Global Corporate Real Estate Guide - Malaysia

Leases

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# What are the usual forms of leases?

The NLC distinguishes between “leases”, which have a term exceeding three years (and are required to be registered) and “tenancies exempt from registration”, which have a term up to three years (and are not registrable).

Registration of a lease accords a tenant certain rights against future owners of the land. However, tenancies may be endorsed and will give the tenant similar rights to that of a registered tenant.

Leases and tenancies may be made up of the following:

Lease or tenancy over the whole or part of a land

Where the lease or tenancy is over vacant land, the tenant may have rights for development or further use of the land. Where there is vegetation, buildings or structures on the land, by implication of the definition of land, the lease or tenancy would include such vegetation, buildings or structures.

Lease or tenancy over part of a building or structure

Leases or tenancies may also be in respect of only part of a building or structure. Lessees / tenants in this instance will not normally have rights in and to the land.

# Are lease provisions regulated or freely negotiable?

Generally, provisions of a lease / tenancy agreement are freely negotiated by the parties. However, certain provisions in the NLC, unless specifically excluded, are implied in lease / tenancy agreements.

# Is there a maximum term for leases? Can these be extended?

The NLC sets provides that:

Where the lease is over the entire land, the maximum tenure of the lease is 99 years

Where the lease is over part of a land, the maximum tenure of the lease is 30 years

Where the parties enter into a tenancy exempt from registration (over the entire or part of the land), the maximum tenure of the tenancy is 3 years

Parties may negotiate to provide for an extension of the lease by election by one or more parties or by mutual agreement. In the absence of such extension, the lease will expire.

# What are the usual lease terms?

The length of the term usually depends on the purpose of the lease and the type of property. Most tenancies / leases of office or retail spaces are for three-year (tenancy) or five-year (lease) terms with options to extend the term for a further period(s) of three or five years.

Leases for industrial and commercial lands are normally for longer periods ranging from 5 – 10 years or 15 – 30 years. Often, lessees / tenants are entitled to rights of renewal for additional terms.

Large commercial and industrial facilities will sometimes require an electricity substation to be built on the land and the utility company will normally take a long-term lease over the land for the portion where the substation is situated.

# Are there instances where tenants may demand an extension of the lease?

These are to be contractually agreed by the parties. In the absence of an option to renew clause in the relevant lease / tenancy agreement, lessees / tenants do not have an express right to extension.

# On what grounds may a lease be terminated?

Lease and tenancy agreements normally provide that parties may terminate upon:

expiry of the agreed tenure of the leases or tenancies exempt from registration;

parties having mutually agreed to terminate without cause;

the breach of the terms of the lease / tenancy, where a lessor / landlord can generally terminate a lease / tenancy should the lessee / tenant fail to honor the terms of the lease / tenancy agreement (including failure to pay rent and to maintain the property in good condition);

damage and destruction to the property and compulsory acquisition may also allow a lease to be terminated.

# Must rents be paid in local currency?

Parties are free to decide the currency of payment, but Malaysian ringgit is typically used.

# Is rent paid on a monthly basis? Is it required to be paid in advance?

Rent is usually paid monthly and in advance (within the first seven days of the month). However, this is subject to contract.

# How is rent reviewed? Are there limits to the increase in rent?

Rent is usually fixed for the initial term, but this is subject to contract. The mechanism for determining the revision of rent for a renewal period is usually provided for in the lease / tenancy agreement. It is common when considering rent revision that rent for the renewal period takes into account the current market value of the property. Otherwise, a formula may be provided, which may provide limits for increasing the rent.

There is no specific limitation on rent increases.

# What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Maintain and keep the structure of the building in good and tenantable condition and repair

Take out fire insurance on the property

Pay all quit rent and assessment in respect of the land

Permit the tenant to peaceably hold and enjoy the property during the term without any interruption or disturbance by the landlord (subject to the tenant not breaching the lease)

The following is usually required of tenants:

Pay rent to the landlord in a timely manner

Keep the interior of the property in good and tenantable condition and repair

Pay all utilities due

Take out fire insurance on the ’tenant’s property

Use the property for the permitted use only

Yield up the property upon expiry or early termination of lease / tenancy

Not cause any annoyance / nuisance to the lessor / landlord or any other person

Not to make any structural renovations without the consent of the lessor / landlord

Not use the premises for illegal / immoral purposes

# What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

Typically, a lease / tenancy can only be transferred, assigned or sublet to a third party with the prior written consent of the lessor / landlord. However, parties are free to contractually agree to subletting rights.

Where there is sub-tenant / sub-letting occurs, the period of the sub-tenancy term / sublease term must end before the expiry of the term of the head tenancy / head lease.

# What happens in the event of destruction of the leased premises?

Depending on the severity of the destruction, the lessor / landlord may opt to rebuild the property. In the meantime, rent of the property is often suspended.

In the event that the leased premises become untenantable, the lessee / tenant usually has the right to terminate the lease / tenancy agreement without any penalty.

# Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the premises. However, the tenant is usually responsible for insuring the ’tenant’s property within the leased premises.

# Will the lease survive if the owner sells the leased premises?

Given that a lease is a registrable transaction and the NLC provides that leases are to be registered, upon registration of a sale of property, the new owner will be aware of the existence of the lease. The terms of the lease will survive and are binding on the new owner.

However, where the parties have entered into a tenancy exempt from registration or the lease is not registered before the sale of the leased property, the lease or tenancy agreement will not bind the new owner unless the new owner agrees to assume the role of the current owner as lessor or landlord after the sale of the leased premises.

# Will the lease survive if the leased premises are foreclosed?

If the foreclosure is in respect of a legal charge registered after the lease, then in the absence of a non-disturbance agreement, the lease may be terminated at the option of the chargor.

Where the lease was registered prior to a legal charge, then the lease will survive foreclosure proceedings. Again, tenancies generally do not survive foreclosure proceedings.

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