

Commercial real estate in Indonesia: overview

by Nafis Adwani and Agus Ahadi Deradjat, *Ali Budiardjo, Nugroho, Reksodiputro*

Country Q&A | Law stated as at 01-Jul-2020 | Indonesia

A Q&A guide to corporate real estate law in Indonesia.

The Q&A gives a high level overview of the corporate real estate market; real estate investment structures, including REITs; title; tenure; sale of real estate; seller's liability; due diligence; warranties; real estate tax and mitigation, including VAT and stamp duty/transfer tax; climate change targets; restrictions on foreign ownership; real estate finance; commercial leases and planning law.

To compare answers across multiple jurisdictions, visit the Corporate Real Estate *Country Q&A tool*.

This Q&A is part of the global guide to corporate real estate law. For a full list of jurisdictional Q&As visit global.practicallaw.com/realestate-guide.

The corporate real estate market

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Despite a slow start, real estate players were hopeful for a rise of the real estate market in 2020, targeting millennials in the housing and small offices market. However, this quickly changed in March 2020 when the 2019 novel coronavirus disease (COVID-19) was officially acknowledged to have entered and spread in Indonesia.

According to the head of the Regional Management Council of Indonesian Real Estate (*Dewan Pengurus Daerah Real Estate Indonesia*) (DPD REI), the housing market in Jakarta alone experienced a steep decrease in sales of 80%. This decline is likely to have been even steeper for apartment sales. This phenomenon was attributable to the credit structure in Indonesian real estate, which has been heavily affected by efforts to address the impact of COVID-19.

In late March 2020, to reduce the spread of COVID-19, the government introduced large-scale social restrictions (PSBB) that have now been implemented in several regions (*Government Regulation No. 21 of 2020 on Large-Scale Social Restriction to Accelerate the Mitigation of Covid-19*). This resulted in many businesses having to close temporarily or even permanently due to financial losses. As a result, real estate buyers who would typically take on a mortgage for a house or an apartment loan felt unable to repay the debt as they experienced bonus cuts, falling wages, unpaid leave, or even termination of employment. Real estate developers that also typically take on loans to develop properties were unable to pay their debt.

The downturn in the real estate market did not only affect the housing and apartment sector. More and more businesses and offices that remained open also opted to implement work-from-home policies. This caused the real estate market for office areas and buildings to also experience a decline. Further, as PSBB restricts activities in public places and facilities, some real estate-related businesses such as retail premises, malls, tourist attractions and hospitality businesses were temporarily closed, resulting in another decline in the real estate market for several business sectors.

The speculation in late 2019 that the capital city of Indonesia would be relocated to East Kalimantan has also been left in limbo. In April 2020, the initial funds allocated for capital city relocation were reallocated to fund the response to COVID-19. This has left prospective real estate projects in East Kalimantan in a state of uncertainty.

Real estate investment

2. What structures do investors typically use for real estate investment in your jurisdiction and what are the main advantages and disadvantages of each (for example, flexibility and tax transparency)?

The most common investment vehicle is the limited liability company (*perseroan terbatas*), which in this case is established specifically for the purpose of engaging in property business. Most investors choose this investment vehicle since a limited liability company is allowed to hold land title known as a right to build (*hak guna bangunan*), the most common land title held by real estate developers for their projects. A right to build can be held for a maximum of 80 years including extension and renewal periods. However, a limited liability company is not allowed to hold freehold title (*hak milik*). Freehold, the most complete and strongest form of land title ownership in Indonesia, can only be held by Indonesian nationals and legal entities stipulated by the government.

Real estate investment trusts (*Dana Investasi Real Estate*) (DIRE) remain unpopular in Indonesia, and their growth has lagged behind that in other ASEAN countries. However, there is evidence of an increase in the use of DIREs. The Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK) has stated that, of the 28 initial public offerings ready to enter the capital market in 2020, one was made by a DIRE.

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

Generally, there are three types of real estate investors in Indonesia:

- Large-scale investors who invest in long-term projects such as development of housing areas, industrial areas and integrated urban living areas. Other than Indonesian billionaires, this type is dominated by overseas investors who are financed by their headquarters and/or their ultimate shareholders.
- Medium-scale investors who invest in mid-term and long-term projects such as development of integrated serviced apartments, hotels, office buildings and medium-scale housing areas. They are usually financed by local banks or through the issuance of bonds in the Indonesian capital market.
- Small-scale private investors who invest mostly in leases of properties or pursue profit margins in the sale of real estate assets. This group is dominated by Indonesian individuals/Indonesian local companies.

Real estate developers typically take on bank loans to develop properties and rely on real estate sales to pay off the loans. During the COVID-19 pandemic, this credit structure has resulted in a downturn in the real estate market and put pressure on banks to lower their interest rates.

Restrictions on foreign ownership or occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions on foreign guarantees or security for ownership or occupation and on lending for the purchase of real estate?

Foreign individuals residing in Indonesia and foreign entities with a representative in Indonesia can hold a right to use (*hak pakai*) under the Agrarian Law (see [Question 9](#)). In practice, this right to use can only be granted for one single residential unit to a foreign individual who is residing in Indonesia. Alternatively, foreign individuals can lease land and/or a building on a contractual basis from an Indonesian title holder.

Companies that carry out the business of purchase, sale, lease and operation of real estate are open to foreign ownership.

The establishment of security over real estate for the benefit of a foreign lender, and lending for the purchase of real estate by a foreign lender, are allowed.

Title to real estate

5. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

In Indonesia, real estate comprises:

- Land.
- Buildings.
- Fixtures attached to land.

The Agrarian Law adopts the horizontal separation principle (*horizontale scheiding*), where the owner of a plot of land can be different to the owner of the building and/or fixtures constructed on it. However, currently there has only been registration of land that is registered with the land office. Building registers have not yet been established. In practice, ownership of a building is commonly acknowledged through the building construction permit (*izin mendirikan bangunan*). However, the building construction permit is not evidence of ownership of a building.

6. How is title to real estate evidenced? What is the name of the public register of title and the authorities responsible for managing it? Is electronic access and electronic conveyancing available?

In the real estate business, land and any buildings on it are normally owned by the same entity. Title over real estate is evidenced by a land title certificate issued by the relevant land office.

The government institution authorised to issue land title certificates is the National Land Agency (*Badan Pertanahan Nasional*) (BPN) (www.bpn.go.id). The National Land Agency is a government institution generally responsible for land administration duties, at national, provincial and regional/municipal levels. It issues land rights certificates. The National Land Agency's head office is in Jakarta. It has land offices (*kantor pertanahan*) across Indonesia at the regional/municipal level and regional offices (*kantor wilayah*) at the provincial level.

The National Land Agency is developing an electronic system for registering land. However, currently, the electronic system is effectively accessible only by an officer of the National Land Agency and a land deed conveyancer (*Pejabat Pembuat Akta Tanah*) (PPAT).

7. What are the main information and documents registered in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title?

The information and documents registered in the public register of title are:

- Details of the land (for example, location, area, location of site boundary, and a sketch or drawing of the land).

- Detail and identity of the owner (title holder).
- Issue date and validity period of the land title.
- Any historical transfer (for example, sale) of the land title.
- Any other land title held over the land by a third party (under Indonesian law, it is possible to create a "lower grade" land title below certain land titles).
- Any encumbrance (mortgage) over the land title.

Information about land titles that are registered at the land office is in principle open to the public. There is no procedure for prohibiting disclosure of confidential information in documents that are registered in the public register of title.

8. Is there a state guarantee of title? Is the authority that manages the public register liable to pay compensation for any errors it makes in relation to title registration? Is title insurance available and is it commonly used?

There is no absolute title guarantee from the state. A land title certificate is the strongest evidence of land ownership, unless proven otherwise. Land ownership under a land title certificate held in good faith by the owner for five years from its issue theoretically cannot be claimed by a third party on the basis that the certificate is invalid.

The authors are not aware of a regulation that provides that the authority concerned can be held liable to pay compensation for any errors it makes in relation to title registration.

Title insurance is uncommon and not generally made available by insurance providers in Indonesia.

9. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

The Agrarian Law recognises several types of land title, of which the following are the most important:

- Right of ownership/freehold (*hak milik*).
- Right to build (*hak guna bangunan*).
- Right to cultivate (*hak pengelolaan*).
- Right to use (*hak pakai*).

All these titles are granted by the government and allow the holder to use the land concerned. However, they differ in their duration, the nature of use allowed and the ability of the title to be used as security.

Sale of real estate

Preliminary agreements

10. What types of preliminary agreements are typically used in the sale of real estate? Are they legally binding?

In new real estate projects, there is typically a marketing/co-operation agreement between the real estate agent and the seller/developer. The terms of a marketing/co-operation agreement commonly include the identity, role and rights and obligations of the parties. More detailed matters, such as sales target and commission fee, may also be included in the agreement. It is also common for the seller/developer to co-operate with a bank that will provide home loans to buyers and offer a more attractive financing scheme (such as a lower interest rate, discount on down payment, and so on).

The real estate agent offers the property to potential buyers in accordance with the marketing/co-operation agreement, including the stipulated price, financing scheme (if the seller associates with a bank) and payment scheme. If the buyer accepts the offer, the loan agreement and the sale and purchase agreement will in principle be in line with the offer.

With regard to documentation, the seller and buyer usually enter into a conditional sale and purchase agreement (CSPA) before the transfer of a plot of land. The CSPA is commonly deemed a pre-contractual arrangement for the sale and purchase of the plot of land.

In some cases, the CSPA requires a down payment by the buyer to the seller and/or the fulfilment of certain conditions by the seller. The CSPA will subsequently be implemented as a sale and purchase agreement (*Akta Jual Beli*) (AJB), which is made before a PPAT (see [Question 6](#)), an official authorised to draw up authentic land deeds. The National Land Agency will deem the AJB as legitimate evidence and as an agreement for the transfer of the plot of land from the seller to the buyer.

Sale contract

11. Briefly outline the typical main provisions of a corporate real estate sale contract and main real estate provisions of a typical share purchase agreement.

The transfer of the right to a plot of land in Indonesia is legally put into effect on the execution of the AJB (see [Question 10](#)). The AJB standard form is provided under Minister of Agrarian Affairs Regulation No. 3 of 1997, as last amended by Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Regulation No. 7 of 2019 on the Implementing Regulations of Government Regulation No. 24 of 1997 on Land Registration (Regulation 3/1997). Regulation 3/1997 provides that the AJB must be made in the format provided under Regulation 3/1997.

The AJB must at least contain/state:

- The identity of the seller and the buyer.
- Evidence of the right to the land.
- A statement regarding the transfer of the land from the seller to the buyer.
- The seller's warranty.
- Re-measurement of the land.
- Statement that the land ownership does not violate the regulation on land ownership restrictions.
- A provision on dispute settlement.

A typical share purchase agreement would at least contain/state:

- The identity of the seller and the buyer.
- The number of shares being transferred.
- The price of the transferred shares.
- Reference to the corporate approvals.
- The seller's warranty.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition and what key areas does it cover? Which documents are typically reviewed? Which specialist advisers are usually involved and which reports do they typically produce?

A potential buyer of land/property will typically engage a legal consultant and a PPAT (see [Question 10](#)) as his/her specialist adviser. The legal consultant examines the legal status of the land and the related agreements, which include a CSPA and a letter of undertaking or power of attorney. The PPAT prepares all the administrative requirements and documents for the sale and purchase of the land, and prepares and executes the AJB (see [Question 10](#)). In some cases, the potential buyer will also appoint an independent appraiser to assess the price of the land.

A potential buyer may request additional due diligence, including:

- **Site checks.** These may include a re-measurement of the land, and comparing the results against the information contained in the land title documents.
- **Investigating the chain of real estate ownership.** This is common in large real estate projects, where developers may buy land from individuals who may or may not have land title certificates. Therefore, this may include checks with the local land office. Under Indonesian law, only land that has been registered with the local land office will be granted land title as evidenced by a land title certificate. Problems often occur in gathering concrete evidence regarding non-registered customary (*girik*) land. Unlike registered land, *girik* documentation only proves that a person has control over a particular land but is not evidence of land ownership. However, rights over land based on *girik* documents can be registered with the land office and granted land title.
- **Checking that the required environmental, location and/or building construction permits have been obtained.** Environmental, location and/or building construction permit requirements may vary according to the type and purpose of the real estate. For further information on planning consents for building works and usage, see [Question 41](#).

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover? What are the main limitations on warranties, for example are they typically qualified by disclosure?

The concept of a share sale in relation to a real estate sale and purchase is not known in the Indonesian legal system.

The following warranties are usually required from the seller of a plot of land:

- The land is validly owned by the seller and registered in the seller's name.
- The land is not the object of or not involved in a dispute.
- The land is free from any foreclosure or attachment ordered by a court, the Tax Office or any other authorised institution.

- The land is free from encumbrances.

The current laws and regulations do not impose limitations on the warranties to be provided by the seller to the buyer.

Liability

14. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

A copy of the land title certificate, which contains information on the real estate, is typically given to the potential buyer to be reviewed before executing the AJB (*see Question 10*). However, the seller must hand over the original land title certificate (or, if the land certificate is missing, other documents to prove the seller's ownership of the real estate to the buyer) immediately after payment of the entire purchase price and execution of the AJB. The seller's other obligations to the buyer are set out in the deed of sale and purchase.

15. Briefly outline the environmental legislation and potential liability for a buyer in a purchase of real estate. Is it common to carry out environmental surveys and searches and to obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

Buyers in certain industries with a high likelihood of environmental impact such as mining, oil and gas, and plantations must conduct environmental surveys and obtain environment impact clearance certification under Law No. 32 of 2009 on Environment Protection and Management.

16. Can an owner or occupier inherit liability for other matters relating to the real estate even if they occurred before it bought or occupied it? Can a seller or occupier retain any other liability relating to the real estate after it has disposed of it?

When the title is transferred, the new owner assumes all rights and liabilities relating to the land. However, the liabilities can be limited by way of an indemnification clause in the deed of sale and purchase, to the effect that the seller indemnifies the buyer for any prior liabilities.

The new owner or occupier can inherit environmental liability relating to the land, even if it was caused by the previous owner. However, this can be negotiated with the seller, and a clause may be inserted in the sale contract to the effect that the seller or previous owner is responsible for all environmental liabilities relating to the land as a result of events that occurred before execution of the deed of sale and purchase.

The parties may contractually agree that the seller or occupier retains certain liabilities after the land title is transferred. The seller can retain environmental liability relating to the land even after disposal of the land.

Completion arrangements

17. What are the typical arrangements and main documents required for completion of the sale? When does title transfer and what are the formal legal requirements to execute the sale documents, transfer the real estate and register the change of title? Is notarisation required?

The parties are legally bound when the deed of sale and purchase is duly executed by the parties.

Registration is conducted by the PPAT (*see Question 10*) at the relevant land office, after all the following conditions are fulfilled:

- The deed of sale and purchase has been duly executed before a PPAT.
- The buyer has paid the purchase price to the seller.
- Payment of applicable taxes (*see Question 18 and Question 20*).

The transfer of title to the buyer is conducted by way of execution of a deed of sale and purchase before a PPAT (which typically will mention the transfer of land title and all of the building and fixtures on the land) and payment of the purchase price to the seller. The land right should then be registered in the buyer's name with the relevant land office.

In some cases, before entering into the deed of sale and purchase, the parties will enter into a CSPA. The CSPA stipulates the conditions to be fulfilled by each party before the execution of the sale and purchase of the land. The conditions are commonly related to and/or subject to the result of the due diligence conducted over the land that is the object of the sale and purchase.

Real estate tax

18. Is stamp duty/transfer tax (or equivalent) payable on the purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

The buyer pays:

- Land acquisition duty (*Bea Perolehan Hak atas Tanah dan Bangunan*) (BPHTB) at 5% of the transaction value or the sale value of the tax object (*Nilai Jual Object Pajak*) (NJOP), whichever is higher, minus the allowable non-taxable threshold. The non-taxable threshold amount varies from region to region.
- Stamp duty at a nominal amount of IDR6,000.

The seller pays income tax (*Pajak Penghasilan*) (PPh) at 2.5% of the transaction value, or NJOP, whichever is higher.

The rate of the land and building tax (*Pajak Bumi dan Bangunan*) (PBB) is 0.5% of the taxable land sale value (*Nilai Jual Kena Pajak*), which is usually payable by the seller up to the date of the sale.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios? What is the general approach of the tax authorities in your jurisdiction to such schemes?

Generally, there are no commonly used methods to mitigate real estate tax liability on acquisitions of large real estate portfolios. Transfer tax liability may be mitigated by purchasing shares of the entity owning the land title.

20. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

If the sale involves a real estate developer that supplies real estate services to consumers, VAT at 10% is payable by the buyer as a consumer.

21. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

Regional governments have authority to issue regulations on regional taxes, which are in line with their regional conditions. However, they must still be in line with the broad policy guidelines set out under Law No. 28 of 2009 on Regional Tax and Retribution. Therefore, regulations on regional taxes (including possible exemptions) vary depending on the policy of the regional government.

Climate change issues

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

Ministry of the Environment Regulation No. 08 of 2010 on Criteria and Certification of Green Buildings encourages green buildings for mitigating environmental damage. It defines a "green building" as one that applies environmental principles in its design, construction, operation and management, and handling of the impact of climate change.

Minister of Public Works and Public Housing Regulation No. 02/PRT/M/2015 on Green Buildings includes requirements for a green building and the incentives that can be granted to the owner and/or manager of a green building, which are obtained from the regional government.

There are targets to reduce greenhouse gas emissions from buildings. They are regulated at municipal level. An example is Regulation No. 38 of 2012 of the Governor of Jakarta on Green Buildings, which states that all buildings must meet stipulated energy efficiency requirements, such as:

- Energy conservation and efficiency.
- Water conservation and efficiency.
- Indoor air quality.
- Proper maintenance by the building's management.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

Provisions relating to the energy efficiency of buildings are not commonly included in contracts for the sale of real estate or in leases. However, under Minister of Energy and Mineral Resources Regulation No. 31 of 2005 on the Procedure for the Implementation of Energy Saving, the management of energy performance in buildings must reflect the country's energy-saving policies. This government policy requires building management to control the use of the building's lifts, escalators and air conditioners and to manage energy use efficiently. It encourages the use of energy-efficient products and technology.

Real estate finance

Secured lending involving real estate

24. Briefly outline the typical security package required by lenders in relation to real estate lending. How are the most common forms of security interest relating to real estate created and perfected (that is, made valid and enforceable)?

The most common form of security over real estate is a mortgage (*Hak Tanggungan*) over the land and building. In a mortgage, the borrower grants the lender an interest in the borrower's real estate, as security for the debt.

Mortgages are established through both:

- Signing a mortgage deed in the Indonesian language, before a PPAT (*see Question 10*) with jurisdiction over the land to be mortgaged.
- Registration of the mortgage deed at the relevant land office. During the registration, the PPAT pays on behalf of the borrower the administrative tariff in the form of Non-Tax State Revenue (PNBP) to the government, which will be normally reimbursed by the mortgagor. The amount of the PNBP depends on the secured amount of the mortgage. There is no mortgage tax payable on registration of the mortgage other than the PNBP.

The mortgage is established on its registration in the public register of titles kept in the relevant land office. To evidence the existence of a mortgage, the land office will issue a mortgage certificate, to be held by the lender.

Other available security interests include a:

- Pledge of shares in the borrower (granted by each shareholder of the borrower) including the relevant powers of attorney.
- Pledge of account (either bank account or account receivable).

- Fiduciary security over the borrower's assets that are not secured by a mortgage, including a fiduciary security over receivables and insurance proceeds.
- Guarantees (either corporate or personal).
- Various contractual security documents, such as conditional novation over key agreements.

These security interests can be granted in addition to a mortgage, depending on the scale of the project.

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

The lender will typically ask for the borrower's representations, warranties and undertakings in connection with the management of the real estate, including:

- The borrower's representation that the borrower is the sole and valid legal owner of the real estate.
- The borrower's warranty that there is no claim of ownership over the real estate from any third party.
- The borrower's undertaking that the borrower will maintain the real estate properly.
- The borrower's undertaking that the borrower will not lease the real estate to any third party without the lender's prior written consent.

Other measures such as conditions precedent, supplemental security and additional credit enhancements may also be requested. Conditions precedent may vary depending on the lender and the purpose of the real estate loan. For example, for a real estate loan for the purpose of land development, the lender may request securing the necessary licences and permits as a condition precedent. The lender may also request supplemental security(ies) in addition to a real estate mortgage to protect themselves against default by the borrower (*see Question 24*). Additional credit enhancements such as deposits, reserves and valuations may also be requested by the lender.

In practice, the lender normally also requires originals of the relevant land title certificates of the borrower to be kept by the lender to prevent the borrower from transferring the land title and/or granting a new mortgage over the land without the lender's consent.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Environmental liability is generally dealt with in the representations, warranties and undertakings of the borrower. The borrower's failure to maintain any of his/her representations, warranties and/or undertakings will give to the lender the right to claim compensation from the borrower.

27. Briefly outline the main remedies for lenders in relation to the secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

Law No. 4 of 1996 on Mortgages provides that a mortgagee is deemed a secured creditor. Therefore, if the borrower is in default on a loan, the lender/mortgagee is entitled to exercise its right to sell the mortgaged real estate to any party by way of public auction (or through a private sale, if agreed between the mortgagor and mortgagee). In theory, a mortgage registered at the land office with a mortgage certificate has the same executory effect as a binding court decision and therefore can be realised outside of court proceedings. However, in practice, a court decision may be required to evidence that the borrower is in default prior to realising the real estate. The right of the mortgagee as a secured creditor is not affected by the borrower's insolvency.

28. Briefly outline key additional issues for lenders in relation to construction and development projects.

The financing of construction and development projects is generally regulated by the Civil Code, Law No. 2 of 2017 on Construction Services and its implementing regulation, that is, Government Regulation No. 29 of 2000 as last amended by Government Regulation No. 54 of 2016 on Realisation of Construction Services, and sectoral regulations depending on the type of project.

The collateral to secure a loan for the purpose of financing projects depends on the type of project. For example, the collateral to secure the financing of the project of a coal mining company can be in the form of a fiduciary right over the project's heavy equipment and machinery, or a mortgage over the concession area. For the construction of a skyscraper, the security can be in the form of a mortgage over the plot of land, performance or warranty bonds issued by the contractor.

For due diligence matters and lender protections, see [Question 12](#) and [Question 24](#).

Other real estate financing techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

The most common real estate finance arrangement is in the form of a loan that is secured by a mortgage. However, other real estate finance arrangements can also be used.

Real estate leases

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable? Which legislation applies?

Contractual lease provisions are generally freely negotiable. The Civil Code sets out provisions regarding contractual leases, but they can be waived by mutual agreement of the parties.

31. What are the formal legal requirements to execute a lease? Does the lease have to be executed by certain parties or as a deed? How do the formalities differ for a company, partnership and for individuals?

There are no specific formal legal requirements to execute a lease. A lease is valid if it fulfils the following general conditions for an agreement under Indonesian law:

- Consent of the parties.
- Capacity to enter into an agreement.
- A specific subject.
- A lawful purpose.

Rent payments

32. How are rent levels usually reviewed and are there restrictions on this? Is stamp duty and VAT (or equivalent) payable on rent? Is a rent security deposit required and does it have to be managed in a certain way?

Rent levels are usually reviewed at the end of the lease period, except for mandatory utility price increases such as electricity and water.

VAT is payable on rent, at 10% of the gross lease rent amount, if the landlord is registered for VAT purposes.

A rent security deposit is not legally required, but is usually required in practice by the landlord.

Length of term and security of occupation

33. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

The length of the lease period is subject to contractual agreement between the parties. Leases normally contain a warranty from the landlord that the tenant's occupation is secure, and an option for the tenant to extend the lease.

Disposal

34. What restrictions typically apply to the disposal of the lease by the tenant? Can the tenant assign or sublet the lease with the landlord's consent? Can tenants share their premises with companies in the same group? What is the effect of a legal reorganisation or transfer/sale of the tenant on the lease and on a guarantee of the lease?

The tenant is usually prohibited from assigning or subleasing the premises without obtaining prior written approval from the landlord.

Tenants can usually share their business premises with companies in the same corporate group, with prior approval from or notification to the landlord.

Whether or not the landlord's consent cannot be unreasonably withheld or delayed is subject to the agreement between the landlord and the tenant.

In the event of a legal reorganisation or transfer/sale of the tenant, subject to the relevant lease, generally the successor of the tenant will continue the lease.

35. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

Subject to the relevant lease, generally liability under the lease after the lease is assigned can be contractually agreed.

Repair and insurance

36. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of lease improvements?

Under the Civil Code, the landlord is responsible for keeping the leased premises in good repair. However, the tenant is responsible for damages caused by the tenant.

Provisions on the insurance of the leased premises are subject to contractual agreement between the parties.

A lease improvement is considered as the property of the party that pays for the improvement.

Landlord's remedies and termination

37. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease and what restrictions and procedures apply? What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

The landlord can normally terminate the lease on occurrence of the following events:

- Rent payment default by the tenant.
- Assignment or sublease without prior approval from the landlord.
- Bankruptcy of the tenant.

The tenant's insolvency can usually trigger early termination of the lease by the landlord.

38. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

Under the Civil Code, the tenant can withhold rent payments (by way of reduction of the rental price) in certain circumstances, such as serious damage to the leased premises or repair works that last for more than 40 days. If the leased premises can no longer be used by the tenant due to the damage or the repair, the tenant can terminate the lease.

However, the tenant and landlord can agree on what to do in such circumstances and set out their agreement in the contract between them.

Planning and development controls

39. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

Central and regional governments, including state-owned companies, may compulsorily purchase business premises located in a certain area, for the purpose of developing public interest facilities such as railways, an airport or infrastructure.

The compensation given to the owner of the premises is determined by an appraiser appointed by the government.

40. What authorities regulate planning control and which legislation applies? Is there specific protection for special categories of buildings such as historic buildings?

At national level, the governmental authority responsible for spatial layout/zoning is the Ministry of Agrarian Affairs and Spatial Planning. However, implementation is decentralised and assigned to the regional governments.

Spatial planning is governed by Law No. 26 of 2007 on Spatial Layout (Law No. 26/2007).

Buildings that can be categorised as cultural heritage, such as historic buildings, are protected under Law No. 11 of 2010 on Cultural Heritage.

41. What planning consents are required for building works and the use of a building?

All developments of any type must be made in accordance with the applicable spatial layout plan. The spatial layout plans consist of the following:

- **National spatial layout plan.** This is directly governed by government regulations.
- **Provincial spatial layout plan.** This is prepared by the provincial government, in co-ordination with the governor, subject to approval by the Minister of Agrarian Affairs and Spatial Planning.
- **Regency spatial layout plan.** This is prepared by the regency government, in co-ordination with the regent, subject to approval by the Minister of Agrarian Affairs and Spatial Planning.
- **Municipal spatial layout plan.** This is prepared by the municipal government, in co-ordination with the mayor, subject to approval by the Minister of Agrarian Affairs and Spatial Planning.

Development requires a space utilisation permit (*izin pemanfaatan ruang*) that can take several forms, including a location permit (*izin lokasi*) and building construction permit (*izin mendirikan bangunan*) for the construction and operation of buildings. Permits are only issued if the development plan complies with the applicable spatial layout plan.

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

The spatial layout plan is prepared and approved by the relevant authorities (see [Question 41](#)).

Consents for the construction and operation of buildings (issued as building construction permits) as well as the use of land (issued as location permits) are currently issued through the Online Single-Submission (OSS) system.

To obtain a building construction permit, the applicant must submit proof of fulfilment of certain conditions to the building management information system operated by the regional government (*Minister of Public Work and Housing Regulation No. 19/PRT/M/2018 on the Provision of Building Construction Permit (Izin Mendirikan Bangunan) and Building Functionality Certificate (Sertifikat Laik Fungsi Bangunan Gedung) through Electronically Integrated Licensing Services*).

A location permit can be granted for land that fulfils certain conditions set out in Minister of Agrarian Affairs/Head of National Land Agency Regulation No. 17 of 2019 on Location Permit. The location permit may be granted with or without commitments, depending on the land conditions. For a location permit with commitment, the applicant must submit proof of fulfilment of certain conditions within ten days of the OSS issuing the location permit, which is then be forwarded to the land office. The land office will issue or reject the location permit application within ten days of the commitment of being fulfilled.

Third-party rights and appeals

Third parties are entitled to:

- Proper compensation for loss incurred due to development carried out according to the relevant spatial layout plan.
- File an objection with the relevant authority to development that deviates from the spatial layout plan.
- Claim annulment of a permit and suspension of development by the relevant authority, for development that deviates from the spatial layout plan.
- Claim compensation for losses incurred from the government and/or permit holder, if the development deviates from the spatial layout plan.

(*Law No. 26/2007*.)

- Although Law No. 26/2007 is silent on the right to appeal against a planning decision, generally any person has a right to appeal against a governmental decision to the State Administrative Court. This Court has jurisdiction over matters relating to state administrative decrees/governmental decisions, including planning decisions.

The public are involved in spatial planning through:

- Preparation of the spatial plan.
- Use of the space.
- Control over use of space.

(Law No. 26/2007.)

The public can submit a report and/or complaint to the central and regional governments.

The public can appeal to the relevant government authority if the development is not carried out in accordance with the applicable spatial layout plan.

Reform

43. Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

The government and the House of Representatives are currently working on the draft Bill on Land (*Rancangan Undang-Undang Pertanahan*). At this stage, it is not clear when the Bill of Land will be enacted into law, since discussions are still ongoing.

Contributor profiles

Nafis Adwani

Ali Budiardjo, Nugroho, Reksodiputro

T +62 212 505 125/5136

F +62 212 150 5001/5121/5122/5392

E nadwani@abnrlaw.com

W www.abnrlaw.com

Professional qualifications. Indonesia, 1984

Areas of practice. Real estate; corporate law; labour law.

Recent transactions. Acting for the Indonesian subsidiary of a multinational company, a fragrance manufacturer, in relation to the move of its plant from a business zone to a suburb, which was required by the government's new zoning regulation. The client requested a legal opinion on whether, based on

the prevailing regulations and the policy of the local government, the plant must be moved from central Jakarta to a suburb of Jakarta.

Agus Ahadi Deradjat

Ali Budiardjo, Nugroho, Reksodiputro

T +62 212 505 125/5136

F +62 212 150 5001/5121/5122/5392

E aderadjat@abnrlaw.com

W www.abnrlaw.com

Professional qualifications. Indonesia, 1996

Areas of practice. M&A; real estate, corporate law.

Recent transactions. Acting for multinational companies in the manufacturing sector, advising on real estate transactions.

END OF DOCUMENT

Related Content

Country Q&A

[Lending and taking security in Indonesia: overview](#) • Law stated as at 01-Nov-2019

[Construction and projects in Indonesia: overview](#) • Law stated as at 01-Jun-2018