



New Type of Title Deeds

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The Department of Land recently introduces a new type of title deeds whose English translations are provided at the end of this writing. The department introduces these new title deeds (one for a land plot and another one for a condominium unit) to evidence a new type of lease (the “New Lease”) under the Rights Deriving Property Act, B.E. 2562 (2019) (the “New Lease Act”). In a Thai language, this New Lease Act means the Act relating to a property being a derivative of rights. This New Lease is introduced to deal with inherent limitations of a traditional lease under the Civil and Commercial Code (the “Traditional Lease”). As the New Lease Act has addressed and largely eliminated those inherent limitations of the Traditional Lease, as far as a lessee is concerned the New Lease is better than the Traditional Lease.

Note on the Lease of Immovable Property for Commercial and Industrial Uses Act, B.E. 2542 (1999)

It is no secret that businesses and practitioners have some reservations with the limitations of the Traditional Lease for a long time. These limitations arise largely from the precedents/interpretations of the Supreme Court Judgments. Prior to the New Lease Act, the Lease of Immovable Property for Commercial and Industrial Uses Act, B.E. 2542 (1999) (the “Industrial Lease Act”), which came into force in an aftermath of a 1997 Asian financial crisis that got started in Thailand, has addressed those limitations of the Traditional Lease by introducing another type of lease, a commercial and industrial under the Industrial Lease Act (the “Industrial and Commercial Lease”). However, due to a zoning limitation, the Industrial and Commercial Lease has not been widely used. In many ways, this New Lease Act is modeled after the Industrial Lease Act.

As a result of these improvements in the New Lease Act, everything else being equal the economic value of the New Lease is greater than the economic value of the Traditional Lease of the same period.

1. Transferability

Traditional Lease	New Lease	Commercial and Industrial Lease
The lessee may not transfer the Traditional Lease either partially or entirely unless a lease agreement explicitly allows or the lessor grants a consent.	<p>The New Lease is freely transferable without requiring any consent of the lessor.</p> <p>The new lease cannot be split, so a partial transfer of the new lease is not possible.</p>	The Commercial & Industrial Lease is freely transferable either partially or entirely without requiring any consent of the lessor unless a lease agreement explicitly prohibits a lease transfer.

2. Statutory Right to Sublease

Traditional Lease	New Lease	Commercial and Industrial Lease
The lessee may not sublease the leased property either partially or entirely unless a lease agreement explicitly allows or the lessor grants a consent.	The lessee may sublease the leased property either partially or entirely without requiring any consent of the lessor.	The lessee may sublease the leased property either partially or entirely without requiring any consent of the lessor unless a lease agreement explicitly prohibits a sublease of the leased property.

3. Mortgageability (Right to Mortgage the Lease)

Traditional Lease	New Lease	Commercial and Industrial Lease
No mortgageability. And a creditor takes higher risk in extending any loan to the lessee.	Mortgageable.	Mortgageable.

4. Inheritability

Traditional Lease	New Lease	Commercial and Industrial Lease
If the individual lessee passes away or the corporate lessee is dissolved/closed down, the Traditional Lease ends.	<p>If the individual lessee passes away, the New Lease can be inherited by lessee's heir.</p> <p>If the corporate lessee (i.e. a company or a juristic partnership) which is a legal entity, is dissolved/closed down, the New Lease can be sold in lessee's liquidation.</p>	<p>If the individual lessee passes away, the Commercial and Industrial Lease can be inherited by lessee's heir.</p> <p>If the corporate lessee (i.e. a company or a juristic partnership) which is a legal entity, is dissolved/closed down, the Commercial and Industrial Lease can be sold in lessee's liquidation.</p>

5. Modification Right

Traditional Lease	New Lease	Commercial and Industrial Lease
Without a prior permission of the lessor, the lessee may not make any alteration, or addition to, the leased property.	<p>The lessee may make any alternation, or any addition to, or any new construction of the leased property under the condition that an ownership in those alternation, addition and new construction will pass to the lessor (the property owner) upon an expiration of the New Lease, unless the parties agree otherwise.</p> <p>This alternation right, addition right and new construction right do not apply to the leased property that is a condominium unit.</p>	Without a prior permission of the lessor, the lessee may not make any alteration, or addition to, the leased property.

6. 3 Year or Longer Registration Requirement vs 100% Registration Requirement

Traditional Lease	New Lease	Commercial and Industrial Lease
Only the Traditional Lease with a period longer than three years must be made in writing and registered with a land registry office, otherwise it will be enforceable only for a period of three years.	Every New Lease must be made in writing and registered with a land registry office.	Every Commercial and Industrial lease must be made in writing and registered with a land registry office. (It is noted that the Commercial and Industrial Lease only covers a period in excess of 30 years but not in excess of 50 years.)

7. Sublease Registration

Traditional Lease	New Lease	Commercial and Industrial Lease
Only a sublease period longer than three years must be made in writing and registered with a land registry office, otherwise such sublease will be enforceable only for a period of three years.	Every sublease of the leased property under the New Lease must be registered with a land registry office.	Every sublease of the leased property under the Commercial and Industrial Lease must be made in writing and registered with a land registry office.

8. Eligible Property

Traditional Lease	New Lease	Commercial and Industrial Lease
All types of property, including a land plot evidenced by a land title deed, a land plot evidenced by an exploration deed Nor Sor 3, a land plot evidenced by an exploration deed Nor Sor 3 <u>Kor</u> and land plots which the state still retains an ownership but occupiers have received lower ranking ownership/possession documents.	Only the property evidenced by a land title deed may be registered for the New Lease, making any land plots evidenced by an exploration deed Nor Sor 3 and an exploration deed Nor Sor 3 out of this New Lease.	Only the property evidenced by a land title deed may be registered for the Commercial and Industrial Lease, making any land plots evidenced by an exploration deed Nor Sor 3 and an exploration deed Nor Sor 3 out of the Commercial and Industrial Lease.

9. Transfer of Leased Property

Traditional Lease	New Lease	Commercial and Industrial Lease
<p>Due to the privity of contract, if the lessor who owns the leased property transfers the leased property to any third party transferee, only rights and obligations of the lessor that are directly related to the Traditional Lease will be transferred to the third party transferee, excluding certain crucial provisions of a lease agreement such as an option to renew the lease and a security deposit.</p> <p>In other words, the third party transferee will not be bound by any contractual provisions pertaining to an option to renew the lease and a security deposit.</p>	<p>If the lessor who owns the lease property transfers the leased property to any third party transferee, all terms and conditions in the title deed issued by the land registry office will apply to the third party transferee in full. This means a lessee under the New Lease will not lose out any right due to such transfer of ownership.</p>	<p>Due to the privity of contract, if the lessor who owns the leased property transfers the leased property to any third party transferee, only rights and obligations of the lessor that are directly related to the Commercial and Industrial Lease will be transferred to the third party transferee, excluding certain crucial provisions of a lease agreement such as an option to renew the lease and a security deposit.</p> <p>In other words, the third party transferee will not be bound by any contractual provisions pertaining to an option to renew the lease and a security deposit.</p>

10. Eligible Lessor

Traditional Lease	New Lease	Commercial and Industrial Lease
<p>Both a property owner and a main lessee.</p>	<p>Only a property owner (Not including any main lessee who may not grant the New Lease to any sub-lessee.).</p>	<p>Only a property owner (Not including any main lessee who may not grant the Commercial and Industrial Lease to any sub-lessee.).</p>

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This legal article was written by Narit Direkwattanachai, a corporate, tax & trial attorney at NARIT & Associates with expertise in corporate & commercial, commercial dispute and tax law. He holds a bachelor of laws (1st class honors) from Chulalongkorn University, a master of law from the University of Cambridge, UK and an MBA in finance from the Georgia Institute of Technology, USA. He can be reached at narit@naritlaw.com

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For the first time in many years, the Department of Land has just introduced a new type of title deeds to evidence a new lease. This new lease is created (as an alternative option to the traditional lease under the Civil and Commercial Code) to eliminate certain inherent limitations of the traditional lease under the Civil and Commercial Code. Read on to understand pros and cons of the new lease (in comparison to the traditional lease) as well as review our unofficial English translations of new title deeds (Certificates of Rights Deriving Property for Land and Condominium Unit).
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Some fascinating and far-reaching developments indeed. Many thanks.

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