

The Omnibus Law: What's Next for the Real Estate Market?



The sixth edition of "**Omnibus Law 2020: Overview Series**" will highlight changes in **real estate** sector. This alert is the first alert on real estate.

One of the sectors that receive a heavy overhaul under the Omnibus Law (Law No. 11 of 2020 on Job Creation) is the real estate sector, where the government intends to improve the ease of doing business. The Omnibus Law amends several stipulations among others in the Spatial Law, the Building Law, the Housing Law, and the Apartment Law, as well as introducing new standalone clauses that do not refer to any specific laws.

On top of the nomenclature changes on several licences, other key changes are the simplification of the licensing process, new obligations on building owner, and the introduction of a new party in the building process, such as a controller (*penilik*). The government also introduced a Housing Management Acceleration Agency (*Badan Percepatan Penyelenggaraan Perumahan*), assigned to manage funds converted from the developer's obligation to develop public housing or apartments.

Similar to other sectors, we expect that further details will be set in the implementing regulations to the Omnibus Law. For now, business actors should familiarise themselves with the new requirements to avoid falling into pitfalls in this sector.

Zoning Conformity Instead of Permits

Previously, business actors must obtain a spatial utilisation permit (e.g. *Izin Prinsip*, *Izin Lokasi* or *Izin Pemanfaatan Tanah*) before commencing their businesses. The process to obtain this permit not only varies from one region to another but is also often lengthy and complicated. Now, in an attempt to ease the licencing process, the Omnibus Law replaced the spatial utilisation permits with a document titled *Kesesuaian Kegiatan Pemanfaatan Ruang*, which seems to be a document that confirms whether the utilisation of the land conforms with the proposed activities ("**Confirmation**").

Here, we also see the shift of power from the local governments, who were previously authorised to issue the spatial utilisation permit, to the central government. The Confirmation will be issued via the Online Single Submission (“OSS”) system. As part of this shift, the Omnibus Law regulates that each local government will upload a detailed spatial plan (*Rencana Detail Tata Ruang*) in the OSS system. This means that businesses can conduct a self-assessment on whether their proposed business activities in the desired area conforms with the prescribed utilisation of the land. If it does, businesses can then move ahead with the licensing process (by obtaining either a Confirmation or an approval). If the government revises the spatial plan, businesses will need to obtain a recommendation from the central government before conducting the self-assessment.

However, not all local governments have a digital spatial plan. To date, less than 10% of cities or regencies in Indonesia have prepared a digital spatial plan. Conscious of the magnitude of the task imposed on local governments, the Omnibus Law allows a business to instead obtain an approval on the conformity of spatial utilisation or *Persetujuan Kegiatan Pemanfaatan Ruang* if the relevant city or regency has yet to prepare a digital spatial plan. But it is unclear whether the issuance of the approval will make the process more complicated, compared to the issuance of a Confirmation.

Simplifying Building Permitting Process with Building Approval

The Omnibus Law replaces the Building Construction Permit (*Izin Mendirikan Bangunan* or IMB) with the Building Approval (*Persetujuan Bangunan Gedung*). Like the Confirmation, the Building Approval, along with the application for a Certificate of Worthiness (*Sertifikat Laik Fungsi*), will now be issued via the OSS system. Administrative and technical requirements for the issuance of a Building Construction Permit are replaced with a set of technical standards to be regulated in the implementing regulations. Such technical standards will stipulate the classification of the building, as well as the applicable requirements. Given that the concept of building approval depends on self-assessment, this process will require heavy involvement from building professionals in determining the compliance of the building with the technical standards stipulated by the government.

The Omnibus Law also sets up an alternative to waive the process of consultation on the technical planning and examination if the building is constructed based on a prototype of the building as stipulated by the central government. This, however, would only apply to simple buildings (*bangunan sederhana*).

While the simplification in building permits seems promising, there may be a practical problem in its implementation given that the issuance of a Building Approval is not concurrent with the progress of the building’s construction (formerly known as a gradual Building Construction Permit or *IMB Bertahap*).

New Building Service Providers

Under the Omnibus Law, a building owner must appoint a group of building service providers, comprising of a planner (*Penyedia Jasa Perencana*), a manager (*Penyedia Jasa Pelaksana*), and a supervisor (*Penyedia Jasa Pengawas*) before starting construction. The supervisor will essentially be an extension of the government through the controller (*penilik*), responsible for inspecting each stage of the

construction. Further, the controller can determine when and whether the construction can proceed to the next stage of construction.

Various Amendments and New Agency under Housing Law and Apartment Law

The Omnibus Law retains the obligation of a developer to develop public housing or apartments. But a developer can now convert such obligation into cash. Once converted, the funds will be managed by the Housing Management Acceleration Agency (*Badan Percepatan Penyelenggaraan Perumahan*), a newly introduced agency whose function is to provide feasible and affordable public housing and apartment for the low-income community. Further details of this agency, including establishment, calculation of the conversion, and management, are not regulated under the Omnibus Law.

The Apartment Law (Law No. 20 of 2011) previously introduced the Implementing Agency (*Badan Pelaksana*), which on paper, has a similar purpose to the Housing Management Acceleration Agency. However, the government has yet to issue an implementing regulation to establish the Implementing Agency. As a result, it is likely that the Omnibus Law introduces the Housing Management Acceleration Agency to replace the Implementing Agency.

Furthermore, specific to the Apartment Law, the Omnibus Law takes out an obligation by the developer to prepare a division plan (*pertelaan*), showing the separation of each apartment unit and common areas, which must be ratified by the local government. But a developer is still obliged to present the ratified division plan to the potential purchasers during the execution of the conditional sale and purchase agreement of an apartment unit.

Foreigners Can Own Apartments

Another significant change under the Omnibus Law is permission for foreigners to own apartments under a Freehold Title Certificate for Apartment Unit (*Sertifikat Hak Milik atas Satuan Rumah Susun*), which may be built on top of a land under a Right to Build and a Right to Use.

Although this change is certainly welcomed, it conflicts with the current regime that allows a foreigner to only own apartments under a Right to Use Title for Apartment Unit. In addition, despite being promising for property developers, the Omnibus Law essentially limits foreign ownership only to apartments in the Special Economic Region, Free Trade and Port Zones, Industrial Area, and other economic area, which is not defined in the Omnibus Law.

The Omnibus Law also does not specify the type of permit that a foreigner must hold to be eligible to hold a Freehold Title for Apartment Units. While the existing law stresses the benefits that a foreigner must bring for Indonesia before being entitled to hold propriety rights, the Omnibus Law leaves the issue open; hence giving the possibility that foreigners holding a residence permit under Article 48(3) of the Immigration Law (Law No. 6 of 2011) and Article 2(2) of the Foreign Ownership of Residential House Regulation (Government Regulation No. 103 of 2015) can hold a Freehold Title of Apartment Units in Indonesia.

Allowing foreign ownership of a Freehold Title Certificate for Apartment Unit itself does not contradict the Agrarian Law (Law No. 5 of 1960) and the Apartment Law, as both laws are silent on foreign ownership of an apartment unit. However, from a legal perspective, allowing foreign ownership of an apartment unit built on top of land under a Right to Build is contrary to the existing foreign ownership rule under the Agrarian Law, which limits foreigners only to hold a Right to Use certificate over land. That being said, the permission of foreigners to hold a Freehold Title for Apartment Units would not be feasible unless a comprehensive and thorough complementing regulation is issued to clarify the existing uncertainties.

Sanctions

Lastly, the Omnibus Law amends several sanctions in the Spatial Law, the Building Law, the Housing Law, and the Apartment Law. Some involve the amendment of sanction, from administrative to criminal or vice versa, while others amend the elements of sanctions.

Specifically for the Building Law, the Omnibus Law introduced a prerequisite event in imposing a demolition order, which is the inconsistency of the building implementation with the technical plan (*rencana teknis*) under the Building Approval.

Key Takeaways

As detailed above, the changes introduced by the Omnibus Law to Indonesia's real estate regime are massive. But our view is that nothing in the Omnibus Law can be deemed as settled until the government issues the implementing regulations. While the public will undoubtedly welcome the new business-friendly and straightforward licensing regime, there are also plenty of uncertainties that need to be made clear in the complementing regulations.

For now, we advise businesses to use this time to familiarise themselves with the new norms and changes under the Omnibus Law, including to revisit and if necessary, amend business plans, to ensure that potential pitfalls are avoided, and proper mitigation plans are made.

The Indonesian government enacted Law No. 11 of 2020 on Job Creation on 2 November 2020. In anticipation of the questions that will arise, we are monitoring this evolving situation, with various teams currently examining the law to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find our alerts on the Omnibus Law [here](#).

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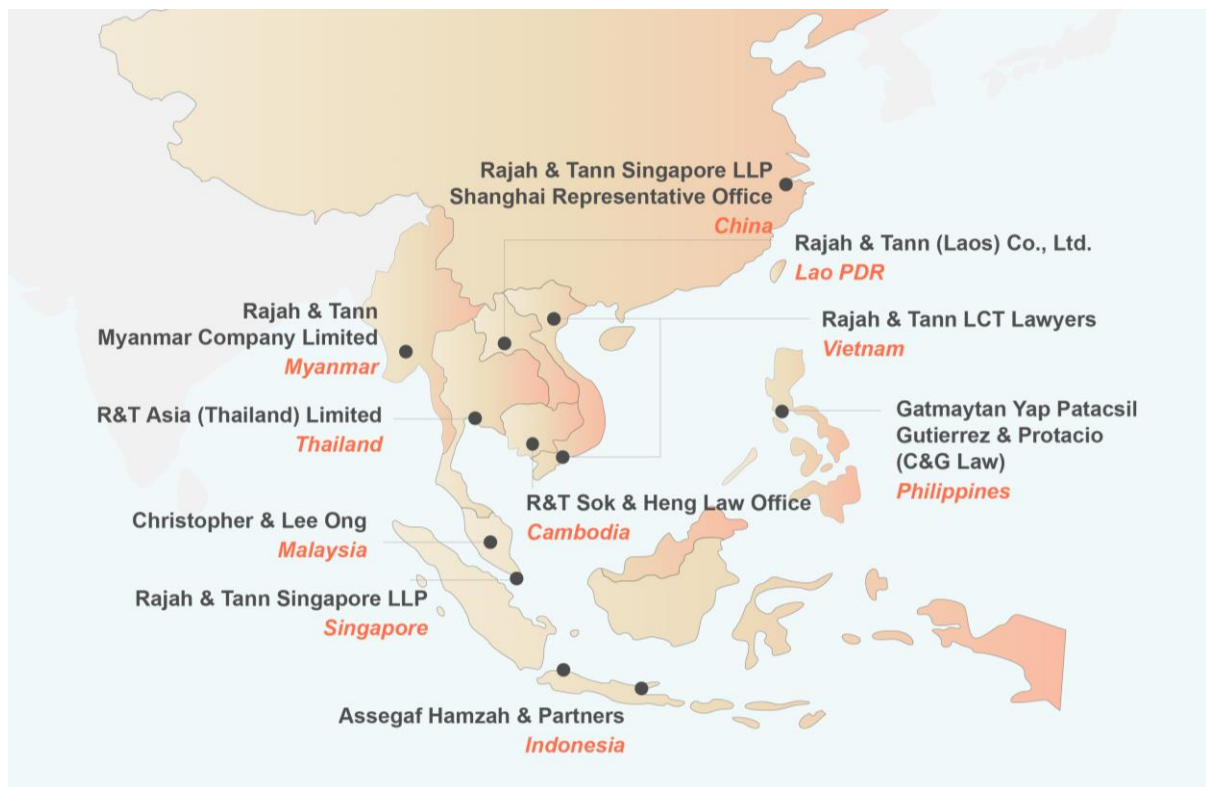
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