

Facilitating Property Ownership In Asia



Purchasing Landed Residential Property in Indonesia

A Guide For Foreigners

This guide provides information on how best to purchase residential property in Indonesia. The guide has two primary objectives; the first objective is to enable investors to obtain secure title over property assets in a legal structure consistent with Indonesian law. The second objective is to provide investors the opportunity of securing finance against this title.

The following step by step guide provides instruction on how best to achieve these primary objectives.

1. The foreign investor identifies a suitable property and agrees a mutually acceptable price with the seller. In order to obtain the aforementioned primary objectives of securing effective title which thereafter is mortgageable this can only be achieved if the property to be purchased is a 'Hak Milik' or freehold title.
2. Due Diligence Phase. The Notary initially checks all aspects of the Hak Milik property and advises in relation to any impediments to acquisition of the Hak Milik property. Key areas checked during this due diligence phase are included in appendix i).
3. If the due diligence is favorable the Indonesian Hak Milik owner executes with the nominee/designee of the foreigner, who must be an Indonesian citizen, either:
 - an Akta Jual Beli ("AJB") ("Sale and Purchase Agreement") pursuant to which 100% of the purchase price is paid; or
 - (a Perjanjian Pengikatan Jual Beli ("PPJB") ("Agreement Binding for Sale and Purchase") pursuant to which a deposit is paid subject to payment of the balance of the purchase price. The deposit is generally not held by a stakeholder but is typically paid to the vendor.
4. Finance for the property may be available if certain eligibility criteria are met, details of these criteria are provided in appendix ii). Multicurrency loans are available and typical loan features are also included in the appendix iii). The lending bank will also require a valuation report on the property.
5. Upon payment of the balance of the purchase price (in either one or a number of installments) the AJB is then executed and the conveyance of Hak Milik title to the foreigner's Indonesian designee occurs thereafter.
6. The Lending Bank may be willing to accept the Hak Milik title of the foreigners designee as appropriate collateral to process the loan. If the lending bank is unwilling to accept this as collateral then the foreigner may need to obtain bridging finance until the Hak Pakai title is processed.
7. Upon registration of the title in the Indonesian designee's name, the foreign investor must then proceed to structure his tenure over the property by way of Hak Pakai atas Tanah Hak Milik. Hak Pakai may be held by a foreign citizen contributing to the national development of Indonesia by owning a residential property in Indonesia and by being present in the country from time to time. The process of creating the Hak Pakai and other features of the title are detailed in appendix iv

Appendices

- i) **Key areas checked during the notaries due diligence phase**
- Hak Milik certificates of title authenticity at National Land Agency (“BPN”)
 - Ensuring no dual/fraudulent certificates exist by comparison with original title at BPN
 - Encumbrances, mortgages, Hak Tanggungan, Hipotik, Crediet Verband
 - IMB (building licence) if a building is constructed on the land
 - Zoning of the land/property usage;
 - Court actions in respect of the property at the relevant district court
 - Power, water and other services connection
 - Secure access road verification
 - Disputes with local residents as a result of on-site inspection;
 - Outstanding PBB rates and taxes payable to the government;
 - Necessary subdivision licenses or indication of government position on subdivision if development requires subdivision; and
 - Any other matters particular to the property.
- ii) **Loan Criteria and Eligibility (IPL Indonesian Property Loan)**
- IPL is available to non-Indonesian citizens (foreigners) residing in Indonesia, subject to Bank approval.
 - Only existing residential dwellings in Indonesia such as house with land, apartment will be considered.
 - Loan can only be granted if the property is registered in borrowers’ name “Hak Pakai” or Title to Use the Land, with a Building Permit (or Ijin Mendirikan Bangunan – IMB) attached to the certificate.
 - Borrowers can only apply for one loan as foreigners are only allowed to own one Indonesian based property.
 - You must be able to demonstrate your ability to meet all your financial commitments, such as rent, living expenses, and loan repayments. The ability to repay the loan will be determined for each borrower and is dependent on their individual financial circumstances and the value of the security.
- iii) **Loan Features**
- The IPL is a loan to assist foreigners to purchase residential property in Indonesia. The IPL is available in United States Dollar (USD), Australian Dollar (AUD), and Indonesian Rupiah (IDR)
 - The minimum loan amount is IDR 100 million and maximum IDR 5 billion, or its equivalent in USD or AUD.
 - The maximum loan amount that can be borrowed is 60% of the latest valuation; a 40% deposit is required.
 - Maximum loan period is 10 years for principal and interest.
 - Interest rates are calculated at a variable rate, based on Cost of Funds for the currency of the loan, and a margin.

iv) **Hak Pakai Atas Hak Milik Process and Features.**

The Hak Pakai is a land title recognized by Indonesian law.

Hak Pakai may be held by a foreign citizen contributing to the national development of Indonesia by owning a residential property in Indonesia and by being present in the country from time to time.

To create the Hak Pakai, the foreigner must be actually present in Indonesia and provide to the Notary executing the transaction with a KITAS or a passport with a valid entry visa stamped therein.

The Notary acting in his capacity as a PPAT (Government authorized conveyancing officer) executes a Deed of Grant of Hak Pakai (“Akta Pemberian Hak Pakai atas Hak Milik”) between the Hak Milik owner/designee and the foreigner pursuant to which the Hak Milik owner grants the Hak Pakai title to the foreigner.

The title created is known as a Hak Pakai atas Tanah Hak Milik which title effectively encumbers/charges the underlying Hak Milik title and may be granted by the Hak Milik owner to the foreigner for an initial fixed 25 year term.

By separate Notarial Deed, the Hak Pakai owner may also prepay to the Hak Milik owner a number of agreed 25 year renewals i.e. 25 years + 3 x 25 year renewals = 100 year tenure. Renewals are subject to prevailing Indonesian law. A conversion clause in the documents provides that if a Hak Pakai renewal is prohibited by subsequent Indonesian law, the unexpired Hak Pakai terms will convert to leasehold by operation of law.

The Hak Pakai owner obtains a certificate of title in his name and with the agreement of the Hak Milik owner is entitled to keep the original Hak Milik title in his possession until expiration of the term.

It should be noted that the Hak Pakai must be renewed at least two years before its expiration and the renewal costs are presently again government transfer taxes of 10% of NJOP (which taxes may be subject to future government adjustment).

It should also be noted that a foreigner is entitled to hold only one Hak Pakai title, for residential purposes, at any time in Indonesia and the land area must be less than 50 are (5000 M2).

Incidental documentation includes a Power of Attorney (“Surat Kuasa”) for the Hak Pakai owner to represent the Hak Milik owner (or their respective beneficiaries under their wills) upon renewals of each pre-paid 25 year term and a Statement Letter/Pernyataan from the Hak Milik owner to the effect that the Hak Milik owner will abide by the directions of the Hak Pakai owner in respect of the sale/transfer of the Hak Milik at any time.

Often as part of the transaction, where a number of Hak Milik titles are held, an amalgamation of titles must occur prior to creation of the Hak Pakai as the Hak Pakai must be granted over only one Hak Milik title.

The Hak Pakai may be transferred to another foreigner, Indonesian company or Indonesian citizen or released and a new Hak Pakai created over the Hak Milik.

Hak Tanggungan encumbering Hak Pakai

The Hak Pakai title is capable of being mortgaged and certain deletions are made by the PPAT to the Deed of Grant of Hak Pakai so that the prior approval of the Hak Milik owner to the encumbrance is not required..

The lender/mortgagee is granted a separate Sertipikat Hak Tanggungan and holds possession of the Hak Pakai certificate to secure repayment.

The Hak Pakai atas Tanah Hak Milik represents a secure government sanctioned structure for foreign investors wishing to take advantage of an investment in one residential property permitted by prevailing Indonesian law, and so the structure should be regarded as a leading investment option for securing freehold property in Indonesia.

Typical Mortgage Costs

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| 1. Booking fee | : 200 USD fee payable on application non refundable |
| 2. Administration fee | : 0.25% of credit limit, with minimum USD200 / AUD200 per approved application (for new & top up program) included stamp duty fee |
| 3. Provision (Bank fee) | : 1% of approved credit limit (for new loan) |
| 4. Early/Partial payment fee | : USD100 / AUD 100 |
| 5. Loan rescheduling fee | : USD100 / AUD 100 |
| 6. Notary charge | : will be charged to Borrower. |
| 7. Appraisal charge | : Appraisal charge to be paid by borrowers in advance |
| 8. Insurance | : will be charged to Borrower |
| 9. Interest Rate | : Interest is charged at a variable rate, based on LIBOR or Cost of Funds (COF) for the currency of the loan. A margin and other related cost are added to the COF. Please refer to your APFM sales associate to obtain prevailing interest rates. |

** All bank fees and charges are subject to change*