

Legal Update: Invalidity of Extended Lease Terms in Thailand

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Under Thai law, leases of immovable property are statutorily limited to a maximum term of 30 years. Despite this limitation, many business operators have sought greater certainty in their long-term operation by attempting to arrange the lease term longer than 30 years. For foreign investors, who are prohibited from owning the land in Thailand, the long-term leases are particularly critical to support the business continuity and long-term planning.

In practice, some investors sought to overcome this limitation by incorporating pre-agreed renewal clauses or executing consecutive lease agreements in advance, with the intention of securing lease terms exceeding 30 years without the need for renegotiation or re-execution upon each expiration.

Nevertheless, the Thai Supreme Court ruled that such mechanisms are legally unenforceable, as they contravene the statutory limitation on lease duration (“**Ruling**”). The Court further reaffirmed that any contractual mechanism purporting to extend a lease term beyond the 30-year maximum without a new negotiation and execution at the time of renewal is invalid and has no legal effect under Thai law.



1. Overview of Laws Governing Property Purchase and Lease in Thailand

- 1.1 Under **the Land Code**, a foreigner is prohibited to acquire land unless permitted for specific purpose or permitted pursuant to an international treaty that grants the right to hold immovable property. Consequently, many foreign investors rely on leasehold arrangements to secure long-term control over property.
- 1.2 Pursuant to **the Condominium Act B.E. 2542 (1999)**, foreign ownership in a condominium is limited to 49 percent of the total units to prohibit the foreign from having control over the building as the majority owner. This restriction prevents foreigners from purchasing a unit in a condominium where the foreign ownership quota has already been reached.
- 1.3 Under **the Civil and Commercial Code (“CCC”)**, the maximum term of lease of immovable property is 30 years. Any lease exceeding this period is automatically reduced to 30 years. While leases may be renewed after expiry, each renewal is also limited to 30 years.

2. Summary of Ruling

In this case, the parties entered into a 30-year lease agreement with the commitment to extend the lease for two additional 30-year terms if the lessee requests. The lessee made full payment for 90-year lease (30+30+30) on the contract date.

From the fact that the lease contained no provisions to adjust rent or conditions for the extended terms, despite covering a 90-year period, the Court consider that the substance of the contract is to create a single 90-year lease, rather than separate renewal and this arrangement was intended to circumvent the 30-year limit under CCC, given that it allows the lease to continue for 90 years under the original terms without taking into consideration of the changes in economic circumstance or property conditions.

In consequence, the Court ruled that clauses providing for the two additional 30-year extensions were void and unenforceable.

This Ruling sets a clear precedent that any pre-agreed renewal clauses or consecutive lease agreements designed to extend leases beyond the statutory 30-year limit are invalid. It reinforces the strict application of CCC and restricts the mechanisms previously used by foreign investors to secure long-term leasehold interests in Thailand.

3. The Recommendation for the Existing Lease Agreement

The lease arrangement containing the renewal term similar to which is invalidated by the Ruling were commonly used in Thailand before its issuance. The review of renewal term in your existing Lease Agreement whether it is similar to the void term is highly recommended. If such renewal terms are identified, revisions should be made promptly to avoid the risk of invalidation by the courts.

The example of the revision which is less likely to be invalidated under the Ruling, includes

- (1) The lessee may be granted an option to register a new 30-year term with the negotiation on some lease conditions, for instance, lease fee or other facility fee. This option should not constitute an “automatic” renewal; or
- (2) The rental fee for the new term may be set based on the current term’s rental, with an escalation provision—for example, tied to the Consumer Price Index (CPI) over the preceding 30 years, and payment for the new term shall be paid at the time of renewal.

4. Alternative Options

If the uncertainty in future negotiation is posing the high risk in business, investors undertaking substantial investments, including foreign investors, may consider adopting a legal arrangement that permits the lease of immovable property for a period of up to 50 years, subject to the conditions prescribed under the law governing leases of immovable property for commercial or industrial purposes.

The Lease of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) establishes specific rules and conditions for the lease of immovable property for commercial and industrial purposes. Under this act, foreign investors may register a lease of immovable property for a term of up to 50 years for eligible business operations. The lease may subsequently be renewed for an additional term of up to 50 years, provided that a new written agreement is executed and duly registered with the Land Office, thereby providing a legal option for long-term business leases.

The eligible business must fall within activities that foreigners are legally permitted to operate under **the Foreign Business Act B.E. 2542 (1999)** and must meet at least one of the following conditions:

- (1) Commercial businesses with an investment of at least 20,000,000 THB.
- (2) Industrial businesses eligible for investment promotion.
- (3) Commercial or industrial businesses beneficial to Thailand’s economy and society, as approved by the Minister of the Interior and the Cabinet.

Apart from the lease of immovable property for commercial or industrial purposes, rights over leasehold assets under **the Rights Over Leasehold Assets Act B.E. 2562 (2019)** currently provide the right to use immovable property for a period of up to 30 years, similar to a standard lease. However, there is a possibility that the law may be amended to extend the maximum term of such rights to 99 years, as the government has previously proposed such extension. If the proposed amendment is enacted, lessees may be able to secure rights exceeding 30 years without conflicting with the lease provisions under CCC.

Such rights grant the holder rights and obligations similar to those of an owner, except that the actual owner retains the right to reclaim the property from unauthorized possessors. Such rights must be registered with the Land Office on the relevant title deed or condominium ownership certificate. Once registered, the rights remain attached to the property notwithstanding any subsequent change in ownership until expiration.

5. Conclusion

The Thai Supreme Court issued the Ruling rules that leases exceeding 30 years through pre-agreed renewals or consecutive agreements are legally unenforceable. Any extension beyond the 30-year statutory limit

must allow new negotiation between the parties in compliance with the Ruling, such as agreement on a new lease fee or other terms and conditions.

Although this Ruling restricts long-term lease strategies, the long-term lease may be achieved through lease agreements with renewal options that are not automatic, as well as through long-term leases granted to large capital investors for commercial and industrial purposes pursuant to **the Lease of Immovable Property for Commerce and Industry Act B.E. 2542 (1999)**.

Additionally, the maximum term of rights under **the Rights over Leasehold Assets Act B.E. 2562 (2019)** may be extended from 30 years to 99 years in the future. Therefore, it would be advisable to monitor any proposed amendments to this law.

By carefully structuring leases under these legal frameworks, investors can maintain long-term security, manage risks, and ensure compliance with Thai property laws.

Should you have any questions or require further clarification regarding Thai property laws, please do not hesitate to contact One Asia Lawyers (Thailand Office), where our team will be pleased to assist you.

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In collaboration with Thai lawyers, she provides advice on a wide range of legal matters, focusing primarily on corporate, labor, and compliance fields. In the corporate sector, she handles a broad spectrum of issues, from various license applications—including those related to foreign ownership restrictions, BOI, and the Foreign Business License (FBL)—to complex corporate legal matters such as mergers, dissolutions, and liquidations. She also has extensive experience in labor law, handling cases ranging from general employment issues to labor litigation. Furthermore, her responsibilities include conducting compliance audits, advising on inheritance and real estate transactions, and assisting with the establishment of external whistleblowing systems.

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