

Guide On Owning Property In Indonesia

GENERAL INFO

The brief explanations that follow cover various ways in which a foreigner can purchase land or property in Indonesia. Currently, the only recommended and viable option is to use a **Hak Pakai** or right to use title. In some circumstances, other options may be possible so we always suggest potential purchasers seek independent legal advice in Indonesia. Subsequent to any purchase, legal advice should also be taken in your home country regarding wills and succession planning.

Freehold Title (**Hak Milik**)

Indonesian law does not currently allow foreigners to purchase property/land with outright ownership, the system common in Western countries. However, there are ongoing discussions at government level regarding liberalising foreign ownership rules.

Leasehold (**Hak Sewa**)

This is a contractual agreement between the land owner and the foreigner. While leases are often notarised documents, they have no official record of existence the Land Board. As such there can be difficulties in enforcement if, for example, there are conflicting documents or multiple lease agreements, a situation that is not uncommon as Balinese land is often owned by extended families.

Nominee Structure

This contractual agreement is held between a foreigner and an Indonesian national who has been nominated to hold the freehold title. This structure typically has several agreements such as right to use and right to sell, as well as a mortgage agreement, which states that the Indonesian nominee has borrowed money in order to buy the property.

Corporate Ownership

A foreign investment, Limited-liability Company incorporated in Indonesia is commonly known as a **PT PMA**. All Indonesian companies – whether Indonesian owned or are foreign invested – can hold a right-to-build title called **Hak Guna Bangunan (HGB)**. In this case, the freehold title is relinquished to the state and the company is given possession of the property under a right-to-use title or **Hak Pakai**. These are normally granted for a period of 30 years with a right of extension at an extra 20 or 30 years.

Personal Ownership - Right to Use Title (**Hak Pakai**)

The National Land Agency in Bali issues foreigners a **Hak Pakai** or right to use title. This is the only certificate of title to land that is recognised and sanctioned by Indonesian law that can be held personally in the name of a foreign purchaser.

This is not a lease as the title is actually issued in the name of the foreign owner and the owner's interest is noted as an encumbrance on the freehold title, unlike a leasehold structure.

A special variation of the right-to-use title is known as '**Hak Pakai atas Tanah Hak Milik**', which means 'right of use over freehold land'. This form of right-to-use title effectively overrules the underlying freehold title, which is reserved exclusively for Indonesian nationals. The freehold owner grants the purchaser a right-to-use title of an initial 25-year term with three prepaid 25-year renewals thus providing 100 years of secure ownership tenure to the property.

From an investment and asset protection aspect, this option provides a legal and clear direct title to the foreign owner and also offers the benefit of preserving the underlying freehold title. Among all the other forms of ownership titles, the freehold title is considered the most valuable, as it is the most easily transferable and mortgageable by all financial institutions. Thus the usage of this ownership structure protects the underlying strength of the asset.

NOTE

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