
New Regulation on Marketing and Sales of Property

The Minister of Public Works and Housing recently issued a new regulation (“**Regulation**”)¹, which regulates, among others, the marketing of property and execution of a preliminary sale and purchase agreement (*Perjanjian Pendahuluan Jual Beli* or “**PPJB**”)² between the potential buyer and the developer.

The Regulation repealed the two previous regulations on sale and purchase of apartments and houses,³ which are deemed by many to be ineffective in regulating sale and purchase of apartments and houses in Indonesia and balancing the interests of both the buyer and the developer.

Below we provide a summary of the key points in the Regulation.

Marketing

In line with the laws on housing and apartment, the Regulation allows a developer to start their marketing activities during the development (for houses) or prior to commencing the development (for apartments) of the property.

To start marketing, the developer must have obtained the following documents:

1. a spatial planning certificate from the regional government;
2. a land certificate under the name of the developer or its partner;
3. a main building permit or individual building permit; and
4. a guarantee for the development of the property from a bank or non-bank financial institution.

In addition, the developer must guarantee and provide explanation to prospective buyers on the evidence of ownership that will be issued to them (i.e. land or strata title).

A developer may circulate marketing information, either through print or electronic media. The minimum information that must be disclosed by the developer in the marketing information include details of the certificates and permits, company details of the developer, housing complex or apartment plan, specification and blueprint of the property, sale price, information on public infrastructure, facilities and utilities promised by the developer, and information on common space, facilities and areas in the apartments.

These requirements are certainly a departure from the previous rule, which allowed a developer to commence marketing simply by submitting a report regarding its intention to conduct marketing to the relevant regional government.

¹ Minister of Public Works and Housing Regulation No. 11/PRT/M/2019.

² A PPJB is an agreement in the form of a notarial deed between a developer and a prospective buyer that governs the sale and purchase of property (house or apartment) before the transaction is finalised in an AJB.

³ Minister Decree No. 11/KPTS/1994 and Minister Decree No. 09/KPTS/M/1995.

PPJB

A PPJB can only be prepared after the developer has fulfilled certain requirements, which include:

1. possession of land certificate, main building permit or individual building permit;
2. availability of public facilities (evidenced by the construction of roads and drainage at the minimum);
3. specifically for apartments, submission of an affidavit to the relevant regional government regarding availability of the land that is ready to be built, as well as the shared land upon which the apartment will be constructed; and
4. completion of at least 20% of the construction, as evidenced by a report from a consultant.

The Regulation also lists the matters that must be regulated in a PPJB, which include, among others, the price and payment methods, warranty from the developer on the validity of ownership and evidence of ownership, and provisions on cancellation and termination of the PPJB.⁴

With respect to the signing of the PPJB, the Regulation explicitly states that a PPJB must be signed before a public notary, and that a prospective buyer must be given at least seven days to review the draft PPJB.

Payment

During marketing

During the marketing phase, the developer can receive payment from prospective buyers. When accepting such payment, the developer must disclose the dates of commencement of the development, signing of PPJB and deed of sale and purchase (*akta jual beli* or “**AJB**”), and official handover of the property.

If the developer fails to meet any of the deadlines, then the prospective buyer may cancel the transaction and receive full refund from the developer. Interestingly, even if the failure is not caused by the developer, the developer is still required to refund any payment made by the prospective buyer minus 10% in addition to any tax payable of the developer. In both cases, the refund must be made within 30 calendar days after a cancellation letter is signed by the prospective buyer.

Failure to do so will subject the developer to a fine of 1 ‰ (one permille) per day of the refund amount.

Post-PPJB

The same refund mechanism applies to situation after the PPJB is executed. This means that if the transaction is cancelled due to the negligence of the developer, the buyer is entitled to receive full refund for any payments that have been made by it to the developer.

But, if the transaction is cancelled due to the negligence of the buyer, then the developer reserves the right to:

1. retain the full payment, if the buyer has already paid less than or equal to 10% of the transaction value; or
2. retain 10% of the payment, if the buyer has already paid more than 10% of the transaction value.

⁴ The full description of the content of a PPJB is provided in Appendix I of the Regulation.

Conclusion

Based on the above discussion, it is clear that prospective buyers will benefit from the significant protection under the Regulation, especially with regards to the refund mechanism. In addition, the clarification regarding the marketing of property will certainly be helpful for developers.

However, there are discrepancies and lack of clarity in the Regulation. First, the requirement that a PPJB must be signed before a notary is not in line with the law on housing, which provides that signing before a notary is optional. This means that potentially, any PPJB that is not signed before a notary after enactment of the Regulation may be considered as invalid. Second and perhaps one of the pitfalls is that the Regulation does not specify what actions would be considered as negligence of the developer, despite giving extensive right to the buyer to cancel a transaction and be entitled to refund as a result of the developer's negligence.

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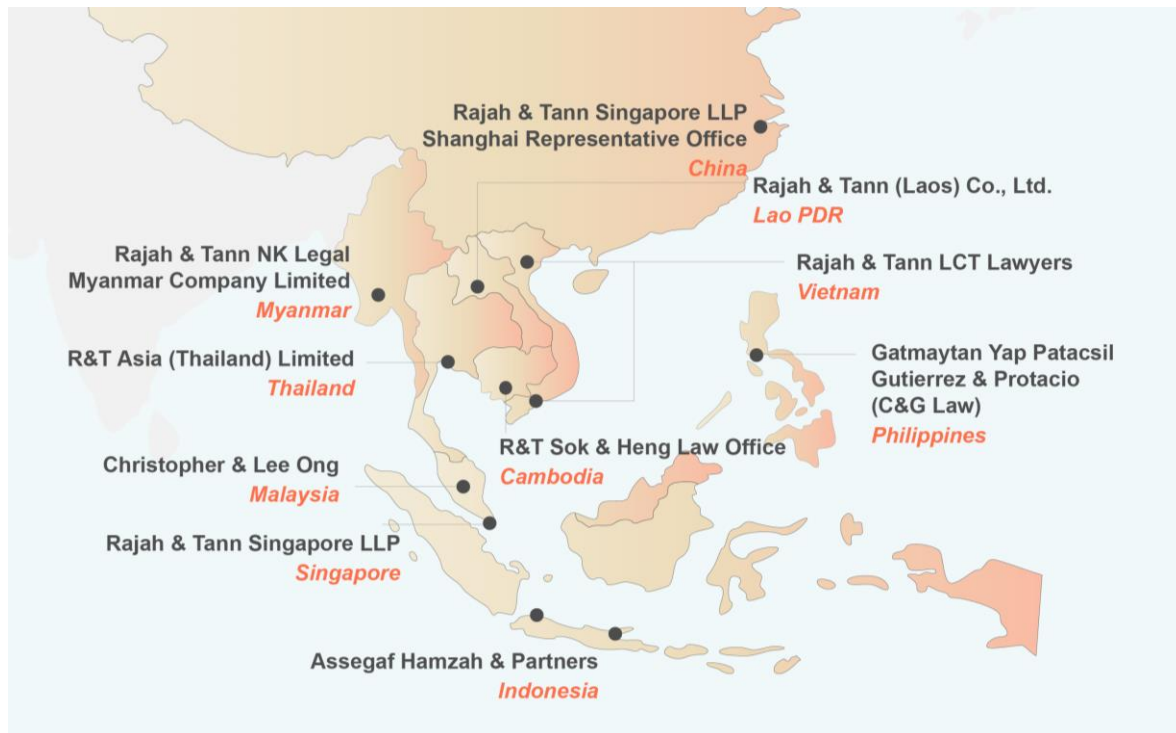
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