



## FOREIGN OWNERSHIP EXPLAINED

### Introduction

Visi-Jabon is a licensed property brokerage and development company, under Indonesian corporate law. We are a platform for a sustainable tourism development in the hills above Selong Belanak in Lombok. Our privately owned hillside properties share access, infrastructure, services and a vision for the future. We create feasible developments and attractive business environments.

Together we work with our trusted legal advisor, SABA Advisors, in preparing transaction paperwork and ownership structures for clients to safely secure their property. All signings are managed by our trusted local Notary, Ibu Retno, who has managed over 97 transactions for us over the past 6 years.

Due to the large amount of confusing and conflicting info on the internet and lack of reliable legal advisors, this document is intended as initial guide only and we recommend independent legal advise prior to any investment decision.

### Freehold Ownership

As a foreigner, legally you cannot directly own freehold property in Indonesia, even via a company structure of any kind. Freehold titles can only be directly owned by Indonesian citizens.

Despite all the conflicting information online, large number of foreigners who have purchased freehold villas and our best efforts with different law firms, there is no legal loophole around this.

There are however things you can do to indirectly own a freehold property by using an Indonesian citizen as a proxy title holder on your behalf, as explained below. It is important to distinguish the fact that this now commonly used strategy provides control over, not direct ownership of, the property.

It might not be your name on the land title, but it is your name on the mortgage and lease agreements which gives you effective control and is in complete compliance with Indonesian law.

### Mortgage

This is a hypothetical mortgage only, not a real one, from the foreigner to the Indonesian proxy who holds the title.

It is a hypothetical loan only in that no money changes hands, whereby the Indonesian proxy acknowledge a debt is owed to the foreigner and puts the title up as a collateral.

Such mortgages provide protection in that unless the mortgage is repaid, the agreement cannot be cancelled and the Indonesian proxy cannot legally do anything with the land.

The mortgage amount is normally 2 or 3x the purchase price or market value, to give sufficient protection.

This process for registering a mortgage is simple and can either be registered on the title with the government land registrar (BPN), or not registered on the title and kept as a private loan agreement.

In either case to be legally binding, it must be witnessed by a local Notary who will want to review the agreement first if it has been drafted by a 3rd party.

Public mortgages (i.e. registered on the title) are worth a special mention as they carry additional implications investors should be aware of...

1. Tax Statements – both the property and the mortgage need to be reported on the annual tax statement of the Indonesian proxy. There has been a recent government push on taxation, hence to avoid further investigation it's a smart idea to be tax compliant these days.

2. Proof of Loan – in the unlikely event the government may request to see a transfer receipt proving a loan was actually made, our lawyers advise us it is easily rebutted (debt was in return for a favor) and easily written into the mortgage agreement.

3. Proof of Repayments – again in the unlikely event the government may request to see a transfer receipt proving loan repayments are being made, our lawyers advise us it is easily rebutted (interest free loan) and easily written into the mortgage agreement.

## Lease

Foreigners can own leasehold titles directly in their name, unlike freehold, in accordance with Indonesian property law. No Indonesian proxies or legal loopholes are necessary. Hence in addition to the mortgage above,

foreigners can put a lease over the top of the freehold title as an additional precautionary measure. Much like the mortgage, there are public leases and private leases.



Public leases are registered on the underlying freehold certificate and an official form of land title recognized by the BPN.

The two main types are explained below and plenty of information online. The main benefit of doing a public lease is complete independence from the Indonesian proxy, as the foreign lessee is able to apply for permits/licenses directly in their name as a legal title holder.

Private leases are simple legal agreements, not official land titles, and normally require the freehold certificate to be escrowed by Notary or held by the lessee.

Durations are limited to 25 years per lease but it is possible to sign up to 3 leases upfront giving 75 years total.

## LEASEHOLD OWNERSHIP #1 (Hak Pakai)

Created as a form of title for expats living in Indonesia and for properties intended as their primary residence. Hence although commonly used its not suitable for a lot of our clients who live outside the country.

It has a short tenure of 25 years with back to back leases not possible to be signed upfront. The foreigner is reliant upon the Indonesian proxy to sign another lease upon expiry of the first lease.

Also the foreigner is also meant to hold a valid Indonesian working VISA (KITAS) which either requires an Indonesian company to be first be setup or an existing Indonesian company to sponsor the foreigner, which add cost/time and create a dependency on the company further complicating matters. Once a KITAS expires the validity of the title is in question.

## LEASEHOLD OWNERSHIP #2 (Hak Guna Bangunan- HGB)

Created as a form of title for foreign companies, usually developers, intending to conduct development projects in Indonesia. Hence although it is sometimes used by foreign individuals with expensive properties and/or low risk tolerance, the complexity in setting up and maintaining the company makes them prohibitive and the land carries additional implications investors should be aware of.

For a start it requires a foreign investment company (PT PMA) to be first set up, with the investment coordinating board of Indonesia (BKPM), which is a costly and bureaucratic process with the various business licenses/permits.

Depending on the business activity such companies cannot often not be 100% foreign owned, which reintroduces the dependency on an Indonesian proxy.

Lastly such companies have ongoing obligations to the BKPM in order to stay compliant otherwise risk having their licenses/permits revoked. Hence for this to be worthwhile it usually requires running a sizeable business.

Similar to Hak Pakai, the lease tenure is max 25 years and back to back leases cannot be signed upfront. At the end of the first lease, instead of applying to the Indonesian proxy for a new 25-year lease, the foreigner must apply to the BPN who will look at a number of factors to ensure it has been compliant. Some of these factors are ambiguous, such as the requirement by year 3 to 'add value' to the land. Remembering HGB was setup by the government for foreign companies to develop.

## RECOMMENDED OWNERSHIP STRUCTURES

For **Visi-Jabon** clients residing outside the country we recommend a freehold certificate with a private lease of 75 years and private mortgage equal to 3x the purchase price. If clients don't have a trusted Indonesian citizen to act as proxy, then we recommend staying with **Visi-Jabon's** nominated proxy as it'll be quick and easy to apply for permits and licenses.

As additional protection we also recommend signing a POA over the proxy and retaining the freehold certificate, sale & purchase agreements (PPJB, AJB) and tax papers (SPPT).

For **Visi-Jabon** clients of block purchases of +4 villas and clients with existing Indonesian property portfolios, we recommend setting up a PT PMA company, converting the title to HGB lease-hold and transferring it to the company. The business activity for the company should be 'real estate'.

For **Visi-Jabon** clients looking to purchase through an offshore trust or fund, due to the complex legal and tax framework in both countries we recommend speaking to SABA Advisors. They are experienced in structuring such investments for retail and institutional clients, so can customize a solution to fit.

