

Having a building permit in Thailand does not guarantee it will be built or stay built...here's why

Recent media reports have cited certain development projects, which are not progressing and are currently stalled purportedly due to legal issues relating to their building permits. Although these projects have obtained a building permit for the construction of the project, they are still facing challenges. Why? To answer that, we must first understand the legal status of a building permit in Thailand.

The issuance of a building permit is legally an *“administrative order”*. An administrative order is defined in Section 5 (1) of The Administrative Procedures Act (1996)(“APA”) as *“an exercising of powers under the law by the competent officers with an effect of creating legal relations between persons in such a way to create, change, transfer, reserve, suspend, or which renders an effect to the status of rights or duties of a person, whether it be permanent or temporary, such as, ordering, permission, approval, decision of appeal, certification, and acceptance of registration, but excluding an issuance of rules.”*

The relevant law for the issuance of a building permit administrative order is the Building Control Act (1979)(“BCA”). If a person wishes to construct, modify or move a structure, such person requires permission to do so. The administrative procedure is as follows. The applicant submits the application documents to the local administrative office. The responsible officer schedules a site visit. He will also verify the application documents (e.g. construction drawings and specifications, etc.). Then he will review if the contemplated structure is legally permissible by law. In certain areas of Thailand, like Phuket the land use restrictions are basically under three laws: (1) BCA; (2) The City Planning Act (1975); and (3) The National Environmental Control and Maintenance Act (1992).

If all the application documents are in order and the building is legally permissible at the applied for location, the local administrative office *must* issue the building permit.

If the documents are insufficient the administrative office will deny the issuance of the building permit and inform the applicant in writing with the reasons for the non-issuance, within forty-five days from the date of the application. Thus, the legal effect of this administrative order is the legal permission to a person to build a certain structure on a defined plot of land.

How can it now be that a person that already received a building permit can be stopped from exercising his right under the permit? The answer is: he can not. As long as the building permit is in effect, the applicant has the right to construct the building as permitted. Section 42 APA states that *“an administrative order shall be valid so long as it is not revoked or terminated by time condition (...)”*.

It should be noted that such “time condition” does pertain to building permits. The temporal validity of a building permit depends on the size of the building to be constructed. Licenses of one year are issued for buildings with less than 10,000 square meters, two years for buildings exceeding 10,000 square meters, but not exceeding 100,000 square meters and three year licenses are issued for buildings exceeding 100,000 square meters. Such licenses are renewable up to four times. The first renewal will be for same period of time as the initial term for which it was granted. However, the second, third and fourth renewal term will be for a period of one year each. A little known fact in relation to building permits is that the applicant has the duty to report the progress and invite the official to inspect the progress of the construction every ninety days.

Can a building permit be *revoked* after its issuance and prior to its expiration? Yes, it can. Legally, a building permit is *merely* an administrative order and administrative orders can basically be revoked through an appeal or by action of the relevant government administration itself. The revocation can be initiated through an appeal by “a party”. Note that such “party” is not necessarily the person subject to the administrative order. It can also be any third party affected by such administrative order. Such person could be the adjacent neighbour of a development project that received a building permit. If the officer agrees that there is a problem of facts, the point of law or suitability he might revoke or amend the order.

Furthermore, Section 49 APA states: *“The competent officer or the supervisor of the competent officer may revoke an administrative order according to the bases in Section 51,*

Section 52 and Section 53, whether or not it has passed the steps of appeal or protest under this law or other laws.”

The conditions for revoking and administrative order without appeal are strict. The relevant regulations, treatment and outcome of a revocation of an administrative order depends on whether or not original order was a lawful or an unlawful one. Expressed in simplified terms, the revocation of a lawful administrative order is subject to compensation for damages arising out of the revocation. Whereas the revocation of an unlawful administrative order is only subject to compensation if the recipient of the administrative order was not aware of the unlawfulness of the order. Section 51 APA explicitly states that if:

“(1)The said person has produced false statements or has concealed facts which should have been reported, or has made a threat or a persuasion by offering property or providing any other benefits illegitimately; or

(2)The said person has produced statements which are incorrect or incomplete in the material part thereof; or

(3)The said person has known of the unlawfulness of the administrative order at the time of receiving administrative order, or his/her not knowing of such is due to his/her serious negligence.”

Such person will not be entitled to any compensation. Thus, an illegal building permit obtained through means of corruption, for example, is revocable *without* any compensation.

Therefore, once the building permit is received, that alone is no guarantee that the applicant will be able to complete the project to which the permit applies. A building permit can “expire”, be revoked after an appeal and it can also be revoked by the administration itself. To mitigate the harsh consequences of revocation it is strongly advised to perform a strict and comprehensive due diligence on the legality of the project prior to applying for the permit.