

Legal guidelines for a lease agreement

In common practice, lease agreements that set forth the terms and conditions of the lease of office space or apartments or houses are prepared and provided by landlords. Some landlords may require both the lease agreement and service agreement to be signed for tax-saving purposes.

As a tenant, should you enter into a lease agreement without reviewing it or consulting a legal adviser? The Thai Civil and Commercial Code (CCC) contains 34 sections that specifically stipulate: the general provisions of a lease; the duties and liabilities of the landlord and the tenant; and extinction of the lease. There is no standard form of lease agreement, as various issues are involved that have to be considered and negotiated with landlords on a case-by-case basis.

One of the principal legal concerns is the term of the lease agreement. Under the CCC, if the lease period is more than three years, it is enforceable only for three years unless it is made in writing and registered with the Lands Department. Most landlords, not wanting to register a long-term lease and pay the registration fee, prefer a lease period of less than three years.

Tenants, on the other hand, who invest large amounts of money on renovation and enhancements, probably do not want to vacate after three years. The alternative normally provided by the landlord is to grant the tenant an option to renew the agreement for an additional three years.

It is important to note that such an option or contractual right of the landlord and tenant to renew the lease agreement is deemed to be a promise under Thai law and will only bind the person making the promise. The death or incapacity of the landlord could be detrimental to the tenant's interests in the property, as the landlord's heirs or legatees are not bound to the promise made by the landlord.

Moreover, many relevant Supreme

Court judgments have deemed that certain wordings in lease agreements are not promises and, therefore, the landlord is not obligated to continue the lease. The tenant must carefully review relevant Supreme Court precedents or consult with a legal adviser concerning the renewal option.

Some tenants are uncertain as to how long they want to lease and stay in the leased property. If the lease term is too long, early termination by the tenant could result in the tenant having to pay rent until the end of the agreed period and also give the landlord the right to forfeit the entire deposit.

Generally, a lease agreement is extinguished at the end of the agreed period without notice. If the tenant is unsure about the lease period and foresees the possibility of terminating the lease before the end of the term, he should try to have a provision included in the lease agreement clearly indicating that he can terminate the lease before the agreed term without being penalised.

Another issue is the landlord's right to inspect the leased property at any time. Under the CCC, the tenant is obligated to allow such inspection at reasonable times and intervals. Therefore, the tenant should review the agreement to make sure that the landlord can conduct the inspections only at reasonable

times and with written notice in advance.

With regard to the duty to maintain the leased property, the landlord is bound to reimburse the tenant for any necessary and reasonable expenses incurred by the tenant for the maintenance of the leased property, except expenses for ordinary maintenance and petty repairs.

The landlord is liable to make all the necessary repairs to any defects that may arise during the term of the agreement, except those which, by law or custom, are to be done by the tenant. The tenant is bound to take as much care of the leased property as a person of ordinary prudence would take with his own property, and to conduct ordinary maintenance and petty repairs. In most lease agreements, the landlord normally passes such duty of maintenance, whether major or minor, to the tenant.

There are other important issues such as the security deposit and termination of the lease. The tenant should carefully review the relevant provisions or seek legal consultation before entering into a lease agreement in order to better protect his rights under Thai law.

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