

LEGAL INSIGHT | Vol. 1, Issue 7

LICENCE, TENANCY OR LEASE: WHICH ONE DOES YOUR BUSINESS ACTUALLY NEED?

The wrong choice at signing determines whether you can be asked to leave tomorrow or stay for twenty years

Every business that occupies commercial space in Malaysia sits under one of three legal arrangements: a licence, a tenancy or a lease. They sound interchangeable. They are not. A licence is permission to use premises — it can be revoked with reasonable notice, it creates no interest in the land, and it does not bind a future owner of the property. A lease, at the other end of the spectrum, runs with the land and survives a sale once registered. A tenancy sits in the middle: exclusive possession for a defined term not exceeding three years, exempt from registration under section 213(1)(a) of the National Land Code (Revised 2020) (“NLC”). The label on the document is the starting point; the substance is what counts.

KEY HIGHLIGHTS

- The three-year threshold under section 221(2) of the NLC is the statutory dividing line: exclusive possession for a term not exceeding three years is a tenancy (section 223); a term exceeding three years is a lease and must be registered in Form 15A (section 221(4)) to bind a subsequent purchaser of the property.
- Label does not govern. An agreement titled ‘licence’ may in substance be a tenancy if it grants exclusive possession — The reality of the arrangement, not the title of the document, determines the occupier’s rights.
- The right structure depends on your business type, your capital investment in the premises, and how long you need to stay. Choosing wrong at signing is not a paperwork problem — it is an occupancy risk.

A LICENCE GIVES YOU ACCESS. IT DOES NOT GIVE YOU SECURITY.

A licence is permission to use land or premises. It creates no interest in land, confers no exclusive possession, and can be revoked by the licensor on reasonable notice. The moment the licensor withdraws permission, the licensee has no legal basis to remain. A licence is governed by the Contracts Act 1950 and by common law principles — it does not engage the NLC’s registration framework because there is no interest in land to register.

The practical consequence: a licensee cannot exclude the licensor from the premises, cannot assign or transfer the arrangement without consent, and has no protection if the property is sold to a new owner. For a pop-up stall, a temporary kiosk or a co-working desk, this is proportionate. For a business that has invested in fit-out, equipment or customer goodwill tied to a location, a licence is structurally inadequate.

A TENANCY GIVES YOU EXCLUSIVE POSSESSION — UP TO A POINT.

A tenancy under Malaysian law grants exclusive possession of defined premises for a term not exceeding three years (section 223(1) of the NLC). The tenant can exclude even the landlord from the premises, except where rights of entry are expressly reserved. A tenancy not exceeding three years is a “tenancy exempt from registration” under section 213(1)(a) — it does not need to be registered at the Land Office.

The critical limitation: because a tenancy is not registered on the title, it does not bind a new owner. If the landlord sells, the new owner can ask the tenant to leave and the tenant’s only recourse is to sue the original landlord for damages, not to recover the premises. The NLC allows a tenancy to be endorsed on the title under section 213(3), which puts any subsequent purchaser on notice of the tenancy, but this requires the landlord’s consent and is rarely agreed to in practice. The more realistic protection is to negotiate safeguards into the tenancy agreement from day one.

A LEASE GIVES YOU SECURITY OF TENURE — IF YOU REGISTER IT.

A lease grants exclusive possession for a term exceeding three years (section 221(2) of the NLC). The proprietor and the lessee execute the lease in Form 15A (section 221(4)), and the lease is registered at the Land Office. Once registered, the lease takes legal effect under section 227(1) of the NLC: it runs with the land, and a purchaser of the property takes subject to it.

A lease that is not registered cannot pass any legal interest in the land. It binds the parties as a contract, but it does not bind third parties and it does not survive a sale of the property. The distinction is consequential: a business that negotiates a ten-year term but never registers the lease, has a contract; it does not have security of tenure.

WHICH STRUCTURE FITS WHICH BUSINESS

- Pop-up stalls and kiosk operators — licence. The arrangement is short-term, no capital investment in the premises is at stake, and the flexibility to exit suits both sides.
- F&B operators, retail boutiques and SME offices on terms not exceeding three years — tenancy. Exclusive possession is essential for daily operations, and the term aligns with the three-year threshold.
- Anchor tenants, industrial and warehouse operators, and any business making capital investment in premises that cannot be recouped within three years — registered lease. The capital at risk demands security of tenure that survives a sale of the property. A lease that is not registered is a contract, not a property interest.

NOTABLE LEGISLATIONS

- National Land Code (Revised 2020) — sections 206, 213, 221, 222, 223, 227 (leases and tenancies); Form 15A (instrument of lease)
- Contracts Act 1950 — governing framework for licence agreements
- Specific Relief Act 1950 — specific performance and equitable relief for lease disputes

PRACTICAL TAKEAWAY

Before you sign, ask three questions. First: does the agreement grant exclusive possession? If yes, it is a tenancy or lease — not a licence — regardless of what the document is called. Second: how long is the term? If more than three years, register the lease in Form 15A or accept that a future sale of the property can extinguish the arrangement. Third: is there an option to renew, and is it clearly worded? If the business depends on staying, the right to renew must be expressly stated and the terms fixed — an option to renew at “market rent to be agreed” is an invitation to dispute, not a right to stay.

The label on the document is the starting point of the analysis; the substance is what determines your rights. Get the structure right before signature — not after.

All information in this Newsletter is correct as at 26 May 2026 unless otherwise stated.

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