

Note
Concerning the draft-Agreement of lease of land belonging to
The Railways Department within the area of Menam Station

The Ministry of Communications has by letter to the Secretary-General of the Judicial and Legislative Council No. 2934 dated 21st. August 2490, requested the examination of a draft-agreement of lease of land belonging to the railways Department within the area of Menam Station.

The Ministry of Communications did request an examination of the wording of the said draft-Agreement submitted to them by the oil Companies, especially because the general Agreement signed on the 5th. April 2490 is in English. The Ministry of Communications have consequently recommended that the examination should be made by the representative of the judicial and Legislative Council who has taken part in the drafting of the general Agreement (meaning the Legislative Adviser).

Having received communication of that request on the 15th October 1947, I beg to submit the following observations.

Generally speaking it is of interest to remind that, according to clause 21 of the General Agreement, “the lease agreements shall confirm and incorporate all appropriate terms of this agreement relative to rights exercisable over or in connection with Land and structures erected or to be erected thereon including wharves when applicable.”

Generally speaking also, there is no objection to use in the draft-lease the words “Lessee” (instead of the specific names used in the General Agreement) since those two words are defined in the Preamble. The same when the words “this agreement” is used in the draft-lease (instead of “original lease”)

As to clauses 1 and 2 of the draft-lease submitted, the specifications of the draft as to the location of places and the fixation of the rent, are in blank. It may be reminded that the said specifications must comply with those included in the General Agreement Clause 5.

Clause 3 (option to renew) To compare with clause 4 (b) of the General Agreement which concerns the Ministry of Defence but is extended to the Ministry of Communications by clause 5 (b). of the General Agreement.

(a) the expiration of the lease-agreement as mentioned at the beginning of clause 3 of the draft-lease, must be governed by the period of 30 years specified in clause 1 of the lease-agreement. The General Agreement repeats fully “unless prior to the expiration of the said period of thirty (30 years)....” It should be better to do so.

(b) the addition of the words “railway wharf” (which are not in clause 4 of the General Agreement) is justified by Clause 5 (b) of the General Agreement.

Clause 4 - (To sublet) To compare with clause 4 (c) of the General Agreement which concerns the Ministry of Defence but is extended to the Ministry of Communications by clause 5 (b) of the General Agreement.

Similar.

Clause 5 – (approach facilities). To compare with clause 4 (d) of the General Agreement which concerns the Ministry of Defence but is extended to the Ministry of Communications by clause 5 (b) of the General Agreement.

Attention is called upon the point that the General Agreement clause 5 (a) (i) specifies plots marked A, B, C, D, E, F whilst the draft-lease says “the lands aboye described and shown in the plan annexed hereto.” I suppose that it is the same thing, but however the omission of the letters in the draft-lease may raise difficulties in other clauses to be examined hereafter (see remark for clause 10(a))

Similar

Clause 6 – (good repairs) To compare with clause 4 (e) of the General Agreement which concerns the Ministry of Defence but is extended to the Ministry of Communications by Clause 5(b) of the General Agreement.

Similar

Clause 7 – This clause is not as such in the General Agreement. It summarizes rights granted to the Lessees under the General Agreement. (See especially sections 15 (oil storages), 16 (use of the Koh Prong wharf) and 20.) It should be better to reproduce the provisions of those three sections, since this is the method followed for all the other matters of this draft-lease. The words “to dismantle and re-construct all things erected on the said lands hereby leased” are not in the General Agreement, but do not seem contrary to the spirit of section 20 of the same (unless there are technical objections).

Clause 8 – (use for storage etc.) To compare with clause 8 of the General Agreement 9but the reference to the plot of land is in blank).

Similar

Clause 9 – (right of way of the Lessor). To compare with clause 9 of the General Agreement (it is assued that “plan annexed thereto” is the plan No” I mentioned in the General Agreement; also that plot in blank is plot marked in the General Agreement).

(a) no remark

(b) specification of land not leased by the end of (b) differs in wording from the end of (b) in the General Agreement. Does the specification come to the same thing? (The difference comes from the fact that clause 6 of the General Agreement has not been reproduced in the draft-lease because it concerns lands not leased to the Companies : see the plan, which I have not).

(c) I. The General Agreement says by the end installations “acquired by the Companies under this agreement”. The draft-lease speaks of installations “belonging to the lessees (Companies)”.It is not the same thing. The wording of the draft-lease is wider. It is recommended to repeat the wording of the General Agreement.

Clause 10 – (right of way of the Lessees) To compares with clause 10 of the General Agreement.

(a) the wording of the draft-agreement does not follow the wording of (a) in the General Agreement. I call attention upon this point : the plots of land to which there may be access under the General Agreement are those marked B, C and F, whilst in the draft-lease it is said “say part of the land leased to the Lessees under this agreement, this including consequently A, D and E in addition.”

I call attention also upon this other point : the right of way further mentioned in the General Agreement is “on or over the area of land laying between the said plots and the river bank”; this becomes in the draft-lease “on or over the

Lessor's land not leased to the Lessees above mentioned". The reference to the plan only may show if it is same thing.

Finally, it should be commendable to include just at the end of (a) the words "in the said area of land" which are just at the end of (a) of the General Agreement, for the purpose of similarity.

(b) mention of the land "referred in clause 6" exists in the General Agreement; but since clause 6 has been deleted in the draft-lease as explained here above, to say "not leased" comes to the same thing.

Clause 11 – (two additional wharves) To compare with clause 13 (a) of the General Agreement.

Clause 12 – (Companies to act separately). This clause says that the Lessor (Ministry) shall not object if, during the period of lease, one of the two Companies shall become sole lease or each Company shall become sole lessee wholly or partly. This is a consequence of clause 28 of the General Agreement, by which that right is acknowledged (at least as far as the partition between two lessees is provided).

But it must not be forgotten that section 28 of the General Agreement subjects possibility to operate independently:

(a) to the completion of payment of the purchase price (I don't know if this is completed already); and

(b) also to the application of section 27 of the General Agreement (joint and several liability for the execution of the agreement and liabilities up to separation.) consequently, to say that "the lessor will not object" can mean only that the Lessor will not object "subject to the application of sections 27 and 28 of the General Agreement 5th. April 1940". I suggest that the underlined words shall be inserted in clause 12 of the draft-lease, paragraph one, just at the end (after the word "object"). This addition will also imply that the procedure of notification, etc. provided in the General Agreement in case of partition (sect.28) shall be complied with.

Clause 13 (b) – (termination) It is recommended to write in the English text : "Upon the expiry of this agreement or of any renewal thereof, or upon the determination or rescission thereof for any reason whatsoever...." (see the legal wording of clause 25 (c) of the General Agreement).

Besides, as to the removal of properties of the Lessees, the General Agreement mentions "all plan, buildings, wharves, equipment of other property". The draft-lease says, "the whole of the property". For the sake of accuracy it should be better to repeat the wording of the General Agreement.

The "proviso" entitling the Ministry to purchase the property of the companies in Siam, at the time when the lease shall come to its end, upon reasonable notice, (see clause 25 (c) of the General Agreement) has disappeared. It may be said that this is not exactly a matter of lease, since it concerns especially the disposal of properties sold to the Companies and existing in the lands leased to them. But clause 13 para. Two of the draft-lease reproduces, as far as that disposal of properties is concerned, the provisions for the benefit of the Companies affecting properties in leased lands; then it should be natural that the provisions for the benefit of the Ministry should be reproduced also.

Clause 14 – I don't understand very well the wording used, which is not very clear. I would suggest to say : "Both parties agree that the terms of this agreement must be interpreted by referring to the terms of the agreement between the parties dated 5th. April 1947, including all details set out therein, and that any matter

not specifically provided in this agreement shall be dealt with according to the said agreement 5th. April 1947”.

See for instance clause 14 of the General Agreement which is not reproduced in the draft-lease.

OMISSIONS
In the draft-lease

The whole clause 7 of the General Agreement which entitles the Ministry of Communications to use the leased railway-wharf free of charge and provides that bridge No. 2 shall be kept free is omitted. Why is not this clause reproduced : that is to say clause 7 (a) subject to the conditions in (b) and (c) ?

18th October 2490