

Traditional Lease and Ideal Lease: The Subtle Meanings of Lease Length

ระยะเวลาการเช่าอสังหาริมทรัพย์ในทางปฏิบัติและอุดมคติ: ความหมายที่มีนัย

Suwadee Thongsukplang Hansasooksin

สุวดี ทองสุกปลั่ง ธรรมสาสุชิน

Faculty of Architecture and Planning, Thammasat University, Pathumthani 12121, Thailand

คณะสถาปัตยกรรมศาสตร์และการผังเมือง มหาวิทยาลัยธรรมศาสตร์ จังหวัดปทุมธานี 12121

E-mail: tsuwadee@hotmail.com

Abstract

Despite the same few components of ground leases, an important variable that differentiates traditional lease from ideal lease is the length of leasehold term. Ground leases in Thailand can be granted in compliance with two laws: the Civil and Commercial Code, and the Hire Act of Immovable Property for Commerce and Industry B.E. 2542 (1999). While the former is the traditional lease releasing the maximum term of the leasehold at 30 years, the latter is the recent law extending the period of lease to 50 years. Nonetheless, there have been many attempts to extend the ideal lengths of lease to 90 – 99 years. Each length of lease, either the traditional or the ideal one, could be considered as a magic number. The backgrounds of such numbers illustrate not only the movement of the market altered by socio-economic circumstances, but also the tension between the traditional lease and the ideal lease which is based on longer time periods. However, it is interesting in that a leasehold agreement is still generally based on the 30-year leasehold tenure. Thus, the attention to leases in this paper is paid to the determination and application of length term, as well as the subtle meaning of each length of lease.

บทคัดย่อ

การเช่าที่ดินเพื่อพัฒนาอสังหาริมทรัพย์ในประเทศไทยสามารถกระทำได้โดยมีกฎหมายรองรับอยู่ 2 ฉบับ คือ ประมวลกฎหมายแพ่งและพาณิชย์ และพระราชบัญญัติการเช่าอสังหาริมทรัพย์เพื่อพาณิชยกรรมและอุตสาหกรรม พ.ศ. 2542 กฎหมายทั้งสองกำหนดกรอบระยะเวลาการเช่าอสังหาริมทรัพย์ไว้ต่างกัน ในขณะที่กฎหมายฉบับแรกอนุญาตให้เช่าได้ไม่เกิน 30 ปี กฎหมายฉบับที่สองได้อนุญาตให้เช่าได้นานถึง 50 ปี อย่างไรก็ตาม ได้มีความพยายามจะขยายกรอบระยะเวลาการเช่าให้มากขึ้นเป็น 90 – 99 ปี เหตุผลเบื้องหลังของระยะเวลาการเช่าที่ปรากฏเป็นตัวเลขต่าง ๆ จึงเป็นประเด็นที่น่านศึกษา การเปลี่ยนแปลงเงื่อนไขด้านเวลานอกจากแสดงถึงความเคลื่อนไหวในตลาดอสังหาริมทรัพย์ ที่มีการเปลี่ยนแปลงไปตามสภาพเศรษฐกิจและสังคมแล้ว ยังแสดงถึงความพยายามที่จะปรับการเช่าให้เป็นอุดมคติ เหมือนกับประเทศอื่น ๆ ที่อนุญาตให้เช่าอสังหาริมทรัพย์ได้เป็นระยะเวลายาวนาน แต่กระนั้น การเช่าในทางปฏิบัติในประเทศไทยก็ยังคงเกิดขึ้นตามเงื่อนไข 30 ปีเป็นส่วนใหญ่ บทความนี้จึงมีเป้าหมายสำคัญที่จะศึกษาเหตุผลเบื้องหลังของการกำหนดระยะเวลาการเช่า และนัยสำคัญของตัวเลขต่าง ๆ

Keywords (คำสำคัญ)

Lease (การเช่า)

Leasehold (สิทธิจากการเช่า)

Ground Lease (การเช่าที่ดิน)

Property Lease (การเช่าอสังหาริมทรัพย์)

Property Development (การพัฒนาอสังหาริมทรัพย์)

1. Introduction

Ground leases are considerable. They are not simply contractual agreements on spatial occupation, but also act as the mechanism for governing land development. The leasehold system of urban development has been widely applied in many cities, for example: Stockholm (Sweden), Amsterdam (the Netherlands), parts of London and Liverpool (England), Canberra (Australia), Oahu Island (Hawaii), the city of Hong Kong, Israel, Sudan, and Singapore (Archer 1971a, in Archer 1974, p. 225). In principle, lease-based instruments in those cities generally comprise of the same few components consisting of the authorised landowner organization, the leasehold tenure and the management policy. However, what makes them considerably different from each other is the length of lease.

Lease length differs from country to country. According to Cheng (2003), the Singapore government releases the leasehold tenure system for private residential development at 99 years in length. In China, leases for residential purposes are granted by the government for 75 years (Cheng et al., 2003, p.1). In Thailand, the focus of this paper, the traditional maximum lease term defined under the Civil and Commercial Code is 30 years. In addition, the term of 50 years has been enacted for more than a decade according to the Hire Act of Immovable Property for Commerce and Industry B.E. 2542 (1999). Considering to the South East Asian economic crisis during the late 1990s, one can get a sense that the determination of lease as an incentive for property investment was a remarkable attempt to address the property market failure. The idea of lease period extension became an issue because the hire of property under Civil and Commercial Code has not been in compliance with the economic situation. The Code does not respond to commercial and industrial activities which require long-term investment and security in the right of hire. Therefore, it is expedient

that the Act is to be enacted in order to attract long-term investment, especially that which can occupy the oversupplied space. Additionally, the Act implies an investment incentive to international companies which seek to obtain secured land.

Unfortunately, although there are two options of leasehold, only the traditional 30 year lease length is practical in Thailand. The 50-year lease seems to be unconventional to the local Thai property market. Moreover, overseas investors have showed their uncertainty regarding the socio-economic situation, for example: the stagnant national economy and the slump in the financial and property sectors during the beginning of 2000s, and political turmoil happening since year 2006.

Surprisingly, there have been attempts to extend a maximum length of lease to 90 years. The most significant evidence can be found in the development plans for the Suvarnabhumi Aerotropolis. Since the construction of the Suvarnabhumi Airport started, the Thai government in 2005 has promoted an urban competition through the establishment of the metropolis. It is believed that the airport will accommodate future growth of commercial aviation and accelerate socio-economic growth. To realize that concept, a physical development plan has been carried out together with supportive policies with the aim of managing real properties and enhancing spatial investment. The Suvarnabhumi Aerotropolis Area Development Act and the Urban and Specific Area Development Act were, therefore, drafted in 2005. More importantly, the Suvarnabhumi Aerotropolis Area Development Act, Section 2 Subsection 16(3) determined a long-term lease for 90 years as a condition for property development. It was expected to be a mechanism for attracting national and international investments which need security as regards the right to hire. Moreover, it would be a channel for the capital gain needed for further community development. Regrettably, the project collapsed due to the political change in September 2006.

Nonetheless, the intention to extend the lease period up to 90 years was re-considered in 2008. A business report in the Bangkok Post stated that the Minister of Finance, Surapong Suebwonglee, considered a longer leasehold term in order to allow greater numbers of foreign ownership in property firms and to stimulate the business sector (Yuthamanop & Katharangsiporn, 2008). Again in 2012, the Joint Foreign Chambers of Commerce in Thailand (JFCCT) property committee proposed the white paper of "Thailand' Need for a 90-year Lease" to Thailand Trade Representative Office. The committee stated that such a long period of leases could attract overseas industrial investments after the severe flood in 2011. It could also make security in the right of hire and stimulate land utilization (Thannews, 2011). It is interesting in that the idea of lease periods was widely debated. Some said that many countries have been offering longer leasehold. Importantly, the business of tourism and recreation could be expected to reap some benefit because of the high demand of long-stay travelers. Also, some added that the principle of extended leasehold would create transparency and prevent the use of nominees. It might turn illegal transactions happened in Phuket and Samui Island into the legal one (Bangkokbiznews, 2009). Contrarily, some concerned about the limitations of land ownership. This is because Thai people had lower purchasing power than foreigners. Thus, there would be no land left for Thais if the government allowed foreigners to buy and sell freely (Yuthamanop & Katharangsiporn, 2008).

Those backgrounds of property leases illustrate not simply the movement of the market altered by socio-economic circumstances, but also the tension between traditional lease and the ideal lease which is based on longer time periods such as 90 years. It is interesting in that such longer term of leases has been proposed although the medium-term leasehold granted for 50 years is impractical. A leasehold agreement in Thailand is still based on the Civil and Commercial Code which releases the tenure system at 30

years in length. Those aforesaid instances prompt this research to explore the significance of time, especially the determination of lease length and their subtle meanings. Thus, a significant question was addressed: what are the implications of time? To come up with solutions relating to a problematic issue, this paper examined some conventional thoughts and behaviour underlying the determination of lease length.

2. Methodology

The study applied realism as the major methodological approach because it helps to comprehend the complicated qualitative connection between actors in the development process. Realism provides the notion of individual and independent social relations, especially in the negotiation between landowners and ground tenants.

2.1 Conceptual Framework

The study focused on the interests and experiential backgrounds of landowners and ground tenants, particularly how they are influenced by socio-cultural, political-economic, and legal factors. The study also considered the process of negotiation between parties which is connected to the consequent determination of leases. These concepts are shown in Figure 1, drawn by researcher. It is comprised of two significant components: the elements of analysis, and the analytical frame.

The elements of analysis show the general structure of institutional analysis consisting of actors and their actions through process of development. The figure shows that the landowner and the ground tenant are major actors playing their roles in three stages of property development: negotiating, decision making, and developing. Initially, they negotiate and bargain over the resources for development. Then, they make decisions and take actions concerning the land development process, i.e. the type of development and size of investment.

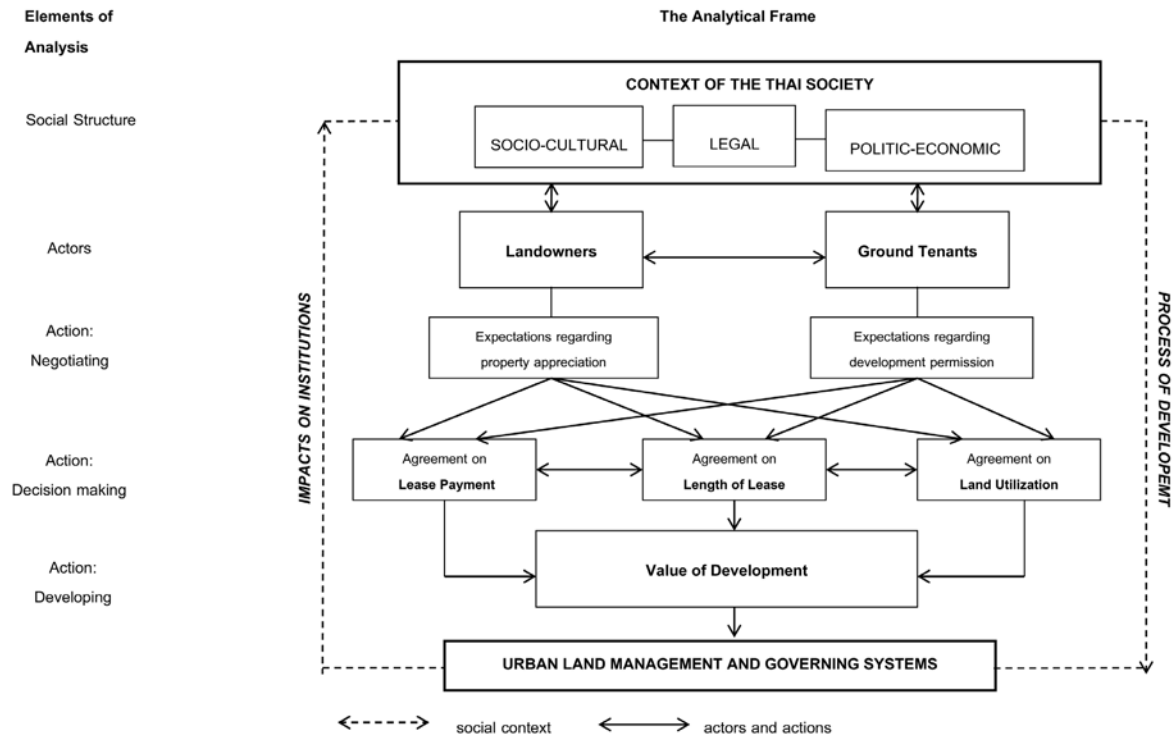


Figure 1. The Conceptual Framework.

The analytical framework shows that the study initially examined the inter-relationships between socio-cultural, politico-economic, and legal aspects which form the nature of leases in the Thai property market. Then, it examined the two-way interactions between the landowner and the ground tenant. This is to explore the way in which both actors shape the institutional context, and the way in which they are shaped by the institutional context. After that, it studied the interactive negotiations concerning property leases. It identified each actor's expectations, which are varied due to their inherent characteristics and past experiences. In economic terms, whereas the landowner aims to achieve property appreciation, the ground tenant aims to achieve fair development permissions. Generally speaking, the landowner's aims are optimal leases that can provide them with control power over properties. The ground tenant's chief aim, in contrast, is an optimal lease that can provide them with security of lease. Finally, the appropriate type and size of investment will generate the optimum scale of returns.

2.2 Studying Methods

2.2.1 Historical study is the review about Thailand and Bangkok. This is to map out the comprehensive pictures of the Thai society which can be considered along with the answers from the interviews. The evidence from the review will be interpreted in three ways based on the structural directions of relationship between the Thai social context and the actors in the property market.

First, it is the horizontal linkage between aspects in the society. The socio-cultural, political-economic and legal aspects fundamentally constructing the Thai institutional context were examined. The interconnectedness between aspects is worth studying in order to understand the dominant factor or mechanism that drives and maintains the process of development. Second is the vertical linkage between the wider social context and people. It is the examination of the connection between structure and agency. This paper studied the interplay between social structure and organizations as well as the way the organizations transfer such inter-relation to individuals.

Finally, the horizontal interaction between groups of people, or so-called the power relations, was conducted. This is to examine the relations in practice and some underlying factors supporting that dominance.

2.2.2 The interviews, conducted during February to May 2009 and March 2011, take a major part throughout the process of study. Landowners and ground tenants or developers are the first 2 groups of the interviewee as they originally develop the lands through lease negotiation. The real estate professionals and the academics, working for development or planning and having neutral attitude towards leasehold, are another 2 groups of interviewee. Lastly, 36 interviewees were recruited. Moreover, each group of interviewee is subsequently divided into 3 sub-groups according to the organizational status which are the public sector, the international or large private sector, and the local or medium-to-small private sector. This is to compare and contrast the groups of actors with different attitudes and actions.

The interview questions were organised into 5 groups: organization's profile, attitudes towards ground leases, decision making on ground leases, managing lease strategies, and attitudes to the application of long-term ground leases, especially the 50-year and 90-year leases. Then, a variety of interview results were processed by the NVIVO program which helped this study gathered key words and constructed verbal nodes for analysis.

2.2.3 Content Analysis was conducted manually through a matrix table. Initially, since the answers to the interview questions were about thoughts on ground leases and actions to lease arrangements, the NVIVO created two original nodes of analysis: the interpretation of leases and lease negotiation. Consequently, the program split those nodes into sub-nodes or issues. Node 1 (the interpretation of leases) consisted of 5 sub-nodes (sn): perception of land and traditional land development, advantages of ground leases, significance of time, implication of ground lease, and possibility of long-term ground

lease. Node 2 (lease negotiation) consisted of 4 sub-nodes (sn): the process of ground leases, power relation, lease calculation and financial strategies.

The analytical series of those sub-nodes were carried out. The organizational profiles and the interview transcriptions, text formats, were filled in a matrix as shown in Table 1. Whereas columns are the fields of data on each sub-node, rows are the field of each interviewee. Therefore, the intersections between columns and rows show the particular data delivered by an actor. The matrix helped this study cope with a collection of data entirely based on verbal characteristics.

Table 1. Matrix for analysis.

| Interviewees | Organizational Profile | Interpretation of Leases | | | | | Lease Negotiation | | | |
|---------------------|------------------------|--------------------------|-----|-----|-----|-----|-------------------|-----|-----|-----|
| | | sn1 | sn2 | sn3 | sn4 | sn5 | sn1 | sn2 | sn3 | sn4 |
| <i>Landowner</i> | | | | | | | | | | |
| <i>Developer</i> | | | | | | | | | | |
| <i>Professional</i> | | | | | | | | | | |
| <i>Academic</i> | | | | | | | | | | |

note: sn is sub-node.

Source: Developed by the researcher.

3. Background of the Thai social Context

This section aims to describe some historical backgrounds of the Thai society which are fundamentally based on three major aspects: socio-cultural, political-economic and legal.

3.1 The socio-cultural aspect focused on the issue of the respect for the Monarch. This custom is one of the unique cultures embedded in the Thai society. The King means not only the Head of the country, but also the centre of the Thai people. The social bonds between the King and the people have existed throughout a long historical period. More importantly, this sort of bond has been strengthened because of the sensitive awareness of the King through the royal activities. However, the feeling of indebtedness occurs not only to the King, but also

to the noblemen. While those higher up in the position seek validation of power from those below them, those lower down anticipate advantageous returns from their superiors. This relationship is named 'the patron-client relationship' which refers to the loyalty and patronage exchange (Keyes, 1987, p. 136). Moreover, this is a culture of power and informality (Askew, 2002, p.2) representing the network of influence between institutions and people (Hansasooksin, 2012, p. 103-104).

It is interesting in that those behavioural-institutional practices are also embedded in the allocation of land resource. In the past, the land tenure in Thailand has been under the Sakdina system, similarly based on the feudal system (Durand-Lasserve, 1980). The King, with sovereign power, assumed his supreme right over the land in the country, then, divided it among his noblemen. The noblemen, thereafter, distributed the land to the people below his rank on the condition of either performing duties or producing goods and services (Ibid). On the other hand, since land titling was introduced in the 1890s, the process of developing landed property for sale and rental was formalized. The King started the process not only by donating the land to the nobility and the ministerial officials for housing development, but also by selling the land for just a token sum of money. More importantly, opportunity to own the land has been widely distributed to common people after the country's ruling system changed from the absolute monarchy to the democracy in 1932 (Tantikul, 1973; Onchan, 1990).

The aforesaid circumstance can be interpreted that land means not just a resource, but also precious estate. This may be because Thai people lacked the opportunity to own the land for a long time. Once they possess land properties, hence, they value such properties as legacies. In addition, the Sakdina system stemming from the social culture for a very long time implies the advantages of land ownership. The land-owner is credited as the wealthy person who gains benefits from his properties without hard working. Granting leases can generate a large amount of incomes for him. This matches the Thai idiomatic

expression 'the Domestic Tiger (Sua Norn Kin).' Therefore, the freehold system is more preferable in Thailand. This sort of attitude appeared in the interviews. Some of the interview participants answered that land property is worth investing in. Moreover, land along with building development is concerned with trophy mentality (from the interview).

3.2 The political-economic aspect is considerably dynamic and influential in altering the performance of the property development sector. Nonetheless, it is worth noting another two groups of people who have crucial roles in controlling the political and economic power in the country. They are the bureaucratic military or politicians and the businessmen (Hansasooksin, 2012, p. 103). The latter group has become more powerful since the country moved forward to national economic development (Keyes, 1987; Uwanno, 2006). This is because the capability of the military and bureaucratic leaders to set up competitive business is limited. The business sector is, thus, required to drive and achieve socio-economic position gain.

Such a kind of connection between actors is a foundation of an informative community. It usually facilitates great opportunity in accessing information for decision making, especially on the matter of land resources. The political-economic power is helpful in constructing a connection with locals and capturing property value. Either the bureaucracy or the businessman can easily acquire land and make high profits from it through selling, leasing and speculating. In addition, during the economic crisis in 1997-2000, this sort of connection was also helpful in creating the network of information. Some business elites and politicians started money trading before the policy of currency floating was launched (Mera & Renaud, 2000). This sort of financial speculation based on insider's information helped them to be save from bankruptcy, but made the currency weaker.

Remarkably, comparing the economic factor to the political factor, it seems that the former has a closer relationship to the property development process. Meanwhile, the latter does function as a sup-

portive factor. The political alteration affects the investment atmosphere, rather than the direct development process. First, the growth in the economic sector normally drives demands on building space. In addition, the promotion of particular types of businesses will definitely accelerate specific segments of the property market, for example the tourism campaign encourages the development of hotels and accommodation like apartments and serviced apartments. On the other hand, the development of office buildings highly depends on the employment trends. Whenever, the employment rate drops, the rental space for such buildings is consequently falls as well as the number buildings under construction (Wanichwatana, 2006).

Secondly, the openness of the country to the global economy also affects the property market, especially the financial sector. The monetary policy and the funding strategy are financial resources that help increase investment potential. Comparing those sources of finance with the local-national bank loan of the past, the sources connecting the offshore funds offer the developers the opportunities to invest in large projects. On the other hand, the inflow of money in the property sector, supported by financial liberalization, has increasingly led the national financial status to fluctuation (Mera & Renaud, 2000).

3.3 The legal aspect is also dynamic. The law of land and property has been altered in accordance with institutional consensus. The law always engages in the change of country ruling and the establishment of socio-economic policies. It is, in general, created and enacted to support the society in the wider context. Moreover, it contains a sense of reconciliation. This is because it mediates different requirements of many stakeholders and systematically controls the actions in the property market. Generally speaking, laws are constructed as a mechanism which links every aspect together. Figure 2, drawn by researcher showing the linkage between social aspects in the society, implies that a successful legal construction should support the political-

economic requirements and be compatible with the socio-cultural backgrounds.

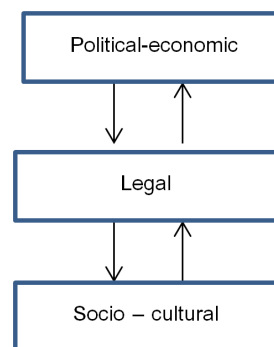


Figure 2. The linkage between social factors in the Thai society.

In conclusion, it can be said that each aspect of the Thai social context performs its own function. The socio-cultural aspect symbolizes not only the identity of the society, but also the conventional thinking and behaviour of the people. The political-economic aspect presents a broad framework for social and economic management in the wider scale generally known as policy. More importantly, it implies a channel to obtain the power structure which seems to be essential for constructing legal mechanism. The aspect of laws and regulations is very important because it makes the policy ready to implement. Interestingly, it also controls social activities and reconciles tensions in the society.

Nevertheless, the socio-cultural aspect seems to be the dominant strand. It represents the strong sense of institutions embedded in the society. In Thailand, the most considerable culture is the dependency system which forms the model for person-to-person relationship and the complex hierarchical entourage (Anderson, 1978, pp. 231-2; Korff, 1989b, pp. 44-5 in Askew, 2002, p.100). However, this study considered those models as the network of power. This kind of network plays a crucial role in either military-bureaucratic business or commercial business. Most importantly, it is associated with the allocation of land resource which illustrates the urban-rural divide in political influence and economic-bargaining power.

4. Research Findings

4.1 *The Connection between the Thai Social Context and People*

This study found that the context was the dominance whereas the people were just the players. Rules, regulations and top-down policies were established by a small group of people like the King and the bureaucracy but, on the other hand, those establishments are powerful since the people wholeheartedly follow them. In Thailand, the most influential structures are the King and the government. However, they produce different kinds of power relations.

The power relation between the King and the institutions is based on the social bond of prestige loyalty. Thai people have appreciated the royal activities bringing benefit to the well-being of the country. Nevertheless, the righteous kingship that helps accelerate urban growth and civilization is not only the development of the country, but also the distribution of land property to the authorized institutions. Those organizations, such as the Crown Property Bureau (CPB), manage the pieces of land for various groups of people, their affordability and uses, rather than returns. The CPB classifies types of ground tenants into groups according to their income and institutional status, for example: the lower-to-middle income people, governmental offices and state enterprises, and large commercial entrepreneurs (from the interview). Each group of tenants pays different levels of rentals determined by activities, locations as well as financial status. Although some pieces of those lands are located in the prime commercial areas, the leasehold value can be lower than the market if the lands are granted to the low income people. Such circumstances are usually occurred because the tenants' incomes are limited for paying rents in accordance with the real transactions in the property market. Moreover, because the royal distribution of land implies the cost of acquisition at zero, the CPB avoids seeking profits by setting lower rents. Therefore, these circumstances show that the institu-

tion still follows the established structure, not the economic rents based on potential of land.

The next power relation is between the government and the institutions in the form of policy and legal enactment, especially the landowner institutions in public sector who are the interviewees of this research. Such organizations are interesting because they are formally constituted through the acts (ACT). Some of them are established according to the mission of ministries (Royal Thai Government Gazette), for instance: the Crown Property Bureau (CPB), the Treasury Apartment (TD), and the State Railway of Thailand (SRT). Whereas the first two is under the Ministry of Finance, the latter relies on the Ministry of Transport. Remarkably, those ministerial acts define the rules of income transferring to the ministries. The rules indicate that the landowner organizations have to transfer the incomes including the fees from leased properties to the supervisory ministries. In contrast, Chulalongkorn University (CU) and Thammasat University (TU) are responsible for property management autonomously. Despite the supervision by the Ministry of Education, the universities authorize the offices of property management to manage and generate incomes from their own properties.

That aforesaid kind of relation is in fact formed by both intrinsic and extrinsic factors. The intrinsic factor refers not only to the unification of public organizations which sounds bureaucratic, but also the commitment to well-being of the people in accordance with the monarchical intentions (Uwanno, 2006). Both the government and the institutions realize that the issue of urban-rural divide is critical. This is because the low income people lacking of social opportunities, especially an access to land resources, are large in numbers. Many public policies are, thus, concerned with the provision of land through lower rent although it distorts the market price and brings the landowner institutions sub-optimal returns.

Meanwhile, the extrinsic factors refer to the global economy which drives the country to liberalization and capitalization. The policy of Free Trade

Agreement (FTA), Foreign Direct Investment (FDI), the Foreign Business Act (B.E. 2542) and the Hire Act of Immovable Property (B.E. 2542) are all examples showing the intention to open the country to the wider world. Unfortunately, the clash between those factors creates a tension in the society, and even the governing system in the institutions. It is the interaction between the liberal, capitalist paradigm and the traditional practices of the bureaucratic-military system. This incidence is considered the social transition in Thai society.

On the other hand, the power relation between the government and general individuals is considerable. This study found that sometimes governmental policies and regulations need a period of time to change the psychological thinking and traditional customs which are strongly embedded in the Thai people. The most obvious example is the Hire Act of Immovable Property (B.E. 2542) which offers the 50-year leasehold for the commercial and industrial activities. Although it has been enacted for more than a decade, it cannot replace the traditional lease length, the 30-year leasehold under the Civil and Commercial Code.

Finally, to consider the interaction between structure and agency through the institutional approach, it can be concluded that the 'rule' in Thai society consists of both the formal and informal one. While laws and regulations are the formal rules, traditional customs are the informal rules. More importantly, either formal or informal rules are generally realized in legal or political terms, rather than economic terms.

4.2 Power of the Actors

It is worth noting that the power relations in the property market are imperfect. Although the equal rights were legal stated for both the landowner and the developer, the relations in practice normally depend upon the function of demand and supply. A limited supply with a high degree of demand will certainly

provide the landowner with great power. In contrast, an over-supplied market will provide the developer with advantages since they can make choices. Nevertheless, the relations in the Thai property market seem to be dominated by the landowners, especially the public sector landowners. The study found that there are two major factors that make their bargaining power strong. First, the status of being the public agency represents the bureaucratic characteristics. People who deal with those organizations need to follow the rules strictly, for example the State Property (Ratchapatsadu Land) Act B.E. 2518 (1975) that states the process of lease arrangement as well as the responsibilities of lessors and landowner. Secondly, they are the public organizations with authority in taking care of state land and the crown properties. They have to be careful with the lease granting and purposes of land utilisation. Most of the organizations have established their own rules and regulations controlling the use of land properties and determining the leasehold fees. The State Railways of Thailand is an example. The Regulation No. 129, section 3(1) – 3(7) shows the length term of lease and expected returns varied by types of project development. Therefore, the developers' interests in development are sometimes limited. Finally, since those pieces of land are located in the commercial prime areas, the competition between potential developers is intense. Lease negotiation is thus necessary in order to attract the landowner.

Private landowners, on the other hand, are either in the group of big families refusing to sell properties, or the group of elite people running business or political matters. They can easily access the properties in Bangkok CBD because of their financial status and their connection with governmental officials. In the past, the elite group in the private sector developed the properties according to the concept of owner-occupier. They acquired and developed pieces of land themselves for specific purposes. At present, however, the principle of development has

changed to lease-based development. They tend to lease their properties for business activities which in turn generate a high income stream along with the appreciation of the properties. The research found three major reasons for the greater power control of the landowners.

- The landowners, especially the public institutions, have regulated the instructions of property management in the form of rules.
- Good location of properties, like Bangkok CBD, could strengthen bargaining power for owners.
- Connection between people in the elite group is close due to business or political relationship and kinship. In the Thai property market, there is an advantageous connection because of the hierarchical structure and the returning of favor inherited in Thai culture. The aforesaid ways of behaving are normally criticized as 'subjective' as well. This is because the emotional and individual relations could stimulate land speculation which actually blocks the appropriate utilization of properties.

4.3 Significance of Time

The analysis in this section focused on the significance of time as an investment incentive. In Thailand, the traditional lease length released is for 30 years. The limitation of value decay according to this period can be explained by the Royal Decree of Property Depreciation B.E. 2527 (1984). In the decree, it is stated that the original value of permanent building properties would decrease by 5% per annum. However, some developers use the depreciation rate at 3.3% per annum. So, the value of the building properties will become zero around year 20 to 30. The extension of the lease period prompts the landowner and the developer to consider the pros and cons of the length of time.

The interview showed that the term of ground

leases is generally based on the 30-year leases. Most of the landowners prefer such a period of time with an extension for renewing. They pointed out that this is the normal practices in compliance with the Civil and Commercial Code. Most of them are concerned with the long commitment attached with term time. They said that the longer the time, the less power of control will be. This is because they lack opportunities to use the land although the rights on land are specified as the owners. The initial uses of land are locked for a very long time. Thus, to change the utilization of land is difficult; the opportunity is rare.

Overall, the 30-year period is interpreted as 'appreciation' from the viewpoint of landowners but as 'depreciation' from the viewpoint of developers. Due to the nature of property leases, owners could receive a large amount of money consisting of the upfront premiums and the stream of periodic rents. Furthermore, they could be satisfied with the value added on plots of land along with buildings which finally belong to them. The number 30 also refers to the generation, so they prefer an investment that generates returns within a lifetime. The longer the period of time, the more difficult to manage and envisage the success or failure of investment. Moreover, the issue of built properties is critical because landowners would appreciate good-conditioned projects. Due to the fact that the durability of projects developed through the appropriate technologies could last for 50 – 60 years, it is, therefore, possible to evaluate that the projects returning to them are worth having for further development. If the projects are not in good physical condition, refurbishment is fundamentally required.

On the other hand, the developers seem to be satisfied with the longer term. The qualitative study of the significance of time showed that time period implies the meaning of chance and security for investment. While chance is a challenging opportunity to plan, develop, and manage large-scaled projects, security is a state of being secured to invest

and run businesses on sites. Therefore, it can be roughly concluded that only developers are satisfied with long-term leases: 'the longer the better.' Moreover, the sense of being secured in investment strongly supports the reason for the long lease length. As almost all developers bear in mind that they might be refused renewal of the lease agreement, they want to negotiate the length of time that offers them most chances to make returns. As well, almost all developers are pleased with the growth of investment; they would definitely prefer a period of time that challenges them to undertake an interesting development campaign.

4.4 Appropriate Lease Length

It seems to be difficult to specify only one appropriate lease length. The interviews found a critical mismatch between the legal and practical aspect since Thai people are used to the 30 year lease based on the Civil and Commercial Codes. Importantly, they apply that number as the standard length of leases, though there have been attempts to extend the period of lease to 50 years and 90 years due to the Act Hire of Immovable Property, and the Act of Suvarnabhumi Aerotropolis Development (draft version), respectively. In practical negotiation, some landowners and developers; like the public landowners and their private ground lessors, constitute various forms of lease length, for instance: '30+10+10,' '30+20,' and '30+30+30' whose totals exceed 30 years. This behavior consequently addressed why lease agreements aiming to last for more than 30 years refuse to follow the Act Hire of Immovable Property or the proposed principle offering a longer lease period.

According to the above statement and the research question, the study therefore examined the disadvantages of the Act Hire of Immovable Property, and the Act of Suvarnabhumi Aerotropolis Development (draft version). As a result, the study found two considerable remarks together with an implication. The remarks are concerned not only with the newness of the Acts, but also the essence. First,

the recentness of the aforesaid Acts undoubtedly causes the feeling of uncertainty amongst the people (Khumpaisal, 2012). This is because the Act Hire of Immovable Property was only promulgated in B.E. 2542 (1999). Secondly, the essence of lease length is clearly different from the Code. The period of time specified in the Acts was extended for more than one generation: 50 years and 90 years. Moreover, the essence of section 4 of the Act Hire of Immovable Property causes the feeling of inconvenience (from the interview). The statement expresses that "it is compulsory that the contract must be made in writing and registered by the competent official," whereas the Code allows it as an optional action. Generally speaking, it can be concluded that the attempts to change traditional belief and behaviour in the Thai society probably face failure. It seems that Thai people resist the recentness of things and significant alterations.

Besides, the implication could be seen through the issue of internationalization. The Acts are criticized for encouraging not only large-scale investment conducted by the group of elites, but also foreign investment. First, the provision of specific rules and conditions of lease period extension is to boost commercial and industrial activities following the national economic crisis in 1997. The rational background of the Act said that there was a necessity to attract overseas' investors through security of the rights because they were not allowed to have freehold tenure. Secondly, the numbers 50 and 90 are probably made to meet the requirement of foreigners who are familiar with lease lengths lasting for 90 years used in their home countries, for instance, UK and Hong Kong.

Again, this study found it is difficult to point the exact lease length appropriate to the Thai society. First of all, it should be accepted that the numbers of lease length are created due to legal perspective by lawyers, not due to real experiences by real estate developers. Next, it is worth noting that lease agreements are negotiable. The specification of time

according to the laws indicates only the maximum period of lease. Therefore, the magic number of lease could be varied as the attitude and satisfaction of actors depend upon their roles and experiences in the local and global property market.

However, the description of the activities compatible with the length term of ground leases is very helpful. This is because each length of time provides the projects with either advantages or disadvantages. This section, thus, summarises those conditions in detail.

- The 30-year Lease

Since most landowners and developers answered that the length of lease due to the Civil and Commercial Code was absolutely recognized as conventional agreement, an investment in local to national level is reasonable. Actors who prefer the condition of 30 years normally consider returns of projects in a single generation.

- The 50-year Lease

The Act Hire of Immovable Property itself defined that only commercial and industrial activity was right to the objectives. Since the length is extended, the Act is suitable for the medium-to-large scale investment which might require branding and support from overseas countries. Interestingly, the Act could also encourage social and environmental development. This is because projects in medium or large scale are highly concerned with good images of buildings which continually link to the good quality of the urban environment, for instance, good road access, green landscapes, and wide open spaces (from the interview).

- The 90-year Lease

If the case of 90-year lease happens in Thailand, it is appropriate to the large-scale investment and the special purposes of development only. The research found that almost all landowners and developers do not accept the term of it, but the professionals and academics do. However, they concerned with the time condition. They simply pointed out that the length could be established for specific development in

special areas. This is because the term 90 years seems to be a lifelong period and be sensitive to the sense of belonging.

5. Conclusion and Discussion

This paper aimed to explore the significance of time, particularly lease length determination and subtle meanings of each magic number; 30, 50 and 90 or 99 years. The researcher, thus, conducted the study through conventional thoughts about land resource and behaviour underlying the determination of lease length. Data from historical review about land allocation in Bangkok and Thailand along with the interviews were qualitative content to be analyzed.

The researcher found that leasehold system in Thailand was the process of land allocation that implying social bonds between the people with higher up in position, like the King and the bureaucratic or business elite, and the ordinary people. In past time, lease was mainly employed as a tool for country governing and military services. At present, however, lease had become a tool for individuals seeking the land for commercial and residential purposes. More importantly, leasehold development normally occurred in prime locations of Bangkok CBD and inner city. Pieces of land located in those areas were owned by the King, the royal families and the noblemen. Once, they distributed such lands to authorized institutions or elite groups, those plots of land would not be sold. Lease would only be the mechanism for land utilization.

The researcher also found that it was difficult to specify one appropriate lease length. There was a mismatch between the legal and practical aspect. Thai landowners, especially the public institutions, had been used to 30-year lease based on the Civil and Commercial Codes. On the other hand, the developers or ground tenants preferred the medium-term lease, 50-years. Thus, in practice they employed the 30-year leasehold contract. Interestingly, the professionals and academics working for planning

and development stated that the ideal long-term lease like 90 or 99 years was considerable. They pointed that such a length of time was a maximum period representing the sign of being internationalized. Oversea investors who require long term investment and security in the right of hire would be satisfied with this condition. Besides, overseas demand for leasehold condominium which needs length of time to reside had been rising.

In summary, to build an effective function of leasehold, this paper would note some additional measures which facilitate the process of land and property development.

First, leasehold regarding the Civil and Commercial Code has been widely used and well-adopted for a long time. Nonetheless, there is a mismatch between project development and the Royal Decree of Property Depreciation. The Revenue Department specifies the principle of depreciation in section 4, that the value of building would be devalued by 5% each year. As a result, the value of the project in year 20 would be equal to 0. In fact, however, the project could be occupied for the next 10 years due to the maximum length of lease, and for the next 20–30 years due to the life-cycle of buildings. Such a mismatch could be criticized as the limitation of development, as the depreciation does not support the intention of long-term investment.

Secondly, 50-year leasehold regarding the Act Hire Immovable of Property requires a few legal tools to control the development and support the implementation. The research found that it is necessary to control the types of development which can be defined into two aspects: activities and physical patterns of the projects. Fortunately, the Act itself limits the uses of property to commercial and industrial use only, since it wants to keep rights for residential use for Thai people. However, the control of project development needs to be well-stated. If it is true that the long-term of lease attracts large-scale investment, developers might build large projects with

greater opportunity to maximize returns. They probably ignore the issue of urban environmental quality. Therefore, the building code is necessary to apply with the Act, especially the intensity control.

Importantly, if the case of 90-year lease were used in the future, the legal tools focusing on management would be required. Initially, the government has to be clear with the objectives of the lease, for example, whether or not to rule specific types and areas of development, whether or not to attract overseas investment or business partnership, and whether or not to allow them to reside in the country. Next, the legislation becomes the essential issue, especially the point of spatial specification and implementation

The study would note that rules for spatial governing and measures for controlling physical development were very critical. Developers, investors, and involved public actors should be concerned with legal statements that could ensure the certainty and security of investment. Thus, 3 possible alternatives for governing development might be applied in the near future. First, the areas for 90-year lease might be shaped like an autonomous locality like the Bangkok Metropolitan Area and Pattaya. Secondly, the areas might be established as a special district according to the Act of Special Economic District. Thirdly, it could possibly apply the Act of Industrial Estate B.E. 2522 (1979) in order to support a new settlement of commercial and industrial units. Most importantly, the governing requires a group of people who could operate and develop the area. The study found that the public organization might be the most appropriate form for the Thai society because the status of being a public sector could support easy and smooth communication with the government and other public agencies.

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