

INDONESIA THAILAND AUSTRALIA

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Legal matters that need to be considered when acquiring uncertified land

In Indonesia, there exist vast areas of land which have not (yet) been officially registered and certified with the National Land Office (BPN) under the requirements of agrarian law. Uncertified land in rural areas is commonly known as girik, while in Bali or Lombok it is also known as pipil or persil. Rights to such uncertified land are often governed by traditional customary adat law and may be possessed by individuals under the adat law-based proprietary rights.

An adat law-based entitlement over uncertified land is often proven by various letters of tax payments, known as a surat girik, which are issued by the head of the relevant Sub-District or Village to the occupant and user evidencing such person's payment of local land taxes and thereby assuming such person's customary entitlement over such land.

In order to transfer girik land to another party, a buyer may apply for a registered title under the Agrarian Law and obtain a proper land certificate. This involves the relinquishment of any adat law-based proprietary rights by the original occupant to the state by virtue of signing an Akta Pelepasan Hak or Right Relinquishment Deed in favor of the buyer which concurrently allows the buyer to obtain a registered title in his name.

The absence of a land certificate does not mean that acquisition of such land is unsecure. In the initial stage, however, information and evidence regarding the historic possession and use of such land must be investigated and checked thoroughly.

Pursuant to current laws and regulations, one of the written evidence instruments of uncertified land is Petuk Pajak Bumi/Landrente, girik, pipil, kekitir and Verponding Indonesia. Besides other documents, the written evidence instrument is

required for the certification process at the local BPN and this process will involve several officials, among others, the Head of District, Head of Sub-District or Head of Village who usually have knowledge about the history of the uncertified land. All available written evidence will be submitted to these officials who have them verified and cross-checked. The officials may also issue a written recommendation that can then be used by the Land Deed Official (PPAT) to further process the registration and certification of the land at the Land Office.

Based on an application of land registration submitted by the PPAT, the Land Office will conduct the procedure of registration of the uncertified land, including measurement and a public announcement of up to 60 days, to investigate whether there are any claims by third parties over such land.

Provided that all of the requirements are met the Land Office will then issue the land certificate which is then fully transferrable, i.e. can be subject of a certificated land acquisition. It is important to note that under Indonesian law freehold title over land can only be registered in the name of an Indonesian citizen.

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