



## Legal News

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#### **The Notification of the Committee on Contract Re: Prescribing Residential Property Leasing Business as a controlled business with respect to Contract B.E. 2561 (2018)**

On 12 February 2018, the Committee on Contract promulgated the Notification Repealing the Notification of the Committee on Contract Re: Prescribing Residential Property Leasing Business Requesting the Security Deposit shall be a Business which Controls the List in the Receipt B.E. 2549 (2006) and the Notification of the Committee on Contract Re: Prescribing Residential Property Leasing Business Requesting the Security Deposit shall be a Business which Controls the List in the Receipt (No.2) B.E. 2559 (2016). On the same day, the Committee on Contract promulgated the Notification of the Committee on

Contract Re: Prescribing Residential Property Leasing Business as a Controlled Business with respect to Contract B.E. 2561 (2018) ("Notification"). The details of the Notification are summarized as follows:

- "Residential property leasing business" under this Notification is defined as the business which the business operator leases the property to individual for residential purposes with the total space of 5 units or more, irrespective of whether such units are situated within the same building. "Buildings" are defined to include dormitory, house, condominium, apartment, or other accommodation, excluding dormitory and hotel under laws related to dormitory and hotel.
  - The building lease contract concluded between a business operator and the lessee is required to include a Thai version and must contain the following details: e.g. name and address of the business operator and its authorized person, name and address of the lessee, lease term, details on condition of leased building including assets and equipment in the building, public utility expense, rental fee, etc.
  - The lease agreement must be executed in two identical copies, and one copy must be delivered to the lessee immediately upon the execution of the agreement.
  - The lease agreement must not contain the terms and conditions which have the following meanings, for example:-
    - An exemption or limitation of the business operator's liability from a breach of the contract or committing wrongful act;
    - The stipulation of business operator's right to claim for advance payment of rental fee equivalent to more than 1 month of rent;
    - The stipulation of business operator's right to amend the rate of rental fee, public utility fee, service fee, and other expenses before the expiration of the lease agreement;
    - The stipulation of business operator's right to confiscate security deposit or advance rental payment;
    - The stipulation of business operator's right to inspect the building without having to notify the lessee;
    - The stipulation of business operator's right to terminate the lease agreement for causes other than material breach by the lessee; and
    - The stipulation of the lessee's liability for the damage to the building, assets and equipment which was not the lessee's fault and circumstances of force majeure.
  - A business operator must attach an evidence of acceptance by the lessee on the inspection of physical condition of the property to the lease agreement, and must deliver a copy of such evidence to the lessee for record.
  - A business operator shall issue the invoice for rental fee, public utility expense, service fee, and other fees to the lessee at least 7 days in advance of the due date, and the lessee will be entitled to verify the information regarding the payable items listed in the invoice.
  - A lessee is entitled to terminate the lease agreement prior to the expiration of the lease term, provided that:
    - a prior written notice is served to the business operator at least 30 days;
    - the lessee must not default in paying rental fee; and
    - there exists reasonable grounds.
- Upon the expiration of the lease agreement, a business operator must return security deposit to the lessee immediately.
- Material breach in which the business operator will have a right to terminate the lease agreement must be stipulated in red, bold, or italic font. The business operator is entitled to terminate the agreement, provided that written notice must be given to the lessee to remedy such a breach within at least 30 days from the date of receipt of such notice, and the lessor fails to remedy such a breach within a designated period of time.

This Notification will come into force from 1 May 2018 onwards.

## **Notification of the Contract Committee Re: The Stipulation of Car and Motorcycle Leasing as a Contract-Controlled Business B.E. 2561 (2018)**

On 12 February 2018, the Committee on Contract has issued the Notification of the Contract Committee Re: The Stipulation of Car and Motorcycle Leasing as a Contract-Controlled Business B.E. 2561 (2018) ("Notification"). The Notification aims to control a Car and Motorcycle Hire-Purchase Agreement ("Agreement") in order to solve the problem of taking advantages from consumers by business operators. The details of the Notification are summarized as follows:

- The Agreement must be made in Thai, covering details of car or motorcycle and details on transfer of ownership, default in payment, method of bidding or auction and any other relevant clauses, in accordance with the stipulation of the Notification;
- The lessor shall manage to have a schedule illustrating all obligations under the Agreement and clearly demonstrate the schedule to each lessee, the details of which shall be in accordance with the stipulation of the Notification;
- The lessor is entitled to claim actual fees or any other expenses, caused by a demand of obligations under the Agreement and economically, essentially and reasonably made, against the lessee;
- In case the Agreement is terminated and such termination allows the lessor to have the ownership over the car or motorcycle, the lessor is required to send an advance written notice not less than 7 (seven) days prior to the bidding or auction of the car or motorcycle to the lessee in order to allow for the lessee to have first priority to purchase it with the remaining price due according to the Agreement. In this circumstance, the lessor is required to provide a discount to the lessee at the rate calculated and stipulated by the Notification. However, if the lessee fails to exercise this right, the lessor shall send the advance written notice to the guarantor not less than 15 (fifteen) days from the date the lessee fails to exercise this right and the guarantor shall then have the same rights as the lessee;
- The lessor is required to send the advance written notice of the bid or auction to the lessee and the guarantor not less than 7 (seven) days prior to such bid or auction;
- In case the lessee agrees to make the payment for the entire amount due in 1 payment, without paying in instalments according to the Agreement, the lessor is required to give the discount of not less than 50% of an interest which is not due and the calculation shall be made in accordance with accounting laws;
- The interest rate of default in payment is reduced from not over 17% p.a. to not over 15% p.a.

The Notification shall come into force and be implemented on 1 July 2018 onwards.

## **Application for Investment Promotion under Measure for Saving Energy, Alternative Energy and Reduction of Effect to the Environment according to the Notification of the Board of Investment No. 9/2560**

On 8 January 2018, the office of the Board of Investment ("BOI") announced the clarification in applying for investment promotion under measure for saving energy, alternative energy and reduction of environmental impact according to the notification of the BOI No. 9/2560 regarding Measure to Promote Improvement of Production Efficiency in order to increase understanding of the investor. The details can be summarized as follows:

### **Qualification of the Promoted Person**

- The promoted person must not be promoted under similar measures according to the Notification of the BOI Nos. 3/2550, 2/2552, 6/2555, 1/2556 (except for investment promotion under measure for target industries) and 9/2560.
- The promoted person must not receive tax incentives or subsidies from another government authority for the same purpose of this measure.
- In cases involving reduction of environmental impact, the promoted person must be qualified with terms and conditions of environment management of the other government authority. The rate of the poisonous substance must not exceed the rate specified by laws.

The business in category 1.1: Manufacture of biological fertilizers, organic fertilizers, nano-coated organo chemical fertilizer and bio-pesticides cannot apply for this measure.

### **Terms and Conditions of Investment**

- The application must be submitted before import of machinery from abroad or purchasing machinery in Thailand. The machinery must be new.
- The following terms and conditions must be complied with:
  - Saving energy: The usage of energy must be reduced as per the specific proportion and the value of the energy saved must not less than the value of exemption of the corporate income tax;
  - Alternative energy: Using alternative energy as appropriate when compared to using previous energy of the promoted person;
  - Reduction of effect to the environment: Reduction of air pollution, waste water or waste according to specific criteria as appropriate in term of technology used without specific minimum. The type of reduction and amount must be significant to the environment;
  - The changing of machinery must be considered 2 following matters:
    - Changing of machinery in production line or service line; and
    - Changing of supporting machinery.
- The investment to be calculated for exemption of corporate income tax will be as follows:
  - In case of commencement of project operation within 3 years from the issuance of the BOI promotion certificate, the investment must be calculated from the date of applying for investment promotion to the commencement date of the project operation;
  - In case of commencement of project operation after 3 years from the issuance of the BOI promotion certificate, the investment must be calculated from the date of applying for investment promotion to the deadline of commencement of project operation i.e., 3 years from the issuance of the BOI promotion certificate;
- The value of the income to be used for exemption of corporate income tax and the value of exemption of corporate income tax must be calculated from the total amount of net profit for each accounting year and must not exceed 50% of the qualifying investment made. The income to be used in the calculation must occur after obtaining the investment promotion certificate.

The application for investment promotion under this measure must be submitted with the application for investment promotion within 30 December 2020. The terms and conditions of investment promotion under this measure must be completed within 3 years from the issuance of the promotion certificate.

## Ministry Of Commerce: Rulings on Business Operations of Foreign Companies in Thailand under the Foreign Business Act B.E. 2542

### Assign specialist to supervise on machine installation in Thailand

Company B, registered overseas executed the Joint Venture agreement with Company A, a Thai company, for Construction of Factory Building according to contract with the Customer in Thailand. Company B will procure the machine to be installed in the constructed factory in Thailand and dispatch the specialist to control and supervise the machine installation by secondment as an employee of Company A. This is considered as a service business under the list 3 (21) under the Foreign Business Act B.E. 2542 and the foreigner (Company B) has to obtain the business permission before carrying on this business operation.

### The definition of store for retail or wholesale business

The place which is considered as a retail or wholesale store is any place that has contact with customers on the sale and purchase of goods such as contracting for sale and purchase of goods with the customer, obtaining the purchase order from the customer, obtaining and returning goods, issuing the accounting documents for customers, etc. Therefore, the issuance of invoices from many branch offices, each office is considered as a separate "store" and requires the minimum capital for each store of 100 million Baht for 1 wholesale store or 20 million Baht for 1 retail store.

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