

Inheritance of leasehold property in Thailand

Published: 16/10/2017 at 04:30 AM

Newspaper section: [Business](#)

With its beautiful beaches, scenic mountains and bustling cities, Thailand has long enjoyed a reputation as a popular tourist destination. At the same time, the country has also become an attractive hotspot for foreign nationals wishing to buy property.



With a plethora of options -- from convenient condominiums in downtown Bangkok, to lodges high up in the serene mountains of northern Thailand, to luxurious villas and apartments situated idyllically beside the Andaman Sea -- more and more foreigners are clamouring to either settle down in Thailand or invest in the burgeoning property market.

But foreign investors face a well-known obstacle to making their dreams come true: the Thai Land Code forbids foreigners, whether individuals or companies, to buy or hold land, unless they obtain permission from certain government authorities, such as the Board of Investment or the Industrial Estate Authority of Thailand.

Despite these land ownership restrictions, the Condominium Act does permit foreigners to own units in condominium projects, provided such foreign ownership does not exceed 49% of the total area of all the units in the project.

There are also no regulations prohibiting foreigners from leasing property. Therefore, leasehold is the most popular type of legal structure for foreigners who wish to own other types of real estate, such as a plot of land with a house or a villa.

Under Thai law, all leases for immovable property must be made in writing, and agreements exceeding three years must be registered with the Land Office where the property is located; otherwise, the agreement will only be enforceable for three years. Under the Civil and Commercial Code, the maximum duration for a lease of property is 30 years, with an option to renew for another 30 years. However, the option to renew is treated as a private agreement between the respective parties.

Another issue to consider is that, as a general principle, one of the material elements of a lease agreement is that it must be specific to the lessee who is named in the lease agreement, and thus the lessee's qualifications are a material consideration for obtaining a lease.

Previous Supreme Court judgements have noted that lessors generally focus their consideration on the qualifications of the lessee, and whether such lessee has the right to use and maintain the leased property.

As the lessee's rights are exclusive to each lessee, the lease will therefore automatically be terminated upon the death of the lessee.

For this reason, the current trend for some investors is to consider investing in a leasehold property through a company, as it is convenient to transfer the company's shares to the investor's heir(s), without the need to proceed with a new lease registration.

However, the recent Supreme Court Judgement No.11058/2559, which has been approved by the general assembly of the Supreme Court, raised an important issue. The court held that if parties intend to obtain the exclusive rights of a lessee or a lessor, and they wish to terminate the lease agreement upon the death of the lessee or lessor, such agreement must specify the duration of the lease to enable it to be effective throughout the life of the lessee or lessor.

If the duration of the lease is not for the entire life of the lessee or lessor, it will be deemed that the parties agree to waive their exclusive rights, and thus the lease will not be terminated upon the death of either party.

The Supreme Court also noted that some clauses specified in a lease agreement can be interpreted to mean that the lessor has waived exclusive rights. For example, this may occur when the lease duration is for a 30-year period, and the lessor has received a one-time rental fee for the entire duration of the lease upon commencement of the lease, or the lessor allowed the lessee to sublease the property to a third party without prior consent of the lessor.

The Supreme Court viewed that the inclusion of these clauses reflected the fact that the lessor did not consider the lessee's qualifications to be material elements of the lease agreement. It further stated that the terms and conditions agreed by the parties, such as the duration of a lease, will be enforceable upon entering into a lease agreement and will persist in accordance with the terms stipulated in the agreement, which means that the lease will not be automatically terminated upon the death of the lessee, and can also be inherited by the lessee's heir(s).

The Supreme Court's decision on these issues appears to differ in some ways from previous judgements, and it will be important to monitor how the particular facts and circumstances of other upcoming cases will be interpreted.

When entering into a new lease, all parties involved will want to ensure that the lease agreement has been correctly drafted to enable them to retain full legal rights and protection over the property.

This article was prepared by Theerapat Sombatsatopnkul, an attorney-at-law from the corporate and commercial department at Tilleke & Gibbins. Please send any comments or questions to Andrew Stoutley at andrew.s@tilleke.com

About the author



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