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Indonesia Real Estate Guide

2018 EDITION

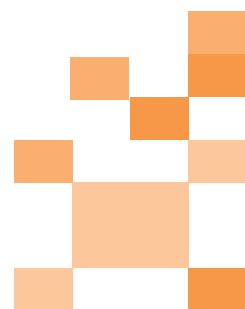




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Disclaimer:

The laws and regulations summarized in this book are current as of 1 September 2018.



A. REAL ESTATE IN INDONESIA

1. Introduction

Indonesia's jurisprudence is based on the European civil law system. This difference from many other jurisdictions in the region, together with ongoing regulatory changes, requires careful consideration of the issues that arise in real estate business and transactions.

Indonesian law is constantly changing, and many provisions in laws, in the absence of implementing regulations, are not clear. In addition, it is likely that there will be amendments to existing laws and regulations, or new laws and regulations, in the near future. Consequently, this guide sets out only preliminary information on real estate business, with a primary focus on real estate mergers and acquisitions in the latter part of the guide, and appropriate legal advice should be sought.

If we are instructed to assist in establishing a real estate company or acquiring a piece of land, we would provide a detailed checklist for the process and would advise on critical path issues such as technical licenses (e.g., location permit).

2. Practice and Procedures

Practice, procedure and policy of relevant Indonesian government agencies or regional government agencies, including the National Land Agency (*Badan Pertanahan Nasional* or "**BPN**"), governor offices, the Ministry of Law and Human Rights (*Kementerian Hukum dan Hak Asasi Manusia* or "**MOLHR**") and the Capital Investment Coordination Board (*Badan Koordinasi Penanaman Modal* or "**BKPM**") will be as important in consummating a real estate transaction.

3. Foreign Investment in Real Estate

Foreign investors must establish an Indonesian foreign investment limited liability company ("**PT PMA**") to undertake real estate business in Indonesia. Consequently, matters relating to foreign investment in the real estate sector must be reported to or approved by BKPM.

The latest negative list of investments was published in May 2016. The negative list determines what business sectors are closed for foreign investments or open for foreign investment with limitations. Additional material on the negative list is available on request.

As real estate development is not listed in the current negative list, a company engaged in real estate development can be 100% foreign owned.

4. Restricted Activities

Although real estate development companies can be 100% foreign owned, certain property activities remain closed for foreign investment, e.g.:

- (a) property agent/brokerage, closed for foreign investment



- (b) property management, only permitted if the entire property is owned or leased by the property management company - otherwise the activity will be deemed as property agency/brokerage activities

B. REGULATORY REGIME AND LAND TITLES

1. Regulatory

In Indonesia, except for freehold and customary land (owned by Indonesian individuals), the government holds title to all land under Law No. 5 of 1960 on Basic Agrarian Provisions ("**Agrarian Law**").

Generally, anyone who wants to use land must obtain a land title from the government. Most land titles granted by the government have a fixed validity period. Where applicable, the validity period of a land title may be extended if the holder of the land title has met the extension requirements, and there are no zoning changes or other public interest requirements.

The Agrarian Law adheres to the horizontal separation theory, where land and building ownership are separated. Thus, it is common to find that owners of land do not own buildings constructed above the land.

Other than the Agrarian Law, land in Indonesia is regulated in various government regulations and decrees/regulations issued by the State Ministry of Agrarian Affairs or the Chairman of BPN. Regulations include Government Regulation No. 40 of 1996 on Right to Cultivate, Right to Build and Right to Use ("**GR 40/1996**") and Government Regulation No. 24 of 1997 on Land Registration.

The Parliament has been deliberating a Land Law since 2014, and it remains one of the priority laws to be completed. The Land Law is meant to provide clarity, to act as a bridge between the Agrarian Law and current conditions, and to codify the key implementing regulations of the Agrarian Law related to land.

2. Types of Land Titles

Under the Agrarian Law, the main types of land titles are:

- (a) Right to Own (*Hak Milik* or "**HM**")

HM is the strongest and fullest/highest hereditary right that may be held with respect to land. HM does not have any validity period. However, all rights to land in Indonesia (including HM) have a social function, meaning that the usage of the land has to comply with the condition and nature of the right, thereby benefiting the owner, the community and the country.

Only Indonesian citizens (individuals) and some legal entities determined by the government (e.g., social and religious institutions) can hold a HM. Indonesian legal entities and foreign citizens may not own land with HM. If a company wishes to acquire land with HM, it will have to convert the HM to become another land title that can be held by a company (e.g., HGB or HGU titles (as defined below)).



A HM can be transferred to a third party. However, land with HM cannot be transferred or sold to a foreign citizen. Any such sale and purchase or transfer of title will be void by law, and the government will automatically control the land.

HM can be encumbered for security purposes.

HM ceases to exist if either of the following occurs:

- (i) The land is controlled by the government as a result of revocation of the HM or due to voluntary relinquishment, abandonment or other causes stated in the Agrarian Law.
- (ii) The land ceases to exist.

Term

Given that HM is the strongest and the fullest of the land rights in Indonesia, it has an unlimited validity period and does not have to be extended or renewed after a certain period.

(b) Right to Cultivate (*Hak Guna Usaha* or "**HGU**")

HGU title is the right to cultivate land that is administered by the state. HGU title is normally granted over land to be used for agriculture cultivation related businesses. GR 40/1996 specifically stipulates that HGU title can be used only for agriculture, plantations, fisheries and poultry farming. BPN has the authority to grant HGU title for land area of more than 200 hectares, while the provincial BPN office has the authority to grant the HGU title for land areas of 200 hectares or less.

The minimum area of land for HGU title for individuals is 5 hectares, and the maximum is 25 hectares. For corporate bodies, the total area will be determined based on the discretion of BPN in consultation with the local (provincial/regency) BPN office.

HGU title can be transferred to a third party. GR 40/1996 permits HGU titles to be encumbered for security purposes.

HGU title may be granted only to Indonesian citizens, or Indonesian legal entities domiciled in Indonesia.

HGU title ceases to exist if (among other things):

- (i) Its validity period expires.
- (ii) Its validity period ends before its expiry date due to unfulfilled requirements.
- (iii) It is voluntarily relinquished by the holder of the HGU title before its expiry date.
- (iv) It is revoked and the land is used for public purposes.



- (v) The land is abandoned.
- (vi) The land ceases to exist.

Term

HGU is usually granted for a maximum of 35 years and can be extended for an additional maximum of 25 years. In practice, the HGU term can be renewed for a maximum of 35 years after the term of the extension expires.

To extend or renew the rights over land under a HGU title, the holder must submit an extension/renewal application to the relevant BPN office at least two years prior to its expiration, although in practice the relevant BPN office will only process the extension renewal within one year prior to its expiration.

Under GR 40/1996, for investment purposes, the extension and renewal of HGU title can be done at one time, giving the holder rights over the land under the HGU title for a maximum period of 95 years. However, since 2008 this one time process is no longer applicable. The Indonesian Constitutional Court has annulled this concept, which was also adopted under Law No. 25 on Capital Investment ("**Investment Law**"), on the basis that it is contrary to the intent of Article 33 of the 1945 Indonesian Constitution.

Generally the holder of a HGU title can apply for an extension/renewal of the term of the HGU title only if all of the following conditions are met:

- (i) The land is still being utilized in accordance with the nature and intended use of the land stated in the HGU title.
 - (ii) The HGU holder still meets the requirements for the granting of the HGU title.
 - (iii) The HGU holder still qualifies as a holder of HGU title.
- (c) Right to Build (*Hak Guna Bangunan* or "**HGB**")

HGB title is a right to establish and construct buildings on a plot of land. HGB title can be granted on state land, land with HPL title (as defined in point (f) below) and land with HM title. HGB title over state land is granted by way of a decree on the granting of the HGB title issued by the relevant BPN office.

Similar to a HGU title, a HGB title can be encumbered for security purposes, or transferred or assigned to a third party.

HGB title may be granted to Indonesian citizens, or Indonesian legal entities established under Indonesian law and domiciled in Indonesia

HGB title ceases to exist if (among other things):

- (i) Its validity period as stated in the decree for the granting of the HGB title expires.
- (ii) For HGB title on HPL or HM land, it is cancelled by the competent authority holding the HPL title or the owner of HM land.



- (iii) It is voluntarily relinquished by the holder of the HGB title before its expiry date.
- (iv) It is revoked and the land is used for public purposes.
- (v) The land is abandoned.
- (vi) The land ceases to exist.

Term

HGB title is granted for a maximum of 30 years and can be extended for an additional maximum of 20 years. In practice, the HGB term can be renewed for a maximum of 30 years after the term of the extension expires.

To extend or renew the rights over land under a HGB title, the holder of HGB title must submit an extension/renewal application to the relevant BPN office at least two years prior to its expiration¹, although in practice the BPN office will only process the extension or renewal within one year prior to its expiration.

The holder of a HGB title can apply for an extension/renewal of the term of the HGB title only if all of the following conditions are met:

- (i) The land is still being utilized in accordance with the nature and intended utilization of the land as stated in the HGB title.
 - (ii) The HGB holder still meets the requirements for the granting of the HGB title.
 - (iii) The HGB holder still qualifies as a holder of HGB title.
 - (iv) The utilization of the land remains in line with the local spatial plan where the land is located.
- (d) Right to Use (*Hak Pakai* or "**HP**")

The Agrarian Law defines HP as the right to use and/or collect the products from the land. The land on which HP title can be granted includes state land, HM land and HPL land.

Residential properties constructed on top of HP title or converted to HP title (from HGB title) can be owned by foreign citizens residing in Indonesia.

HP title may be owned by:

- (i) Indonesian citizens
- (ii) foreign citizens residing in Indonesia
- (iii) Indonesian legal entities domiciled in Indonesia

¹ Even though it is allowed under GR 40/1996 and the Investment Law, based on the same reasons as HGU, extension and renewal of HGB for a straight 80 years cannot be done, and HGB land titles can only be extended and renewed after the initial period granted by the government.



- (iv) foreign corporate bodies with representatives in Indonesia
- (v) departments, non-departmental government bodies and regional governments
- (vi) foreign country representatives and international organization representatives
- (vii) religious and social institutions

A HP title can be encumbered for security purposes, and can generally be transferred or assigned to a third party. For HP title over HM land, the transferability must be agreed in the agreement on the granting of HP title over the relevant HM land.

HP title ceases to exist if (among other things):

- (i) Its validity period as stated in the decree or agreement for the granting of HP expires.
- (ii) For HP title on HPL title or HM land, it is cancelled by the competent authority holding the HPL title or the owner of the HM land.
- (iii) It is voluntarily relinquished by the holder of the HP title before its expiry date.
- (iv) It is revoked and the land is used for public purposes.
- (v) The land is abandoned.
- (vi) The land ceases to exist.

Term

Under GR 40/1996, HP title over HPL or state land is granted for a maximum of 25 years and can be extended by 20 years or another period of time as long as the land remains utilized for a specific purpose. On the other hand, HP title over HM land can be granted only for a maximum of 25 years and cannot be extended. Only renewal is possible and the renewal must be based on a new agreement between the holder of the HM and the holder of the HP. The agreement must be made before a land deed official, and the HP title must be registered at the relevant BPN office.

In practice, it is possible for the relevant BPN office to grant a HP title for as little as 10 years as seen in several parts of Indonesia, including in Jakarta, in the past couple of years. For example, notaries/land deed officials have told us that the BPN office in Jakarta usually considers the purpose of the land before it determines the period of a HP title. For areas outside Jakarta, each BPN office will have its own policy for granting HP title.

If a foreign citizen residing in Indonesia acquires a property which is built over a HP title or a HGB title (which will 'automatically' be converted to a HP title after the acquisition is complete), the term of the HP title will have the same



term as a HGB title (i.e., a maximum of 30 years and can be extended for an additional maximum of 20 years, and then can be renewed).

According to GR 40/1996, the holder of a HP title over state land can apply for an extension/renewal of the term of its HP title only if all of the following conditions are met:

- (i) The land is still being utilized in accordance with the nature and intended utilization of the land with HP title.
 - (ii) The HP title holder still meets the requirements for the granting of the HP title.
 - (iii) The HP holder still meets the requirements as a holder of the HGB title.
- (e) Right to Lease (*Hak Sewa* or "**Hak Sewa**").

Article 16 of the Agrarian Law lists Hak Sewa as one of the "titles" for land. Article 44 of the Agrarian Law further provides that Hak Sewa is a land title that gives its holder the right to construct a building on another person's land, upon payment of rent. While HP is a primary land title as it is granted by the state over state land, Hak Sewa is a secondary or derivative title granted by a holder of a land title.

Hak Sewa is not currently registrable as it may be in other countries with more sophisticated land title systems. The only protection given to leases is under Article 1576 (1) of the Indonesian Civil Code which loosely provides that the "*selling of a leased object does not terminate the lease on the object unless it has been agreed upon the entry into the lease agreement*".

Hak Sewa may be held by:

- (i) Indonesian citizens
- (ii) foreign citizens residing in Indonesia
- (iii) Indonesian legal entities domiciled in Indonesia
- (iv) foreign corporate bodies with representatives in Indonesia

Term

Since a Hak Sewa is a secondary title and is based on negotiation, the term of Hak Sewa is also commonly based on agreement between the landlord and the lessee. We have seen leases over land granted for 25 and 50 years.

Lease Agreement

Hak Sewa, which in practice is the right to use land and buildings, similar to many other jurisdictions, is granted through lease agreements.



As the Agrarian Law adheres to the horizontal separation theory, where land and building ownership are separated, land and a building constructed above the land can be owned by different parties. Based on this, it is possible for a company, say, to enter into a certain lease agreement with an individual that has a HM, under which the company leases the land for its use and builds a building on the land. Of course, once the lease arrangement is terminated, the company would have to demolish the building, or an arrangement could be made with the land owner on whether the land owner wishes to acquire the building.

Certain regional governments, including the Jakarta local government, are trying to conceptually accommodate the above type of arrangement by stipulating in a Jakarta regional regulation provisions which govern the issuance of building ownership certificates in Jakarta. However, we are not aware of any building ownership certificates issued by the Jakarta local government.

Please note though that leases are not registered instruments against the land title and are not reflected in the land title certificate.

Consequently, there is a degree of risk in entering into lease arrangements, which most foreign companies are uncomfortable with, although Article 1576 of the Indonesian Civil Code specifically provides that leases run with the land (even if land is sold). Therefore, lease agreements should be carefully drafted to include for the land owner obligations not to sell the land and to renew the land title (especially if this is a renewable title), and for the lessee clear signatory rights to demonstrate its lease interest and the usual obligations in long term leases.

(f) Right to Manage (*Hak Pengelolaan* or "**HPL**")

The Agrarian Law does not mention HPL as a type of land title. HPL is never stipulated at a "law" level, but rather it is stipulated under various implementing regulations of the Agrarian Law. In essence, HPL is defined as the state's controlling right over land, the implementation of which is delegated to the holder of the HPL right. The implementation right covers, among other things, the right to plan the utilization of the HPL land and the right to enter into cooperation with third parties to utilize the land.

It is important to note that HPL is granted only to state-owned companies and government agencies, and is normally granted with an unlimited term. A good example of a HPL right granted to a government agency is the HPL right over Batam, which was granted to the Batam Industrial Development Authority in the past.

The land itself is usually state land, which is allocated specifically for a particular state-owned company or government agency. As explained above, other land titles (e.g., HGB and HP) can be granted on top of HPL land by the holder of HPL, and once the term of the HGB or HP land title expires, the title returns to the HPL holder.



C. TITLE REGISTRATION, EXTENSION AND RENEWALS

1. Land Title Registration

HM, HGU, HGB, HP, HPL and Strata Titles (*Hak Milik atas Satuan Rumah Susun* or "HMSRS" - as defined in **Part D** below) are registrable property titles. Holders of these titles will receive a land/HMSRS certificate as evidence of ownership.

The Indonesian land title registration system is also designed to provide the general public with access to information on land titles that have been registered at the relevant BPN office, although in practice getting access to land information will require the consent of the land title holder.

The government adopts a negative land registration system, which means the government does not guarantee the accuracy of the data registered at the BPN office. Any claims over a land title that have been issued needs to be made in writing to the land title holder and the relevant BPN office within five years from the date the land title certificate is issued, although in theory this claim can only be made for newly registered land titles.

2. Maximum Area Limitations

The government imposes maximum area limitations for Indonesian individuals or companies holding land titles. For business activities, the area limitations are usually imposed based on the type of line of business and are applicable across groups of companies. In general, groups of companies refer to companies with common ownership or common management. For example, in the plantation sector, area limitations are determined based on the type of plantation being cultivated.

3. General Extension Timing

Although in general GR 40/1996 states that a land title extension application must be submitted within two years prior to the expiration of the land title, in practice the relevant BPN office has sole discretion on whether or not an extension application can be processed earlier than the statutory two-year period (we have seen a case where an extension application was approved three years prior to the expiration of the term, although this is very rare). The BPN office's main concern is to ensure that the land value that will be used in the formula for the calculation of the extension fee reflects the most up-to-date value of the land (the formula usually uses the tax object sale value (NJOP)).

4. Extension VS Renewal

The land title validity period may be *extended* once if the land title holder has met the applicable extension conditions and there are no zoning changes or other public interest requirements. Upon the expiry of the extension period, it is also possible to apply for a *renewal* of the land title, subject to fulfilment of the renewal conditions, which are quite similar to the extension conditions.



"Extension" and "renewal" are defined as follows:

- (a) "Extension of land title" means the extension of the validity period of a land title without changing the terms and conditions that applied when the land title was initially granted. From a documentation perspective, the relevant BPN office usually just makes an extension annotation in the land certificate (e.g., for HGU the initial term is a maximum of 35 years, and can be extended for 25 years).
- (b) "Renewal of land title" means the granting of the same type of land title to the same holder after the initial period and the extension period have expired. From a documentation perspective, the relevant BPN office will document a renewal similar to a granting of a new land title, i.e., the issuance of a (i) renewal decree by the relevant BPN, and (ii) a new land certificate by the relevant BPN office (e.g., for HGU renewal can be given for a maximum term of 35 years).

In essence, the difference is that (i) a land title extension is granted under the same terms and conditions as the initial decree on the granting of a land title, and (ii) a land title renewal is granted under new terms and conditions.

Although the Agrarian Law was enacted in 1960, it was only in the late 1970s and early 1980s that the Indonesian economy started to emerge and private investment was made.

Consequently, given the duration of land titles, more parties are now processing land title extensions, but the number is still quite low, and not many parties have processed land title renewals.

The area of the land may change after an extension process is completed as there is a re-measurement of the land involved in the process.

5. Rejection of Application for Extension of Renewal

Notwithstanding that the government has stated in several regulations that it will guarantee extensions and renewals of land titles provided that the land is used in compliance with the intended purposes, the government may still reject an extension or renewal application if the applicant is unable to fulfil the extension conditions or the renewal conditions, as the case may be.

6. Authority of BPN Offices in Granting Land Titles

In general, the authority of BPN offices will depend on the size of the land. The following is the authority of BPN based on BPN Regulation No. 2 of 2013 on Delegation of Authorities in the Granting of Land Titles and Registration of Land Titles (as amended):

Land Title	Holder	Purpose	Local BPN (City or Region)	Province BPN	Central BPN
HM	Individual	Agriculture	≤50,000 m ²	≥50,000 m ²	-



Land Title	Holder	Purpose	Local BPN (City or Region)	Province BPN	Central BPN
		Non Agriculture	≤3,000 m ²	>3,000 - ≤10,000 m ²	>10,000 m ²
	Entity	Agriculture	-	-	-
		Non Agriculture	≤50,000 m ²	>50,000 - ≤150,000 m ²	>150,000 m ²
HGB	Individual	Non Agriculture	≤3,000 m ²	>3,000 - ≤10,000 m ²	>10,000 m ²
	Entity	Non Agriculture	≤20,000 m ²	>20,000 - ≤150,000 m ²	>150,000 m ²
		HGB issued on HPL Land - any size		-	-
HP	Individual	Agriculture	≤50,000 m ²	>50,000 - ≤100,000 m ²	>100,000 m ²
		Non Agriculture	≤3,000 m ²	>3,000 - ≤10,000 m ²	>10,000 m ²
	Entity	Agriculture	-	-	-
		Non Agriculture	≤20,000 m ²	>20,000 - ≤150,000 m ²	>150,000 m ²
	HP issued on HPL Land - any size				
HGU	Individual	Agriculture	-	≤200 Ha	>200 Ha
	Entity	Agriculture	-	≤200 Ha	>200 Ha

D. STRATA TITLE

1. Introduction

Strata title or HMSRS is stipulated in Law No. 20 of 2011 on Apartments ("**Apartment Law**") and Government Regulation No. 4 of 1988 on Apartments ("**GR 4/1988**").

The provisions of the Apartment Law and GR 4/1988 are equally applicable to strata title apartments for residential, non-residential and mixed-use purposes. In this guide we will focus on non-residential units or purposes (and will use the term "Units" rather than "Apartments" because it is used in the regulation).



Both the Apartment Law and GR 4/1988 recognize the concept of a mixed-use strata title apartment in which a building is used for both residential and non-residential purposes such as offices, hotel rooms and shopping malls. There is no specific law or regulation in Indonesia which governs the development and operation of mixed-use strata title apartments.

Strata title buildings may only be constructed on plots of land with (i) HM, (ii) HGB or HP on state-owned land, and (iii) HGB or HP on HPL.

Regardless of the purpose or usage of any parts of a strata title complex (i.e., residential or non-residential), the title over a Unit is called a Right of Ownership over an Apartment Unit or HMSRS and is evidenced by a HMSRS certificate to be issued by the land office where the apartment is located.

The elucidation of Article 41 of GR 4/1988 stipulates that an HMSRS covers the following:

- (a) an individual right of ownership over the Unit
- (b) common rights over the parts and structures of the apartment, including its equipment, for the proper function of the apartment, including central services equipment, electricity installations, lighting installations, gas supply, hot and cold water, air conditioning system, water pumps, generators, compressors, ducting for air conditioning system, and other installations, blocks, columns, main foundations, roof, entrances, doors, corridors, hallways, stairs and emergency exits for common use by the occupants
- (c) a common right over facilities constructed over the common land
- (d) a common right over the common land where the apartment is constructed

2. Owner Requirements

Only individuals or legal entities that are qualified to hold title over the land where the apartment is built can own a Unit. For example, if the apartment is developed on HGB land, only those persons who are qualified to hold a HGB title can own a Unit.

3. Cessation of HMSRS

A HMSRS will cease in any of the following circumstances:

- (a) The underlying land title expires or becomes invalid under the prevailing laws and regulations.
- (b) The land and building no longer exist.
- (c) All conditions for cancellation of the land title are met (e.g., expiration of HGB title).
- (d) The land is voluntarily relinquished to the state.



4. Procedure

Before obtaining the HMSRS certificate for each of the Units, the developer of the Apartment must obtain the following permits or documents (which is generally applicable for residential, non-residential and mixed-use apartments):

(a) Building License (*Ijin Mendirikan Bangunan* or "**IMB**")

Before the construction, the developer must obtain an IMB from the local government. The application form must indicate the purpose of the strata title complex, i.e., residential, non-residential or mixed-use. Any change in the building structure or the time for completion of the construction of the strata title complex or installations of the strata title units is subject to approval from the local government.

(b) Building Specification ("**Pertelaan**")

After obtaining an IMB, the strata title complex developer must clearly specify the boundaries of each strata title unit, common area, common land and common property that comprise the strata title complex, and the proportional ratio value (*Nilai Perbandingan Proporsional* or "**NPP**") of each strata title unit, in the form of a deed ("**Akta Pertelaan**"). After an Akta Pertelaan is prepared, the developer must obtain approval for the Akta Pertelaan from the relevant level II regional government (regency) (in the case of DKI Jakarta, from the Governor of DKI Jakarta through the Head of the DKI Jakarta Land Office).

Any changes to the purpose of a strata title complex (e.g., from residential use to non-residential use or mixed-use), along with the corresponding changes to the *Pertelaan* and NPP, must be approved in advance by the relevant local government in accordance with the prevailing requirements.

(c) Occupation Permit

After construction of the strata title complex, the developer must obtain an occupation permit ("**Occupation Permit**") from the relevant local government. The local government will issue an Occupation Permit based on its inspection of the architecture, construction, installation and other supporting facilities of the strata title complex.

(d) Separation Deed

After an Occupation Permit is obtained, the developer must separate the strata title complex into strata title units, common areas, common land and common property with clear specifications in the forms of drawings, descriptions and boundaries in vertical and horizontal directions as specified in the Akta Pertelaan, by preparing a deed of separation ("**Separation Deed**").

The Separation Deed is subject to approval from the relevant level II regional government (regency) (in the case of DKI Jakarta, from the Governor of DKI Jakarta through the Head of the DKI Jakarta Land Office). The Separation Deed will be used as the basis for issuing strata title certificates of the strata title complex.



Once the Separation Deed is approved, it must be registered at the relevant BPN office by submitting, among other things, the underlying common land certificate, the Occupation Permit and the approved Akta Pertelaan.

(e) HMSRS Certificate

After the Separation Deed is registered at the relevant land office, the land office will issue a Land Book and a HMSRS certificate under the name of the developer for each strata title unit in the strata title complex.

E. LAND ACQUISITION

1. Acquiring Entity

(a) Establish 100% foreign-owned real estate company

Under the current negative list, real estate development activity can be conducted by 100% foreign owned companies.

Under the 2015 Standard Indonesian Business Field Classifications (KBLI) as amended in 2017, the real estate line of business (KBLI 68110) covers the following activities:

- (i) *buying, selling, leasing and operating real estate, which is either owned or leased, such as apartments, and housing and non-housing buildings (e.g., convention centers, personal storage facilities, malls, shopping centers and others)*
- (ii) *providing of housing, flats or apartments (furnished or non-furnished) for permanent use, on either a monthly or an annual basis*
- (iii) *selling land, building development to be self-operated (for space leasing), land division without development and the operation of moveable housing*

A real estate company must be in the form of PT PMA established in accordance with the relevant regulations, which include the Investment Law and the Indonesian Company Law. To operate in Indonesia, the PT PMA must obtain approvals or licenses from, among others, BKPM, the tax office, the MOLHR, and the Ministry of Trade.

The PT PMA must then acquire land (subject to the types of land titles discussed here) and develop the land so that the company can be categorized as a real estate company.

(b) Establish a joint venture company between a foreign party and a local party

Similar to the above, this structure is possible given the absence of any foreign investment limitation for real estate development in the current negative list.



This structure is commonly used in situations where the proposed local joint venture partner is the land owner (which land will eventually be purchased by the joint venture PT PMA). One of the benefits in having a local joint venture partner is availability of people on the ground for license processing and land registration matters.

Please see our Company Incorporation (PMA) Desk Top Reference on establishing a PMA company as well as our Indonesian Capital Investment Law and Company Law Guide.

2. Land Titles

Companies in Indonesia may own the following land and property rights in Indonesia:

- (a) HGB
- (b) HGU
- (c) HP
- (d) HMSRS/Strata Title

For companies (except for agricultural activities), the most appropriate land right is HGB, or alternatively HMSRS/Strata Title over HGB land. This is because HGB title is granted for a period of 30 years and can be extended for 20 years (and can be renewed), thereby becoming the longest land right which can be owned by a company (except for agricultural activities).

It is possible for a company to apply for HGB on top of HPL. However, as we have mentioned above, HPL is usually issued to State Owned Enterprises or government agencies. Consequently, a company would need to obtain HGB over HPL from a State Owned Enterprise or a government agency. An agreement must be entered into by a company and the HPL holder, which may be very costly.

3. Due Diligence

- (a) Required Information

Given the absence of a centralized register of land and companies in Indonesia, copies of land ownership documentation must be obtained from the land owner, and searches can only be done with the knowledge of the land owner.

The following are some of the basic documentation and information that must be obtained from the land owner.

- (i) identity documents of the owner (ID card and tax number (for an individual), or the latest articles of association, the relevant MOLHR approval and tax (and Value Added Tax ("VAT")) registrations (for a company)
- (ii) land title certificates and BPN decree for the issuance of the land title certificate



- (iii) location permit and/or land usage approval for the land
 - (iv) construction license and or Occupation Permit for buildings over the land (if there are already structures over the land)
 - (v) information on any security interest over the land (and related documentation)
 - (vi) evidence of land and building tax payment for the land
 - (vii) environmental documents for the land
 - (viii) information on any litigation involving the land
- (b) Land Searches in Indonesia

Land searches in Indonesia are undertaken by requesting the relevant BPN office where the land is located to manually search its land registration book. Like most government offices, there is no centralized online database of these land registration records. The land registration book only records information on encumbrances, land blockages and court attachments but does not record covenants, easements and leasehold interests (given these cannot be registered in Indonesia).

Consequently, these land searches are not conclusive given the following:

- (i) They are dependent on the relevant BPN office being prudent and its promptness in updating the register.
- (ii) Although there is a maximum time for registration of an encumbrance at the relevant BPN office (a total of five weeks until a mortgage is registered), there could be delays in the mortgage registration at the relevant BPN office, in which case the mortgage would still be effective pending the registration.

Obtaining a land search confirmation letter may take two to three weeks.

4. Technical Licenses/Requirements Considerations

There are technical licenses that need to be considered when acquiring land. Some of them are:

- (a) location permit
- (b) IMB
- (c) zoning (spatial planning)
- (d) environmental license (*Analisa Mengenai Dampak Lingkungan/AMDAL* or UKL-UPL)
- (e) building function worthiness certificate (*Sertifikat Kelayakan Fungsi Gedung/SLF*)



The following are also some technical requirements that need to be considered when acquiring land:

- (a) obligation to obtain a location permit and a spatial utilization principle permit (IPPR) for acquisition and utilization of at least 5,000 m² of land in Jakarta
- (b) obligations to construct public apartments and low-cost housing
- (c) green building requirements in Jakarta

Detailed advice on the above could be provided upon request.

5. Mechanism to Transfer Land Titles

The transfer of land is done through a deed of transfer made before PPAT. There are certain taxes and duties payable by both the vendor and the purchaser before a land transfer deed can be executed. Please see further a discussion on tax in **Attachment**.

Following the signing of the land transfer deed, the PPAT, will submit an application to the relevant BPN office where the property is located, to register the name of the new owner in the Land Book at the relevant land office as well as on the land certificate.

The transfer is done in the following sequence:

- (a) Where there are certain conditions that need to be fulfilled by either party, the parties can enter into a binding sale and purchase agreement first, then after all conditions are fulfilled, the land transfer deed is signed by the parties.
- (b) The purchaser and the seller appoint a PPAT that has the authority to prepare land transfer deed/documents for the relevant land or property.
- (c) The purchaser and the seller deliver all relevant documents to the PPAT. This usually includes land certificates from the seller as evidence of the seller's title over the land, or the relevant corporate documents such as articles of association.
- (d) Land transfer taxes/levies are paid. The PPAT usually provides the relevant government bank account into which payment will be made.
- (e) The purchaser and the seller sign the land transfer deed, in front of the PPAT, witnessed by at least two qualified persons.
- (f) Payment of the purchase consideration for the land (this is usually done on the same day as the signing of the land transfer deed). The land transfer deed must state that the full purchase price has been paid.
- (g) In general, land transfers are subject to VAT, which needs to be paid on the date the purchase consideration for the land is paid, unless exempted by the tax regulations (e.g., the land is purchased by individuals who do not have the authority to collect VAT).



- (h) The PPAT registers the purchaser as the new owner of the land at the local land office. The registration process can sometimes take several months.

The abovementioned procedures are also applicable for the transfer of HMSRS, with an addition that the following documents should be attached to the deed of transfer of HMSRS:

- (a) certificate of HMSRS
- (b) articles of association and by-laws of the Tenants Association
- (c) other documents required for the transfer of a HMSRS (e.g., death certificate and testament, in the event of transfer due to inheritance)

F. FOREIGN CITIZENS' OWNERSHIP OF PROPERTY

1. Requirements

Foreign citizens residing in Indonesia (with an appropriate stay permit) ("**Resident Foreigner**") may own a house or an apartment with HP title. If the Resident Foreigner dies, the house or apartment can be inherited as long as the heir is an Indonesian citizen or a Resident Foreigner.

The house or apartment can either be a new property (in a primary sale) or an existing residential property. The house or apartment can be transferred to another party (not only Indonesians) or encumbered under a mortgage (*Hak Tanggungan*) subject to the prevailing regulations on mortgage.

Resident Foreigners (except for foreign country representatives or international agency representatives) can only have one plot of land per person/family, and the maximum land area is 2,000 m² (which can be increased subject to approval from the Minister of Agrarian Affairs and Spatial Planning/Head of BPN).

2. Title Conversion

If a house or apartment currently under HM or HGB title is purchased by a Resident Foreigner, the conversion of the title (to become HP) will automatically happen, and if the house or apartment is then transferred to an Indonesian, the title can be re-converted to a HM and HGB title.

You should note that the concept under the current regulation is technically incorrect given that the underlying title should have been converted before the sale and purchase occurs (although we suspect this technicality will be ignored in practice given this is a work around to remedy prior regulatory inadequacies in opening up residential property to Resident Foreigners).

3. Underlying Title

If a Resident Foreigner buys a residential property (built on land with HGB title), the title of the residential property will be deemed to be converted into HP upon the signing of the sale and purchase document before a PPAT. The PPAT will then register the transaction at the relevant BPN office so that the BPN office can



manually update the title certificate to reflect the change of the residential property from HGB to HP.

For strata title apartments/HMSRS, the title of the underlying land will remain HGB title. So, upon a purchase by a Resident Foreigner only that particular unit will be converted into a HP strata title (in Indonesia known as *Hak Pakai Atas Satuan Rumah Susun* or "**HPSRS**"). Only if all apartment units are owned by Resident Foreigners can the underlying land be converted to HP title.

4. Minimum Prices

The government stipulates minimum prices for houses or apartments that can be purchased by Resident Foreigners depending on the location of the house or apartment.

For example, for Jakarta, the price of a house must be Rp10 billion or more, while for an apartment it must be Rp3 billion or more. For Banten and Bali provinces, the price of a house must be Rp5 billion or more, while for an apartment Rp2 billion or more.

5. Term of Title

The term for underlying titles owned by Resident Foreigners would depend on the type of the rights as follows:

Type	Rights	Term	Transfer
Houses	A HP which is derived from conversion of a HM	Valid for 30 years, and can be extended for 20 years + renewed for 30 years	If transferred back to an Indonesian, the HP can be converted to HM
	A HP which is derived from conversion of a HGB	Valid for the remaining term of the HGB, and can be extended for 20 years + renewed for 30 years	If transferred back to an Indonesian, the HP can be converted to a HGB, and the term of the HGB is the remaining term of the HP
Apartments	New condition/1st sale - A HPSRS which is derived from conversion of a HMSRS	Valid for 30 years, and can be extended for 20 years + renewed for 30 years	If transferred back to an Indonesian, the HPSRS can be converted to a HMSRS, and the term of the HMSRS is the remaining term of the HPSRS
	Not new condition/2nd sale - A HPSRS which is derived from conversion of a HMSRS	Valid for the remaining term of the HPSRS, and can be extended for 20 years + renewed for 30 years	



G. SECURITY RIGHT OVER HGB LAND AND HMSRS OVER LAND WITH HGB TITLE

For corporate entities, HGB land and HMSRS over land with HGB title can be used as security of a loan by encumbering the HMSRS or HGB land and the building over it with a security right on land or *Hak Tanggungan*.

Please refer to our separate brochure on security and enforcement of security in Indonesia for further discussions on this issue.



ATTACHMENT

GENERAL TAX AND DUTY RELATED WITH LAND

1. Sale and Purchase of Land

Based on Law No. 20 of 2000 on Land and Building Acquisition Duty (*Bea Perolehan Hak Atas Tanah dan Bangunan* or "**BPHTB**") and Government Regulation No. 71 of 2008 on the Payment of Income Tax on Income Earned from the Transfer of Land and or Building Titles (*Pajak Pendapatan untuk Pengalihan Hak Atas Tanah dan Bangunan* or "**PPHTB**"), as amended, the applicable duty and tax in relation to a transfer of certified land are BPHTB and PPHTB. These duties and taxes are also applicable for transfers of uncertified land (i.e., Girik).

Generally, as a purchaser of land, there are two types of taxes that a company must be aware of, i.e., VAT on the acquisition, and BPHTB.

VAT for a real-estate property acquisition is 10% (note that there might be an additional 20% luxury goods sales tax for qualified luxurious property, such as luxurious homes, apartments, condominiums or town houses), based on the sale price. As a general rule, VAT is payable at the time the purchase consideration is paid or at the transfer date of the land title, whichever is earlier. The transferor is obliged to issue tax invoices for VAT purposes to the transferee.

The seller is required to pay PPHTB in the amount of 2.5% of the land value at the time that the land transfer deed is signed. At the same time the purchaser is required to pay BPHTB in the amount of 5% (or lower, subject to the prevailing regional regulations) of the land value.

BPHTB and PPHTB are calculated based on the transaction price or the land value of the land and/or building as determined by the government (known as NJOP (see below)), whichever is higher.

Under the Indonesian Tax Law, the transfer of land rights is subject to BPHTB and PPHTB. The calculation is based on the Taxable Acquisition Value of the Tax Object (*Nilai Perolehan Object Pajak* or "**NPOP**").

Taxable NPOP is determined by subtracting Non Taxable NPOP from NPOP, i.e., in the following formula.

$$\text{Taxable NPOP} = \text{NPOP} - \text{Non Taxable NPOP}^2$$

If the NPOP is not available or is lower than the Selling Value of the Tax Object (*Nilai Jual Object Pajak* or "**NJOP**") determined by the government to calculate the applicable annual Land and Building Tax (*Pajak Bumi dan Bangunan* or "**PBB**") in the

² Non Taxable NPOP varies in different regions. However, the maximum Non Taxable NPOP for land is Rp60 million



area where the land is located, then the calculation of BPHTB will be based on the NJOP stated in the applicable PBB in the year the land is transferred.

The formula for the Taxable NPOP is as follows:

$$\text{Taxable NPOP} = \text{NJOP} - \text{Non Taxable NPOP}$$

Generally, the current applicable tariff for BPHTB and PPHTB is as follows:

$$\text{PPHTB} = 2.5\% \times \text{Taxable NPOP}$$

$$\text{BPHTB} = 5\% \text{ (or lower, subject to the prevailing regional regulations)} \times \text{Taxable NPOP}$$

2. Lease of Land

The lease of land will be subject to VAT of 10%. The lessor is obliged to issue a tax invoice for VAT purposes to the lessee. The rental fee received by the lessor is considered as taxable income and is subject to 10% final income tax that must be withheld by the lessee.

3. Luxury and Super Luxury Taxes

The following is a table on taxes that must be paid by the seller of residential properties with a certain size and/or sale price.

	Tax	Amount	Threshold
(a)	VAT on Luxury Goods	20%	House or townhouse (non-strata) with a sale price of Rp20 billion or more
			Apartment or condominium or townhouse (strata title) with a sale price of Rp10 billion or more
(b)	VAT on Super Luxury Goods	5%	House or townhouse (non-strata) with a sale price of more than Rp5 billion <u>or</u> with a size of more than 400 m ²
			Apartment or condominium or townhouse (strata title) with a sale price of more than Rp5 billion or with a size of more than 150 m ²

4. Other Payments

(a) PPAT Fees

Notarial fees are payable to the notary on any land sale and can be negotiated. However, the PPAT fees should not exceed 1% of the transaction price.



(b) Transfer Fees Imposed by Land Office

Based on Government Regulation No. 128 of 2015, the registration fee for the transfer of land title to an individual or a legal entity is:

$$(0.1\% \times \text{Value of Land}) + \text{Rp}50,000$$

Value of Land refers to market value determined by the relevant land office, or NJOP in the absence of the determined market value.

(c) Other Fees

The BPN office also imposes fees, calculated based on a formula, for providing public services related to land, for example:

- (i) fees to convert land from HM to HGB title
- (ii) fees to split or merge a land title certificate
- (iii) fees to conduct re measurement
- (iv) fees for the issuance of new land title certificates if the existing certificate is damaged.

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