

LEGAL ALERT

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New Law (Sap-Ing-Sith) on the Transferable Right to Utilise Immovable Property)

The new Sap-Ing-Sith Act enacted on Royal Thai Government Gazette on 30 April 2019 will be effective on this 27 October 2019 with regulatory details and procedures coming up.

Sap-Ing-Sith was designed to eliminate restrictions about the rental law or lease in Thailand with three significant restrictions. Firstly, the restrictions imposed by the rental law according to the Thai Commercial and Civil Code such as a contract of hire of an immovable property is exclusive for each person so it is non-transferable unless the landlord's consent is received to sub-lease, transfer of hire, renovate or modify. Secondly, another law applicable to lease, is the Lease of Immovable Property for Commercial and Industrial Purpose Act, which is not widely adopted by the public as there are only six entities that have registered the lease according to this Act. Lastly, the validity and extent of enforceability of a special lease contract (a reciprocal agreement with greater right than a conventional lease) for which it can be transferred to a tenant's successor without registration but cannot be subleased without the landlord's consent, still heavily relies on judicial discretions on a case-by-case basis.

Therefore, by applying the concept of both common law countries (i.e., the United Kingdom) and civil law countries (i.e., France and Germany) in relation to leasehold, the parties to the contract will derive the right of utilising the property rather than leasing, but their rights do not fall under ownership (freehold) of the property. The Ministry of Finance came up with the Sap-Ing-Sith Act. Sap-Ing-Sith will facilitate investors to invest in immovable properties with the elimination of the current rental law's restrictions and create the "new asset class" providing more rights to the right holder to utilise the property.

The highlight points to note for the Sap-Ing-Sith are:

Sap-Ing-Sith holder's rights

- Utilising, sub-leasing, transferring of lease, renovating, modifying, transferring of Sap-Ing-Sith, mortgaging, using it as business security or as an inheritance without consent of the landlord.
- When constructing a building on the land, the Sap-Ing-Sith holder will have the ownership of the said construction until the extinction of the Sap-Ing-Sith agreement. Then the ownership will be transferred to the landowner and the Sap-Ing-Sith holder will return the property as it is, with no duty to reinstate it into the former condition unless agreed otherwise.

Obligation according to Law

- The Sap-Ing-Sith holder is subject to duties according to any applicable enforcing laws (e.g., tax payment such as land tax) and is obliged to immediately inform the owner in case of any disturbance of peaceful possession.

Restrictions on the immovable property owner's ("the Owner's") Rights

- When selling the property with registered Sap-Ing-Sith, the Sap-Ing-Sith is still attached to the property, and the new owner has to assume all the rights and obligations of the transferor according to the Sap-Ing-Sith agreement.
- When mortgaging the property with registered Sap-Ing-Sith or using it as business security, consent from the Sap-Ing-Sith holder is required.

- Benefits for the Owner is that with Sap-Ing-Sith, the property is occupied and the Sap-Ing-Sith holder is obliged to immediately inform the Owner in case of any disturbance to the possession and thus prevent the property from an adverse possession.
- The Owner cannot establish any forms of jus in rem (real right) i.e., servitude, charge on immovable property, or usufruct, until the extinction of Sap-Ing-Sith agreement.
- In case there is already a jus in rem (real right) established over the property before the Sap-Ing-Sith registration, consent from the party involved is required. For example, if the Owner would like to register a Sap-Ing-Sith on land with a mortgage with a commercial bank, the Owner will have to obtain the bank's consent before registration. In practice, if the mortgaged land has a probability of a high increase in business value, the bank may agree to the Sap-Ing-Sith registration agreement.

Establishment of Sap-Ing-Sith

There are two circumstances to establish an immovable property to fall under the Sap-Ing-Sith.

- The Owners register their property under the Sap-Ing-Sith on their own even when there are no receiving parties to the contract in order to attract investors to invest in this property.
- The parties to a contract register the property under the Sap-Ing-Sith together at the Department of Lands, which has two stages, i.e. the immovable property owner has to register the property to be the Sap-Ing-Sith first, then register to transfer the Sap-Ing-Sith to the receiving party.

Briefly, the immovable property owner always has to be the first Sap-Ing-Sith holder.

Term

The Sap-Ing-Sith Act allows the parties to agree differently from the prescribed conditions and the highest extension period of the Sap-Ing-Sith Agreement is at 30 years with no required minimum period.

Property

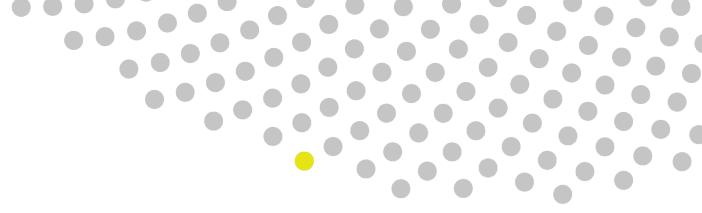
A property that can be registered under the Sap-Ing-Sith and must be an immovable property with a document of rights that certify ownership explicitly. There are three types of the immovable property that can be registered, which are:

- Land with a title deed;
- Land with a construction; and
- Ownership in condominium units.

Therefore, a certificate of utilisation, e.g. Nor Sor 3, Nor Sor 3 Gor, cannot be registered under the Sap-Ing-Sith. In addition, the registration of the Sap-Ing-Sith must not contravene with any other regulations such as the Town Planning Law and Ratchaphatsadu Land Law. For example, a land owned by a government sector such as railway stations can be registered under the Sap-Ing-Sith, unless there are conflicts to related regulations like Ratchaphatsadu Land Law to construct community malls for increasing locals' income and it is a way to boost up local economic conditions.

Extinguishment

The extinguishment of the Sap-Ing-Sith Agreement can only occur by the registration at the Department of Lands or the agreed term has extinct. If there is a breach of contract such as missing monthly payment, the property owner can enforce the agreement to repossess the property, however, such enforcement will not be valid against a truthful third-party who had registered the property and truthfully paid for consideration of Sap-Ing-Sith prior to such enforcement. Therefore, it is likely that mutual termination between all parties must be agreed or else the extinguishment registration will not materialised.



To conclude, the Sap-Ing-Sith is an alternative option for business or investors to make a long-term investment in properties, which can be utilised almost in an equivalent of purchasing the properties. It is a cost-reduction and can be used as business security to acquire more capitals, it can be sub-leased, modified and renovated with no owner's consent required.

If you have any questions or require any additional information, please contact **Threenuch Bunruangthaworn, Archaree Suppakrucha, Panwadi Maniwat** or the ZICO Law partner you usually deal with.

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