

Are 99-year leases good for Thailand?

The prospect of extending the current maximum leasehold to 99 years has surfaced again. And as usual, pro and anti lobbies are gathering steam to push their agendas.

So let's look at what the situation is now, how a change could happen and the arguments for and against.

The situation now

Under Thai law leases of up to 3 years don't need to be registered. If the tenant or the landlord wants security for a longer period, they will need to register the lease on the title deed at the Department of Land and pay a registration fee of 1% of the total rent payable.

Civil & Commercial Code

Under the Civil & Commercial Code (C&CC), the maximum lease allowed is 30 years. In theory, one renewal period of another 30 years is possible, but in practice this renewal is problematic. Since the renewal can't be registered upfront, the parties will have to wait for the first 30-year lease to expire before they can register the second term. But that makes the renewal insecure. For instance, if the freehold underlying the lease is sold to another party, the new owner may refuse to register the renewal. The tenant's recourse would be to sue the original landowner, which is unlikely to help him get his renewal quickly.



Leasehold Act

Since 1999, there has been a second law governing leaseholds. Its official name (the Act on the Lease of Immovable Property for Commercial and Industrial Purposes) is as unwieldy as its use, so let's just call it the Leasehold Act. This act actually allows leases of up to 50 years and a renewal of another 50 years to be registered, but again in practice this hasn't really worked. To get a lease registered under this act is not easy. Apart from a number of restrictions, the process is quite cumbersome.

Nominee culture

One of the unforeseen consequences of Thailand's restrictive leasehold regime is that a culture of nominee ownership has emerged. Most property investments are significantly less attractive on a 30-year ownership term than on a longer term. Evidence from other markets indicates that property on leases of less than 50 years trades at a significant discount to freehold. Once ownership stretches to 90 years or more, the discount is minimal. Restricting foreign investors to 30 years has created a situation where investors try to find a way around the restriction, resulting in the use of nominees, a general lack of transparency and, of course, institutionalised corruption.





The how

The Prayut government has already moved to extend the term allowed under the Leasehold Act from 50 years to 99-years. But before you get too excited, you should know that this change is only being proposed for government owned land. A particular target seems to be land owned by the debt-ridden State Railways of Thailand, which is looking to transfer its huge Makkasan depot to the Treasury Department to pay off some of its massive debt. If the transfer were of a 99-year lease rather than 30 years, the value would be significantly higher and therefore so would the amount of debt written off.

Another area that has attracted attention is the Special Economic Zones proposal for the border provinces. Much of the land here is government owned and it is believed that offering investors 99-year leases rather than 30 would significantly enhance the attractiveness of investment in the SEZs.

99-year leases would be a gamechanger

No doubt, allowing 99-year leases under the Leasehold Act would help the government achieve specific goals such as those set out above. But the unwieldy nature of the act makes it unsuitable for more general application. So even if the Leasehold Act allowed 99 years both for government and private land – and even if residential property were covered by the act (which it is not now) – the impact on the overall market may be negligible.

As a result, the private sector – both Thai and foreign – has been pushing for an amendment to C&CC instead. The proposal is to change the 30-year limit under C&CC to 99 years, which, unlike amending the Leasehold Act, would be a gamechanger. Such a move would, by the way, render the Leasehold Act redundant and it could therefore be scrapped.

A change of C&CC to allow for 99-year leases should and would be viewed as a major liberalisation of the Thai economy. As with any major change like this, there are strong arguments on both sides.

The cons

Is Thailand ready?

One of the main arguments against the change is a perception that Thailand is not ready for this kind of liberalisation. Sometimes this is expressed as concern that foreign investors would dominate the market and marginalise Thai landowners, sometimes more dramatically known as “selling the country” or “ขายชาติ”.

There is an understandable fear that generations of successful diplomacy that successfully protected Thailand from colonisation could be thrown away by a careless legislative amendment. The fear is that highly liquid foreign investors will seize the opportunity to buy large swathes of the country, effectively disenfranchising the Thai people, depriving them of their birthright and, worst of all, condemning countless Thai farmers to servile roles serving foreign interests with no chance of ending the vicious cycle of poverty. There is also a more hard-nosed commercial fear that Thai investors will lose out if they need to compete on a level playing field with deep-pocketed foreign investors for prime assets.

These are highly emotive and substantial arguments and they need to be addressed.

The typical response from the pro lobby is that (a) we are talking about leasehold only, so the freehold land will still be owned by Thai nationals, with the lessee (who, by the way, could be Thai as well as foreign) only owning a subsidiary interest for the length of the lease, (b) many large Thai corporates already own large swathes of Thailand, so the poor are already often experiencing the effect of such loss of ownership and a change to the law is unlikely to make their situation better or worse, and (c) even if the land is held by foreigners, they will eventually go home and they can't take the land with them!

Such arguments may seem callous to people whose main concern is the welfare of Thais, especially in rural areas. It may be more useful to understand the validity of such arguments and consider whether there are ways in which they can be accommodated while optimising the potential benefits outlined below.

The commercial argument is less emotional but can be just as difficult to counter. In the end, it's a decision about how open to competition the Thai economy should be.

Tax issues

Some concern has also been raised that landowners and the tax authorities will lose out if 99-year agreements are based on current values. The theory here seems to be that land prices tend to increase over time at a faster rate than rents payable on land, so by locking in such long-term leases, the future benefits to the landowner and the nation through the tax code are reduced sharply. In countries with experience of long leases, this problem has long been overcome by including rent reviews every 5 or so years based on market values at that time.

Another argument sometimes raised against longer leases is that the promised benefits may not materialise due to a quirk in the taxation system. To register a lease longer than 3 years, the Department of Land charges a registration fee of 1% calculated on the rent payable over the lease term. But a long lease is likely to have upward renewals in rent payments every 3 to 5 years. As the Department of Land does not permit a present value calculation, landlords are effectively paying tax today on proposed future values. Over 30 years, this is an obstacle. Over 99 years, it could be disastrous.

But in reality the market is smarter than that. Many leases are structured with a large upfront payment and smaller annual rents. This effectively allows the tax to be skewed more to present value than would otherwise be the case. However, a registration fee paid on an annual basis would obviously be a plus. But that's another story for another day...





The pros

Attracting foreign investment is often cited as a key reason for extending the lease term. With leases at a maximum of 30 years and no right to own land outright, many foreign investors find the potential returns unattractive and too risky. As a result, they prefer to invest in other countries in the region with more generous lease allowances.

The ASEAN Economic Community

As Thailand enters the era of the ASEAN Economic Community, this point has become more powerful. The goal of becoming a regional hub cannot be achieved without foreign investment. Granted, foreigners are allowed to own land for Board of Investment promoted activities and a few other specialised uses, but property developers, investment funds and other institutional investors can only really play in the listed property sector – and increasingly the REIT market – which can capture equity investors but not funds dedicated to direct investment in property.

As a result, institutional investors gravitate to Singapore and Malaysia, where 99-year leases are allowed, and even Vietnam, which has far more foreign funds in the property sector than Thailand as leases of up to 70 years are possible there. Without this source of money, the Thai market remains immature, relatively undeveloped and potentially more volatile.

If Thailand is to effectively compete for global funds in the AEC era, it should therefore allow investors comparable opportunities to its main competitors to the south – 99-year leases.

Maximum leasehold in each ASEAN economy



Thailand

	Leasehold period	30 years
	Renewal option	30 years

Cambodia

	Leasehold period	99 years
	Renewal option	N/A

Laos

	Leasehold period	50 years
	Renewal option	Case by case basis

Malaysia

	Leasehold period	99 years
	Renewal option	N/A

Myanmar

	Leasehold period	50 years
	Renewal option	10+10 years

Philippines

	Leasehold period	50 years
	Renewal option	25 years

Singapore

	Leasehold period	99 years
	Renewal option	N/A

Vietnam

	Leasehold period	70 years
	Renewal option	N/A

Indonesia

	Leasehold period	25-30 years
	Renewal option	20 years

Brunei

	Leasehold period	25-99 years
	Renewal option	Case by case basis

Main beneficiaries are Thai citizens

Another strong argument for longer leases is the fact that banks are very reluctant to lend against properties on leases of only 30 years. A lease of over 90 years is generally considered to be almost as safe to lend against as a freehold property, so buyers of leasehold property should be able to access mortgage loans at a similar loan-to-value ratio as buyers of freehold property.

This point is particularly relevant to low-income households. The government is keen to encourage private developers to construct low-income housing on land that would be leased from the government at low rates. This attractive idea is unlikely to work if low-income earners are unable to access decent mortgage loans. On a 30-year lease, the buyer is likely to get a mortgage loan of around 50% (or at most 70%) of the full value, meaning he or she will need to come up with more equity in percent terms than the buyer of a normal middle-income condo in Bangkok who is likely to get a mortgage of around 85% of the full value.

This highlights an issue that is often overlooked in the discussion on longer leases: the main beneficiaries will be Thai citizens, not foreign investors. While the country would benefit from the new source of foreign investment that longer leases will attract, Thai landowners will be the biggest winners. Those who are reluctant to sell their land will be able to offer longer leases, and therefore make much more money, than before. Developers building on long lease land will not only be able to pay more for the privilege, they will also be able to build higher quality buildings in the knowledge that there is sufficient time to earn returns on the invested capital. Buildings limited to a 30-year lease are often forced to sacrifice quality as the market will be paying a discount for the product.



Are 99-year leases good for Thailand?

- + Thai landowners can gain more income without sacrificing ownership
- + Thai developers would be able to deliver higher quality product
- + Better access to bank loans for developers and buyers, particularly low-income households
- + Gamechanger for attracting foreign investment and developing Thailand as AEC regional hub
- + More competitive marketplace
- + Reduce corruption related to land ownership and make town planning more efficient
- Some Thai developers/investors may find it difficult to compete for prime land plots
- Fear that low-income Thais, especially farmers, will end up landless
- Higher lease registration fees

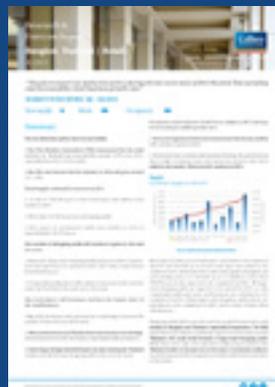
Our conclusion

Our conclusion is that 99-year leases would overall be a good thing for Thailand and should be supported. Given the problems experienced implementing the Leasehold Act, the logical and simplest way to reform the leasehold system would be to amend the terms of the Civil & Commercial Code from stipulating a maximum term of 30 years to a maximum term of 99 years. However, in order to make sure the amendment is used for its intended purpose of encouraging urban property development, rather than allowing massive land grabs, it may be necessary to maintain the restriction of 30 years on agricultural or rural land while allowing 99 years on urban and resort properties.

We have **200** research Professionals in **90** offices on **6** continents

Improve your perspective. We have.

Property Research worth talking about. www.colliers.com/en-gb/thailand/insights



How else can we help you?

We offer a full range of property solutions...

- Advisory Services
- Valuation Services
- Capital Markets and Investment Services
- Project Sales & Marketing
- Real Estate Management Services
- Hospitality Services
- Office Services
- Retail Services
- Industrial Services
- Residential Services



Colliers International Thailand

Floor 17, Ploenchit Center, 2 Sukhumvit Road, Klongtoey, Bangkok 10110, Thailand
Tel: (662) 656 7000 Email: info.th@colliers.com www.colliers.co.th