

New Contract Controls Introduced for Residential Property Leasing Businesses in Thailand

Chaiwat Keratisuthisathorn
chaiwat.k@tilleke.com

Section 35 *bis* of the Consumer Protection Act B.E. 2522 (1979) grants the Contract Committee of the Consumer Protection Board the power to designate “contract-controlled businesses,” in order to control the contents of written contracts between certain businesses and their consumers in the course of sales or services. Designation as a contract-controlled business is intended to ensure that contracts contain necessary terms and conditions and to prevent consumers from being unreasonably disadvantaged by unfair contract terms.

On February 12, 2017, the Contract Committee used that power to issue “Notification of the Contract Committee Re: The Stipulation of Residential Property Leasing as a Contract-Controlled Business B.E. 2561 (2018)” (the “Notification”), which was published in the *Government Gazette* on February 16, 2018. As a result, residential property leasing will be deemed a contract-controlled business as of May 1, 2018.

The Notification defines a “residential property leasing business” as a business that leases (or subleases) five units of property or more to individual lessees, for residential purposes, in exchange for a fee collected by the business operator, regardless of whether or not the units are in the same building. Property is defined to include any accommodation, house, condominium unit, apartment, or other kind of residential property leased for residential purposes, excluding dormitories and hotels which are regulated under a separate regime.

The Notification imposes the following requirements:

1. Residential lease agreements must include a version in Thai and must contain the following details:
 - a) Name and address of the business operator and its authorized person;
 - b) Name and address of the lessee;
 - c) Name and location of the property;
 - d) Details of the property’s physical condition, including any items and equipment in the property;
 - e) Term of the lease specifying its commencement date and expiration date;
 - f) Rental fee rates and due dates for payment;
 - g) Public utility fee rates and due dates for payment;
 - h) Service fee rates, which must be reasonable and at the actual cost paid for the services, and due dates for payment;

- i) Other fees and expenses (if any), which must be reasonable and at the actual cost paid, and due dates for payment; and
 - j) Amount of security deposit.
2. Invoices for the fees in items (f)-(i) above must be sent to the lessee at least seven days before their due dates, and the lessee will have the right to check information related to the payments shown in the invoices.
 3. Details of the physical condition of the property and equipment (if any), inspected and acknowledged by the lessee, must be attached to the lease agreement, and a duplicate must be delivered to the lessee.
 4. The security deposit must be immediately returned to the lessee at the end of the agreement, unless the business operator has to investigate any damage to ascertain whether or not it is the responsibility of the lessee. If the lessee is found not to have caused such damage, the security deposit must be returned within seven days from the end of the agreement and the business operator retaking possession of the property. The business operator is also responsible for any expenses incurred in returning the security deposit to the lessee.
 5. The lessee has the right to terminate the lease agreement early provided that at least 30 days' advance written notice is given to the business operator.
 6. Any material breach for which the business operator can terminate the agreement must be clearly written in red, bold, or italic font. The business operator can only terminate the agreement if written notice has been given to the lessee to rectify the breach within 30 days of receipt and the lessee fails to do so.
 7. The agreement must be made in duplicate, one of which must be given to the lessee immediately upon execution.

Under section 35 *ter* of the Consumer Protection Act, any residential lease agreement which does not contain the required terms above shall be interpreted to include them as implied terms.

Residential lease agreements must not contain:

1. Any waiver or limitation of the business operator's liability from its breach of agreement or wrongful acts;
2. Any advance rental fee equivalent to more than one-month's rent;
3. Any term allowing the business operator to change the rental fees, public utilities fees, service fees, or any other expenses before the end of the agreement;
4. Any security deposit of more than one-month's rental fee;
5. Any term allowing the business operator to confiscate the security deposit or advance rental fee;
6. Any term allowing the business operator or its representatives to inspect the property without prior notice;
7. Any stipulation of electricity and water supply fees exceeding the rates specified by the relevant authorities;

8. Any term allowing the business operator to prevent or obstruct the lessee's access to the property to seize or remove the lessee's belongings if the lessee defaults on rental fees or other expenses related to the lease of the property;
9. Any term allowing the business operator to request any fee or expense for renewing the lease;
10. Any term allowing the business operator to terminate the agreement early other than for a material breach of the lease agreement by the lessee;
11. Any term making the lessee liable for damages incurred due to ordinary wear and tear from usage of the property's contents and equipment;
12. Any term making the lessee liable for damage to the property, contents, and equipment that was not the lessee's fault and in force majeure situations; and
13. Any term making the lessee liable for defects to the property, contents, and equipment incurred due to ordinary wear and tear through usage.

Under section 35 *quarter* of the Consumer Protection Act, a residential lease agreement that includes any of the prohibited terms above shall be interpreted as not including them.

Any business operator who fails to meet the above requirements may be subject to imprisonment not exceeding one year and/or a fine not exceeding THB 100,000 (section 57 of the Consumer Protection Act).

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

bangkok | hanoi | ho chi minh city | jakarta | phnom penh | vientiane | yangon

www.tilleke.com