



ISSUES RELATING TO COMMERCIAL LEASING

MALAYSIA

Skrine

CONTACT INFORMATION

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

In general, ad valorem stamp duty will be payable for the creation of a lease. The amount of stamp duty payable is prescribed under the Stamp Act 1949. The stamp duty chargeable for a lease or agreement for lease of any immovable property is: when the average rent and other considerations calculated for a whole year - (i) does not exceed RM2400, then no duty is chargeable and (ii) for every RM250 or part thereof in excess of RM2400 (a) RM1.00 if lease is for a period not exceeding one year; or (b) RM2.00 if the lease is for a period exceeding one but not exceeding three years; or (c) RM4.00 if the lease is for a period exceeding three years or for any indefinite period.

In respect of a lease registered pursuant to the National Land Code 1965, a registration fee is payable to the relevant land office.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).



Pursuant to the National Land Code 1965, every lease granted shall be for a term exceeding 3 years, otherwise, it is regarded as a tenancy. The maximum term for which any lease may be granted shall be 99 years if it relates to the whole of any alienated land and 30 years if it relates to part only thereof.

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

There is no provision in Malaysia which compels a landlord to allow the renewal of a lease or a tenancy. Any renewal of the lease or tenancy is agreed contractually between the landlord and tenant.

4. Describe any restrictions on rent that may be charged for to a tenant.

There is generally no restriction on rent that may be charged to a tenant.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

A lease may be terminated before its stated expiration date either expressly (as provided by section 239 (1) of National Land Code) or by operation of law.

The express surrender of any lease or sublease must be effected in writing by an instrument in the prescribed form, and the interest of the lessee or sub-lessee, as the case may be, will determine as from the date on which the instrument is registered.

To effect a surrender by operation of law, there is not only to be a quitting of the premises by the tenant but also a taking of possession of the premises by the landlord, which shows that the landlord consented to the tenancy being put to an end.

Otherwise, termination of lease will be in accordance of the provisions in the lease or tenancy agreement. If the lease or tenancy is terminated prematurely, it is common that a lease/tenancy agreement to provide that the lessee/tenant will pay rental for the unexpired period of the said lease/tenancy provided always that the lessor/landlord has to mitigate their losses.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

There are no laws that expressly allow tenants to assign or sublease without landlord's consent. However, in the absence of restrictions on assignment in the tenancy agreement, an assignment by the tenant to a third party of its rights in the tenancy agreement for any period less than his own term may be deemed effective by serving the landlord a notice of assignment.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

Some titles to real estate are subject to restrictions in interest such that a lease cannot be created unless State Authority consent is obtained. However, there are generally no specific laws that expressly allow a landlord to restrict assignments or subleases. Nonetheless, it is common that landlord will impose restrictions on assignment or sublease in the lease or tenancy agreement. In the absence of such restrictions, an assignment of such tenancy in the usual course is deemed to be effective by providing an express written notice to the landlord on such assignment. In such an event, assignment of liabilities is not permitted.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

In the event of a default by a tenant, the Landlord is required to serve a forfeiture notice to the Tenant pursuant to section 235 of the National Land Code 1965 where the Tenant is given a reasonable time to remedy the said forfeiture (usually 14 to 30 working days as stated and provided in the agreement), failing which the Landlord will then be authorised to re-enter upon the premises and determine the lease/tenancy without prejudice to the right of action of the Landlord in respect of any antecedent breach by the Tenant. It is usually contractually permitted on determination of the lease/tenancy, all security deposits paid by the Tenant will be forfeited as liquidated damages.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

Pursuant to the National Land Code 1965, any lease of alienated land may be charged with the repayment of any debt, or the payment of any sum other than a debt, or the payment of any sum other than a debt, or payment of any annuity or other periodic sum, subject to any prohibition or limitation imposed by the National Land Code, any restrictions in interest to which the land in question is for the time being and the provisions in the lease, express or implied. Where there is restriction in interest, Eg. no charging allowed without prior approval of State Authority, such prior approval has to be obtained before the creation of the charge.

Pursuant to section 213(5) of the National Land Code, no tenancy exempt from registration (ie tenancy not more than 3 years) shall be capable of being charged. In such an event, the rights of the Landlord may be assigned.

By virtue of 231(1)(d) of the National Land Code and in the absence of contrary intention, it is also implied in every lease that unless there is provision to the contrary, the lessee agrees not to charge the lease without the prior written consent of the lessor, which consent must not be unreasonably withheld.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

No such requirement.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

Nil.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

Nil.

13. Describe any limitations on the ability of landlords to exercise self-help.

Pursuant to the amendment of Section 7 of the Specific Relief Act 1950 which came into operation on 21 February 1992, where a specific immovable property has been let under a tenancy, and that tenancy is determined or has come to an end but the occupier continues to remain in occupation, the person entitled to the possession of specific immovable property may only recover it by proceedings in the court and in the manner prescribed by the law relating to civil procedure. Notwithstanding Section 7 of the Specific Relief Act 1950 which refers specifically to tenancy, some academic writers have opined that the section also applies to leases as well.

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

Remedies such as acceleration of rent must be expressly stated in the lease/tenancy agreement.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

All remedies are subject to agreement between the Landlord and the Tenant. However, a landlord may apply ex-parte to the Court for an order for the issue of warrant of distress for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding twelve completed months of the tenancy immediately preceding the date of the application.

16. Describe any formal requirements for the execution of a lease.

In West Malaysia, a statutory lease must be granted by an instrument in prescribed form pursuant to the National Land Code. The interest of any lessee, whether or not it takes effect in possession, vests in him on the registration of the lease.

Where the lease relates to a part only of any alienated land, there must be attached to the instrument a plan and description sufficient to enable the part to be accurately identified.

On the other hand, in respect of tenancy not more than 3 years, there is no formal requirement for registration of tenancy exempt for registration (ie, tenancy not more than 3 years) under the National Land Code 1965 and may be granted either by word of mouth or by a written instrument in any form. However, it is not compulsory but prudent for a tenant to obtain endorsement of the tenancy on the register document of title to protect its interests.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

Yes. Please refer to the answer in question 16 in respect of tenancy not more than 3 years. The prescribed form is Form 15A under National Land Code.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?



Upon the registration of the said transfer, the title of the transferor will pass to and vest in the transferee, together also with the benefit of any registered interests then enjoyed with the land. The transferee will hold the same subject to any lease and tenancy exempt from registration which are endorsed on the register document of title subsisting in respect thereof at the time the transfer is registered (section 215 (3) of National Land Code). Any tenancy exempt from registration where endorsement has not been made on the register document of title is not binding on the transferee.

Pursuant to section 216 of National Land Code, where any land is transferred subject to any lease or tenancy exempt from registration with endorsement on the register document of title, every provision, express or implied, of such lease or tenancy shall, so long as the land continues vested in the transferee, be enforceable by or against him as if he were a party thereto.