heads of central state agencies under Law on Public Investment 2019⁵.

Time limit for granting construction permits shortened

Construction Law 2020 (amended) has shortened the time to grant construction permits in the case of work construction, including construction permits with definite terms, adjusted construction permits, relocation permits, from 30 days⁶ to 20 days⁷; thus, the time has been shortened by 10 days. Particularly, the time limit to grant construction permits for detach houses is still kept at 15 days. This regulation may facilitate corporates' investment in construction sector. However, shortening document processing time will also become a challenge for the competent authorities since they must upgrade the

⁴ Law on Advertising 2012, Article 31, clause 2

⁵ Law on Public Investment 2019, Article 4, clause 4

⁶ Construction Law 2014, Article 102, clause 1, point e

⁷ Construction Law 2020 (amended), Article 1, clause 36, point b

professional quality and competency of the staff who receive and handle dossiers. Simultaneously, in order to accomplish this challenge, State agencies must further promote the application of modern technologies to the procedure of receiving and processing construction permit issuance. This regulation shall create a premise for an open legal corridor, facilitate construction investment activities.⁸

Amendment of conditions for construction work commencement

Construction Law 2020 (amended) has abolished one of the mandatory conditions to commence construction works under Article 107 of Construction Law 2014 “*Allocating sufficient capital according to the work construction process*”. Therefore, when commencing construction, investors do not need to prove the allocation of sufficient capital according to the construction progress. Regulations on capital used to be considered one of the conditions that create much pressure on construction enterprises since they will have to allocate capital sources before commencement of a project with available funds, loans, etc. The abolition of this condition has addressed the difficulty of several construction investors. The alleviation of this condition is also a step forward in administrative procedure reform, enabling investors to commence construction smoothly and quickly⁹.

However, it should be noted that Construction Law (amendment) 2020 supplements the responsibilities of investors in “*notification of the construction commencement date to the local construction management agency at least 3 working days before commencement*”¹⁰. This regulation has enhanced specialized agencies’ inspection and supervision over construction activities, as well as required investors’ compliance during construction.

Effectiveness of Construction Law 2020 (amended)¹¹

⁸ Ngan Ha, *Several beneficial regulations for enterprises in the amended Construction Law 2020*, Law Propaganda and Dissemination Portal, August 20, 2020. See further at: https://pbgdpl.hanoi.gov.vn/pho-bien-giao-duc/-/asset_publisher/sxBNLsQSLyY8/content/nhieu-quy-inh-co-loi-cho-doanh-nghiep-tai-luat-xay-dung-sua-oi-nam-2020

⁹ Ngan Ha, *Several beneficial regulations for enterprises in the amended Construction Law 2020*, Law Propaganda and Dissemination Portal, August 20, 2020. See further at: https://pbgdpl.hanoi.gov.vn/pho-bien-giao-duc/-/asset_publisher/sxBNLsQSLyY8/content/nhieu-quy-inh-co-loi-cho-doanh-nghiep-tai-luat-xay-dung-sua-oi-nam-2020

¹⁰ Construction Law 2020 (amended), Article 1, clause 39

¹¹ Construction Law 2020 (amended), Article 3, clause 2

Construction Law 2020 (amended) shall take effect from January 1, 2021. However, some regulations shall be applied from August 15, 2020, including those on construction permits:

- Construction works with construction design appraised by specialized construction body after basic design **before August 15, 2020** and request for construction permit under Construction Law 2014, shall continue to obtain construction permits in accordance with the regulations;
- For construction works requiring appraisal, appraisal for construction design adjustment after basic design by specialized construction body **from August 15, 2020 to December 31, 2020**, when carrying out such appraisal, the specialized construction body shall be responsible for coordinating with local construction state management agencies to review and assess the fulfillment of conditions for granting construction permits under Construction Law 2014 to get exemption for construction permits in accordance with Construction Law 2020 (amended); in the case where construction permits have been granted to the work, no adjustment will be required.

From the above analysis and comments, it can be seen that Construction Law 2020 (amended) has institutionalized the policies of the Party and State in administrative procedure reform to *“remove barriers, administrative measures directly interfering in the production and business market, creating inequality in access to social resources with a focus on capital and land, business opportunities affecting competitiveness of the private economy”*¹². In the process of project implementation, corporates need to pay attention to reviewing other legal regulations of Construction Law 2020 (amended) and promptly updating future legal guiding documents for effective application of these laws.

Note:

All analyses and comments herein are for reference only. This article is not considered as an official legal opinion to apply in any specific case. For further particular advices, please contact us directly.

¹² Resolution of the fifth Meeting of Viet Nam Communist Party’s Central Committee, Session XII No. 10-NQ/TW dated June 3, 2017 on developing private economy into an important driving force of the socialist-oriented market economy