



MAKES & PARTNERS
LAW FIRM



INDONESIA

PROPERTY INVESTMENT GUIDE



WELCOME

We are very glad to release the second issue of Investment Guide jointly with Makes & Partners and KPMG. Our first publication in 2015 has been a great benefit to our foreign investor clients by guiding them to understand the property, legal and tax regulations in Indonesia.

The Indonesian property market has entered into a consolidation phase due to global and economic conditions. Gradual recovery is expected in 2017 as long-term confidence in fundamentals such as accelerations on major infrastructure projects, successful local elections and the tax amnesty program are expected to boost optimism in the next few years.



We hope that this updated publication will continue to be a great benefit to our clients. Please do feel free to contact Knight Frank should we be able to assist you in your investment plan.

Willson Kalip
Country Head, Knight Frank Indonesia
willson.kalip@id.knightfrank.com

Warm greetings to all.

We at Makes & Partners are delighted to be working once again with Knight Frank and KPMG for the 2017 edition of the Indonesia Property Investment Guide Book.

The Indonesian legal landscape, in particular, on construction and real estate has been very dynamic and robust in the past years, providing for a conducive environment to foreign and local investors alike. With our known market strength in property, construction and real estate laws, Makes & Partners is very pleased to share with you valuable and practical general legal insights to take into consideration when crafting an informed decision to invest in and/ or buy real property in Indonesia.



We hope that you will find the 2017 Indonesia Property Investment Guide Book useful and informative. We wish you all the best in your real property investments in Indonesia.

Yozua Makes
Founding and Managing Partner
Makes & Partners Law Firm

Welcome to this second edition and we hope that this publication would help potential investors to understand the overall condition and regulation on investing in the Indonesian property business, which in the end would increase the economy as a whole. We are pleased to assist further for any questions.



Abraham Pierre
Partner, Head of Tax KPMG Indonesia
Abraham.Pierre@KMPG.co.id

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Indonesia Investment Guide Team

Editor
Hasan Pamudji

Marketing & Communications
Miranti Paramita

Creative Designer
Candra

2nd Edition - 2017

INDONESIA PROPERTY



**INDONESIA
PROPERTY**

INDONESIA OVERVIEW

Highlights

- The world's largest archipelago, lies at the intersection of the Pacific Ocean, along the Malacca Straits and the Indian Ocean.
- Over half of all international shipping goes through Indonesian waters.
- A home to more than 250 million people, it is the world's fourth most populous country after China, India and United States.
- The world's 16th-largest country in terms of land area about 1,919,440 square kilometers.
- Close to 583 languages and dialects are spoken in the archipelago.
- Official language is Bahasa Indonesia, while English is widely used in the trade.
- The nation's capital city is Jakarta. Other major cities include Surabaya, Bandung, Medan and Semarang.
- The world's largest population of Muslims with other minority religious groups being Christians, Hindus and Buddhists.
- Indonesia is a Republic with an elected legislature and president.
Its first free parliamentary election after decades of repressive rule took place in 1999, Indonesia is now the world's third-largest democracy.
- A founding member of ASEAN and a member of G-20 major economies.
- One of the few countries that successfully escaped the pitfalls caused by the recent global financial crisis.
- It is increasingly gaining spotlight in the international stage as one of the new rising stars in Asia.





Fact Sheet

Capital City	Jakarta
Official Language	Indonesia (Bahasa Indonesia), English is commonly used in trade
Type of Government	Unitary Presidential Republic
Population	262,514,708 (2017 est.)
President	Joko Widodo
Main Ethnic Groups	Javanese 42.7%, Sundanese 15.4%, Madurese 3.4%, Minangkabau 2.7%, Betawi 2.5%, Bugis 2.5%, Banten 2.1%, Banjar 1.7%, Balinese 1.5% and others/unspecified 25.5% (2010 census)
Main Religions	Muslim 87.2%, Christian 9.9%, Hindu 1.7%, Buddhist 0.7% and others/unspecified 0.5% (2010 census)
Total Area	1,919,440 square kilometers
Land Area	1,826,440 square kilometers
Water Area	93,000 square kilometers
Currency	Rupiah (IDR)
Climate	Tropical, hot, humid; more moderate in highlands
Terrain	Largely coastal lowlands; larger islands have interior mountains
Population Growth Rate (%)	1.28% (2017 est.)
Major Agricultural Products	Rice, coconuts, soy beans, bananas, coffee, tea, palm, rubber, sugar cane
Major Industries	Fishing, petroleum, timber, paper products, cotton cloth, tourism, mining of petroleum, natural gas, auxite, coal and tin
Source: Processed from Multiple Sources by Knight Frank / PT. Willson Properti Advisindo	



Growth Centers and Opportunities

In the inception, major cities in Indonesia were developed based on commercial trading activity patterns. The growth of the cities was influenced by business sectors that provided dominant economic contribution to the region. Today, the majority of cities in Java are still dominated by trading and industrial activities, while major cities in Sumatera, Kalimantan and Sulawesi are largely supported by plantation, oil and mining sector activities. Moreover, some other key cities such as Denpasar, Bandung, Bogor and Yogyakarta rely heavily on the tourism industry.

Major Urban Centers
(Metropolitan Cities with Population of over 1 Million)

#	City	Province	Population
1	Jakarta	DKI Jakarta	9,586,705
2	Surabaya	East Java	2,765,487
3	Bandung	West Java	2,394,873
4	Bekasi	West Java	2,334,871
5	Medan	North Sumatera	2,097,610
6	Tangerang	Banten	1,798,601
7	Depok	West Java	1,738,570
8	Semarang	Central Java	1,520,481
9	Palembang	South Sumatera	1,440,678
10	Makassar	South Sulawesi	1,331,391
11	South Tangerang	Banten	1,290,322

Source: Central Bureau of Statistics – 2010 Census



Important Growth Centers

(Cities with Population of between 500,000 and 1 million)

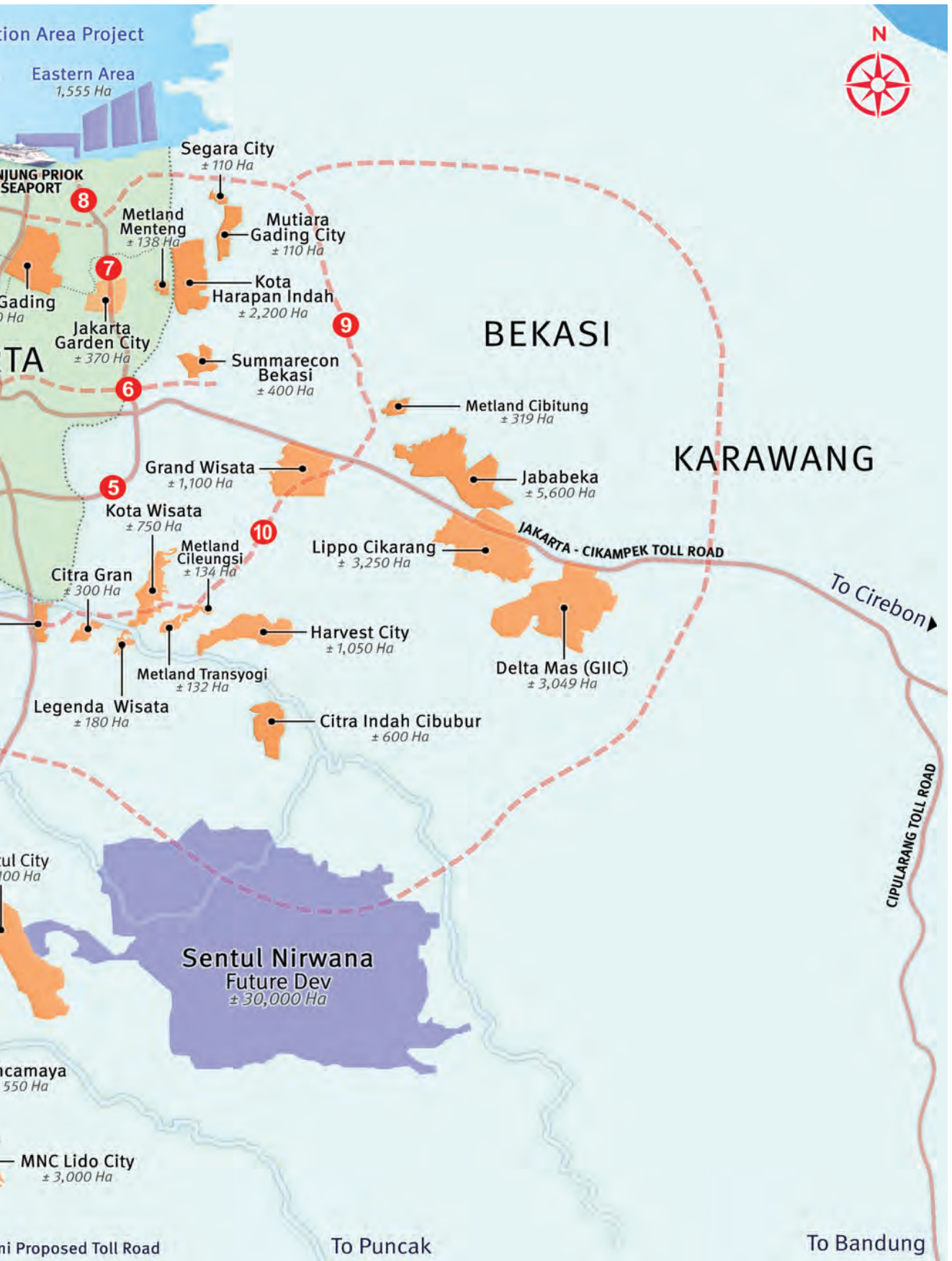
#	City	Province	Population
1	Bogor	West Java	950,334
2	Batam	Riau Island	917,998
3	Pekanbaru	Riau	882,045
4	Bandar Lampung	Lampung	881,801
5	Malang	East Java	820,243
6	Padang	West Sumatera	799,750
7	Denpasar	Bali	788,589
8	Samarinda	East Kalimantan	685,859
9	Banjarmasin	South Kalimantan	612,849
10	Serang	Banten	611,897
11	Tasikmalaya	West Java	578,046
12	Pontianak	West Kalimantan	554,764
13	Cimahi	West Java	541,177
14	Balikpapan	East Kalimantan	526,508
15	Jambi	Jambi	515,901

Source: Central Bureau of Statistics – 2010 Census

Major Townships in Greater Jakarta



Source: Various Developers | Land Area : Estimated Total Development Rights



Greater Jakarta Industrial Estate Development Map



Source: Knight Frank / PT Willson Properti Advisindo





Major Infrastructure Development Programs

Expansion of Indonesia's infrastructure has not been able to keep up with its robust macroeconomic expansion since the recovery from the Asian Financial Crisis in the late 1990s. As a consequence, its economic growth is unable to reach its full potential. However, on a positive trend, President Joko Widodo has made a strong commitment to improve Indonesia's infrastructure by increasing private investment through Public Private Partnerships (PPPs) and government spending through the 2015-2019 National Medium Term Development Plan of Rp5.5 trillion in total investment.

Infrastructure Investment Requirements (RPJMN) 2015-2019 (in Rupiah Trillion)

Sector	National Development Budget (APBN)	Local Development Budget (APBD)	State-Owned Enterprises (SOE)	Private	Total
Roads	340	200	65	200	805
Railways	150	-	11	122	283
Sea Transports	498	-	238	164	900
Air Transports	85	5	50	25	165
Land Transports	50	-	10	-	60
Urban Transports	90	15	5	5	115
Electricity	100	-	445	435	980
Oil and Gas	4	-	152	352	507
Information and Communication Technology	13	15	27	223	278
Water Resources	276	68	7	50	401
Clean Water and Sewage	227	198	44	30	499
Public Housing	384	44	13	87	528
Total Infrastructure Spending	2,216	545	1,066	1,692	5,519

INFRASTRUCTURE DEVELOPMENT JOKOWI 2015-2019

LOCATION OF 15 AIRPORTS AND 24 SEAPORTS



 <ul style="list-style-type: none"> ● New roads 2,650 Km ● Toll roads 1,650 Km ● Road maintenance 46,770 Km 	 <ul style="list-style-type: none"> ● Railway lines 3,258 Km in Java, Sumatera, Sulawesi and Kalimantan, comprising inter-city rail 2,159 Km and city rail 1,099 Km
 <ul style="list-style-type: none"> ● 15 new Airports ● 20 Pioneer Planes ● Air Cargo Service in 6 Locations 	 <ul style="list-style-type: none"> ● Transport link in 60 locations ● Pioneer ferry transport link of 50 Units
 <ul style="list-style-type: none"> ● 24 new Sea Ports ● 26 Pioneer Cargo Ships ● 2 Livestock Carriers ● 500 Boats 	 <ul style="list-style-type: none"> ● Bus Rapid Transit in 29 cities ● Mass Rapid Transit in 23 large cities

Major Sectors in Selected Major Cities

City	Economic Base	Landed House	Office	Condo	Retail	Hotel	Industrial
Greater Jakarta	Business, Services, Trading & Industrial	✓	✓	✓	✓	✓	✓
Surabaya	Business and Trading	✓	✓	✓	✓	✓	✓
Medan	Trading	✓		✓	✓	✓	✓
Bandung	Business and Tourism	✓		✓	✓	✓	
Bali	Cultural and Tourism	✓		✓		✓	
Balikpapan	Trading (Oil and Gas)	✓		✓	✓	✓	✓
Makassar	Trading	✓		✓	✓	✓	
Yogyakarta	Cultural and Tourism	✓		✓	✓	✓	
Palembang	Trading	✓			✓	✓	
Batam	Trading and Industrial	✓		✓	✓	✓	✓
Pekanbaru	Trading (Oil and Gas)	✓			✓	✓	
Manado	Trading	✓			✓	✓	
Lombok	Cultural and Tourism	✓		✓		✓	

Source: Knight Frank / PT Willson Properti Advisindo

Office Sector

Rental Payments	
Base Rentals	In Rupiah/sqm/month. Rents are usually quoted as net of service charges and other outgoings.
Typical Lease Terms	2 to 3 years. Some large space users opt for 5+5-year leases.
Frequency of Rent Payable (In Advance)	Quarterly.
Typical Rental Deposit	3 months gross rent as Security Deposit (gross rent comprises base rental plus service charge).
Tenant Statutory Rights for Renewal	Can be accommodated as Option to Renew, subject to prior written notice to the Lessor and Lessor’s approval.
Basis of Rental Increases or Rental Review	Unless an option to renew and a renewal cap is agreed at the outset and specified in the lease, rental increment upon renewal will be based on prevailing market rents.
Frequency of Rental Increases or Rental Review	Will be reviewed after the lease expiry of initial period. Open market rental venue or pre-agreed levels.
Basis of Service Charge Increases or Review	Government Regulations on changes of national electricity charges, fuel prices, increase of minimum labor cost, maintenance, permits, repairs, supervision, spare and replacement parts and materials for the building and equipment, cost of building management, land and building tax, energy and water supply cost , depreciation of mechanical and electrical, any other costs that the Landlord reasonably thinks appropriate for the benefit of the building, its facilities and amenities, building insurance and increment of other costs related to office building operations.
Frequency of Service Charge Increases or Review	Normally on annual basis, but subject to changes of Government Regulations on costs related to building operations.
Tenant Improvements	Tenant is responsible for the fitting out cost.
Building Signage Cost	Tenant is responsible to pay for the fee. It may sometimes be included in the rental payment subject to negotiations and bargaining power.
Service Charges, Operating Cost, Repair and Insurance	
Service Charges	Mostly quoted in Rupiah/sqm/month. Covers general maintenance cost, and may either include or exclude AC and electricity cost during normal office hours.
Tenant Statutory Rights for Renewal	Can be accommodated as Option to Renew, subject to prior written notice to the Lessor and Lessor’s approval.
Utilities Payment	Water consumption during normal office hours is included in the service charge. Some buildings include AC and electricity cost during normal office hours in the service charge, whilst other buildings charge AC and electricity cost based on usage, measured by separate meters.

Utilities Payment	Separate metering for AC and electricity consumption is becoming the common market practice.
Car Parking	Car parking charges are payable annually in advance in addition to gross rents. Parking lots are generally allocated based on a ratio of approximately one lot per 100 sqm of office space leased. However, due to scarcity of space and increasing number of cars, many building owners are unable to meet the above parking ratio.
Internal Repairs	Tenant is responsible.
Repairs of Common Areas (Lobby, Lifts, Stairs)	Landlord is responsible, but costs may be charged back to tenants through service charges.
External/Structural Repairs	Landlord is responsible.
Building Insurance	Landlord is responsible, but costs may be charged back to tenants through service charges.
Overtime Charges	After working hours or 6:00 pm, some buildings calculated overtime charges for Saturday and public holiday, additional hourly rates apply.

Disposal of Lease	
Tenant Subleasing and Assignment Rights	Generally accepted, subject to 3 (three)-6 (six) months prior written notice and landlord’s approval.
Tenant Early Termination Rights	Only by break clause (not common).
Tenant’s Building Reinstatement Responsibilities at Lease End	Original condition, allowing for normal wear and tear.

Retail Sector

Rental Payments	
Base Rentals	In Rupiah/sq-m/month, except for Premium-Grade A and selected Grade A buildings, where base rents are quoted in U.S. Dollar. Rents are usually quoted as net of service charges and other outgoings. Percentage Rent Leases are commonly applied.
Typical Lease Terms	3 years and 5+5 years for larger space users.
Frequency of Rent Payable (In Advance)	Normally divided into 24 months installment or yearly basis.
Typical Rental Deposit	3 months gross rent (base rental + service charge) paid as Security Deposit.
Tenant Statutory Rights for Renewal	Can be accommodated as Option to Renew, subject to prior written notice to the Lessor and Lessor’s approval.
Basis of Rental Increases or Rental Review	Unless an option to renew and renewal cap is agreed at the outset and specified in the lease, rental increment upon renewal will be based on prevailing market rents.
Frequency of Rental Increases or Rental Review	Will be reviewed after the lease expiry of initial period.

Basis of Service Charge Increases or Review	Government Regulations on changes of national electricity charges, increase of minimum labor cost, fuel prices and increment of other costs related to retail center operations and any other cost that the Landlord reasonably thinks appropriate for the benefit of the building, its facilities and amenities.
Frequency of Service Charge Increases or Review	Normally on annual basis, but subject to changes of Government Regulations on costs related to building operations.
Tenant Improvements	Tenant is responsible to pay for fitting out.
Building Signages	Tenant is responsible to pay for the fee; It may sometime be included in the rental payment subject to negotiations and bargaining power.

Service Charges, Operating Costs, Repairs and Insurance	
Service Charges	In Rupiah/sq-m/month, except for Premium-Grade A and selected Grade A retail centers, where service charges are quoted in U.S. Dollar.
Utilities Payment	AC, electricity, water and gas consumptions are is excluded from service charge and separately metered.
Car Parking	Car parking lots are provided for shoppers who will be charged on hourly basis. No dedicated reserved car parking lots for retail tenants.
Internal Repairs	Tenant is responsible.
Repairs of Common Areas (Lobby, Lifts, Stairs)	Landlord is responsible, but costs may be charged back to tenants through service charges.
External/Structural Repairs	Landlord is responsible.
Building Insurance	Landlord is responsible, but costs may be charged back to tenants through service charges.
Overtime Charges	None.
Disposal of Leases	
Tenant Subleasing and Assignment Rights	Subject to 6 (six) months prior written notice and landlord’s approval.
Tenant Early Termination Rights	Only by break clause (not common).
Tenant’s Building Reinstatement Responsibilities at Lease End	Original condition, allowing for normal wear and tear.

Single-Factory Building (SFB)

Rental Payments	
Base Rentals	In Rupiah/sq-m/month. Rents are usually quoted as net of service charges and other outgoings.
Typical Lease Terms	Minimum of 2 years.
Frequency of Rent Payable (In Advance)	Annually, some semi-annually.
Typical Rental Deposit	3 months gross rental (base rental) paid as Security Deposit.
Tenant Statutory Rights for Renewal	Can be accommodated as Option to Renew, subject to prior written notice to the Lessor and Lessor’s approval.

Basis of Rental Increases or Rental Review	Unless an option to renew and renewal cap is agreed at the outset and specified in the lease, rental increment upon renewal will be based on prevailing market rents.
Frequency of Rental Increases or Rental Review	Open market rental venue or pre-agreed levels.
Basis of Service Charge Increases or Review	Government Regulations on changes of manpower costs, fuel prices and increment of other costs related to industrial estate operations.
Frequency of Service Charge Increases or Review	Normally on annual basis, but subject to changes of Government Regulations on costs related to industrial estate operations.
Tenant Improvements	SFB's are offered on as-is basis, typically equipped with small office on the mezzanine floor. Normally no tenant improvements are required.
Building Signages	Tenant is responsible.

Service Charges, Operating Costs, Repairs and Insurance	
Service Charges	Rupiah per sqm per month.
Utilities Payment	Electricity is separately metered.
Car Parking	No specific parking charges, free parking charges.
Internal Repairs	Tenant is responsible.
Repairs of Common Areas (Lobby, Lifts, Stairs)	Not applicable.
External/Structural Repairs	Landlord is responsible.
Building Insurance	Landlord is responsible.
Overtime Charges	Not applicable.

Disposal of Leases	
Tenant Subleasing and Assignment Rights	Subject to prior written notice and landlord's approval.
Tenant Early Termination Rights	Only by break clause (not common).
Tenant's Building Reinstatement Responsibilities at Lease End	Original condition, allowing for normal wear and tear.

Residential Sector (Apartment)

Rental Payments	
Base Rentals	In Rupiah/sq-m/month and in U.S. Dollar. Rents are usually quoted as net of service charges and other outgoings.
Typical Lease Terms	Minimum of 1 year.
Frequency of Rent Payable (In Advance)	Annually or sometime according to the lease term.
Typical Rental Deposit	1 month gross rental (base rental) paid as Security Deposit and it depends on the lease term.
Tenant Statutory Rights for Renewal	Subject to prior written notices to the Landlord and Landlord's approval. Typically, a minimum of 3-6 months notification to the Landlord may be required.
Basis of Service Charge Increases or Review	Tenant is responsible.
Tenant Improvements	Typically, it comes with semi or full furnished. If not, tenant is responsible subject to the Landlord's approval.

Service Charges, Operating Costs, Repairs and Insurance	
Service Charges	In Rupiah per sq-m per month. Typically, tenant pays for service charge or may be included in the rental fee.
Utilities Payment	Electricity and water are separately metered. Tenant's responsibility.
Car Parking	No specific parking charges; Subject to Landlord's availability and negotiations.
Internal Repairs	Tenant is responsible if it is a small sum of costs/repairs. Landlord will pay for larger sum of costs/repairs.
Repairs of Common Areas (Lobby, Lifts, Stairs)	Not applicable.
External/Structural Repairs	Property Management is responsible.
Building Insurance	Property Management is responsible.
Overtime Charges	Not applicable.
Disposal of Leases	
Tenant Subleasing and Assignment Rights	Subject to prior written notice and landlord is approval.
Tenant Early Termination Rights	Only by break clause (not common).
Tenant's Building Reinstatement Responsibilities at Lease End	Original condition, allowing for normal wear and tear.

Residential Sector (Landed House)

Rental Payments	
Base Rentals	In Rupiah/sq-m/month and in U.S. Dollar. Rents are usually quoted as net of service charges and other outgoings.
Typical Lease Terms	Minimum of 1-2 year.
Frequency of Rent Payable (In Advance)	Annually or sometime according to the lease term.
Typical Rental Deposit	1 month gross rental (base rental) paid as Security Deposit and it depends on the lease term.
Tenant Statutory Rights for Renewal	Subject to prior written notices to the Landlord and Landlord's approval. Typically, a minimum of 3-6 months notification may be required.
Basis of Service Charge Increases or Review	Not Applicable.
Tenant Improvements	Typically, it comes with semi or full furnished. If not, tenant's responsibility with the Landlord's approval.
Service Charges, Operating Costs, Repairs and Insurance	
Service Charges	Not Applicable.
Utilities Payment	Tenant is responsible for electricity and water payments.
Car Parking	Included.
Internal Repairs	Tenant's responsibility if it is a small sum of costs/repairs.
Repairs of Common Areas (Lobby, Lifts, Stairs)	Not applicable.
External/Structural Repairs	Landlord is responsible.
Building Insurance	Landlord is responsible.
Overtime Charges	Not applicable.
Disposal of Leases	
Tenant Subleasing and Assignment Rights	Subject to prior written notice and landlord's approval.
Tenant Early Termination Rights	Only by break clause (not common).
Tenant's Building Reinstatement Responsibilities at Lease End	Original condition, allowing for normal wear and tear.

Note: on March 31, 2015, Bank Indonesia issued regulation number 17/3/PBI/2015 concerning Mandatory Use of Rupiah for all cash and non-cash transactions in the Territory of Indonesia (BI Regulation).

LEGAL REQUIREMENTS



**LEGAL
REQUIREMENTS**

FOREIGN INVESTMENT IN INDONESIA'S PROPERTY SECTOR - 2017

A. INTRODUCTION

Comprehensive understanding of Indonesia's regulatory environment is a key to success in making foreign investments in the property sector. This note covers the basic legal framework that potential investors must take into consideration, namely on foreign direct investments and the land ownership rights pursuant to the agrarian laws and regulations. In addition, potential investors must also be aware of the sector-specific regulations at the ministerial and local government levels, for instance in relation to zoning allocation and possible local permit.

B. LEGAL FRAMEWORK FOR FOREIGN DIRECT INVESTMENT

1. Basic Legal Framework

Foreign direct investment in Indonesia is regulated by Law No. 25 of 2007 on Capital Investment (the “**Investment Law**”) and its implementing regulations issued by the Indonesian Investment Coordination Board (*Badan Koordinasi Penanaman Modal*, or “**BKPM**”). As an integral part of the government's recent economic-policy packages, in 2015, BKPM enacted a new investment-licensing framework that is expected to reduce licensing requirements and simplify procedures for investing in Indonesia, under the Head of BKPM Regulation No. 14 of 2015 as lastly amended by the Head of BKPM Regulation No. 8 of 2016 on Guidelines and Procedures for Investment Principal License and the Head of BKPM Regulation No. 15 of 2015 on Guidelines and Procedures for Investment Licensing and Non Licensing Matters (the “**BKPM Regulation**”). The BKPM Regulation sets out the basic rules and procedures for foreign direct investment in Indonesia and aims to simplify the processes involved in securing licenses and non-licenses for direct investment.

2. Eligible Corporate Entity

Pursuant to the Investment Law, any form of foreign direct investment in Indonesia must be in the form of a limited liability company (*perseroan terbatas*, or “**PT**”), in which the foreign investors will hold some or all stakes in the PT. A company with foreign shareholding is known as a “PMA Company” (*Penanaman Modal Asing*). The establishment of a PT will follow a general company law as guided under Law No. 40 of 2007 on Limited Liability Company (the “**Company Law**”). The Company Law requires a minimum 2 (two) shareholders in the PT, and also adopts a two-tier board approach (board of directors and board of commissioners).

As an alternative to setting up a fully operational PMA Company in Indonesia, it is possible for a foreign investor to set up a representative office (the “**Rep Office**”). However, bear in mind that, given the limitation, having a Rep Office is not meant to be a substitute to a fully operational PMA Company. A Rep Office can only perform marketing and promotional activities. It cannot undertake actual trading, own facilities, accept orders, sign contracts, or participate in a tender. It is mostly used by multinational companies looking to oversee and coordinate its Indonesia operation with its regional head office.

3. Shareholding Limitation

A crucial policy that affects the foreign direct investment environment in Indonesia is the “Negative List”, most recently embodied in Presidential Regulation No. 44 of 2016. The Negative List determines what business sectors are open or closed for foreign investors and if open, to what extent foreign direct investment is permitted.

The Negative List is the first and most important regulation that any foreign investor contemplating investment in Indonesia should consult. If the business of the companies in the contemplated foreign direct investment falls under the list of business fields that are closed to foreign investment as provided in the Negative List, then the foreign investor cannot make an investment in such business field in Indonesia. If the business falls under the list of business fields that are conditionally open for investment, then foreign investment in such business is permitted but will be limited by to the allowed threshold for foreign ownership allowed in the Negative List.

The Negative List does not apply to shares held or acquired by foreign investors in portfolio investment made through the stock exchange. However, the exemption shall only apply if the shareholding involves passive portfolio foreign investment and not strategic or controlling foreign investment.

In connection with property investment, some relevant provisions in the Negative List are among others:

Property/real estate developer	Not regulated, allowing up to 100% foreign shareholding
Hotel with non star or up to two star classification	Maximum foreign shareholding of 67%
Other accomodation business (i.e. motel)	Maximum foreign shareholding 67% (which may be increase up to 70% if the foreign investors originated from the ASEAN).





4. Procedures for setting up a PMA Company in Indonesia

Foreign direct investment procedures in Indonesia consist of liaising with several different institutions, with BKPM as the focal point. The procedures below describe the most essential steps to setting up a PMA Company in Indonesia. However, BKPM and other relevant government authorities may request additional information or documents to be provided by the relevant parties to complete the relevant applications to set up the PMA Company. When the investment has become fully operational, the PMA Company must then apply to BKPM for a permanent business license, unless another specific technical license prevails.

1. Obtain the principle license from BKPM, by submitting the application form to BKPM. As of 1st June 2014, pending license application shall be done online, through BKPM official website;
2. Execute the Deed of Establishment by liaising with the Public Notary;
3. Setup domicile letter – necessary for the official address of the PMA Company (please note that a specific official address is essential, and in many instance, having a virtual office is not always sufficient);
4. Obtain the tax registration number (NPWP and PKP), by liaising with the Tax Office;
5. Open up a bank account;
6. Obtain the approval for the Manpower Plan (RPTKA), to the Ministry of Manpower for employing expatriates;
7. Obtain the approval for the Deed of Establishment from the Ministry of Law and Human Rights of the Republic of Indonesia; and
8. Company registration at the Ministry of Trade of the Republic of Indonesia.

C. BASIC FRAMEWORK FOR LAND OWNERSHIP

1. General Framework for Land Title

Ownership of land in Indonesia is principally regulated under the Basic Agrarian Law (i.e., Law No. 5 of 1960). The Basic Agrarian Law and its implementing regulations (including Government Regulation No. 24 of 1997 (the “**GR on Land Registration**”) and Government Regulation No. 40 of 1996 on Right to Cultivate (*Hak Guna Usaha* or “**HGU Title**”), Right to Build (*Hak Guna Bangunan* or “**HGB Title**”), Right to Use (*Hak Pakai* or “**HP Title**”) (“**GR No. 40/1996**”) provide various forms of land titles and a registration system to protect legal ownership.

The highest form of land title available in Indonesia is right of ownership (*Hak Milik* or “**HM Title**”). HM Title is available only to Indonesian individuals and certain religious and social organizations and government bodies in Indonesia. The HM Title is not available to companies (whether Indonesian or foreign owned) or foreign individuals. HP Title is the only title that is open to be owned by foreign individuals in Indonesia.

The Basic Agrarian Law also recognizes a form of title based on traditional Indonesian law commonly referred to as the *Hak Milik Adat* (or other name depending on the region) or Communal Right. A Communal Right title arises as a result of occupation or residence on land and payment of taxes and retributions with respect to the land, or by renouncement of right by the previous holder of land covered by the Communal Right title. The Communal Right title is an unregistered form of title but may be evidenced by certificates registered in the books of the relevant local sub-district office.

There is also another land title, the Right to Manage (*Hak Pengelolaan* or “**HPL Title**”), that can only be held by state owned companies or governmental/public bodies. An HPL Title can become relevant to those wishing to enter into a cooperation agreement with those bodies under the framework of a Build-Operate-Transfer Scheme (the “**BOT Scheme**”). In a typical BOT Scheme, the Government, as land owner and BOT Grantor, grants certain rights over the land to a private party (or a BOT grantee). The grantee may be granted with an HGB Title over the HPL Title, while the HPL Title remains within the relevant government body. The BOT Scheme shall have a maximum term of 30 (thirty) years and following the expiration of the cooperation, the BOT Grantee shall handover the HGB Title and other objects of the relevant BOT agreement to the BOT Grantor.

For companies that have obtained a capital investment license, the Minister of Agrarian Affairs and Spatial Layout/Head of National Land Agency Regulation No. 5 of 2015 on Location Permit (the “**MoA Regulation No. 5/2015**”), which superseded the Ministry of Agrarian/National Land Agency Head Regulation No. 2 of 1999 on Location Permit (“**MoA Regulation No. 2/1999**”), requires that a company whether foreign and/or domestic capital investment companies intending to acquire land for investment purposes, must obtain a Location Permit from the local government before purchasing the land.

The procedures for obtaining a Location Permit vary from region to region. MoA Regulation No. 5/2015 stipulates that the Location Permit is valid for three years and extendible for a period of one year upon approval by the relevant authorities on the condition that 50% of the total area of the land being applied for has been purchased or obtained by the company. After obtaining a Location Permit, the holder must still negotiate with the individual landowners whose land is located within the area prescribed in the Location Permit. After the process of acquisition and the settlement of rights with the individual owners is completed, the holder of the Location Permit may apply for the relevant title over the land. However, a company is under no obligation to purchase the land covered by its Location Permit.





2. Relevant Land Titles for Property Investment

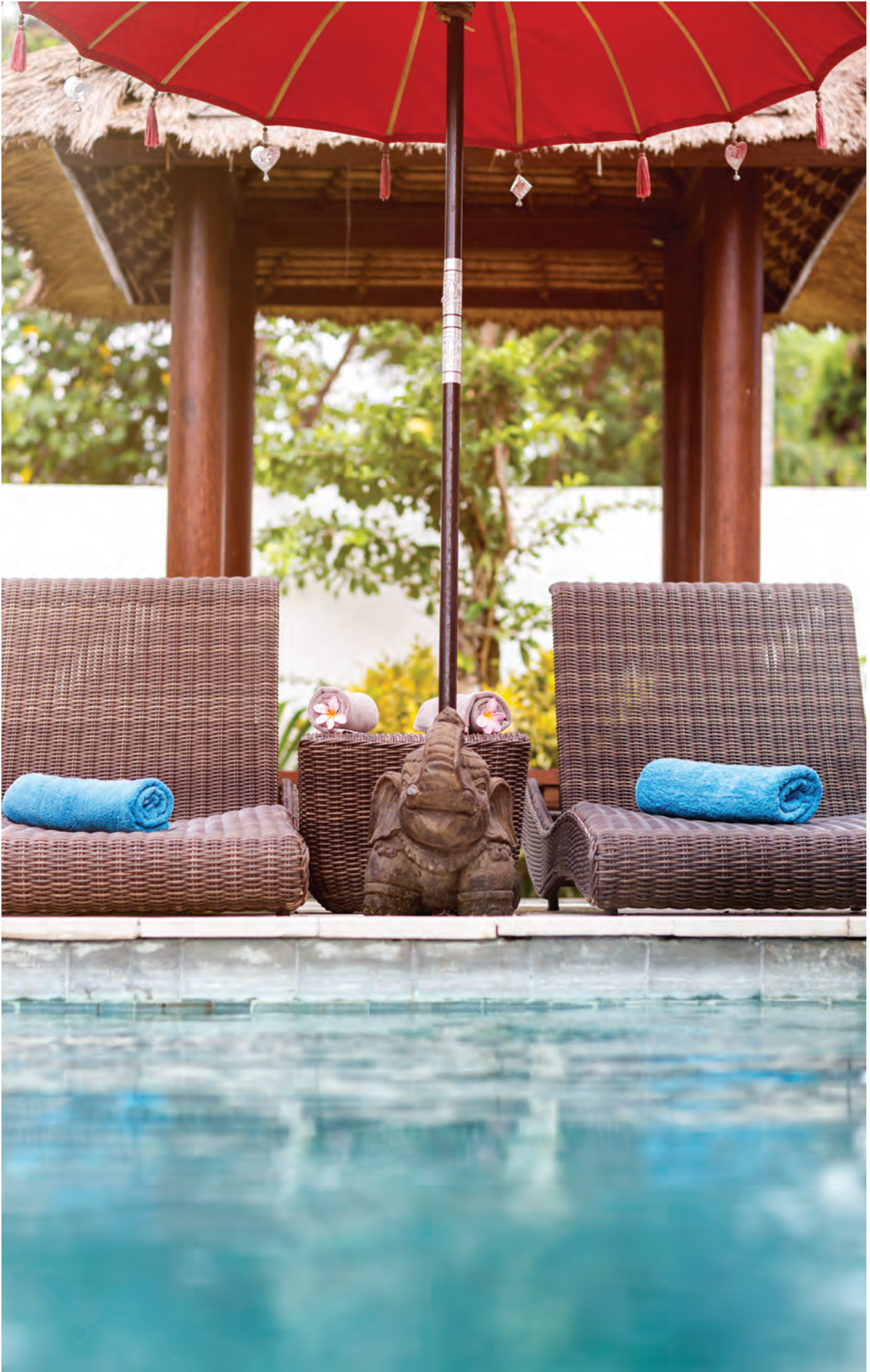
Right to Build (Hak Guna Bangunan or “HGB Title”)

HGB Title can only be obtained by an Indonesian citizen, or by a legal entity incorporated under Indonesian law and located in Indonesia including a PMA Company established in the framework of direct foreign investment. A holder of a HGB Title to a parcel of land has the right to use to build and to own any buildings on such parcel of land, including on land owned by another party, and to transfer and encumber all or part of such parcel.

In general, HGB Title is granted for a maximum initial term of 30 (thirty) years. It may be extended for an additional term not exceeding 20 (twenty) years by submitting an application to the relevant local land office no later than 2 (two) years prior to the expiration of the initial term. It is also common that upon the expiration of the extension, the HGB Title holder may apply for renewal and a new HGB Title may be granted on the same land to the same holder by fulfilling certain requirements under prevailing laws and regulations. The application for the new HGB Title should also be submitted no later than 2 (two) years prior to the expiration of the extension. The cost of extension is determined based on a certain formula as stipulated by the National Land Office. The approval from the relevant local land office tends to grant an extension or renewal of HGB Title, will be subject to, among others, there being no: (i) changes in zoning policies by the government, (ii) abandonment of the land, (iii) destruction of land, (iv) breach of conditions of the current HGB Title by the HGB Title holder, and (v) revocation of the HGB Title due to public interest considerations. For HGB Title over HPL Title, such approval for extension or renewal would be subject to the terms of the BOT Agreement.

Pursuant to Article 35 of GR No.40/1996, an HGB Title will terminate, among others:

- (i) upon expiry of the HGB Title period stated in the relevant decision or agreement with respect to the grant or extension of the HGB Title;
- (ii) if revoked by the authorized government authority or the HPL Title holder prior to its expiry due to, among others,
 - (a) non-fulfilment of the obligations of the HGB Title holder,
 - (b) non-compliance with the requirements or obligations stated in the agreement with respect to the use of HPL Title land, or
 - (c) a final and binding court decision;
- (iii) if voluntarily released by the HGB Title holder prior to its expiry;
- (iv) if abandoned;
- (v) if the land vanishes; or
- (vi) if the HGB Title holder is no longer eligible to hold the HGB Title based on the requirements set out in Article 19 of GR No.40/1996, and fails to transfer its rights over the HGB Title to an eligible party within one year.



Right to Cultivate (*Hak Guna Usaha* or “HGU Title”)

HGU Title is applicable when the land is to be utilized for plantation, fisheries, or animal farming. Under the Basic Agrarian Law, the grant of a HGU Title is effective for 35 (thirty five) years, and may be extended once, for no more than 25 (twenty five) years, subject to the fulfillment of relevant obligations and operation of the business in accordance with the prevailing regulations. Thus, the holder of a HGU Title can generally obtain title to the land for a maximum period of 60 years under the Basic Agrarian Law. Only Indonesian nationals and legal entities (including Indonesian joint-venture companies) may be granted HGU Title.

Under GR No. 40/1996, an application for the extension of a HGU Title must be filed at least two years prior to the title’s expiration. Pursuant to Article 9 (1) of MoA Regulation No. 2/1993, a holder of a HGU Title is guaranteed an extension of those rights so long as the utilization of the land covered by the right complies with the approved usage of the land when the right was initially granted to the holder.

An HGU Title may be granted in respect of both state land and designated forest land by offices of the National Land Agency at the local, provincial or national level, depending on the extent of the land area concerned and the duration of the title.

An application for a HGU Title involves a number of stages, and the five principal stages are as follows:

1. Obtaining a Location Permit (Ijin Lokasi);
2. Land acquisition from the landowners;
3. Cadastral process;
4. Inspection, survey and verification of physical and legal data by Committee B (Panitia B); and
5. Granting of the HGU Title.

Strata Title

The development of multi-storey strata-title residential, retail and office buildings is regulated by Law No. 20 of 2011 on Multi-Storey House which was enacted on November 10, 2011 (the “Law No. 20/2011”) which replaces the previous Law No. 16 of 1985 on Multi-Storey House . Law No. 20/2011 classifies several types of multi-storey house, namely (i) public multi-storey house (rumah susun umum) provided for low income persons, (ii) special multi-storey house (rrumah susun khusus) provided for special needs, (iii) state multi-storey house (rrumah susun negara) which are owned and provided by the state for residential purposes and other support services for state officials, and (iv) commercial multi-storey house (rumah susun komersial) for commercial purposes.

Pursuant to Law No. 20/2011, the developer of commercial multi-storey house must provide public multi-storey house with a floor area of at least 20% of the total floor area of its commercial multi- storey house. Such public multi-storey house may be located outside the premises of the commercial multi-storey house but is required to be located within the same regency or city where the commercial multi-storey house is located.



A multi-storey house may be constructed on a parcel of land where the developer has (i) HM Title over a land, (ii) HGB Title or HP Title over a state-owned land, and (iii) HGB Title or HP Title over HPL Title. In addition, public multi-storey house and/or special multi-storey house can be constructed by utilizing the state or region-owned land (by way of lease or cooperation for the utilization) or utilization of donated land (wakaf) (by way of lease or cooperation for the utilization pursuant to ikrar wakaf). Only multi-storey house that is constructed over HP Title land can be owned by foreign individuals.

Foreign investment for the construction of multi-storey house is permitted under Law No. 20/2011 provided that the prevailing regulations in the foreign investment sector are complied with.

Under Indonesian Law, the owner of a strata title unit in a multi storey house would acquire:

- (i) a separate title to the strata title unit itself;
- (ii) an undivided proportionate right to the land on which the multi storey house is constructed (the “Common Land”); and
- (iii) an undivided proportionate right to the common area and common property of the multi storey house (in Law No. 20/2011 defined as common part and common thing).

Pursuant to Article 50 of Government Regulation No. 4 of 1988 on Condominium (“GR No. 4/1988”) and its elucidation, the strata title rights over the strata title unit will cease to exist/terminate following the expiration of the relevant land title (e.g., HGB Title) on which the strata title unit is constructed. Further, before the respective land title expires, the owners through the Association (Perhimpunan Pemilik dan Penghuni Satuan Rumah Susun or the “Association”) should apply for extension or renewal of the HGB Title in accordance with prevailing laws and regulations.

A developer may market the multi-storey house before the commencement of construction. However, prior to marketing, the developer is required to satisfy the following criteria: (i) the certainty of the space allotment; (ii) the certainty of the right over the land; (iii) the certainty of the status of the possession over the multi-storey house; (iv) construction license; and (v) guarantee over the construction from the relevant surety institution. The developer may enter into a preliminary sale and purchase agreement with purchasers before a notary prior to completion of the multi-storey house. The preliminary sale and purchase agreement can only be entered into if the ownership of the land is clear, the building construction permit has been obtained, and when the infrastructure, facilities and public utilities are available, the construction progress of the respective multi-storey house have reached at least 20% of the total construction and the object of the agreement is clear. In the event the multi- storey house is built over a HGB Title, a Hak Pakai title or a HPL Title, the developer shall settle the ownership title of such land prior to the sale and purchase of the multi-storey house units.

The Minister of Agrarian Affairs and Spatial Layout/Head of National Land Agency recently issued Regulation No. 13 of 2016 on Procedures for Granting, Relinquishing and Transferring Ownership of Residential Property for Foreign Citizens Domiciled in Indonesia (“MoA Regulation No. 13/2016”) which regulates that foreigners who live, work or invest in Indonesia, or who are generally deemed to be of benefit to the country, may now take possession of property under the so-called right-to-use (hak pakai) land title, provided that the foreigner in question is in possession of a valid residential permit. Previously, foreigners were not required to possess residency permits in order to: (i) build or obtain a house on land designated with either a right-to-use over state-land or a freehold-right title, leasehold-right-for-building (hak sewa untuk bangunan) title, or freehold-right title; or (ii) obtain an apartment unit on land designated with a right-to-use over state-land title. It is important to note that foreigners may only purchase house or apartment units directly from developers or land owners. In other words, foreigners are prohibited from buying secondhand houses. Additionally, foreigners may only purchase property which meets certain minimum-price thresholds which differ, depending on the type of location of the property in question.



Pursuant to MoA Regulation No. 13/2016, property bought by foreigners may also be mortgaged (hak tanggungan). It should be noted however that foreigners must first secure the consent of the following parties before their property can become collateral:

- a. The freehold-right holder, if the mortgaged property has been built on land designated with a right-to-use title over a freehold-right title;
- b. The management-right holder, if the mortgaged property has been built on land designated with a right-to-use title over a right-to-manage title.

3. Development and the Use of Land

Following the acquisition of land and prior to construction, a developer must obtain an environmental impact analysis for the proposed project. Environmental protection in Indonesia is governed by various laws, regulations, and decrees, including Law No. 32 of 2009 on Environmental Protection and Management (the “Environmental Law”), which was enacted on October 3, 2009 and Government Regulation No. 27 of 2012 on Environmental Licenses (“GR No. 27/2012”). The Environmental Law stipulates that all business sectors that are required to obtain an Environmental Impact Analysis (Analisis Mengenai Dampak Lingkungan, or “AMDAL”) or an Environment Management Effort and Environment Monitoring Effort (Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup, or “UKL & UPL”) shall obtain an Environmental License, which are issued by the State Minister of Environment, Governor, or Mayor/Regent (in accordance with their respective authorities). An Environmental License is a pre-requisite for companies wishing to obtain their operational business license and shall expire concurrently with such operational business license. Under the Environmental Law, by October 3, 2011 all businesses that have obtained business licenses but do not yet have an AMDAL or UKL-UPL must complete an environmental audit, if they require an AMDAL, or prepare an environment management document, if they require a UKL-UPL. Furthermore, Law 32/2009 requires businesses to integrate their AMDAL or UKL-UPL into an Environmental License by October 3, 2010.

The granting of an Environmental License is based on either (i) an environmental feasibility study carried out by an independent third party, which is approved by the AMDAL Assessment Commission (Komisi Penilai AMDAL), based on the recommendation of the Ministry of Environment, governor, mayor or regent, as applicable, or (ii) a recommendation in a UKL and UPL issued by the appropriate Government or regional government institution responsible for environmental management and control of the relevant area.

The Environmental License application process includes (i) preparation of an AMDAL and UKL-UPL; (ii) evaluation of the AMDAL and UKL-UPL; and (iii) written application for and issuance of the Environmental License. The documents for the application for an Environmental License must include, among other things, the AMDAL documents or a UKL-UPL form, the corporate documents of the company and the company profile.

Based on the Minister of Environment Regulation No. 5 of 2012 dated April 12, 2012 on Type of Business Plan and/or Activity which requires an AMDAL, any business and/or activity that may cause significant environmental impact must obtain an AMDAL, including, among others:

- (a) any business activity within residential properties in (i) metropolitan cities occupying 25 hectares or more of land; (ii) large scale cities occupying 50 hectares or more of land; (iii) medium and small scale cities occupying 100 hectares or more of land; and (iv) for transmigration settlement purposes of 2,000 square meters or more; and
- (b) the construction of a building for multi-sectoral purposes which occupies 5 hectares or more of land or has a building area of 10,000 square meters or more.

Thereafter, the developer (or contractor responsible for construction) must obtain a construction permit (Izin Mendirikan Bangunan or “IMB”) from the regional government. IMB can only be granted if the purpose of development is in line with the zoning as contemplated in the respective regional spatial planning. After the IMB is received, development and construction may commence, including clearing and preparing land, and constructing infrastructure such as drainage systems, roads, landscaping, street lighting, electricity and telephone cables. If construction is conducted in various phases, an IMB must be obtained for each phase of construction.

The development of residential properties must also comply with regulatory requirements relating to the provision of social facilities benefiting the community, including schools, sports facilities, houses of worship, markets, parks and playgrounds.

4. Land Acquisition for Public Interest Purpose

Land acquisition for public interest purpose is governed under Law No. 2 of 2012 on Land Procurement for Public Interest (the “Land Procurement Law”) and its implementing Presidential Regulation No. 71 of 2012 on Implementation of Land Procurement for Public Interest was enacted and came into force on August 7, 2012, as lastly amended by Presidential Regulation No. 30 of 2015 dated March 17, 2015 (“Land Procurement Implementation Regulation”). Under the Land Procurement Law, the Government and/or the regional government are given the task of ensuring the availability of land required for the public interest. The Land Procurement Law also clearly stipulates that a party who owns or otherwise controls designated land is obliged to release its rights for the purpose of public interest land procurement, following the provision of fair and reasonable compensation or a legally binding court decision. After such land is released, it becomes the property of the Government, the regional government or a state-owned enterprise, as the case may be.



The Land Procurement Law specifically stipulates the development projects for public interest as follows:

- (1) national defense and security;
- (2) public road, toll road, tunnel, railway, train station, and train operating facilities;
- (3) water embankment, reservoir, irrigation, drinking water channel, water disposal channel and sanitation and other water resource management construction;
- (4) seaport, airport, and terminals;
- (5) oil, gas, and geothermal infrastructure;
- (6) power plant, power transmission, switch yard, power network and distribution;
- (7) government telecommunication and informatics network;
- (8) waste disposal and processing place;
- (9) hospitals owned by the Government or regional government;
- (10) public safety facilities;
- (11) cemetery owned by the Government or regional government;
- (12) social facilities, public facilities and public open green space;
- (13) wild life and culture preservation area;
- (14) office area for the Government, regional government or sub-districts/villages;
- (15) structuring of urban slums area and/or land consolidation, and rented residential for low-income communities;
- (16) education facilities or schools under the Government or regional government;
- (17) sport facilities owned by Government or regional government; and
- (18) public market and public car park.

Initially, a government entity that plans to procure land for the public interest must have a public consultation with the relevant entitled parties (the land owners). In the event that no consensus can be reached or there occurs any objection on the proposed development plan, the Governor will establish a team to examine the reasons for the objections. Based on this, the Governor will decide whether the objections are valid. To the extent that such objections are denied, the entitled party may file a legal claim to the State Administrative Court, whose decision can thereafter be subject to final appeal at the Supreme Court. If by virtue of a legally binding court decision, the land has been approved to be procured for the public interest, then the Head of Regional Office of the National Land Agency, as the Chief Executive of Land Procurement appointed under Land Procurement Implementation Regulation, shall determine the compensation value to be paid to the entitled party based on appraisal report made by independent public appraiser. To challenge the compensation value, if required, the entitled party may file a legal claim to a District Court and if required, the decision of the District Court can be filed for final appeal at the Supreme Court.

D. CLOSING

The first step to investing in Indonesia's property sector for foreign investors is to establish a corporate presence by virtue of a Foreign Direct Investment or PMA company. Requirements on maximum foreign shareholding and minimum investment value will follow, so investors need to decide on the line of business carefully. The type of land title is another concern for investors, as different lines of business require different land titles, and the eligibility requirements for each title are also different.

Before making any decision to enter into property transaction, there are many local regulatory issues that investors need to comprehend. These regulations may come in different names and forms, but generally they deal with spatial planning or location approval, community approval, land clearance permit, and building construction permit. Prior to acquiring those permits, the investors need to carry out environmental assessment and obtain environmental approval, depending on the line of business. Navigating around these complexities requires insight and understanding of the local regulatory dynamics.





TAX INFORMATION

BUSINESS PROPERTY AND DEVELOPMENT IN INDONESIA

Business Overview

Business properties have always be one of the major target investments for both international and local investors in Indonesia and cover all kinds of property types, from residential real estate, including apartments, to commercial buildings, industrial estates and hospitality properties, such as villas and hotels. It is undeniable that generally investing in Indonesian properties has provided a good return in the long term.

Business Structure

Generally, an investment in business property in Indonesia is done through a limited liability company. Please refer to the Legal Section for limitations on foreign investors investing in properties in Indonesia.

Due to Indonesian license requirements, a property company's activities are limited to developing, managing, renting and/or selling properties. Construction activities are done by construction companies, which have different licenses and tax rates than real estate companies and also have a different limitation on foreign ownership.

Income taxes on property businesses

In general, the corporate income tax rate is 25% and 30% maximum for individuals¹. However, real estate companies are only subject to a final tax, which is based on their revenue. Therefore real estate companies are not subject to the normal tax rate on any gains, except for non-business (other than the property business) income, such as interest for late payment, etc. Although this final tax provides for a simpler corporate tax calculation, the downside is that companies must pay this tax even if they incur a loss. Deductibility of expenses for corporate tax purposes is not relevant for real estate companies.

The final tax rates are:

- 2.5% for companies and individuals selling properties², and
- 10% for companies and individuals leasing/renting properties³ (this final tax also applies to service and any other charges made to tenants).

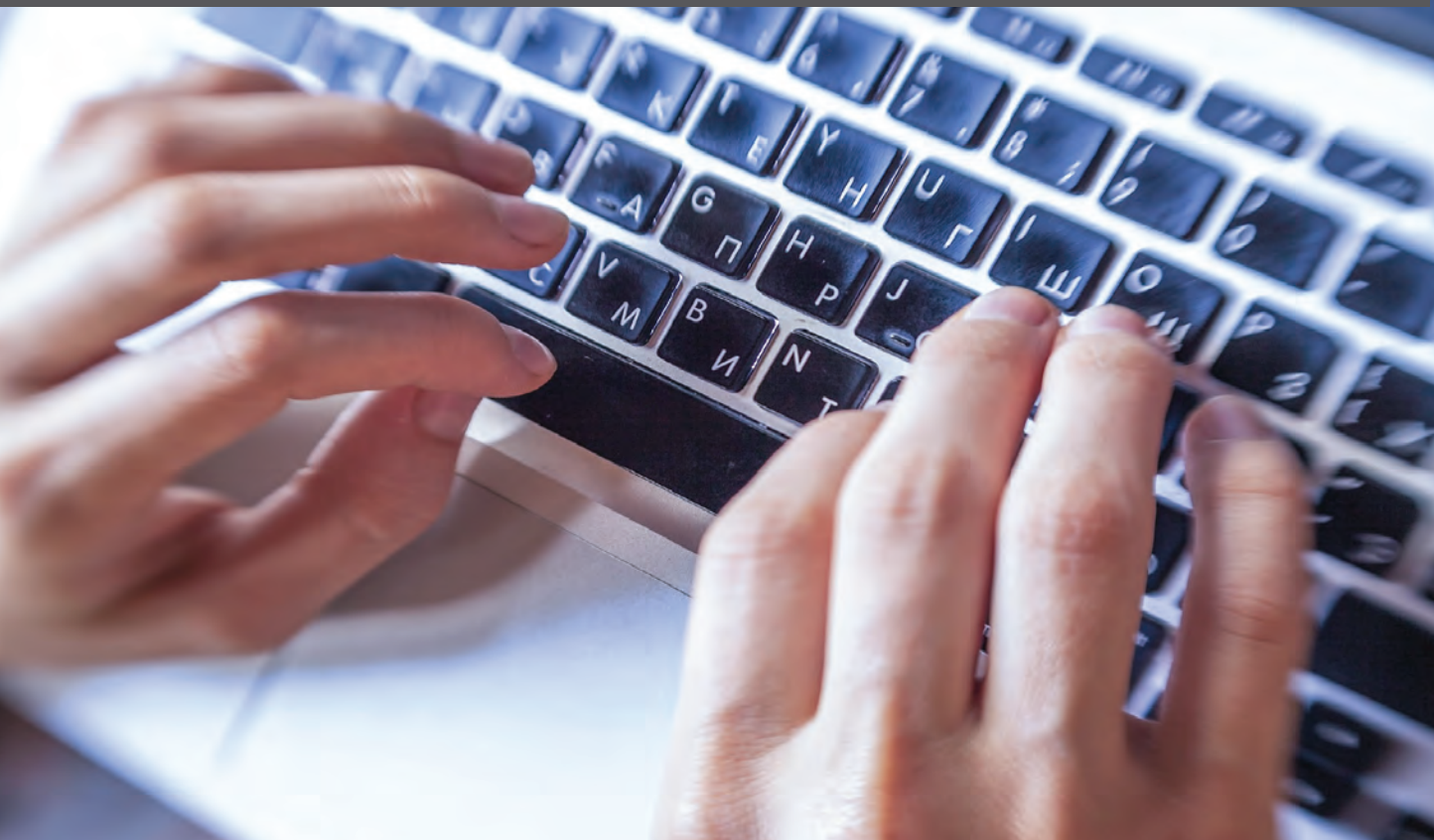
The transfer value of land and/or buildings used to calculate the 2.5% final tax payable is as follows:

- If the transfer is made to a government institution, it is based on the decision of the authorized official;
- If an auction, the value is based on the auction report;
- If the transfer involves related parties, the value must be determined on an arm's length basis (i.e., the value that would be received based on its market value);
- If the transfer involves non-related parties, the value is the actual value received; or
- If an exchange/swap, rights release or surrender, a gift, an inheritance or any other arrangement that is agreed to between the parties, the value must be the value that would be received based on market value.

1 Income Tax Law Article 17

2 Government Regulation No. 34 Year 2016

3 Income Tax Law Article 4(2)



Final Tax Payment Obligations

1. Individuals and entities receiving or earning income from the transfer of land and/or building rights must pay the tax themselves, before an authorized official, normally a notary or auction official, who signs the documents (deeds, decisions, agreements or tender summaries) regarding the transfer of rights.
 - These documents can only be signed after the payment of the tax payable.
 - The Tax Payment Slip (SSP) or other forms which are equivalent to a SSP must be attached.
2. For individuals and entities whose main income comes from the transfer of land and/or building rights (i.e., developers or real estate companies), revenue is taxable when payments are received, either in full or partially, such as a down payment, interest and any other levies that must be paid by the buyer.
3. Individuals and entities receiving or earning income from the transfer of land and/or building rights through a sale and purchase or swap arrangement with the Government are subject to this income tax obligation. The final tax payable is imposed by the State Treasurer, the Authorized Official who makes the payment or the Authorized Official who approves the swap arrangement.
4. Settlement of the final tax payable for any changes or amendments to a binding sale and purchase agreement (*perjanjian pengikatan jual beli*) on land and/or buildings must be made by the individuals or entities listed in the initial binding sale and purchase agreement before the finalization of the amendment or addendum of the binding sale and purchase agreement.
5. The sale of a Simple House (RS) and/or a Simple Flat (RSS), is subject to a final 1% income tax⁴.

For leased properties, a company must pay the 10% final tax on a self-assessment basis if the tenants do not withhold this final income tax. This especially applies to individual tenants, as they are not licensed withholding tax agents.

4 0% if the transfer is made to government, state owned companies, etc. for public utilities



Title Transfer Tax Obligations for the Buyer (“BPHTB”)

BPHTB is imposed on the buyer in all land and/or building property acquisitions, for both new and existing properties. The BPHTB rate is 5%⁵. Unlike the final tax, the basis to calculate this tax is the higher value of the actual transaction price, as stated in the sale and purchase agreement (provided that this is not a related party transaction) or the deemed market value for Land and Building Tax purposes (“NJOP”). There is a non-taxable band, but it is minimal. The BPHTB 5% tax rate is expected to be reduced following the reduction of the final tax rate on selling properties from 5% in 2015 to 2.5% currently.

Value Added Tax (“VAT”) obligations

All property companies are required to register as a VAT-able Company and it is mandatory to impose a 10% VAT on the value of transfers of land and/or buildings, including houses, apartments and townhouses, to a buyer. If the buyer is also a VAT-able Company, theoretically this VAT can be claimed as a credit, provided that the property is used for business purposes. This does not apply to individual buyers, as they are not typically VAT registrants.

This VAT obligation also applies to property companies that rent/lease properties, based on the value of their total charges to tenants, including not only rental charges, but also service and any other charges.

Sales Tax on Luxury Goods (“STLG”) obligations

In addition, a 20% STLG (or “PPnBM” in Bahasa Indonesia) is imposed on the value of transfers of luxury houses and non-strata title townhouses with a selling price of IDR 20billion or higher and apartments, condominiums and strata title town houses and the like with a selling price of IDR 10billion or higher⁶. According to the VAT law, the PPnBM is only imposed one time, which is at the delivery by the manufacturer or producer of the luxury taxable goods.

No STLG is payable on renting properties.

⁵ Law No. 21 Year 1997

⁶ Minister of Finance Regulation No. 206/PMK.010/2015



Withholding Tax on Sales of Luxury Goods

In addition to VAT and SLTG, sales of the following luxury goods are subject to withholding tax Article 22 (WHT Art. 22) at 5% of the sales value (excluding VAT and STLG): (i) land and buildings, with a minimum sales value of IDR5billion or 400m² and (ii) apartments, condominiums and the like, with a minimum sales value of IDR5billion or 150m²⁷. This WHT Art. 22 is a prepaid tax and can be claimed in annual tax returns to reduce the annual tax payable.

Tax on Land and Building (“PBB”) obligations

There is also a PBB obligation of 0.1% of the NJOP value payable by property owners annually⁸. Normally, the PBB amount is not significant in terms of the value of the property.

Distribution of Profits – Dividends

Gross dividends paid or payable are subject to Withholding Income Tax (“WHT”); the WHT rates are:

- None, if the recipient is a local company having a share ownership of at least 25% of the paid-up capital of the company paying the dividends;
- 10% final tax if the recipient is a local individual;
- 15% withholding tax if the recipient is a local company having share ownership of less than 25% (which means the dividend income is subject to the normal 25% corporate tax and the 15% withheld tax is a prepaid corporate tax); and
- 20% withholding tax if the recipient is a non-resident of Indonesia. This 20% WHT rate can be reduced by utilizing available tax treaty protections (subject to certain requirements, which include the recipient providing a Certificate of Domicile using Form DGT-1 and qualifying under the beneficial owner test).

⁷ Minister of Finance Regulation No. 90/PMK.03/2015

⁸ Law No. 12 Year 1994



Schedule for tax payments and reporting

Tax	Tax Payment Due	Monthly Reporting	Annual Reporting
Title transfer tax (BPHTB)	Prior to Notary signing the deed	NA	NA
VAT/SLTG	Prior to filing monthly VAT Returns	End of following month	NA
Corporate Income Tax (CIT)	Prior to filing Annual Returns	NA	4 months after end of taxable year
Individual Income Tax	Prior to filing Annual Returns	NA	End of March of the following calender year

Duty Stamp

Agreements related to sale and purchase transactions are subject to a duty stamp of Rp 6,000 for transaction amounts above Rp 1,000,000.

Exiting

If an owner wants to exit a business, there are two general options:

- Sell its shares to another investor; or
- Liquidate the company.



Sale of shares

The tax obligations on the sale of shares in an unlisted Indonesian company are:

- If the seller (shareholder) is an Indonesian tax resident: any gain on the sale of local shares is subject to normal corporate or individual income taxes. A loss would be a deductible expense only for a corporate taxpayer.
- If the seller (shareholder) is a non-resident: the sale is subject to a 5% withholding tax based on the gross transaction value, even if the transaction is made at a loss. This 5% withholding tax may be exempted, subject to available tax treaty provisions and the availability of Form DGT-1 to utilize the tax treaty benefits.

Liquidation of a company

In addition to the legal process to liquidate a company, it must submit an application to the Indonesian Tax Office (“ITO”) to cancel its tax registration. Before providing approval, the ITO will conduct an audit of all open tax years. Any resulting tax due must be paid before tax registration cancellation approval can be obtained from the ITO.

In a liquidation, any remaining retained earnings are deemed by the ITO to be distributed as a dividend and therefore is subject to withholding tax obligations. Outstanding payables regarded as forgiven are subject to normal corporate income taxes.

Real Estate Investment Trusts (“REITs”) – Tax Facility

To provide more alternatives in financial investment instruments and also to attract investments in the real estate business, the Government has introduced a tax facility scheme for Indonesian REITs (in Bahasa called *Dana Investasi Real Estat/DIRE*)⁹. Please note that the definition of a REIT/DIRE differs in many countries and in this case we only refer to the Indonesian regulation.

⁹ Government Regulation No. 40 Year 2016

The requirements to establish an Indonesian REIT are:

- It must be in the form of a Collective Investment Contract (Kontrak Investasi Kolektif) in accordance with the capital markets law; and
- It can only invest in real estate assets and/or cash and cash equivalents.

A REIT can also establish a special purpose company (“SPC”) for a qualifying investment, but it must be owned at least 99.9% by the REIT and its purpose can only be to support the REIT.

The facility provided is a reduced final income tax rate of 0.5%, instead of the 2.5% rate described above, on the total transaction value of properties transferred to the REIT and/or SPC. If the transferor is a related party, the transaction value must reflect the arm's length value of the properties.

Other than the final income tax rate reduction on the transfer of properties, all of other tax obligations described above apply to a REIT.

Conclusion

While the Indonesian taxation requirements on business property investments are numerous, they clearly do not out-weigh the potential returns that may be realized from these investments.



OUR SERVICES



KNIGHT FRANK SERVICES IN INDONESIA

Knight Frank has strengthened its Indonesian presence with a collaboration with PT. Willson Properti Advisindo, Indonesia. A strong track record of impressive local and regional MNC clients have already been built since its establishment. Knight Frank in Indonesia is part of an integrated global property advisory firm, which has a powerful network of over 370 offices in 55 countries in six continents in established and emerging property markets. Our clients have access to the most up-to-date intelligence on local, national and regional residential and commercial property markets worldwide. This information, coupled with the experience and expertise of Knight Frank's professionals, enable us to help our clients achieve their property aims. We assist the creators, owners and users of property to enhance the value of their residential and commercial spaces as investments, and as effective and attractive places in which to live, work and play.



Consultancy & Research

Market and feasibility studies, highest and best use studies, site research, township service charge/ maintenance cost studies, market repositioning analysis, strategic portfolio review, investment strategy and due diligence, value enhancement strategy.



Valuation Advisory

Valuation of all property types throughout Indonesia for mortgage, financial reporting, acquisition & disposal, insurance and loan workout. Valuation is an important element in IPO and REIT listing, mergers & acquisitions, corporate restructuring & Investment decision.



Investment Sales

Assist in the acquisition and disposal of all types of investment grade real estate, which include entire residential, office, retail and industrial properties or part thereof, hotels, golf courses, luxury bungalows as well as development land. Provide advice on acquisition and divestment strategies to help optimize returns and values of the new rising stars in Asia.



Residential Project Sales and Leasing

Project consultancy, marketing and sales of new local and overseas residential developments. Our experienced marketing team will tap on innovative ideas, good understanding of the local market & property trends, and capitalize on its strong networking to ensure successful project launches.



Commercial Sales and Leasing

Advisory and tenant representation services for offices investors and occupiers. Corporate consultancy and advisory services on an organisation's occupation needs. Creation and implementation of marketing strategies for new commercial projects.



Property Management and Building Engineering Services

Market and feasibility studies, highest and best use studies, site research, township service charge/ maintenance cost studies, market repositioning analysis, strategic portfolio review, investment strategy and due diligence, value enhancement strategy.

Indonesia Contact

Willson Kalip
willson.kalip@id.knightfrank.com

Capital Markets

Willson Kalip
willson.kalip@id.knightfrank.com

Hasan Pamudji
hasan.pamudji@id.knightfrank.com

Research & Consultancy

Sindiani Surya Adinata
sindiani.adinata@id.knightfrank.com

Kaibei Zhang
kaibei.zhang@id.knightfrank.com

Valuation (KJPP Willson & Rekan)

Mosalina Dewi
mosalina.dewi@id.knightfrank.com

Wisnu Wardhana
wisnu.wardhana@id.knightfrank.com

Property Management Services

Lioni Sugiarto
lioni.sugiarto@id.knightfrank.com

Asep Sujiana
asep.sujiana@id.knightfrank.com

Commercial & Industrial

Christianto Budiman
christianto.budiman@id.knightfrank.com

Rina Martianti
rina.martianti@id.knightfrank.com

Ipung Rachmaningtyas
ipung.rachmaningtyas@id.knightfrank.com

Residential

Frank Tumewa
frank.tumewa@id.knightfrank.com

Yohanes Rully
yohanes.rully@id.knightfrank.com

Matthew Georgeson
matthew@elitehavens.com





KPMG Indonesia

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KPMG Indonesia is:

Siddharta Widjaja & Rekan

KPMG Advisory Indonesia

KPMG Siddharta Advisory

Contact us

KPMG Indonesia

Address:

33rd Floor, Wisma GKBI
28, Jl. Jend. Sudirman
Jakarta 10210
Indonesia

Audit Services

T : + 62 (0) 21 574 2333 / 574 2888

F : + 62 (0) 21 574 1777 / 574 2777

Tax Services

T : + 62 (0) 21 570 4888

F : + 62 (0) 21 570 5888

Advisory Services

T : + 62 (0) 21 574 0877

F : + 62 (0) 21 574 0313

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For further information about Makes & Partners Law Firm please visit our website at <http://www.makeslaw.com>

Mr. Yozua Makes, S.H., LL.M, MM.
E: ymakes@makeslaw.com

Mr. Iwan Setiawan, S.H.
E: setiawan@makeslaw.com

Mr. Irfan Ghazali, S.H.
E: irfan.ghazali@makeslaw.com

Ms. Fransisca, S.H.
E: fransisca@makeslaw.com

Address:
Menara Batavia, 7th Floor,
Jl. KH. Mas Mansyur Kav. 126,
Jakarta 10220
Indonesia

T: (62 21) 574 7181
F: (62 21) 574 7180
E: makes@makeslaw.com
W: www.makeslaw.com



kpmg.com/id

KnightFrank.co.id

makeslaw.com

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