

Banking & Finance

Indonesia Introduces the e-Mortgage System

In June 2019, the Ministry of Agrarian and Spatial Planning/Head of the National Land Agency (BPN) (“**Ministry**”) introduces Regulation No. 9 of 2019 (“**Regulation No. 9/2019**”) on electronically integrated land mortgage (*hak tanggungan*) service (“**e-Mortgage**”). It is hoped that the issuance of Regulation No. 9/2019 will expedite physical land service process and improve its transparency and efficiency.

Currently, the e-Mortgage system supplements the existing physical land mortgage service. E-Mortgage will especially be advantageous for financial institutions and banks who provide loans that are secured by a land mortgage as they can register the land mortgage on their own directly on the e-Mortgage system, instead of going through the municipal/regional land office. However, the signing of the land mortgage deed (*Akta Pemberian Hak Tanggungan* or “**APHT**”) must still be done physically before a land deed official (*Pejabat Pembuat Akta Tanah* or “**PPAT**”) in the city or regency where the land is located.

Under Regulation No. 9/2019, all land mortgage services can be conducted through the e-Mortgage system. These include registration, rectification of a land mortgage certificate, assignment of a land mortgage, change to a creditor’s name, and partial and full release of a land mortgage.

Below we highlight key additions and potential issues under the e-Mortgage system:

E-Mortgage users

Users eligible to use the e-Mortgage system are Creditor (as defined below) and state officials who are responsible for land mortgage service.

Creditor

Under Regulation No. 9/2019, a creditor is defined as an entity who has a claim for a repayment of loan and it can either be a legal or natural person (“**Creditor**”). To access to the e-Mortgage system, a Creditor must become a registered user (*pengguna terdaftar*) and fulfil the following requirements:

- a. has obtained an electronic domicile, which is an email and/or mobile phone number that has been verified;
- b. is licensed by the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”);
- c. has completed the statement of fulfilment of the requirements and criteria and approval as a registered user; and
- d. has complied with any other requirements determined by the Ministry.

There may be two issues that may arise in relation to the accessibility of the e-Mortgage system.

First, the OJK is only able to grant a license to a legal person (i.e. a company), and not to an individual. As such, although an individual can be a Creditor under Regulation No. 9/2019, they would not be able to obtain a license from the OJK, and subsequently access the e-Mortgage system. Further, a financial

Banking & Finance

institution or bank established under a foreign law may not be able to access the e-Mortgage system as the OJK only grant licenses to a legal entity established under Indonesian law.

Second, where a Creditor has appointed a security agent or an attorney to manage the debtor's secured assets, such security agent or attorney would not satisfy the definition of a 'Creditor' and as a result, they would not be able to access to the e-Mortgage system.

PPAT

With respect to 'state official who is responsible for land mortgage service', please note that a PPAT is not considered as such. However, Regulation No. 9/2019 then states that only a PPAT can submit an APHT through the electronic system that is integrated with the e-Mortgage system. Therefore, although a party can technically register a mortgage on its own, they would still need the assistance of a PPAT in submitting the APHT.

Regulation No. 9/2019 does not provide a clear mechanism of logistics in the e-Mortgage system as between the PPAT, a Creditor, and the land office.

Requirements for Land Mortgage Registration

The types of document that must be submitted to the e-Mortgage system remain largely the same as documents that must be submitted under the non-electronic land mortgage system. However, it is also unclear whether the e-Mortgage system requires submission of an original Power of Attorney to Grant Land Mortgage (*Surat Kuasa Membebaskan Hak Tanggungan* or "**SKMHT**") if the APHT is preceded by an SKMHT.

More importantly, mortgages can only be registered over lands that are under the name of the debtor. This is a shift from the non-electronic system, which allows registration of mortgages over lands that are under the name of a third party in favour of a debtor (i.e. a subsidiary of the debtor).

E-Mortgage Output

A mortgage registration in the e-Mortgage system will result in an electronic version of a land mortgage certificate, along with a land mortgage encumbrance annotation form (both are inseparable from one another) ("**Certificate**").

Once the Certificate issued, the head of the relevant land office will simultaneously attach the Certificate to the relevant land book registry maintained in the land office and the original land title certificate. Nevertheless, the e-Mortgage system also allows the Creditor to attach the Certificate into the original land title certificate on its own.

Banking & Finance

Rectification of an e-Mortgage Certificate

In case a rectification of a Certificate is needed (i.e. correcting the name of the Creditor), Regulation No. 9/2019 requires a rectification to be submitted through the e-Mortgage system no later than 30 days after the date of issuance of the Certificate.

The Certificate that has been issued will be in status quo during the rectification process. The e-Mortgage system will then issue a new Certificate and the previous certificate will be void.

Suspension or Nullification of the e-Mortgage System

Regulation No. 9/2019 states that the land mortgage registration process will be suspended if the e-Mortgage system is unable to issue Certificate due to a force majeure event.

Conclusion

As highlighted above, there are several potential issues that may arise due to the implementation of Regulation No. 9/2019. The implementing regulation would need to address these issues clearly.

As of now, the e-Mortgage platform and service is not yet available to the public. It remains unclear on when the e-Mortgage system will be fully operated and based on a verbal confirmation that we obtained from the Ministry, the e-Mortgage system is still in its initial stage of development, although they are hoping to begin operation at the earliest by the end of August or beginning of September.

While the Central Jakarta Land Office will be the first land office to provide the e-Mortgage system, an assumption may be made that the physical land mortgage system may be replaced in its entirety with the e-Mortgage system in the future once such system has been integrated nationally.

Contacts



Ibrahim Sjarief Assegaf
Partner

D +62 21 2555 7825

F +62 21 2555 7899

ibrahim.asegaf@ahp.id

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海 SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

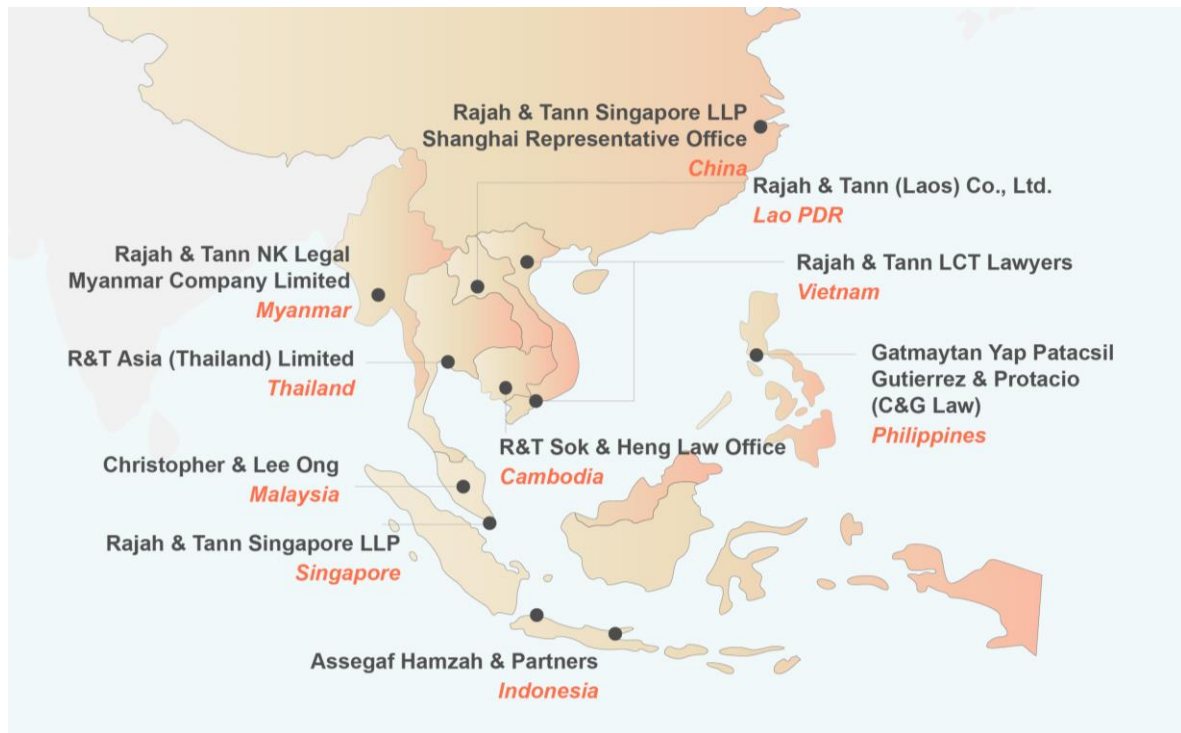
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

Our Regional Presence



Based in Indonesia, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Assegaf Hamzah & Partners and subject to copyright protection under the laws of Indonesia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Assegaf Hamzah & Partners.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Assegaf Hamzah & Partners.