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Tabanan
Going up the
country

Tropical Hardwoods
A rethink

Market Update
How the regions
are faring



The Lawyers Speak

The finer points of owning abroad

Access and construction taxes – worthwhile checking!

When buying in a foreign market like Bali, for some reason, buyers sometimes tend to neglect to conduct those elementary checks and due diligence which they would in their home jurisdictions. Based on recent experience, we would like to draw the attention to two specific items which a buyer might but should not take for granted when buying in Indonesia.

ACCESS WAY

The importance of access is evident as it allows the owner to reach his property without hindrance or interference by third parties. In fast-growing property markets, there is often a rapid conversion of originally agricultural land into land for building. Public master planning and implementation of public infrastructure, therefore, does not always keep up with such changes in land usage. Therefore it is important to check prior to acquiring a property whether a physically existent access road actually is a legally protected access way (e.g. public road or local community road) or if such access is only temporarily provided via a property of a third person who might restrict the use of the access way at his discretion.

It is crucial to thoroughly check whether a property is located adjacent and with direct access to a public road as dedicated under a public spatial layout plan or adjacent to a local community road. In Bali, such local community roads are common. These are managed by the local community or village under traditional laws and provide access to those people living at the respective road. Cost for maintenance or improvements of such a road will be collected from those living in properties around that road.

For any access road which is not publicly registered and dedicated it is necessary to conduct direct investigations with the local people and also the village authorities where the property is located to clarify the legal status of any existent road. In certain cases it is further recommended to obtain a letter from the head of the village confirming the access and right of use as this would make it more difficult for any third to dispute access rights in the future.

CONSTRUCTION TAX

Under Indonesian law, there are generally two different ways to declare and pay construction tax (which is a special form of VAT), i.e. declaring a building as 'self-built' or declaring it as 'built by a construction company'. 'Self-built' literally means that a person constructs and builds his own property by himself or by hiring a non-professional party or labourers, as opposed to using a professional construction and development company to build the property. 'Self-built' properties enjoy tax privileges and are subject to 4% tax as opposed to properties built by professional contractors, which are subject to 10% tax calculated on the construction cost.

In practice, the tax privilege for 'self-built' houses sometimes results in incorrect declaration of taxes by the builder, i.e. buildings are declared as 'self-built' even though they were built with help of a professional contractor which might be already evident from design, size and quality of construction or number of properties built. It is important to know that the authorities have the right to investigate construction tax within five years from the date a building permit (IMB) was issued. Any incorrectly declared construction tax has to be paid at the reassessed amount plus penalties, and such subsequent payment has to be made by the current owner of the property.

This means, when acquiring a property not older than five years, it is important to check that the construction tax was declared and paid correctly otherwise you as the new buyer of a property might be exposed to late tax payments and severe penalties. In addition, rights of retention might be contractually agreed with a seller of a property to be protected from any potential subsequent tax payments.

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