

26 December 2013

Leks Newsletter



## The Firm

Leks&Co is a multi-services law firm, full of young, dynamic, and intelligent lawyers, operating at a definite quality management system, rendering preeminent and world-class legal services under a specified quality code and core values.

## Our Uniqueness

1. We are young, energetic, and creative lawyers, so that we can provide and deliver a fast and reliable legal service;
2. We emphasize the use of technology in delivering our service;
3. Leks&Co's quality management system is ISO 9001:2008 certified;
4. We emphasize our core values in providing and delivering our service;
5. Our office is strategically located at CBD area;
6. We have received numerous award from Global Law Expert, Corporate INTL and Finance Monthly;



Dear {FIRST\_NAME},

This is the Leks Newsletter of December 2013. On this issue, you will see legal update and our blogs update. We hope that our newsletter is useful for you.

## Leks News

**Eddy Leks, founder of Leks&Co, gives lectures on “Hukum Pertanahan dan Properti” to Participants of Indonesian Property Watch in Internet Plaza, Gedung Pos Ibukota, Jakarta**



- Finance Monthly,
7. We provide services to store client's legal document in the online server, accessible by our client password protected;
  8. We provide useful legal update knowledge through Blogs, Twitter, Facebook, Slide Shares, and other resources;
  9. We provide pro bono service for churches and social organizations, and international organizations through Trust Law Connect, run by Thomson Reuters Foundation and also through Mitra Klinik, group of pro bono providers at Hukumonline, leading legal news and education site in Indonesia;
  10. We provide one (1) hour free consultation and free trial for retainer services within two (2) weeks;
  11. We provide premium service with a cost efficient approach;
  12. We are the International Partner of China-ASEAN Legal Cooperation Center;
  13. We are member of (i) Eurojuris International, a leading worldwide network of law firms and (ii) International Chambers of Commerce.

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**International  
Certification**



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**Recommended by ICFM (Intercontinental Finance Magazine) as 2014 Top 250 Leading Firm Award Winner**



Leks&Co is recommended by ICFM (Intercontinental Finance Magazine) as 2014 Top 250 Leading Firm Award Winner. We would like to thank all of our clients and colleagues for the opportunity that you have given us to serve you.

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**A Legal Column by Eddy Leks, titled “Quo Vadis Peraturan Pelaksanaan Undang-undang Rumah Susun? Part 3”, published in Property & Bank magazine, December edition.**

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Leks&Co is certified of ISO 9001:2008 on Quality Management



**International  
Network**



**Awards and  
Accolades**



Eddy Leks wrote a legal column titled “Quo Vadis Peraturan Pelaksanaan Undang-undang Rumah Susun”. The column is published in Property&Bank magazine, 099/2013/Tahun VIII, at page 32-34.

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## Leks Blog Update

### **Temporary Suspension of a Member of the Board Of Directors by the Board of Commissioners**



There are 3 (three) organs present in a limited liability company (“PT”), which are the general meeting of shareholders (“GMS”), the Board of Directors (“BoD”) and the Board of Commissioners (“BoA”). All three organs work together in accordance with their own respective powers. However, in practice sometimes these organs experience problems in performing their duties. The BoD as an organ which runs the day to day management of the business is prone to make mistakes and/or doing their job improperly. When that happens, what can the other organs do to prevent this from continuing? The quickest solution in the best interest of the PT is for the BoC to temporarily suspend the respective member of the BoD. This is regulated under Law Number 40 year 2007 on the Limited

HIGHLY RECOMMENDED



Liability Company (“UUPT”)

### **Suspension from Duties**

The temporary suspension of a member of the BoD can be executed by the BoC after stating the reasons for suspension and notifying the member of that BoD in writing. The consequence of this temporary suspension, is the particular member of the BoD is no longer authorized to do his job in Article 92 paragraph (1) and Article 98 paragraph (1) UUPT. These provisions state:

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### **Function of the Executing Agency in the Development of a Condominium Based On Law Number 20 of 2011**

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After Law Number 20 of 2011 on Condominiums (“Condominium Law”) came into force, there were quite a few changes compared to the previous



regulations concerning condominiums. One of the new provisions regulated in the Condominium Law is an Executing Agency. The provisions concerning the Executing Agency are Article 72 and 73 of Condominium Law. What is the Executing Agency? That will be discussed in this article.

### **Definition of the Executing Agency**

In the Condominium Law it is not stated what the definition of the Executing Agency is. However in Article 72 of the Condominium Law in effectuating condominiums that are decent and affordable for people with low income, the government assigns or establishes an Executing Agency.

### **The Purpose and Function of Forming the Executing Agency**

According to the Condominium Law, the assignment or establishment of an Executing Agency has the aim to:

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## **The Appointment of a Land Use Permit (“SIPPT”) in the DKI Jakarta Region**

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The current growth of project development is reflected in the increasing need for land to support the project development activities, especially in the region of DKI Jakarta as the capital city of Indonesia where project development is the biggest. However, there are various constraints regarding project development activity due to poor registration of land ownership and control which is a main tool for project development. Efforts of law enforcement have been disorderly which often result in unavoidable disputes over land that result in the delay of project development in both private and public sector conducted by the government of DKI Jakarta. Therefore, the government of DKI Jakarta must take controlling and surveillance measures dealing with the ownership of and control over the limited land in the DKI Jakarta region still remaining.

To solve this problem, provisions and regulations on the appointment and use of land are needed. This was realized by the government of DKI Jakarta with a regulation on issuing a SIPPT. In Article 1 number 12 of Governor of DKI Jakarta Province Decree Number 41 of 2001 on the Procedure of Acceptance of SIPPT Holder Obligation to the Provincial Government of DKI Jakarta (“Governor Decree No. 41/2001”), SIPPT is defined as the land use designation permit which is granted to the developers in order to develop an area.

### **Procedure of SIPPT Procurement in DKI Jakarta for Private Parties**

The first paragraph addressed that project development activities are not only conducted by the government of DKI

Jakarta in the public interest, but parties in the private sector also participate in project development in the DKI Jakarta region. Governor Decree No. 41/2001 stipulates that a party from the private sector can be a SIPPT holder. Article 1 number 14 Governor Decree No. 41/2001 states that an SIPPT holder can be; an agency, a property company, a developer, a foundation and/or an individual who obtains the SIPPT from the DKI Jakarta government to build housing, offices or other physical and commercial structures or the application for right of land in the DKI Jakarta region.

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## **Legal Aspects of Principle Approval on Location/Land Exemption ( “SP3L”) in DKI Jakarta Province Region for Development and Investment Activities**

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### **Legal Basis Regulating SP3L stipulated by the Government of DKI Jakarta Province**

The realization of city physical development plan, part of the General Spatial Plan and Urban Region Section Plan determined by the Government of DKI Jakarta Province, affects the



rapid progress of physical development and growth of the investment climate, especially in the region of DKI Jakarta Province. Therefore, improvement of regulations must regulate exemption or purchase of the limited land available in the region of DKI Jakarta Province to prevent any potential disputes which can be a limiting factor for the continuance of development activity. In response, the Government of DKI Jakarta Province has set rules regarding controlling and monitoring activities on the exemption or purchase of land by setting the rules for granting SP3L as referred to in Article 1 letter (i) Governor of DKI Jakarta Decree Number 138 of 1998 on Procedures for Application and Principle Approval of Location/Land Exemption for Foreign Investment Companies and Domestic

Investment Companies in DKI Jakarta (“**Governor Decree No. 138/1998**”) and Governor of DKI Jakarta Decree Number 540 of 1990 on Implementation Guidance regarding the Granting of a Principle Approval for Location/Land Exemption for City Physical Development in DKI Jakarta (“**Governor Decree No. 540/1990**”), replacing the previous provisions stipulated in Governor of DKI Jakarta Decree Number Da.11/3/11/1972 on the Improvement of Exempt Permit Application Procedures and Appointment/Land Use and Land Acquisition Procedures and Objects Above It for the Official or Private Interest in the Region of DKI Jakarta (“**Governor Decree No. 11/1972**”).

### **Procedure and Requirements regarding SP3L Procurement for Applicants**

Under Article 1 of Governor Decree Number 640 of 1992 on the Provisions of the Location/Land Exemption Without Permission from the Governor of DKI Jakarta (“**Governor Decree No. 640/1992**”), the requirements for obtaining SP3L from the Governor of DKI Jakarta Province for a location or area covering over 5.000 m<sup>2</sup> and/or less than 5,000 m<sup>2</sup> which on the lane of protocol road by a legal entity or individual. Implementing necessary land exemption for the investment is conducted on the basis of consensus and based on a consensus agreement as stipulated in Article 2 Governor Decree No. 138/1998. The requirements to obtain SP3L set out in Part Two Governor Decree No. 540/1990 explain that the land acquisition to obtain SP3L must first meet the following requirements:

1. Applicant must be incorporated as a limited liability company, a limited partnership, a state or local-owned enterprise company in any form, a partnership, a firm, a joint venture, an association, a co-operation, a foundation, an institution or a permanent establishment;
2. The application must be submitted in writing by filling the provided form to the City Planning Office cq. The Land Agency Secretariat of Land Affairs of DKI Jakarta;
3. The application shall be joined by a project proposal or design which comprise:



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