

April, 2023 No.60

This issue covers the following topics:

Indonesia

Investing in the New Capital – What should investors know?

Ichsan Montang

Vietnam

Draft Amended Land Law

Hoai Tran

Indonesia

Investing in the New Capital – What should investors know?

インドネシアでは東カリマンタンへの首都移転が正式に公表されてから数年が経過し、2024年にも第一弾の移転が実施されることになっている。新首都となる「ヌサンタラ」では、既に様々なインフラの整備が進められているものの、2024年の大統領選挙の結果次第で首都移転事業が次期政権に継承されるのかどうか未だ懐疑的な見方も強いことから、多くの外国投資家は依然様子見という状況である。本稿では、首都移転に向けて導入された新たな法規制、特に投資の促進に向けた新制度について概説する。

Introduction

After the announcement of capital relocation plan from Jakarta to Ibu Kota Nusantara (“IKN”), the government has explained that the total estimated cost for the relocation will be around IDR 460trillion (approximately USD 30billion). It is expected that 20% of the total cost will be funded by state budget and the remaining 80% will be sourced from investment, either investment fully made by investors or through a public private partnership between investors and the government.

To create the legal basis for the acceleration of development of IKN, the government has issued Government Regulation No. 12 of 2023 on the Granting of Business License, Ease of Doing Business, and Investment Incentives for Business Actors in IKN (“GR 12/2023”). The GR 12/2023 is not only addressed to business actors that engage in business within the IKN, but also for investors that engage in business activities within certain regions of Kalimantan Island as part of the IKN economic superhub (“Partner Regions”). The list of Partner Regions will be later determined by the Head of IKN Authority.

Business License for Business Actors conducting business within the IKN and Partner Regions

Article 2 of the GR 12/2023 provides that any business actors that wish to engage in business within IKN and/or Partner Regions must obtain business license from the IKN Authority. To obtain such business license, business actors are first required to (i) fulfil basic licensing requirements, and (ii) secure sectoral business license.

Fulfilment of basic licensing requirement shall include:

1. Conformity of spatial utilization activity, specifically, evidence of the conformity of business locations with the spatial plan of IKN;
2. Environmental approvals, which refer to the Environmental Impact Analysis of IKN; and
3. Building approvals and building worthiness certificate, which are issued for certain periods upon the

fulfilment of 1. and 2. above.

After obtaining the basic licensing requirement, the business actor shall apply for sectoral business license depending on the line of business conducted, namely:

1. Marine and fisheries;
2. Agriculture;
3. Environment and forestry;
4. Energy and mineral resources;
5. Nuclear power;
6. Industry;
7. Trade;
8. Public works and housing;
9. Transportation;
10. Health, medicines, and food;
11. Education and culture;
12. Tourism;
13. Religion;
14. Postal service, telecommunication, broadcasting and electronic systems and transactions;
15. Defense and security;
16. Manpower;
17. Finance; and
18. Other priority sectors as determined by the IKN Authority.

After securing the sectoral license, business actors shall apply for the IKN Business License through the OSS System. The IKN Authority will verify all submitted documents. Once all documents and applications are approved, the IKN Authority will issue the IKN Business License to the relevant business actor.

One benefit for investors under Article 5 of GR 12/2023 is foreign ownership restriction under the relevant laws and regulations shall not be applicable to businesses conducted within IKN and Partner Regions, hence all line of businesses are open for foreign investment in the IKN and Partner Regions.

Ease of Doing Business

Ease of doing business measures introduced by the government and the IKN Authority for business actors conducting business within the IKN and Partner Regions include the granting of land rights and utilization of foreign workers.

Under GR 12/2023, investors can be granted land rights in the form of (i) right to build certificate (“HGB”), (ii) right to cultivate certificate (“HGU”), or (iii) right to use certificate (“HP”), depending on the purpose of utilization.

The HGU can be granted for a maximum of 35 years, which can be extended and renewed for maximum 25 years and 35 years, respectively. While the HGB and HP can be granted for maximum 30 years, which can be extended and renewed for maximum 20 years and 25 years, respectively. However, different from common practice where the extension and renewal are given immediately before the expiry, the land rights within the IKN and Partner Regions can be granted at one time, provided that such plot of land has been utilized for the period of 5 years. For example: A landowner is granted HGB for a period of 30 years. After 5 years of utilization, such landowner may directly apply for extension and renewal simultaneously so that the total validity of HGB is 80 years (“**First Cycle of Land Rights**”). Before the expiry of First Cycle of Land Rights, the landowner may apply for the second cycle of land rights for another maximum 80-year period. The land rights granted within the IKN and/or Partner Regions are transferrable and can be mortgaged.

In addition to the benefit related to the validity of land rights, the GR 12/2023 also stipulates that there will be no fees or taxes relating to land rights acquisition in connection with grant and transfer of land rights within the IKN

and/or Partner Regions.

With respect to the utilization of foreign workers, companies which are carrying out business activities within the IKN are allowed to employ foreign workers and will be exempted from the obligation to pay the compensation funds for the use of foreign workers for a certain period. The validity of foreign workers employment plan (RPTKA) is given for the period of 10 years and can be extended. The foreign workers can also be granted residency permits for a maximum period of 10 years which can be extended depending on the employment agreement between the foreign worker and the employer.

Investment Facilities

Additionally, the government will provide investment facilities especially related to taxation matters. For example, with respect to corporate income tax (“CIT”), the government has reduced the CIT for domestic taxpayers and for the establishment and/or transfer of head offices and/or regional offices, as well as income tax from salary received by the employees working and living at the IKN will also be exempted. In addition, the government will not collect value added tax within the IKN and exempt luxury goods sales tax (PPnBM) for release of taxable goods.

Current Updates and Conclusion

The development of IKN has been conducted with an initial focus on building the presidential palace, toll roads, and housing for civil servants. The President aims that the first stage of the development of IKN will be completed by 2024, by which time the construction of major buildings such as presidential palace, ministerial offices, and housing for ministers would be completed and ready to use.

Through the issuance of GR 12/2023, the government has provided the legal basis to facilitate the development of IKN through private investment, either investment fully made by investors or through a public private partnership between investors and the government. In order to attract investment from foreign investors in the development of the IKN, the guideline introduces special treatment and relaxations which would not be available if such investors carry out business outside of the IKN or Partner Regions.

[Author]



Ichsan Montang

(IM & Partners in association with Nagashima Ohno & Tsunematsu Partner /
Nagashima Ohno & Tsunematsu Singapore LLP Counsel)

ichsan_montang@noandt.com +62-21-25098013

Ichsan Montang is a partner at IM & Partners, NO&T’s associate office in Jakarta. He graduated from the University of Indonesia with Cum Laude predicate and obtained his LL.M degree in Erasmus University Rotterdam, the Netherlands. Prior to joining NO&T, Ichsan worked at one of the most prominent law firms in Indonesia and experienced in handling both domestic and international clients. He focuses his practice on mergers and acquisitions, foreign direct investment, general corporate matters, TMT, and real estate business.

Vietnam

Draft Amended Land Law

ベトナムでは、約 10 年ぶりに土地法の改正が検討されており、現在第 4 草案が公表されている。現在の予定では今年秋の国会で改正法が成立し、来年 7 月 1 日に施行されることとなる。本稿では、改正土地法において不動産開発実務に影響を及ぼすことが予想される点に焦点を当て、同法の主要なポイントをご紹介します。

Introduction

The Government of Vietnam has recently introduced the 4th draft of amended Land Law (“**Draft**”) for public comments. It is expected that the Draft will be updated and submitted to the National Assembly for a final review in May 2023 and then passed in October 2023. Once it is passed, the amended Land Law will take effect from 1 July 2024 and will replace the current Land Law 2013 (“**Current Law**”), which took effect from 1 July 2014.

The amended Land Law (also known as “new Land Law”) will be the 5th enactment of land law in Vietnam. The previous land laws (including the Current Law) were enacted in 1987, 1993, 2003 and 2013.

Generally, the Draft retains the basic fundamental concepts and principles of the previous laws (including the Current Law) that ownership of land in Vietnam belongs to the entire people of Vietnam and the State acts as a representative of the land owner; accordingly, the State leases or allocates land to land users and in some circumstances, the State may recover such land from existing land users to lease or allocate such land to other land users.

The Draft is expected to deal with the outstanding urgent issues such as investor selection, land clearance, land price, land rent payment, and dispute settlement.

Below we discuss some major changes affecting business community (especially foreign investors) in comparison to the Current Law.

Abolishment of land price bracket

Under the Draft, the land pricing system will comprise of “land price table” and “specific land price” instead of three types of land price as prescribed under the Current Law. The “land price bracket”, which is promulgated by the Government as a basis for the provincial People’s Committee (“**PC**”) to produce the “land price table”, will no longer be part of the land pricing system, and the PC will publish the land price table annually. According to the Current Law, the land price bracket (applicable to certain regions in the country) and the land price table (applicable to certain areas in the province) are published on a five year basis, whereas the specific land price is determined and approved by the PC on a case by case basis. This change is expected to give certain flexibility to the PC in determining the land price in its provinces.

As the land price is used for various transactions between the land user and the State, the Draft appears to continue the current regime that the land price in the table will often be set to be lower than the specific land price (although the Draft stipulates that the fixing of land price (land price table and specific land price) must be consistent with “the common price on the market in ordinary conditions”). This regime is aimed to allow the land users to pay less to the State in some special cases and pay full in other cases. In particular, the land price in the table and the specific land price will be used for the following different purposes:

Types of land price	Purposes
Land price table	<ul style="list-style-type: none"> • monetary penalties (due to breach of law) • additional land use fee/land rent (due to failure or delay in bringing land into use) payable to the State • land use fee/land rent payable to the State by individuals (not organizations)

	<ul style="list-style-type: none"> starting price for land auction
Specific land price	<ul style="list-style-type: none"> land use fee/land rent payable to the State by organizations (in cases of exemption from land auction/project tendering, or conversion of land use purposes) compensation for land clearance by the State

Limitation on lump sum payment of land rent

The cases eligible for making a lump sum payment will be limited to the following two categories:

- using land to implement investment projects on agricultural production, forestry, aquaculture, salt production; and
- using industrial zone land, industrial cluster land, export processing zone land, or high-tech zone land

Under the Current Law, a user of land leased from the State may choose to pay land rent either annually (annual payment) or fully upfront (lump sum payment), and in the case of annual payment, the land user may apply for a permission from the competent authority to convert to the lump sum payment. In respect of the annual payment, land rent is fixed for a period of five years and thereafter, the relevant authority shall adjust the land rent in accordance with the applicable regulations. The Draft will continue with this regime of five years stability.

The lump sum payment of land use fee (applicable to land allocated for residential development) will remain unchanged.

More specific provision on extension of land use term

The Draft continues the principle for determining land use term as set out under the Current Law. The land use term is based on the operational duration of the project as approved by the competent authority. In any event, the land use term may not exceed 50 years; however, if the project requires a substantial amount of investment capital and needs a longer time to pay back, or otherwise locates in a location with difficult social-economic conditions, a longer land use term of up to 70 years may be granted.

Notably, the Draft, however, indicates that enterprises may be permitted to adjust their land use term before the expiry of the term as long as they obtain an approval for amendment of the operational duration of the project in accordance with the applicable law on investment (probably means amendment of investment policy approval (“IPA”) and/or investment registration certificate (“IRC”)). Additionally, the adjustment must be consistent with the annual land use planning and zoning of the relevant district and must satisfy the environmental conditions in accordance with the applicable law on environment protection. This new regulation is likely to be good news to those who wish to upgrade their factory but the remaining land use term is not long enough for paying back the upgrading costs and generating a reasonable profit.

Clearer regime for land auction and project tendering

Under the Draft, an investor may acquire land for his investment project by one of the following four methods:

- (i) land allocation or lease without land auction/project tendering,
- (ii) land auction,
- (iii) project tendering, or
- (iv) agreement with existing land user.

Compared to the Current Law, the Draft specifies conditions and procedures for each method, especially the land

auction method and project tendering method. In respect of land auction, the Draft contemplates that the land must have been fully cleared and a 1/500 master plan covering the land must have been issued by the competent authority.

For project tendering, the land may not need to be fully cleared but the project must fall into a category where land recovery by the State is permitted by law. In addition, if the project is a township project or commercial housing project, it must use a land area of 50ha or more in rural area and 20ha or more land in urban area.

The key conditions and typical cases of the four methods are summarized as follows:

Methods	Key conditions	Typical cases ¹
Land allocation /lease without auction or project tendering	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Using land for a mining project. • Using land for offices of foreign organizations with diplomatic function.
Land auction	<ul style="list-style-type: none"> • Land is covered under the district's approved land use planning • Land is fully cleared • Having a 1/500 master plan in place 	<ul style="list-style-type: none"> • Using agricultural land and/or non-agricultural land for township project, rural residential project, or commercial housing project. • Using land of State land fund for projects of non-agricultural production, commercial and service purposes.
Project tendering	<ul style="list-style-type: none"> • Land is covered under the district's approved land use planning • Land is used for purposes where land recovery by State is permitted 	<ul style="list-style-type: none"> • Using 50ha or more in rural area and 20ha or more in urban area (applicable to township project or commercial housing project). • Using land for certain special cases such as for public/underground facilities for business purpose or urban/rural residential area embellishment/development.
Agreement with existing land user	<ul style="list-style-type: none"> • Land use is consistent with the approved land use zoning • Land is recorded in the district's annual land use planning • Land use is approved in accordance with the investment law • Land use is permitted to be converted to new purposes and the investor pays land use 	<ul style="list-style-type: none"> • Using agricultural land and/or non-agricultural land for projects (other than township project, rural residential project, and commercial housing project). • Using residential land and non-residential land for township project, rural residential project, or commercial housing project (permission for conversion of land use purpose is required).

¹ The Draft lists out many cases; however, we select certain typical cases only.

	fee/land rent to the State (based on the specific land price).	
--	--	--

The Draft also emphasizes that, instead of obtaining the land lease or allocation from the State (under method (i) through (iii) above), the enterprise may acquire land directly from the existing land users (method (iv) above). However, the enterprise may need to obtain permission from the competent authority to convert the land use purpose to be one that is suitable for the project and pay the additional land use fee/land rent to the State.

With respect to a township project, rural residential project or commercial housing project, that will use residential land (whether 100% residential land or a certain portion of project area is residential land and the remainder is other types of land), the enterprise is required to acquire the residential land and other land from the existing land users for the project; and if there is no residential land, the enterprise may only acquire the land by way of either land auction or project tendering (as the case may be). If the Draft is passed in its current contents, this can be deemed as a new policy affecting hundreds of township/residential development projects in the country which have been put on hold for many years due to lack of a concrete policy (consequently, they have not been able to obtain an IPA approving them as developers to develop the project). The developers of these projects have acquired land from the existing land users but no part of the acquired land is residential land.

Land clearance by the State for township project, rural residential project and commercial housing project

Under the Draft, the State will handle land recovery (land clearance) for township project, rural residential project, and commercial housing project (among other things), if the project does not use any residential land. If there is certain residential land in the project area, the developer will need to acquire land through entering into agreement with the existing land users (rather than relying on the land clearance handled by the State).

Notably, the Draft includes commercial housing project in the list of projects that can rely on land clearance by the State. However, as noted above, the land clearance by the State will mean that the land must be put on public auction or project tendering, whereas under the Current Law, the State may clear the land and allocate/lease such land to the developer without needing to go through the land auction or project tendering process.

Further, the State will not clear land for the township project, rural residential project, or commercial housing project, if a certain portion of project land is residential land. This means the developer will need to acquire land directly from the existing land users in this case.

Leasing right is saleable or mortgageable

In addition to the concept of transfer/mortgage of “land use rights” as currently contemplated under the Current Law, the Draft introduces a new concept of sale/mortgage of “leasing right under land lease contract” provided this right will be exercised together with sale/mortgage of the assets on the land. To enjoy this right, the land user must have (i) completed the construction of assets on land and (ii) advanced money for the land compensation/clearance cost (which has not been fully deducted against land rent payable to the State). The new concept appears to reduce the adverse effect from the limitation on lump sum payment of land rent (as discussed above).

Under the Current Law, only the use rights in respect of land leased with lump sum payment of land rent (or allocated land with lump sum payment of land use fee) may be transferred or mortgaged. The user of land leased with annual payment of land rent is not permitted to transfer or mortgage the land use right (or leasing right).

Dispute settlement

Disputes relating to land will be settled by a competent court (the relevant people’s committee is required to provide relevant documents to the court). If the dispute arises from commercial activities relating to land, the dispute may be referred to either a competent court or arbitration. Currently, the dispute settlement body is subject to whether the land user has a land use right certificate (“LURC”) or not. If there is a LURC for the land, the dispute must be referred to a competent court, whereas if there is no LURC for the disputed land, a party may

request either a competent court or competent people's committee to settle the case. The Current Law also does not make it clear whether the dispute arising from commercial activities relating to a land can be referred to an arbitration for settlement.

[Author]



Hoai Tran (Nagashima Ohno & Tsunematsu HCMC Branch)

hoai_tran@noandt.com

Hoai Tran is a Vietnamese qualified attorney in the Ho Chi Minh City office. His areas of practice include mergers and acquisitions, joint ventures and real estate transactions. Hoai has extensive experience working in Vietnam related matters and this includes acquisition and sale of private companies and businesses, establishment of project companies, project transfers, land acquisitions, real estate developments, leases and sales.

[EDITORS' PROFILES]



Nobuo Fukui (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

nobuo_fukui@noandt.com

Nobuo Fukui is a partner at Nagashima Ohno & Tsunematsu and a representative of its Singapore Office (Nagashima Ohno & Tsunematsu Singapore LLP). He has been stationed in Singapore since 2013 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries.

He is a graduate of the University of Tokyo (LL.B., 2001) and Duke Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Widyawan & Partners (Jakarta) from 2010 to 2013, focusing on Indonesian legal practice, and he has extensive legal experience in the Indonesia related transactions.



Motohisa Nakagawa (Nagashima Ohno & Tsunematsu HCMC Branch Partner)

motohisa_nakagawa@noandt.com

Motohisa Nakagawa is a partner at Nagashima Ohno & Tsunematsu and a representative of its Ho Chi Minh City office. He has been stationed in Vietnam since 2011 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries, especially Vietnam.

He is a graduate of Keio University (LL.B., 1999) and Stanford Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Allens (Ho Chi Minh City) from 2011 to 2014, focusing on Vietnamese legal practice, and he has extensive legal experience in the Vietnam related transactions.



Rashmi Grover (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

rashmi_grover@noandt.com

Rashmi Grover is an attorney in the Singapore Office. She is qualified in India and the UK. Her areas of practice include mergers and acquisitions, private equity and general corporate. She has extensive experience working in the Indian market and advising clients on corporate commercial and finance transactions including transactions involving mergers, acquisitions, formation of joint ventures, private equity investments, business/asset acquisition transactions, regulatory filings and debt issuances.

This newsletter is given as general information for reference purposes only and therefore does not constitute our firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our firm's official view. For any specific matter or legal issue, please do not rely on this newsletter but make sure to consult a legal adviser. We would be delighted to answer your questions, if any.

www.noandt.com

NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan
Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com



Nagashima Ohno & Tsunematsu is the first integrated full-service law firm in Japan and one of the foremost providers of international and commercial legal services based in Tokyo. The firm's overseas network includes locations in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi, Jakarta and Shanghai, and collaborative relationships with prominent local law firms throughout Asia and other regions. The over 500 lawyers of the firm, including about 40 experienced attorneys from various jurisdictions outside Japan, work together in customized teams to provide clients with the expertise and experience specifically required for each client matter.

Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41
Singapore 049909
Tel: +65-6654-1760 (general)
Fax: +65-6654-1770 (general)
Email: info-singapore@noandt.com

Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhiraj Tower at EmQuartier
689 Sukhumvit Road, Klongton Nuea
Vadhana, Bangkok 10110, Thailand
Tel: +66-2-302-4800 (general)
Fax: +66-2-302-4899 (general)
Email: info-bangkok@noandt.com

HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower
29 Le Duan Street, District 1
Ho Chi Minh City, Vietnam
Tel: +84-28-3521-8800 (general)
Fax: +84-28-3521-8877 (general)
Email: info-hcmc@noandt.com

Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building
16 Phan Chu Trinh, Hoan Kiem District
Ha Noi City, Vietnam
Tel: +84-24-3266-8140 (general)
Fax: +84-24-3266-8141 (general)
Email: info-hanoi@noandt.com

Jakarta Office (*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401
Jalan Jenderal Sudirman Kav. 40-41
Jakarta 10210, Indonesia
Tel: +62-21-25098080 (general)
Fax: +62-21-25098090 (general)
Email: info-jakarta@noandt.com

Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road
Xuhui District, Shanghai 200031, China
Tel: +86-21-2415-2000 (general)
Fax: +86-21-6403-5059 (general)
Email: info-shanghai@noandt.com

[For more details on our global practice](#)

If you would like to receive future editions of the NO&T Asia Legal Review by email directly to your Inbox, please fill out our newsletter subscription form at the following link: https://www.noandt.com/en/newsletters/nl_asia_legal_review/

Should you have any questions about this newsletter, please contact us at [<asia-legal-review@noandt.com>](mailto:asia-legal-review@noandt.com).

Please note that other information related to our firm may be also sent to the email address provided by you when subscribing to the NO&T Asia Legal Review.