

New Minister of Land Affairs' Rules Extends Land Rights' Validity



Approximately two weeks after issuing a circular letter on limiting physical services, the Ministry of Land Affairs (*Kementerian ATR-BPN*) issues a decree (No. 88.1/SK-HR.01/IV/2020) to relax the validity period of certain land rights. This relaxation is granted to accommodate the heavy limitation imposed by land offices on physical attendance of both officials and applicants, which has created significant interruption in the provision of services by land offices.

Under the decree, the following land rights that will or have expired on 31 March 2020 will remain valid until 31 December 2020:

1. right to build (*hak guna bangunan*);
2. right to use (*hak pakai*); and
3. right to cultivate (*hak guna usaha*).

The decree also relaxes the registration of decrees within the Ministry's jurisdiction, including decrees on approval of land title, decrees on extension, or renewal of land title, provided that such decrees have been registered by 31 March 2020. But if the applicant does not apply for an extension or renewal of land title, or register the decree before 31 December 2020, the relevant land right will expire or be cancelled, respectively.

The details for the decree are provided under Circular Letter No. 7/SE-100.HR.01/IV/2020, This circular letter also relaxes the documentation requirement for a transfer of right over land, from previously requiring a validated evidence of tax payment (either income tax (*pajak penghasilan* or "**PPH**") or duties on the acquisition of title on land and building (*bea perolehan hak atas tanah dan/atau bangunan* or "**BPHTB**")), to only requiring a statement letter and proof of payment.

Potentially Problematic

Although the Directorate General of Tax (“DGT”) already enacted Regulation No. PER-21/PJ/2019 for the online validation process, it does not mean that the validation process will be expeditious. In fact, DGT still allows for a manual submission in case of a failure with the online submission. However, the DGT’s policy alone of restricting physical attendance may also cause a delay in validating PPh and BPHTB.

In addition, clients need to note that while the registration of land is not halted, the land in question cannot be transferred or secured for a loan or mortgaged until the payment validation is submitted to the relevant land office.

Conclusion

From an administrative process perspective, the relaxation on the validity period of the land rights might be a solution for the time being. However, from an administrative law perspective, it leaves an open question on how the enforcement of the relaxation will be implemented as it may conflict with the Agrarian Law and relevant government regulations. Could the decree and the circular letter stand as a legitimate waiver of certain provisions under these higher laws and regulations that specifically govern the strict validity period of the land titles?

Further, while no one will argue that the Ministry’s initiative could solve the current issues on time constraint in relation to the registration of existing land titles or decrees, from a practical point of view, one may question how this initiative will turn out towards the end of the year. Given the deadline, we hope that the Ministry and land offices will be prepared to handle a heavy load of applications and land services that will be submitted once the Massive Social Restriction (*Pembatasan Sosial Berskala Besar* or PSBB) is lifted.

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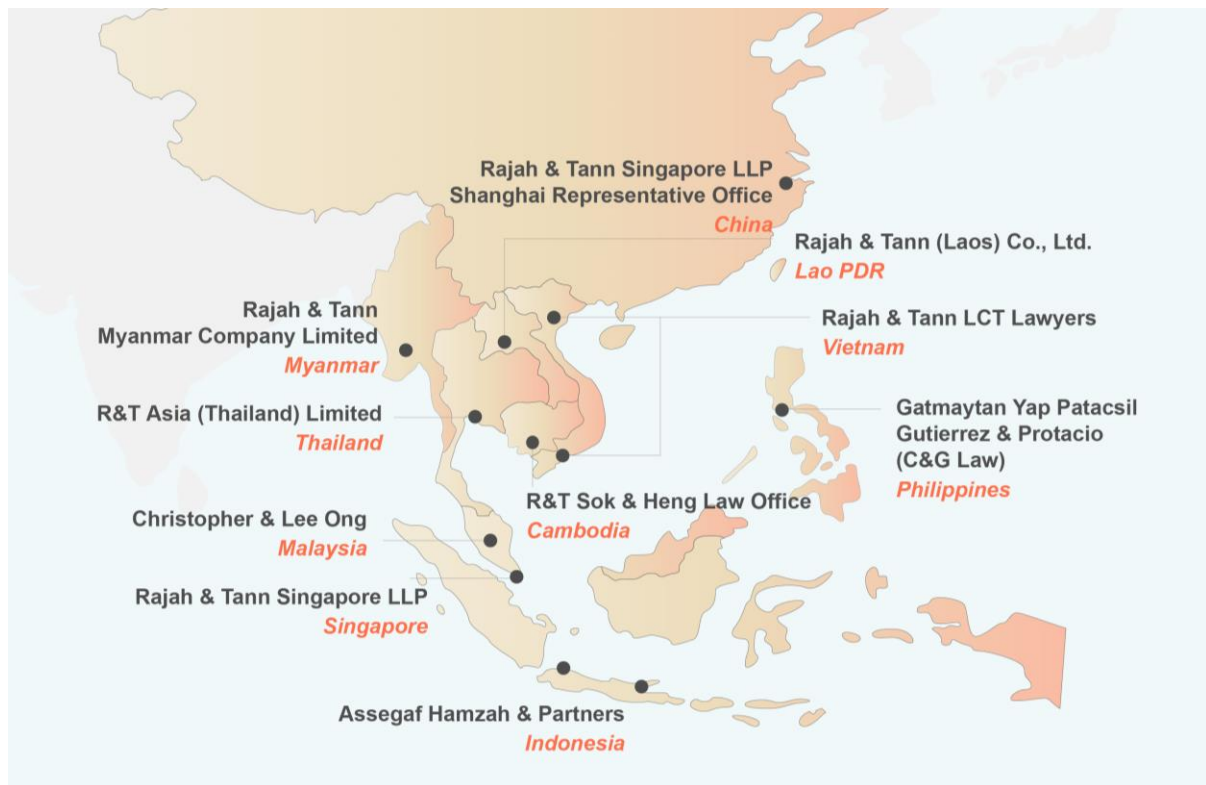
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