

Long lease legalities



When registering long leases over real estate, what procedures must be followed and what are the common issues to look out for?

In Indonesia registered rights over land generally require execution of a notary deed pertaining to such right and registration of the same with the competent land office.

Hak Guna Bangunan (HGB) is the long-term registered right (30 years) to construct and develop buildings on land and to possess the same for a specific period of time which may be owned by individuals who are Indonesian citizens or by legal entities established under Indonesian law and domiciled in Indonesia, including foreign investment companies (known as a PMA). HGB title is not available to foreign individuals.

Hak Pakai title is a long-term registered right (25 years) to use a parcel of land which can include the right to construct a building which may be held by legal entities established under Indonesian law (including PMA companies) and by foreigners residing in Indonesia. It is important to note that previously registration of Hak Pakai title to foreigners, who were staying in Indonesia under a tourist visa, were commonly accepted. Recently there were reports that some land offices may request proof of residency in order to complete the registration to a foreigner.

The registration is effected through a PPAT (notary) who submit the relevant documents to the land office. Depending on the type of title the process may take between a few weeks up to several months. Therefore you should link final payment to completion of registration.



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In Thailand foreign purchasers of residential property may acquire a leasehold interest for a fixed term that cannot exceed 30 years, although the lessee will usually be granted options to renew the lease for further periods of 30 years. A lease that is over three years in length must be registered at the Land Department. In order to register the lease the



lessor and lessee will jointly need to make an application to the Land Department and submit certain documents including proof of payment of the rent. A tax of 1.1 per cent of the rental value of the lease is payable. The act of registration involves an entry being made on the title deed regarding the lease.

In terms of the timing of the registration, the optimum position for a lessee is that registration takes place at the outset at the same time as the first lease payments to the lessor are made although some lessors may structure the timing of the lease registration date so that they receive all monies due to them from the lessee before they are obliged to register the lease.

It should be ensured that the person purporting to grant the lease is the owner of

the land and not a sub-lessee. It is important to review the title to ensure that there are no mortgages registered on the title. If there are the lease cannot be registered without the consent of the mortgagee who, if there is still debt outstanding, is unlikely to consent to the registration.



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At present, Vietnam law has yet to establish a registration process for long term residential leases for an apartment or villa. In addition, since all land is administered by the State, most land is leased out to local or foreign enterprises on a long term lease basis – usually for either fifty (50) years or seventy (70) years, depending on the permitted use of the land and as such, there is no registration process for this type of long term lease either.

Notwithstanding the absence of a formal registration system in Vietnam, a lessee under a long term residential lease (i.e. an apartment or vacation villa) is afforded legal rights and protections under the Civil Code to remedy a breach, such as to sue for damages for breach of contract. As a matter of public policy, and given our experiences, the court would require any subsequent purchaser of the assets of a bankrupt owner/developer to honor the lease agreements with lessees. Moreover, it is important to note, that the validity of a lease agreement with a foreign national would be contingent upon that said foreign national obtaining a three-month visa to enter Vietnam prior to signing the lease agreement, thereby requiring physical presence in Vietnam at the time of entering into the lease agreement.

When leasing land directly from the State to undertake an investment project, protection is afforded under the Land Use Right Certificate (LURC), which is a legal document akin to a deed granting the holder rights over the land.



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