

Commercial lease agreements and thai law

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Long-term lease agreements in Thailand are generally limited to a maximum term of 30 years and may then be renewed for another 30-year term under Section 540 of the Civil and Commercial Code of Thailand.

Under certain circumstances, however, the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999 grants a maximum lease term of 30-50 years if the lease has an industrial or commercial purpose. After this initial term, an extension of 30-50 years is possible. Similar to an ordinary long-term lease, this extension term can only be registered after the initial term has already lapsed.

Regional comparisons: Thailand's neighbours have similar regulations, but the duration of the maximum lease term is generally longer. In Vietnam, for example, the term for an ordinary lease can be up to 50 years, and even up to 70 years in specific areas with approval from the prime minister.

The lease rules and terms in Laos are slightly more diverse. As in Thailand, the ordinary lease term is 30 years with an option for extension and 50 years with an option for extension for investment and business activities, based on the scale of the project. Laos also allows 75 years in specific economic zones and up to 99 years for diplomatic purposes or international organisations.

In Cambodia, the laws allow for a 99-year lease term, while foreign companies with privileges from the Cambodia Investment Board and the Cambodia Development Council may even be permitted to own the land on which they are building factories. Malaysia also allows a maximum lease term of 99 years. Under Myanmar's new foreign investment law, foreign companies will be allowed to lease land for up to 50 years, with up to two possible extensions of 10 years each.

Eligibility: Although Thailand's maximum commercial lease term of 30-50 years falls short of those in some of its neighbours, investors are nevertheless eager to seek such arrangements. To be eligible for a maximum commercial lease term in Thailand, a number of conditions must be met.

The leased property must be located in an area specified for industrial or commercial purposes or in an industrial estate zone. The lessee can be an individual person or a company, either of Thai or foreign nationality.

If the purpose of the lease is commercial, the commerce must show an investment of at least 20 million baht. If the purpose of the lease is industrial, it must be a type of industry that would be eligible to apply for investment promotion under Thailand's Investment Promotion Act and related laws. Alternatively, a commercial or industrial enterprise that has been announced and published by the Interior Minister as being beneficial to Thailand's economy and society is also eligible to register a commercial lease.

If a non-Thai person or entity is applying for registration of a commercial lease, the operated business must be one that is not prohibited to foreigners under the Foreign Business Act. Non-Thais are additionally required to provide evidence they brought funds for the investment into Thailand in foreign currency, have funds in a foreign currency account or have funds in a baht account of a non-resident.

Another important requirement is the work plan that each applicant has to submit to the Land Department along with the application form, a report on environmental impact and a certificate issued by the Public Works and Town & Country Planning Department. The latter confirms the land to be leased is located in a commercial or industrial area or an industrial estate.

The work plan must contain details about the land exploitation plan, the amount and the source of the capital fund, employment and a time frame for the business operation. Once the lease has been successfully registered with the Land Department, the lessee must proceed with the work plan within 90 days, under full compliance with the conditions laid down in the registration.

If the plot of land to be leased exceeds 100 rai in size, additional conditions apply: the local council where the land is located must be given the opportunity to comment on the application of the lease, and only businesses that are beneficial for Thailand's exports, employment situation or manufacturing technology _ or are otherwise necessary or beneficial to the country's economy and society _ are eligible to register such a commercial lease. If the lessee is non-Thai, the minimum investment amount must be 100 million baht or more.

Advantages: Of course, the key advantage that commercial leases have over ordinary leases is the longer lease term. But there are other advantages as well. The lease for commercial or industrial purposes can be mortgaged as a security for financing, which an ordinary lease of property cannot. And if the lessee is an individual person, his heirs are able to inherit the rights and obligations from the lease after his passing.

Prepared by [Ahmet Yesilkaya](#), a consultant in the Corporate and Commercial Department at [Tilleke & Gibbins](#). Please send comments to [Andrew Stoutley](#) at andrew.s@tilleke.com

About the author



Writer:
[Tilleke](#)
 &
[Gibbins](#)
[International](#)
 Ltd
 Position:
 Consultant
 company

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