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New Developments in the Leasing Market in China

Jason Tian

On July 30th, 2009, the China Supreme Court promulgated a piece of judicial interpretation concerning leasing issues, the *Interpretation*

on Several Issues regarding Application of Law in Leasing Disputes over Properties in Cities and Townships (the “**Interpretation**”), marking the new trend of development in the leasing market.

There are several points deserving a good read. I particularly single out two issues that have invited a great number of disputes in leasing market.

1. subletting of the leased property

PRC Contract Law of 1999 has made it clear that, in case a tenant sublets the leased property without the prior consent of the landlord, the landlord may rescind the lease contract between him and the tenant. However, the Contract Law did not go further to provide the time limit of rescinding, and treatment of the relationship between the sub-tenant and the landlord.

Now the **Interpretation** sets out guidance to those questions.

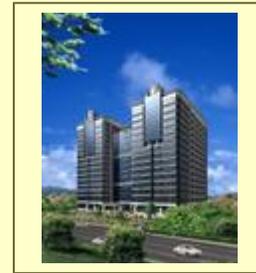
- (1) Period of subleasing shall not be longer than that of the leasing contract. Article 15 of the **Interpretation** provides that, unless otherwise agreed by the landlord and the tenant, the excess period shall be invalid, provided that the subletting has been consented by the landlord.
- (2) Lessor shall have to terminate the leasing contract within six (6) months, where property is subleased. Article 16 of the **Interpretation** says that where the lessor does not put forward its objection within six (6) months after he knows or ought to know that the lessee has subleased the property, he will lose in court in requesting to rescind the lease contract or avoid the sublease contract on the ground that the tenant subleases property without his consent. This is not good news for landlords.
- (3) Subtenant now has a right against the lessor terminating the lease contract. It is provided in the **Interpretation** that, in case that the lessor asks to rescind a lease contract for the

INSIDE THIS ISSUE

In this issue of “**Real Estate**”, we highlight the new development in China’s leasing market, as embodied in the new judicial interpretation issued by China Supreme Court, effective as from September 1st, 2009.

We give particular attention to two important leasing issues, namely, the right of subletting and the pre-emptive right to purchase the leased property.

reason that the tenant has not paid rent in time, the subtenant can now step in and pay the owed rent and liquidated damages on behalf of the tenant in order to prevent the lessor from terminating the lease contract, which termination will inevitably jeopardize the sublease contract. The court will support the subtenant in so doing unless the sublease contract is void at law.



2. pre-emptive right to purchase

The pre-emptive right to purchase the leased property by the tenant is granted by China Contract Law. Generally, the landlord shall notify the tenant of its sale of the leased property three (3) months in advance and otherwise, the tenant may have a good claim to nullify the sale contract between the landlord and the third party buyer.

However, the **Interpretation** seems to limit the pre-emptive right to purchase by the tenant:

(1) Article 11 of the **Interpretation** provides that, the court shall uphold the claim by the tenant for damages against the lessor if the lessor sells the property without informing the tenant of the same in advance or otherwise infringes on the tenant's priority right to purchase; the court shall not uphold the request made by the tenant to nullify the contract for sale of the property between the lessor and the third party.

(2) Meanwhile, the **Interpretation** has further set forth four (4) situations where the tenant's assertion of purchasing the property based on its pre-emptive right will not be upheld:

(a) The co-owner exercise his or her priority

right to purchase the property;

(b) The lessor sells the property to his or her immediate relatives, such as spouse, parents, children etc.

(c) The tenant fails to explicitly express its intention to buy the property within fifteen (15) days following the notice from the landlord; and

(d) A bona fide third party has purchased the leased property and has effected the title transfer of the property.

3. reminder to readers

Leasing, a plausibly easy matter, can lead to a lot of trouble if the contract is not well drafted. Foreign investors shall be more cautious and careful in investing in Chinese property market.

We are ready to provide our professional legal service to property owners not only in regard of entry into leasing contracts but also the administration of your lease contracts in connection with your properties in China, with a view to minimizing your exposure to legal and commercial risks.

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江苏省徐州市人，毕业于华东政法大学研究生院，获硕士学位。曾先后在英国高伟绅律师行上海代表处任高级法律翻译，并在北京市中伦金通律师事务所上海分所担任专职律师。现执业于中银律师事务所上海分所。

服务范围:

- (1) 房屋和土地之买卖和租赁、物业管理、劳动、婚姻家庭、交通事故和其他人身损害赔偿等；
- (2) 外商投资企业设立、增资和变更、房地产投资（包括取得土地使用权、建设项目规划、施工等）、商业物业经营、公司治理结构（即股东、董事、经理等职权分配等）、股权转让和并购、产品质量等；
- (3) 法律顾问：担任各类企业常年法律顾问，协助企业建立劳动、合同管理、公司治理、对外投资等规范和制度建设，对企业经营进行事先法律风险防范，促进企业依法经营；

About Mr. Tian and his services:

Mr. Tian graduated from the renowned law school, East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he served as senior translator at Clifford Chance LLP for 1 year and as an attorney-at-law at Zhonglun Law Firm for 2 years. His **legal services** cover FDI, M&A, real estate businesses (investment, sale, purchase, leasing and property management of both residential and commercial properties), corporate governance of FIEs etc. and other general legal businesses such as tort, marriages.

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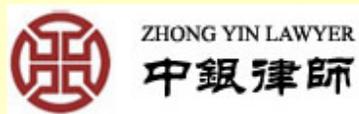
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If you have any questions about the above written contents, please do not hesitate to contact us!

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