



The article indicates several ways to purchase property in Bali and why it is essential to have a legitimate legal counsel to aid in the purchase

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Buying Property in Bali

In South-East Asia where purchasing a property could be often an investment as well as a life-style decision, Bali is one of the foremost and most attractive destinations in the region to look into. This article will outline some important aspects which a prospective buyer of property should take into consideration when looking at investing in Bali.

As Bali, i.e. Indonesia has a complex and strict regime of laws regulating foreign investment in property and land, it is essential for any buyer to be familiar with some general legal principles and the purchasing options that are available.



General Recommendations

Whenever considering investing in a country with a legal frame work largely different from one's home jurisdiction, it is crucial to have an impartial, independent and reputable legal counsel to conduct due diligence on your behalf before making any substantial financial commitments other than a fully refundable reservation deposit. Any deposit payments should be made into a neutral third party's account, which should preferably be controlled by your own advisor or agent.

Furthermore as every property is located on land, it is essential to check the legality and the title to the land on which the property is situated. This will require checking whether the person or agent offering the property for sale is actually the lawful owner or has due authority to sell the land; that there is legally guaranteed access from a public road to the property; that the relevant building permit (Izin Mendirikan Bangunan or IMB) and other local permissions are in place; that there are no outstanding taxes on the property; and that there are no restrictions on the usage of land under national or local laws with regard to the intended use.

The above checks should be conducted by your independent legal counsel always in advance to any proposed acquisition and such checks can in ordinary circumstances be conducted within a period of 30 days.

Laws regulating property acquisition in Bali

It is important to note that only Indonesian nationals (not even Indonesian companies) may own freehold title to land in their own name such title usually being referred to as *Hak Milik*. Based on current practice, there are essentially three options available for foreigners to acquire an interest in land in Bali only two of which, from our perspective, are recommendable from a perspective of sufficient legal protection.

Leasehold Right (*Hak Pakai* – up to 45 years)

An attractive and feasible option for a foreigner to acquire an interest in land in Indonesia is to acquire a leasehold or usage right known as *Hak Pakai*. Foreign individuals are eligible to hold such leasehold titles

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which would be granted over the relevant land for an initial period of 25 years extendable for up to another 20 years; the leasehold right may, subject to properly drafted documents with the land owner, be renewed repeatedly and such rights would be documented in the sales contracts as well as in a notary deed and registered with the competent land office (*Kantor Pertanahan*).

When choosing this method of investment into property, it is important that the contractual documentation is properly drafted by your legal counsel in conjunction with a notary deed which should include, amongst others, provisions dealing with and ensuring an irrevocable option of the buyer to renew the leasehold right throughout the lease term and upon expiration; assignability of the leasehold right at the buyer's discretion; limitation of rent increases upon extensions and renewals; and limitation of termination rights of the land owner.

Right to Build (HGB – up to 80 years)

Another viable alternative for foreigners looking at buying a property in Bali is to acquire an interest in land through corporate ownership which would allow owning a piece of land and building on it for a period of 30 years with an extension of up to 20 years and a subsequent renewal of another 30 years (therefore totaling to a term of 80 years). In addition, repetitive renewal options may be agreed by the parties which should be properly drafted in the sales documentation. Such right is referred to as *Hak Guna Bangunan* or HGB and should be properly documented in sales contracts besides a mandatory notary deed and registration of the HGB at the competent land office providing the buyer with a deeded right to the land.

The HGB as a method of investment is especially feasible and attractive for acquisition of high-end properties as well as for structuring development projects as it, under certain circumstances, allows acquiring an interest in land through an investment company established under Indonesian law that may be up to 100 percent foreign-owned.

Such an Indonesian company (referred to as PMA company) requires complying with certain

set up requirements including ongoing reporting to the Indonesian Investment Coordinating Board (BKPM) and other Indonesian authorities. However, with regard to real estate investments this method of investment would allow a buyer to fully own, develop and control a property within the lawful term of the HGB and would also allow to sell any interest in the property (in parts or full) offshore as the PMA company may be fully foreign-owned. Another advantage of acquiring a right to Build (HGB) by setting up a foreign investment company is that, under certain circumstances, HGB is accepted by Indonesian banks as collateral for finance.

Nominee arrangements (not recommended)

Even though properties in Bali are frequently advertised as 'freehold', the reality is that foreigners cannot own land freehold title in Indonesia. Currently it (still) is a widely common practice that foreigners use a local Indonesian citizen as a nominee to hold the freehold title for the foreigner. Such nominee arrangements usually involve a number of documents including a loan agreement, a mortgage against the land; an undated or blank Power of Attorney, and other documents theoretically 'allowing' the foreigner to dispose of and deal with the freehold title without permission of the Indonesian nominee.

However, it is important to note that under Indonesian law such nominee arrangements are illegal and void by law (Art. 26 of Law no. 5 of 1960 regarding the Agrarian Code) including the risk of losing the land without any rights for compensation whatsoever. Therefore, even though it is (still) common practice to enter into nominee arrangements to acquire an interest in land, from our perspective, it is not advisable to any person interested in buying in Bali to adopt such practice.

Summary

It is possible and feasible for foreign buyers and investors to lawfully acquire an interest in land and property in Bali. Out of the commonly used three methods in Bali we recommend not to purchase property through a nominee arrangement but to utilize the available options of *Hak Pakai* or HGB to acquire a duly registered interest in property. Any person looking at buying a property in Bali should seek independent legal advice to determine the most appropriate method of purchase for their personal circumstances or investment purposes.

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