

September 2020 | NEWSLETTER

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Brief Overview on Land Legal Due Diligence: Things to Consider When Purchasing Land in Indonesia

Land acquisitions in Indonesia may be problematic as land disputes are common and there are third parties (including persons who claim that they or their families are former (or actual) owners of the land and did not receive proper compensation for the land) who may try to disrupt an acquisition process in order to gain financial benefit. The *caveat emptor* or “let the buyer beware” principle rings true in this situation especially for large scale transaction. This is where due diligence comes in.

Legal Due Diligence itself is an activity of (i) examining and analyzing documents and information related to the transaction object; (ii) in view of the purpose of the transaction and the regulatory framework relevant to the transaction; (iii) to obtain material information or legal clarity on the due diligence object and further to assess and identify the risks and viability of the transaction in question from legal perspective; and (iv) finally mitigate such risks where possible (“LDD”).

Therefore, when conducting an LDD, at least the 4 (four) points above must be kept in mind. In view of land LDD, the 4 (four) points above may translate into some questions we need to ask to be as prudent as possible, such as:

- a. What is the purpose of acquiring the land? If it is for business purpose (such as building a factory, or manufacturing plant, or housing estate, or otherwise), is the business purpose in line with the current statutory zoning of the land?
- b. Is the land certified (i.e. has land certificate)? If so, when does it expire? What is the land title? Does it match with the purchaser’s needs?
- c. If the land is uncertified (i.e. not registered in the land office registry such as *tanah adat* or land in remote village), how did the current owner come into possession of the land? Is he/she the rightful owner?
- d. Is the land under any encumbrances in favour of a creditor/third party?

Given the above, we set out below a brief overview on things we need to consider before we acquire plots of land in Indonesia:

I. Zoning

It is useful to check the zoning of the targeted land with the relevant regional regulations and further to the local spatial planning agency (*dinas tata ruang*). Zoning check is **important** to ascertain the intended utilization of the land so that the purchaser could use the plots of land as planned.

For example, in our experience in conducting land LDD for hotel or resort purpose, after zoning check, it was found that some plots of land intended to be purchased by our client, could not be purchased and certified as the plots of land is a part of conservation area for sea-grass. This is one example of why it is important to do a zoning check first.

After the zoning check is cleared, purchaser who will specifically utilize the land for its business activity should note on the location permit requirement. For further discussion on location permit, you may see our previous article [here](#).

II. Land Title

Please note that there are plots of land that have been certified – meaning that they are registered in the relevant local Land Office (*BPN*) record for which a land title certificate is issued under the owner's name ("**Certified Land**") – while there are also plots of land that have not been certified (for example, a customary land (*tanah adat*) or plots of land in a remote settlement/village).

These uncertified plots of land **have no land title certificate** and are not officially registered in the local land office, and therefore a number of documents evidencing history of previous land transfer up to the current owner/occupant need to be requested by the purchaser and produced by the current owner/occupant. These documents are important for ensuring the current occupant/owner is the rightful occupant/owner and for applying for certification/registration of the plots of land ("**Uncertified Land**"). This is why land LDD for Certified Land is much simpler than Uncertified Land.

1. **Certified Land**

In Indonesia, there are several types of land titles, among others (i) Right of Ownership (*Hak Milik* – "**HM Title**") which is a strongest and fullest right; (ii) Cultivation Right (*Hak Guna Usaha*); (iii) Right to Use a Building (*Hak Guna Bangunan* – "**HGB Title**"), etc. Further to this, in examining Certified Land, the Purchaser should at least:

- A. **Check whether the land title is in accordance with the purchaser's interest** – For example, if the purchaser is a company and the land title to be acquired is owned by an individual and is under HM Title, then since a company may not hold HM Title, it should be converted first to the appropriate land title that may be held by a legal entity (in this case, a limited liability company), for example an HGB Title. Depending on the transaction arrangement, the conversion of HM Title to HGB Title may be carried out by the seller before the land title is transferred to the purchaser or by the purchaser after the transaction. We will discuss the difference between them in a separate article.
- B. **Ensure that the land is free from encumbrances/mortgage** – any record on encumbrances over the land in favour of a third party should be recorded in the land title certificate. If found that there is an ongoing encumbrance over the land, then such encumbrance/security over the land must be released first before entering into the land transaction.

- C. **Note the expiry date of the land title certificate** – the purchaser should note the expiry of the land title certificate. Note that extension/renewal may be granted subject to certain conditions (among other things, it is still in line with the zoning requirement).
- D. **Conduct a land title search** - Land title search is useful to determine, among other things, (i) the originality of the land certificate; (ii) the rightful owner of the land; and (iii) if there are any encumbrances on the land. This, of course, requires the cooperation of the seller/land-owner.

2. Uncertified Land

Depending on how the Uncertified Land came into possession to the current owner/occupant (whether by sale/purchase (“**Purchased Land**”), inheritance (“**Inherited Land**”) or grant (“**Granted Land**”)), the land LDD may be conducted differently to each of the Uncertified Land. The general items that the purchaser should examine, among other things, are:

- a. Identity documents of the seller.

This may include, among other things, identity card (KTP) and family card (this is particularly important for Inherited Land).

- b. Land history related documents.

This may include statement of Land History (*Surat Keterangan Riwayat Tanah*), excerpt of *Girik*, or other types of written evidences/documents as referred to in Article 24 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration (“**GR 24/1997**”) – this is necessary for the registration of Uncertified Land.

- c. Land transfer documents.

This may include previous land sale and purchase documents, land grant documents, or inheritance documents.

- d. Land occupation related documents.

This may include Land Physical Occupation/Possession Statement (*Surat Pernyataan Penguasaan Fisik Bidang Tanah (Sporadik)*). This is in accordance with Article 24 paragraph (2) of GR 24/1997. In the event where no written evidence/record can be provided by the current occupant, then this document may be used.

In addition to the above, the following are scenario related items the purchaser needs to bear in mind and request to the current occupant/owner depending on how the Uncertified Land came into the possession of the current owner/occupant:

- A. **Purchased Land** – this one is fairly straightforward. The purchaser needs to examine the statement of sale and purchase agreement of the land (*Surat Pernyataan Jual Beli Hak atas Tanah*) between the current occupant/owner and the previous owner and cross-check it with the land history related documents.
- B. **Inherited Land** - This may require extra steps to be prudent. In this case the holder(s) of the land right is/are the heir(s). Therefore, all heirs (if more than 1 (one) heir) must provide their

approval or statement letter that they do not object to the sale and purchase of the Inherited Land.

In other words, the purchaser must ascertain that the inheritance was carried out properly and ALL heirs unanimously approve of the transaction. Other than obtaining the above statement of no objection, the purchaser may also ascertain it by ensuring the following documents, among other things:

- Original death certificate of the deceased - this is to confirm that the land was indeed obtained by way of inheritance and to be cross-checked with the deed of inheritance;
- Statement/Deed of Inheritance or Inheritance Letter – this is to verify the rightful heirs of the deceased and to be cross-checked with the family card; and
- family card of the deceased and the heirs – this is to confirm the identity of ALL heirs so that no heirs' approval goes unobtained.

C. Granted Land – It is important to note that under Article 1682 of the Indonesian Civil Code, a grant has to be recorded in a notarial deed form, failing which, then the grant is not valid.

III. Ownership of the building (if any)

If the plots of land to be purchased has a building(s) on it, the purchaser may wish to ascertain if the building(s) is/are owned by a party different than the seller of the land and to see if there are arrangements that may adversely impact the purchaser's right to the land. The purchaser should also check, among others, the (i) Building Construction Permit (IMB) and (ii) that the property tax (PBB) of the land has been paid.

IV. Request Local Land Office to Conduct Measurement on the Land

Conducting a measurement over the plots of land as part of land LDD is important, among other things:

- (i) to confirm the correct area of the land (as claimed by the current owner/occupant or as stated in the land title certificate – note that over years, erosion of land surface or other natural occurrences may happen and reduce the area of land, especially if the land borders with beach land or cliff); and
- (ii) to confirm whether the land is really owned or controlled or occupied by those who claim to be the land owners because if the land is owned or controlled or occupied by someone else, it is expected that such person will protest if BPN official comes and measures the land without their permission.

The above are some of the issues that a purchaser may face in conducting a land acquisition in Indonesia. Being cautious and conservative in respect of land ownership and potential problems is very important in land acquisition.

The above is a summary prepared by Solis Advisors – Attorneys and Consultants (“Solis”), an Indonesian based Law Firm. It is only intended to inform generally on the topics covered and should not in any way be treated as legal advice or relied upon when making investment or business decisions. If you have any questions/comments on the matter set out above, or other subject(s) you wish to inquire, please contact your usual Solis contact or email us at consult@solis.consulting
