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Real Estate 2022

Singapore: Law & Practice
and
Trends & Developments

Jay Epstein, John Sullivan and Matt Alshouse
DLA Piper LLP

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SINGAPORE

Law and Practice

Contributed by:

Dorothy Marie Ng, Monica Yip,
Tan Kay Kheng and Tay Peng Cheng
WongPartnership LLP see p.22



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1. GENERAL

1.1 Main Sources of Law

The Singapore legal system is based on the English common law system.

Singapore land law falls under two systems:

- the Registration of Deeds Act, where lands are typically known as “unregistered land”; and
- the Land Titles Act or the Land Titles (Strata) Act, where lands are registered and known as “registered land”.

The system of land registration for registered land is adopted from the Torrens system of land registration.

There is legislation governing areas specific to real estate, such as permitted use (the Planning Act), development and construction (the Building and Construction Act), management of strata units in flats and buildings (the Building Maintenance and Strata Management Act) and taxes relating to transactions involving real estate (the Stamp Duties Act).

1.2 Main Market Trends and Deals

In the second year of the COVID-19 pandemic, there was a significant increase in sales of private and public homes, and in sale prices, particularly for landed properties. The increase in prices resulted in the government introducing new measures in mid-December 2021 aimed at cooling the residential real estate market. The measures included higher rates of stamp duty for property purchases and tighter limits on loans.

Commercial real estate investment also saw a comeback in 2021, with two thirds of investment being in the office and retail sectors. This was largely driven by overseas capital. Investments in the industrial sector gave rise to mod-

est growth, with interest in acquisitions of new economy real estate such as warehouses for logistics use, business parks and data centres.

Notable transactions include the following:

- the sale of office building One George Street for over SGD1 billion;
- the acquisition by A-REIT of a significant stake in the Galaxis office building in the One North business park;
- the proposed privatisation and sale of the non-media business of the listed Singapore Press Holdings Limited with the deal valued at over SGD3.4 billion; and
- the SGD650 million collective sale of an old shopping complex with adjoining apartment complex at Peace Centre and Peace Mansion.

1.3 Impact of Disruptive Technologies

Apart from instruments and deeds registered or to be registered under the Land Titles Act, the Land Titles (Strata) Act and the Registration of Deeds Act, there is currently no explicit legislation in Singapore governing the use of digital instruments or “tokens” to transact real estate generally. Some “proptech” companies have used or offered blockchain platforms that enable investors to tap into funding for real estate, mainly for the purpose of raising funds or projects outside of Singapore.

In September 2021, the Singapore Land Authority (SLA) launched a 3D version of its OneMap, called OneMap3D, which is its national map of Singapore. The application provides geospatial solutions to the user, be it the government, businesses or members of the public. With anticipation of steady growth in the geospatial market, it was launched to further facilitate use of the original OneMap by the real estate industry and other businesses (such as logistics and robotics companies).

1.4 Proposals for Reform

In March 2022, the Urban Redevelopment Authority introduced a new restriction on strata subdivision of commercial properties or mixed-use developments with a commercial component in certain areas within the Central Area of Singapore. Given the challenges in properly maintaining and upgrading old developments held by multiple owners of different strata units, the prohibition against separate ownership of parts of commercial developments will result in a single owner for a non-strata subdivided commercial development, thereby ensuring consistent upkeep. Furthermore, the single owner-landlord would be in a better position to ensure an optimal mix of tenants in a retail-use building. Such restriction may reduce investment interest in a new development or redevelopment of old buildings within the designated areas, as investors will have one less option to exit such investment (by way of the sale of separate strata units). However, as the prohibition applies predominantly to prime designated areas within the Central Area, the restriction is not expected to significantly dampen investor interest in such areas.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

Legal and equitable interests may be created in respect of property rights. Legal interests in relation to real estate include an estate in fee simple, a statutory land grant and a leasehold estate. Equitable interests include interests derived under an agreement in relation to land (eg, a purchaser's rights under an agreement for sale and purchase or a lessee's rights under an agreement for lease).

2.2 Laws Applicable to Transfer of Title

For the transfer of title of registered land, the transaction must be effected in a form pre-

scribed under the Land Titles Act and registered with the Land Registry.

Under the Residential Property Act (RPA), there are restrictions on foreign ownership of vacant land or landed residential property. Except for landed homes in Sentosa Cove (situated on Sentosa Island), where ownership by foreigners (who are not Singapore permanent residents) is generally allowed with approval, any purchase of landed residential property by a person who is not a Singapore citizen (but who is a Singapore permanent citizen) is subject to the approval of the government. Subject to certain rules and conditions, foreign developers may acquire landed residential property to develop for sale. There is generally no law against a foreigner purchasing Singapore commercial property.

2.3 Effecting Lawful and Proper Transfer of Title

As mentioned in **2.2 Laws Applicable to Transfer of Title**, transfers of title to registered land are effected by way of the registration of transfer instruments with the Land Registry. All transfers of registered land are recorded in the Land Register administered by the Registrar of Titles. Title insurance is not common in Singapore, although it has recently been relied on in a few transactions.

Although safe management measures are in place arising from the COVID-19 pandemic, there were no prohibitions against physical meetings in 2021. Accordingly, the completion of documentation and the closing of real estate transactions were not hampered.

2.4 Real Estate Due Diligence

Buyers usually carry out title searches, which can be conducted online. Where the land is unregistered, title must be deduced by inspection of the title documents. Buyers of large buildings will typically carry out a building audit and

a technical inspection of the real estate (either internally or by the appointment of consultants) to ascertain the state, condition and structural soundness of the buildings, and encroachment surveys on the land. For industrial land, it is not uncommon for the buyer to carry out (or in some cases, require the seller to carry out) an environmental study to determine whether there are any environmental contaminants on the land.

Buyers also carry out legal requisition searches with various government agencies and statutory bodies, which may reveal matters that affect the real estate (eg, notices of government action against the property, roads, drainage lines, reserves, railway lines or schemes, zoning and approved use).

Buyers will usually review sellers' documents relating to, inter alia, title, tenancy information (if applicable), services contracts and building warranties.

Social distancing and crowd limit restrictions imposed on traditional showroom launches and physical viewings of residential properties as a result of the COVID-19 pandemic accelerated efforts to adopt and develop virtual showrooms and viewings, with several sales actually made solely through virtual viewings.

2.5 Typical Representations and Warranties

There is no legislation specifically requiring the provision of seller's warranties. Real estate is traditionally sold on an "as-is-where-is" basis – ie, the seller does not generally provide any representations or warranties regarding the real estate.

Where properties are large or transactions are complex, buyers will negotiate with sellers to provide warranties. The scope and extent of the warranties will depend largely on the bargaining

power of the sellers and buyers. Typical seller warranties include the following:

- there being no outstanding notices from government agencies;
- related contracts being valid, binding and enforceable; and
- there being no breach of approved use.

The continuance of the COVID-19 pandemic did not result in any significant insistence by parties for new representations and warranties in transactions.

If there is a breach of a warranty, the buyer's remedies will be governed by the negotiated agreement between seller and buyer.

Representation and warranty insurances have been used in some transactions, but have not yet found favour with many parties given the premiums to be incurred.

2.6 Important Areas of Law for Investors

An investor in real estate should consider the laws governing the ownership of real estate (eg, prohibitions against foreigners purchasing "residential property" as defined under the RPA and terms and conditions that may be imposed where the approval of the state or a statutory board is required for a purchase and subsequent sale), the laws governing the usage (or proposed usage) of the real estate and zoning requirements.

As a significant portion of land ownership in Singapore is derived under leases from the state or statutory boards, it is important to consider specific restrictions imposed under the terms of the relevant lease (eg, prevailing policy with respect to subletting caps and rights of first refusal granted to the lessor in the case of a subsequent sale). In addition, where an investor

intends to purchase land for development, laws and regulations relating to rights of development and terms and conditions imposed on approvals granted for development should be considered. Taxation laws (eg, stamp duties imposed on purchases as well as subsequent sale and property tax) should also be taken into account.

2.7 Soil Pollution or Environmental Contamination

An owner or occupier will generally be liable for any pollution. Accordingly, a buyer will become responsible once they become the owner, even if they did not cause the pollution or contamination.

While the Environmental Protection and Management Act distinguishes between an owner and an occupier (including a lessee), in most circumstances both are liable in the event of pollution. There are also statutory presumptions, where, in the case of a discharge of toxic substances or hazardous substances into water, it is presumed that the occupier is at fault.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

A buyer can submit legal requisitions to the Urban Redevelopment Authority (URA), and the replies will indicate the prevailing master plan zoning of the land and the approved use.

Prior to the development of land, a developer must submit applications to the URA for planning approval. A buyer or developer may submit an outline application before making plans for the redevelopment of land. The outline application is a broad proposal to test the allowable land use, plot ratio, building height and building form on a development site.

2.9 Condemnation, Expropriation or Compulsory Purchase

The Land Acquisition Act allows the State to acquire land compulsorily where it is needed:

- for any public purposes;
- by any person, corporation or statutory board for any work or an undertaking that, in the opinion of the Minister for Law, is of public benefit or public utility, or is in the public interest; or
- for any residential, commercial or industrial purposes.

The acquisition process will commence with the publication of a notice of intended acquisition in the Government Gazette, after which the Collector of Land Revenue will cause a notice to be published in major newspapers, and notices will be sent to persons interested in the real estate. Thereafter, the Collector of Land Revenue will, inter alia, ascertain the persons interested in the real estate and their rights thereto, and make an award of compensation, which must take into account the market value of the real estate compulsorily acquired.

The Collector of Land Revenue may then acquire or take possession of the real estate, upon making the award of compensation, by posting an appropriate notice.

Other than the Land Acquisition Act, legislation such as the Street Works Act and the Sewerage and Drainage Act empower statutory boards to enter private lands and take possession of or vest lands or part thereof for public purposes. Aggrieved owners may submit appeals according to the process set out in the relevant legislation.

2.10 Taxes Applicable to a Transaction

Buyer's Stamp Duty

In a property purchase, the buyer is obliged to pay buyer's stamp duty (BSD) based on the acquisition price or market value of the property (whichever is higher). Since 20 February 2018, BSD rates have differentiated between residential and non-residential properties, with the top marginal BSD rate for residential properties increasing to 4% and the BSD rates (of up to 3%) for non-residential properties remaining unchanged. For a mixed-use or mixed-zoning property, the BSD rates of up to 4% and 3% apply on residential and non-residential components respectively. The market value of residential and non-residential components can be determined by a professional valuer.

Additional Buyer's Stamp Duty

Depending on the profile of the buyer, an additional buyer's stamp duty (ABSD) of between 5% and 35% of the acquisition price or market value of the property (whichever is higher) is also payable for the purchase of residential property. In addition to the new ABSD rate for entities of 35%, which came into effect on 16 December 2021, housing developers are also subject to an additional non-remittable ABSD rate of 5%, but the rate of 35% may qualify for remission of ABSD for the acquisition of residential property for development and sale, subject to certain terms and conditions.

Seller's Stamp Duty

Seller's stamp duty (SSD) is payable by the seller for the disposal or sale of residential and industrial property if the property was sold within a period of up to three years after the acquisition thereof. Depending on the holding period of the property, the rate of SSD payable for the sale of industrial property ranges from 5% to 15% of the sale price or the market value of the property (whichever is higher), and the rate of SSD payable for the sale of residential property ranges

from 4% to 12% of the sale price or the market value (whichever is higher).

Licensed housing developers do not need to pay SSD when selling residential units that they have developed.

Where there is a transfer of shares, stamp duty – typically borne by the buyer – is payable on the actual price or net asset value of the shares, whichever is higher. The rate is 0.2%, or SGD0.2 for every SGD100 (or part thereof). Exemptions may apply in certain circumstances (eg, transfers between associated companies).

Additional Conveyance Duty

Where there is a transfer of equity interests in a property-holding entity (residential PHE) whose primary tangible assets, owned directly or indirectly, are residential properties in Singapore, additional conveyance duty (ACD) may be payable on the transfer.

The ACD regime applies to the acquisition and disposal of equity interests in a residential PHE by an entity that is considered a significant owner of the residential PHE, or that becomes one after the acquisition.

If applicable, ACD is imposed on both the buyer and the seller in a transaction. ACD for buyers can range up to 44% of the value of the equity interests transferred for transfer instruments executed on or after 16 December 2021. ACD is payable in addition to the prevailing stamp duty of 0.2% for the transfer of shares in companies mentioned earlier. ACD for sellers is 12% of the value of the equity interests transferred. Sellers are not exposed to ACD if the equity interests disposed have been held for more than three years.

The rates described above will similarly apply in the case of partial ownership transfers.

Goods and Services Tax

The sale of non-residential real estate is subject to goods and services tax (GST), currently at the rate of 7%. In its Budget 2022, the government announced that the rate of GST will increase to 8% from 1 January 2023 and to 9% from 1 January 2024. The sale and purchase of residential property is exempt from GST.

2.11 Legal Restrictions on Foreign Investors

As mentioned in **2.2 Laws Applicable to Transfer of Title**, the RPA sets out restrictions on foreign ownership of residential property in Singapore, but there are some exemptions. Non-Singaporeans and non-Singapore entities may acquire approved condominium units or flats. Subject to other rules, foreign developers may acquire residential property for the purpose of developing it for sale.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are traditionally financed by loans from banks and financial institutions. In light of tax incentives and the low-interest environment, in recent years purchasers have turned to corporate bond issuances. Notwithstanding interest generated by crowdfunding – and, in some cases, direct lending of debt funds, particularly to small and medium-sized enterprises – direct bank lending and corporate debt issuance remain the predominant sources of financing for large commercial acquisitions.

3.2 Typical Security Created by Commercial Investors

An investor (who is the borrower) will typically grant a mortgage on real estate to a lender or lenders.

Where separate title to real estate has been issued, an investor may provide security by way of a mortgage, which will be registered against the title in the land register.

Where separate title has not been issued, an investor may provide security by way of an assignment of rights under the relevant contract for sale (eg, a building agreement or a sale and purchase agreement in respect of real estate). The assignment of the contract will be executed together with a mortgage over real estate, which is executed in escrow and held by the lender until separate title to the real estate has been issued, when the mortgage is then registered.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

Generally, Singapore companies are not restricted from providing security over real estate to foreign lenders, or from making loan repayments to a foreign lender, and there are no exchange controls in Singapore. However, the title to some leasehold real estate may require the lenders or mortgagees to be financial institutions permitted under the laws of Singapore to lend to the borrower.

Financing in the context of the “lending of moneys” is a regulated activity subject to the jurisdiction of certain statutes. Express approval will have to be obtained if a foreign lender who is not licensed under the Banking Act or the Monetary Authority of Singapore Act engages in the lending of moneys.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Stamp duty is payable where security is created over real estate or shares, subject to a cap of SGD500. A registration fee is payable for the registration of the mortgage.

3.5 Legal Requirements before an Entity Can Give Valid Security

Under the Companies Act (CA), a public company or a company whose holding company or ultimate holding company is a public company is prohibited from directly or indirectly providing financial assistance in connection with the acquisition of shares in the company or shares in the holding company or ultimate holding company, including the provision of real estate assets as security.

With some exceptions, the CA also prohibits companies from giving security for loans, quasi-loans or credit transactions made to another company if the directors of the first company have a 20% interest or higher of the total number of equity shares in the latter company.

The CA requires a director to “at all times act honestly and use reasonable diligence in the discharge of the duties of his office.” The directors of a company have to ensure there is corporate benefit in providing any security over its real estate assets, particularly if the real estate assets are provided in a group-borrowing context. Any exercise of the directors’ power to grant security outside of the director’s fiduciary duties may be subject to challenge by the liquidator and other creditors.

Title documents may contain restrictions with respect to giving security over real estate.

3.6 Formalities when a Borrower Is in Default

Generally, security over real estate can be enforced upon default by a borrower through the following methods:

- the appointment of a receiver;
- obtaining possession of the real estate (eg, by court order or by consent) and subsequently exercising the power of sale; or

- foreclosure.

Where the exercise of power of sale is in respect of real estate held under a lease issued by the JTC Corporation, the real estate can only be sold subject to the JTC’s prior consent and in accordance with the terms imposed. Some real estate held under a lease from a statutory board prohibits the security holder from exercising its right of foreclosure if said security holder is owned by a foreign government.

In the case of registered land, the Land Titles Act confers priority according to the order in which security interests are registered.

Legislation promulgated in 2020 following the COVID-19 pandemic provided temporary relief against the enforcement of legal action for certain “scheduled contracts” entered into or renewed before 25 March 2020. However, such moratorium on enforcement action is no longer applicable.

3.7 Subordinating Existing Debt to Newly Created Debt

The usual methods of subordination are structural subordination and contractual subordination (ie, turnover subordination and subordination of rights of payment in the event of the debtor’s insolvency). The efficacy of subordination arrangements remains open to question in Singapore, although it is likely that these arrangements will be upheld as long as the general body of unsecured creditors is not prejudiced thereby.

3.8 Lenders’ Liability under Environmental Laws

While the Environmental Protection and Management Act (EPMA) distinguishes between an owner and an occupier (including a lessee), in most circumstances both are liable in the event of pollution. There are also statutory presumptions under the EPMA, such as the presump-

tion that the occupier is at fault where toxic substances or hazardous substances are discharged into water.

The definition of “occupier” under the EPMA is very broad and includes any “person in occupation of the premises or having the charge, management or control thereof.” It may include a mortgagee who has taken possession of the real estate.

3.9 Effects of a Borrower Becoming Insolvent

Under the CA, a company granting security over real estate will be required to file a statement containing the particulars of the charge created with the Accounting and Corporate Regulatory Authority, if the charge is created in Singapore, within 30 days of the creation of the security. If this requirement is not met, the security is void against a liquidator and any creditor of the company.

Liquidators and judicial managers have the power to apply to court to set aside pre-liquidation transactions that are deemed to be at an undervalue or that constitute an unfair preference. Under the Insolvency, Restructuring and Dissolution Act 2018, the claw-back period is three years for undervalue transactions and one year for transactions constituting an unfair preference, calculated backwards from the date of commencement of liquidation. Where an unfair preference was given to an associate of the company, the claw-back period extends to two years prior to the commencement of liquidation.

3.10 Consequences of LIBOR Index Expiry

The Sterling Over Night Index Average (SONIA) for sterling loans and the Secured Overnight Financing Rate (SOFR) for US dollar loans have been recommended as the replacement benchmarks for GBP LIBOR and USD LIBOR by the

Alternative Reference Rates Committee and the Working Group on Sterling Risk-Free Reference Rates of the Bank of England, respectively. The Monetary Authority of Singapore has also recommended the Singapore Overnight Rate Average (SORA) as a replacement for the Singapore Dollar Swap Offer Rate (SOR), which uses LIBOR in computation.

Fresh loan documentation to be entered into between a lender and a borrower will now typically document such replacement benchmarks from the outset, without any reliance on LIBOR rates.

As regards existing loan documentation that extends beyond 2021 maturity and relies on LIBOR rates, there has also been an uptake in amendment exercises being effected to document the switch from LIBOR-based interest rates to the aforementioned replacement benchmarks as market participants recognise that the alternative fall-back rates and market disruption regime in most existing loan documentation are only intended to address temporary issues in interest rate availability. From a borrower’s perspective, relying on the market disruption regime in the Loan Market Association (LMA) or Asia Pacific Loan Market Association (APLMA) type of loan documentation may expose borrowers to lenders’ individual cost of funds rather than resulting in an objective market benchmark.

In addition, even if loan documentation provides for the aforementioned replacement benchmark rates, parties may also wish to ensure that a replacement of benchmark rate clause is included to cater for any future cessation of that replacement benchmark rate (eg, SONIA, SOFR or SORA), and due consideration should be taken regarding the level of consent required to enact such a replacement.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The URA administers the Planning Act and its subsidiary legislation. The Planning Act regulates the development of land in Singapore according to a master plan, which is a statutory land use plan renewed every five years. Development and building works in Singapore require the planning permission of the URA, except for minor development and building works that are exempt from the requirement for planning permission.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

All building works require building plan approvals, except works (such as insignificant building works) that are exempt under the Building Control Act (BC Act).

The approval process for building works is an ongoing process involving engagement with the Building & Construction Authority (BCA) via a qualified person (QP) – either an architect registered under the Architects Act or a professional engineer registered under the Professional Engineers Act.

Requirements imposed will depend on the building works concerned and the building/area in which such works are to be carried out. The works should also fulfil the prime objective of safety, amenity and matters of public policy in general, as guided by the BC Act, its regulations and various codes. The BC Act also requires the licensing of builders, particularly those performing specialist works.

Approvals will also have to be obtained from other government authorities for compliance with

requirements such as height restrictions, access to and from public roads, discharge of waste, sewerage or surface water, and fire safety.

4.3 Regulatory Authorities

The URA regulates the use of developments, through the Planning Act and subsidiary legislation. There are allocated permissible uses for each property type. The BCA is the principal agency that regulates developments in Singapore, through approvals of building plans.

The development of a parcel of real estate will have to comply with various pieces of legislation and regulations on different aspects, such as development planning and control, building and structural safety, fire safety, environmental control, utilities (water, electricity and gas supply) and workplace safety and health.

4.4 Obtaining Entitlements to Develop a New Project

The development application typically commences with the owner/developer appointing a QP.

After the QP submits a development application to the URA for planning permission, the common types of planning permission that may be granted are provisional permission and grant of written permission. Permissions may be unconditional, or subject to such conditions as the URA deems fit, with reasons being given in writing. Conditions may include granting permission for a specified period and/or restrictions on the height, design, appearance or siting of buildings.

In addition, all building works require building plan approval, including the refurbishment of an existing building, except for those exempted under the BC Act.

There is no formal process for a third party (eg, a member of the public) to intervene in the plan-

ning permission process or the building plan approval process.

4.5 Right of Appeal against an Authority's Decision

Where the URA rejects an application for planning permission, an appeal to the Minister for National Development may be made within 60 days of the date of notification of the decision.

Where any application made for the approval of plans of any building works is refused, or is granted by the Commissioner of Building Control subject to terms and conditions, an aggrieved applicant may appeal to the Minister for National Development against the decision within 14 days of being served with notice of the decision.

4.6 Agreements with Local or Governmental Authorities

Generally, subject to obtaining the relevant permits/approvals, an owner/developer would be able to develop a project without any requirement to enter into additional agreements with the relevant authorities to facilitate the project. An owner/developer is at liberty to enter into a separate agreement with a utility supplier for the provision of utilities.

4.7 Enforcement of Restrictions on Development and Designated Use

In general, where there appears to be a breach of planning control, the relevant authority has the right to enter the real estate and to serve a notice on the owner or occupier requiring them, inter alia, to provide information relating to use of the real estate. Once a breach is ascertained, the relevant authority has the right to serve an enforcement notice, which may require, inter alia, the alteration, demolition or removal of any building or works. The possible penalties for non-compliance are fines and/or imprisonment.

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Investment in real estate assets can be made by individuals, companies, partnerships (including limited liability partnerships), business trusts or REITs.

Generally, limited liability companies are considered to be the entities that best protect owners (shareholders) from personal liability while retaining the right to control the operations. They also provide an alternative to a direct asset sale by way of sale of their shares.

5.2 Main Features of the Constitution of Each Type of Entity

There are no particular requirements to be included in the constitution of a company used to invest in real estate. The constitution of Singapore companies used to invest in real estate will generally have the capacity and authority to acquire and deal with real estate as express objects in their constitution.

5.3 Minimum Capital Requirement

There is no minimum capital required to set up a Singapore company. However, if a company intends to obtain a licence under the Housing Developers (Control and Licensing) Act, it has to comply with the minimum paid-up capital requirements.

5.4 Applicable Governance Requirements

A company will have a sole director or a board of directors. The company must have at least one director who is ordinarily resident in Singapore. The business of the company must be managed by the directors, or under their direction or supervision, and the directors may exercise all the powers of a company except any power that the CA or the constitution of the company

requires the company to exercise in a general meeting.

5.5 Annual Entity Maintenance and Accounting Compliance

Compliance costs will depend on the service provider(s) appointed.

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Other than ownership of real estate, arrangements for the occupation and use of real estate include leases and licences. The law also recognises easements that grant limited rights (eg, right of way) and “*profit à prendre*” (which allows the right holder to take or use something on the land, such as the cutting down and removal of timber).

6.2 Types of Commercial Leases

Commercial leases can generally be divided according to their use – eg, office, retail and industrial leases.

6.3 Regulation of Rents or Lease Terms

The terms of a lease (including rent) are freely negotiable between the parties. However, a set of guidelines, namely the Code of Conduct for Leasing of Retail Premises (Code of Conduct), has been proposed by the Fair Tenancy Pro Tem Committee (which comprises key representatives from landlord and tenant communities, industry experts and academia) to guide tenants and landlords of “qualifying retail premises” to ensure a fair and balanced position in negotiations of leases. The Code of Conduct applies to lease agreements that are entered into on or after 1 June 2021. It is currently not legally binding but the members of the Fair Tenancy Industry Committee (the custodian of the Code of Con-

duct) have committed to adopt and comply with the Code of Conduct, and have recommended to the government that compliance with the Code of Conduct be made mandatory through legislation.

A Rental Waiver Framework was introduced in 2021 as part of legislative relief measures in connection with the COVID-19 pandemic, to complement the rental support scheme. This was to ensure fair co-sharing of rental obligations over specified periods between the government, landlords and eligible tenants. In addition to direct cash pay-outs, support was provided to eligible tenants and owner-occupiers by requiring landlords to waive two weeks of rent. Notwithstanding this, some retailers found the support insufficient and were unable to sustain their businesses, thus resulting in the termination of their leases.

The government also introduced a framework allowing the renegotiation of qualifying leases or licences in the fourth quarter of 2020 (Re-Align Framework). Under the Re-Align Framework, parties to qualifying leases or licences could serve a notice of negotiation on other contractual parties between 15 January 2021 and 26 February 2021, to renegotiate the lease or licence. If the renegotiation was unsuccessful, the lease or licence was terminated pursuant to the terms of the Re-Align Framework. Given the limitations of the qualifying criteria, there was no significant rise in the termination of leases arising from this Framework.

6.4 Typical Terms of a Lease

There is no fixed duration for the length of a lease; it depends on the needs of the lessee and the agreement made between the lessor and lessee.

The tenant is typically responsible for the upkeep of the property and is required to maintain and

repair the real estate, preserving it in good condition. The tenant's failure to comply with this covenant will constitute a breach of a term of the lease, for which the landlord will be entitled to enter the premises to carry out necessary works and to recover the costs of so doing from the tenant.

Rent is typically payable monthly in advance.

Please refer to **6.3 Regulation of Rents or Lease Terms** regarding the Re-align Framework for renegotiations of qualifying leases or licences.

There was no significant change in lease terms issued by major landlords to deal with future pandemic events, construction build-out or supply chain issues. However, in some negotiated leases, parties may provide for longer time frames to cater for potential construction or supply chain delays.

6.5 Rent Variation

Whether the rent remains unchanged or is variable during the length of the lease term depends on the agreement between the lessor and lessee.

6.6 Determination of New Rent

The rent may be varied at a fixed rate or may be pegged to an index such as the consumer price index or the prevailing market rent. The exact mechanism is up to the parties to negotiate.

6.7 Payment of VAT

GST is payable on rent, except in the case of leases of residential properties, which are exempt from GST.

6.8 Costs Payable by a Tenant at the Start of a Lease

The tenant usually pays the stamp duty chargeable on the lease and a security deposit as secu-

rity against breach of terms of the lease. They may also be required to pay service charges or charges for the hire of furniture and fittings and the landlord's legal costs and/or administration fees.

6.9 Payment of Maintenance and Repair

Landlords are typically responsible for the costs of maintaining and repairing common areas shared by several tenants.

6.10 Payment of Utilities and Telecommunications

Tenants will arrange with and pay suppliers directly for the supply of utilities and telecommunications. If separate metering for utilities is not possible for the leased premises or if the landlord is purchasing electricity in bulk for the entire property, the landlord will arrange for the supply of utilities to the leased premises and apportion the charges for utilities to the tenants.

6.11 Insurance Issues

The tenant will bear the cost of insuring the real estate that is the subject of a lease. A landlord will usually require the tenant to take up the policy in the joint names of the landlord and the tenant.

A public liability insurance policy is typically required to be taken up to cover claims arising from personal injury, death or property damage or loss. A tenant may also be required to insure (i) all of their property at the leased premises against damage by fire and other risks, and (ii) all plate-glass windows and doors of the leased premises for the full insurable value.

There is no clear data on whether tenants have claimed or are successful in claims against business interruption policies arising from the government-imposed "circuit breaker" in 2020 where "non-essential" business premises were ordered to be closed for more than a month.

6.12 Restrictions on the Use of Real Estate

The Planning Act permits various uses for various premises. Accordingly, in a lease, a landlord will stipulate the permitted use and require a tenant not to use the premises other than for the permitted use or the use approved by law.

6.13 Tenant's Ability to Alter and Improve Real Estate

Upon entry into a new lease, the landlord will commonly allow the tenant to undertake fitting-out works during a prescribed fitting-out period, subject to compliance with conditions such as approval of plans for the fitting-out works. These conditions are sometimes set out in a handbook.

6.14 Specific Regulations

Specific regulations that apply to the different categories of real estate generally pertain to their uses. A landlord of a commercial real estate approved for one use class may only lease premises for that use class. Similarly, a light industrial building cannot be utilised for general industrial use without prior approval for such change of use.

The Rental Waiver Framework introduced as part of legislative relief measures in response to the COVID-19 pandemic came into force on 5 October 2021 and applied, subject to certain criteria, for the benefit of eligible small and medium-sized enterprises and specified non-profit organisations renting qualifying commercial properties.

6.15 Effect of the Tenant's Insolvency

If the tenant becomes insolvent, leases will generally provide that the landlord will be entitled to terminate the lease and exercise the right of re-entry to the premises. Leases will also provide that the landlord is entitled to use the security deposit and apply it towards unpaid rent and other outstanding obligations.

Under insolvency legislation, there are limitations to the landlord's possible remedies in the event of the insolvency of the tenant. If bankruptcy or compulsory liquidation proceedings have commenced, legal proceedings against the tenant will require leave of court. A landlord will have to file a claim with the official assignee or the liquidator for outstanding rents and monies owed under the lease. There may also be issues as to whether the landlord is entitled to use the security deposit, as the security deposit may be considered part of the tenant's assets to which all creditors are entitled.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

A landlord will collect a security deposit, payable by way of cash, banker's guarantee or both (and sometimes a parent-company guarantee), at the commencement of a lease to secure against non-performance or default on the part of the tenant with respect to its obligations under the lease.

6.17 Right to Occupy after Termination or Expiry of a Lease

If a tenant continues to occupy the real estate after the expiry or termination of a lease without the consent of the landlord, that would constitute a breach of the terms of the lease. Unless otherwise specified in the lease, a tenant remaining in the property after the termination of a lease will be chargeable with double rent (or double value). The landlord may also be entitled to claim for mesne profits.

To ensure the tenant vacates the leased premises on the date originally agreed, the landlord must clearly specify this in the lease; it must be expressed that the landlord does not consent to the tenant remaining in the property after the expiry or termination of the lease.

6.18 Right to Assign a Leasehold Interest

Leases in Singapore typically prohibit a tenant from assigning or sub-letting without the prior written consent of the landlord, which may be given subject to terms and conditions. Conditions imposed for consent may range from a fee or levy payable to increased rents or a requirement for the sharing of profits from the sub-let rents.

6.19 Right to Terminate a Lease

Whilst a tenant would typically have minimal or no right to terminate the lease, the landlord would be able to terminate the lease and exercise the right of re-entry if any of the following occurs:

- non-payment of rent or other sums payable under the lease;
- breach of any term or condition of the lease;
- compulsory land acquisition by the authorities;
- major damage and destruction of the building in which the leased premises are comprised;
- insolvency of the tenant; or
- a prolonged force majeure event.

6.20 Registration Requirements

A lease of land for a period exceeding seven years shall be void under Singapore law unless it is made by deed in the English language. There is no formal requirement for the registration of leases but a lease of registered land for a term exceeding seven years may be registered under the land registration system. A registration fee is payable by the party submitting the lease for registration.

6.21 Forced Eviction

A typical lease will provide for the landlord to determine the lease and exercise the right of re-entry in respect of the premises if any event of default on the part of the tenant occurs.

The Conveyancing and Law of Property Act (CLPA) governs the exercise of a landlord's right of forfeiture, including prescribing for notice requirements. Where the requirements are complied with, the landlord may then exercise its right of re-entry.

Re-entry is usually effected by issuance of a writ of possession (a process by which the landlord seeks from the court the right to serve an order requiring the tenant to leave the premises) but the landlord is entitled to effect peaceable re-entry and take possession of the property if the lease provides for it.

Upon the purported exercise by the landlord of a right to forfeit the lease, the tenant may apply to court for relief from forfeiture, pursuant to the CLPA. Specifically with regard to a situation where rent has not been paid, after the court has ordered the tenant to return possession to the landlord, the tenant has to pay the rent in arrears; if the tenant does so, the tenant may continue to hold on to the lease.

The total duration required before the landlord regains possession will depend largely on whether the statutory requirements have been complied with by the landlord, the complexity of the claim, whether the tenant seeks relief from the forfeiture and whether the tenant has paid outstanding rent prior to the landlord's possession.

6.22 Termination by a Third Party

As mentioned in **2.9 Condemnation, Expropriation or Compulsory Purchase**, land may be compulsorily acquired.

The length of the compulsory acquisition process will depend on the urgency with which the real estate is needed by the State or relevant agencies, and whether there are objections from the persons concerned.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

The two most common contractual models for pricing construction works are the “lump sum” contract and the “measurement” contract.

The lump sum contract is the most common form of construction contract and is used where the type and quantities of works are clearly defined. In this form of contract, the contractor is paid a lump-sum price for works described in the contract. Subject to the conditions, the lump-sum price may be subject to change, due to, for example, the addition or omission of works, extensions of time resulting in increased costs and expenses, and/or agreed fluctuations in prices of materials.

The measurement contract is used where the type and quantities of works are not clearly defined at the time a tender is called. In such a case, the contractor usually submits a schedule of rates (SOR) setting out the cost of each type of materials, parts and labour required for the works. Upon completion of the works, parties would carry out measurements, usually with the assistance of a quantity surveyor, to determine the types and quantities of materials, parts and labour incorporated into and expended for the works, and apply the rates stated in the SOR to determine the amount of payment due to the contractor.

7.2 Assigning Responsibility for the Design and Construction of a Project

Under the traditional contracting model, the employer, who is the owner of the project, will engage a third-party consultant (an architect in a building project, or an engineer in an engineering project) as the lead consultant responsible for the preparation and completion of the design. That lead consultant typically also oversees the

development of the project, together with other consultants engaged by the employer, and acts as the contract administrator or superintending officer for the main construction contract. The lead consultant would also undertake the role of an independent certifier to certify payment, assess claims by the contractor and certify the works done and, ultimately, the completion of the project, fairly and independently, notwithstanding having been appointed by the employer.

In such a model, the responsibility for design lies with the consultants; the contractor will only be responsible for the building works.

The employer will have direct contractual recourse to its directly appointed consultants for any deficiency in design and against the main contractor for any delay or defects in the building works that are not design-related. The main contractor is responsible for the building works and is typically liable for any delay or any other default under the terms of the main construction contract arising out of its works, even if such delay is caused by a subcontractor. There are specific instances where an employer may wish to have direct rights against a specialist subcontractor (eg, in relation to water-proofing works) or a supplier (eg, in relation to the supply of certain fixtures). This would require the specialist subcontractor or supplier to extend a warranty in relation to those specialist works or material to the employer.

Alternatively, it is increasingly common for employers to enter into a “design and build” contract where responsibility for design and construction lies solely with the main contractor. In this model, the employer provides a desired outcome and broad specifications for the project. As the single point of responsibility, the main contractor undertakes the obligations and risk of the design (through its employment of the relevant architects, engineers and con-

sultants) and the construction of the project. In this model, the employer typically does not have direct contractual recourse against the architect and engineers who are appointed by the main contractor, but would have recourse to the main contractor.

7.3 Management of Construction Risk

Contractors and specialist subcontractors are typically required to furnish undertakings and/or indemnities relating to specific works. Employers of large projects would commonly require a security deposit, in the form of a cash deposit or a performance bond. This provides the employer with some security in the event of non-performance by the contractor. Performance bonds typically secure about 5% to 10% of the value of the contract and are usually valid up to the expiry of the defects liability period.

It is also common for performance bonds to be drafted as “on demand” bonds, which would require the issuer of the performance bond to make payment to the beneficiary on demand, without enquiring into the beneficiary’s reasons for the demand. A restraint on payment under such bonds will only be allowed on limited grounds (eg, fraud or unconscionability), although unconscionability can be excluded as a ground for such restraint under the contract, or in the performance bond.

In some cases, employers may also require a parent company guarantee from the contractor. Under legislative measures passed in 2020 arising from the COVID-19 pandemic, parties to qualifying construction and supply contracts could, up to 28 February 2022, serve a notification for relief as prescribed under such legislation for, among other things, temporary relief against calls on performance bonds, where they had been unable to perform or had breached their contractual obligations. Such contractual

breaches or inability to perform must have been due to the COVID-19 situation.

Payment mechanisms in the building contract are usually designed to provide payment for works that have already been done, rather than in advance. A contract administrator is often tasked with certifying that the works have been done, whilst reserving the right to require any rectification of defects, or to dispute any such works that fall short of the employer’s requirements. Furthermore, the employer usually reserves rights to have access to and inspect the works, or to request the opening up of the works for inspection. The employer usually also incorporates a contractual right to require the main contractor to rectify defects in the works that might surface during a period of a year or 18 months from the date of completion (usually referred to as a maintenance period or defects liability period).

Typically, the employer would also have various contractual rights to terminate a construction contract in certain pre-agreed events (the bankruptcy of the contractor, failure to start works, failure to comply with material obligations under the contract, etc). The exercise of such rights is usually subject to strict compliance with the contractual provisions (eg, notice requirements and cure period).

Contractors are usually obliged to provide certification and warranties for certain types of works (eg, fire-rating certificates for doors, and water-proofing warranty to guarantee the watertightness of the roof and wet areas).

Insurance is also particularly crucial in building contracts for managing risks. The employer often requires contractors to procure contractors’ all-risks insurance, public liability insurance and other insurances as may be prudent, having regard to the work. Employers usually require

consultants to obtain professional indemnity insurance. Workers' compensation insurance is required to be taken out by all parties (including the employer and the contractor) by law under the Work Injury Compensation Act to compensate employees for any personal injury by accident.

7.4 Management of Schedule-Related Risk

Most building contracts will contain provisions allowing for extensions of time and providing for the payment of liquidated damages by the contractor in the event of delay in the completion of the project. Allowance for valid grounds for extensions of time is crucial to prevent time from being set at large, where, for example, a delay is caused by the employer.

A liquidated damages clause gives the employer a remedy of receiving an agreed sum, usually accrued on a daily basis, based on a genuine pre-estimate of the loss in the event that there is a delay in the completion of the project. Contractors may negotiate for a limitation of delay-related liability with the employer, or for the exclusion of certain liabilities (eg, indirect and consequential losses).

If it appears that there is going to be a delay in the works, the employer's first course of action would usually be a request for the contractor to expedite its works. Depending on the form of contract used, the employer may also request that the contract administrator issues an instruction or direction to the contractor setting out the delay and requiring that the works be expedited. The contractor will not be allowed to claim any additional losses or expenses arising from a delay if the delay is not excusable under any ground for an extension of time. A claim for acceleration costs might be viable if it can be shown that the employer had expressly or con-

structively issued an instruction or direction for accelerative measures to be undertaken.

Where it is stated that time is of the essence in completing the contract, the employer may rely on this as a ground for terminating the contract.

Under legislative measures passed in 2020 arising from the COVID-19 pandemic, the completion dates of qualifying construction contracts were automatically extended by up to 122 days, to address the severe impact of the various lockdown measures on construction progress and productivity. Employers are also required to co-share up to 50% of qualifying prolongation costs incurred by contractors due to delays arising out of COVID-19. Over and above the default reliefs (which are applicable to most construction contracts), parties to qualifying construction and supply contracts could, up to 28 February 2022, also serve a notification for relief as prescribed under the COVID-19 legislation for additional reliefs against certain prescribed legal action (including the imposition of liquidated damages) if they have been unable to perform or have breached their contractual obligations. Such contractual breaches or inability to perform must have been due to the COVID-19 situation. There are also additional ex gratia reliefs available for certain public sector projects, pursuant to circulars issued by the BCA.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

See **7.3 Management of Construction Risk**.

7.6 Liens or Encumbrances in the Event of Non-payment

The contractor has no right under general law to impose a lien or otherwise encumber an immovable property in the event of non-payment.

However, a contractor has the statutory right under the Building and Construction Industry

Security of Payment Act to a lien over unfixed goods supplied by the contractor that have not been paid for, if the contractor has obtained an adjudication determination in its favour under the Act and the amount determined thereunder has not been paid.

7.7 Requirements before Use or Inhabitation

Upon completion of the works in a building project and before occupation of the building is permitted, the QP has to apply to the BCA for a Temporary Occupation Permit (TOP) and subsequently for a Certificate of Statutory Completion. Upon the issuance of a TOP, the project can be inhabited.

8. TAX

8.1 VAT

Singapore currently imposes GST at the prevailing rate of 7% on all imports of goods and taxable supplies of goods and services made by a taxable person in the course or furtherance of carrying on a business. In its Budget 2022, the government announced that the GST rate will increase to 8% from 1 January 2023 and then to 9% from 1 January 2024. Advance notice of an increase to 9% by 2025 had been given in previous budgets as early as 2018.

A purchaser of non-residential real estate will be liable for payment of the GST unless the purchase is part of the transfer of a business as a going concern and the prescribed conditions for exemption are satisfied. Supplies of residential property are exempt from GST.

8.2 Mitigation of Tax Liability

Subject to the fulfilment of conditions, the remission of stamp duty is available at law in a number of circumstances (eg, reconstruction of certain companies and transfers between certain associated companies). Under Section 33A of the Stamp Duties Act, there is a general anti-avoidance rule that grants broad powers to the Commissioner of Stamp Duties to challenge any arrangement that reduces or avoids liability for stamp duty.

8.3 Municipal Taxes

Apart from GST and stamp duty, businesses owning immovable property are also subject to property tax at the rate of up to 10% on the annual value of the property.

8.4 Income Tax Withholding for Foreign Investors

Rental income is subject to income tax, which is payable by the landlord. The prevailing corporate tax rate is 17%. Where real estate is sold by a seller who is a property trader, gains are also subject to income tax. Where the seller is a property trader who is not resident in Singapore and whose operations are carried on outside Singapore, such gains are subject to withholding tax at 15% of the consideration, but the seller may file a tax return to claim a deduction for allowable expenses. Where a seller is not a property trader, the gains are not subject to tax as there is no capital gains tax in Singapore.

8.5 Tax Benefits

Expenses incurred solely for producing the rental income and during the period of tenancy may be claimed as tax deductions. Depreciation of furnishings (eg, furniture, fixtures and electrical appliances) is not claimable.

WongPartnership LLP is an award-winning law firm and one of the largest in the country, with offices in China and Myanmar. It has affiliate offices in Abu Dhabi, Dubai, Indonesia, Malaysia and the Philippines, through the member firms of the WPG regional law network, which offers the expertise of more than 400 professionals to meet clients' needs throughout the region. WongPartnership has one of the largest teams of real estate lawyers in the country, which has worked on a diverse range of deals throughout the region, across different real estate investment products. The firm's corporate real estate practice offers domain knowledge on acquisitions, divestments and financing arrangements, joint ventures, purposed build-to-suit projects, commercial leasing and small or extensive de-

velopment projects. The firm's expertise also covers structuring, preparing and negotiating leases and other documents on behalf of landlords and tenants; advising major developers, landlords and tenants across all asset classes; advising statutory boards, government bodies and charities on real estate issues; advising investors in the purchase and tenders of land from government and private or statutory bodies or units in collective sales; and acting for both lenders and borrowers in property-backed financing/refinancing transactions. Clients include high net worth individuals and families, major developers, foreign and local property funds, public listed and private real estate companies and funds, financiers, government-linked companies and statutory bodies.

AUTHORS



Dorothy Marie Ng is the head of the corporate real estate practice at WongPartnership. She has more than 30 years' experience across the full spectrum of real estate advice and transactions, including working on acquisitions, dispositions, leasings and (joint) developments of properties and property companies, funds, statutory boards, real estate investment trusts and real estate redevelopment. She also advises on the structuring of real estate and real estate-related transactions and the restructuring of property companies and entities, and on asset and estate planning. Dorothy is often involved in transactions crossing practice areas, such as those involving secured asset bilateral or syndicated loans, joint ventures, joint developments, asset and business acquisitions, asset restructuring, debt restructuring, project financing and

development financing and special leases. She has been a member of the Disciplinary Tribunal appointed by the Chief Justice under the Legal Profession Act since 1995 and a member of the Singapore Institute of Legal Education Compliance Committee since its inception in 2011; she is also an adjudicator for the Law Society's panel of Expedited Adjudication Scheme and serves as a member of the Valuation Review Board appointed by the Minister of Finance.



Monica Yip is the head of the corporate group and a partner in the corporate real estate practice at WongPartnership. Her main practice areas are property-related corporate

transactions and investment work, acquisitions, disposals, securitisations, the management and leasing of commercial, industrial and residential properties, property advisory work, property development and finance work, joint developments and government land sales. She has extensive experience in the real estate sector and regularly advises real estate investors, including corporates, individuals, societies, funds and real estate investment trusts. Monica is admitted to the Singapore Bar and has over 30 years of legal experience. She is a member of the Law Society of Singapore and the Singapore Academy of Law, and is also a Commissioner for Oaths, a Notary Public and a member of the Accreditation Committee (Accreditation Panel), Continuing Professional Development Scheme of the Singapore Institute of Legal Education.



Tan Kay Kheng heads the tax practice at WongPartnership and is also a partner in the litigation and dispute resolution group. In the field of revenue law, his practice encompasses

both contentious and advisory/transactional work relating to income tax, stamp duty, property tax and goods and services tax. He works closely with colleagues from other practices on real estate transactions and provides tax advice on structures and implications for clients. Kay Kheng regularly appears as counsel in the Singapore Court of Appeal and High Court, and at specialist tribunals such as the Land Acquisition Appeals Board, the Income Tax Board of Review, the Goods and Services Tax Board of Review and the Valuation Review Board. He is also on the Disciplinary Tribunal Panel for the legal profession and the SingHealth Centralised Institutional Review Board (Board E). He serves as vice-chairman of the Law Society of Singapore's Compensation Fund Committee, and is also involved in committees with CPA Australia. Kay Kheng also served on the Accounting Standards Council (2010–15), the board of the Tax Academy of Singapore (2012–17) and the board of the SIATP (2013–2020), as a divisional councillor of CPA Australia (2016–18), as adjunct faculty at the School of Law, Singapore Management University (2012–13) and on the Inquiry Panel for the legal profession (2007–21).



Tay Peng Cheng is head of the energy, projects and construction practice, and focuses on the energy and utility industries, construction and engineering projects, and civil, commercial and property developments. He represents clients in court and arbitration proceedings, including acting for and advising developers, contractors and consultants in disputes arising out of large-scale energy and utilities projects, construction and engineering contracts, and supply and offtake agreements. He has advised on private and commercial developments, utility facilities, waste-to-energy plants and offshore installations. On the non-contentious front, Peng Cheng is also active in drafting and reviewing contracts for commercial plants and installations, project

documentation and construction-related documents, as well as the management of construction claims. He regularly advises clients on the suite of standard form construction and engineering contracts in use both locally and internationally, and bespoke contracts. He is an accredited adjudicator appointed under the Building and Construction Industry Security of Payment Act (Cap 30B). He has also been appointed to the Asian International Arbitration Centre's (AIAC) Panel of Adjudicators, and is a Fellow of the Chartered Institute of Arbitrators and the Asian Institute of Alternative Dispute Resolution. Peng Cheng is a member of the Society of Construction Law, Singapore, and was a tutor in Building and Construction Law at the Law Faculty of NUS.

WongPartnership LLP

12 Marina Boulevard Level 28
Marina Bay Financial Centre
Tower 3
Singapore 018982

Tel: +65 6416 8000
Fax: +65 6532 5711 / 5722
Email: contactus@wongpartnership.com
Web: www.wongpartnership.com



Trends and Developments

Contributed by:

*Dorothy Marie Ng and Monica Yip,
WongPartnership LLP see p.28*

Introduction

2021 marked the second year of the COVID-19 pandemic. It was an eventful year for all sectors of the real estate market in Singapore, which proved its resilience as Singapore weathered the continued effects of the pandemic.

Although work-from-home arrangements have become fairly common practice in Singapore, the demand for office space has increased, especially for Grade A buildings. Offices outside the Central Core area registered an increase in demand as businesses saw the benefits of decentralisation. This has led to an increase in office rents and leasing activity, and active investment in companies that own commercial developments.

Code of Conduct for Leasing of Retail Premises

In 2020, a Fair Tenancy Pro Tem Committee was formed by representatives from the landlord and tenant communities, industry experts and members of academia to improve collaboration and increase the vibrancy and competitiveness of Singapore's retail, food and beverage and lifestyle sectors. The result was the release of the Code of Conduct for Leasing of Retail Premises (the Code of Conduct) in March 2021, setting out guidelines on what constitutes fair practice in relation to tenancy agreements of qualifying retail premises. The Code of Conduct includes a checklist template to accompany such retail tenancy agreements.

Shortly after, in May 2021, the Fair Tenancy Industry Committee (comprising business leaders representing major retail landlords and ten-

ants in Singapore) was formed to serve as the custodian of the Code of Conduct and to which non-compliant practices may be reported. As the Code of Conduct does not have the force of law, there are no penal remedies for non-compliance. Where a lease agreement for qualifying retail premises is not compliant with the Code of Conduct, a party may file a complaint against the other with the Fair Tenancy Industry Committee or approach the Singapore Mediation Centre to try to resolve the disagreement. The suggestion is that defaulting parties may be "named and shamed". In June 2021, several statutory boards and major corporate landlords committed to comply with the Code of Conduct.

Impact of COVID-19

Technology continued to play an increasing role in the marketing of housing units in 2021. Purchasers became familiar with virtual tours of the properties they were interested in, as searches of homes on the internet became commonplace. It is now not uncommon for purchases of homes to be made without purchasers having to step into the actual unit or house.

Relief periods pursuant to the COVID-19 (Temporary Measures) Act 2020 (COTMA) were extended in relation to the delivery of possession in agreements for the sale and purchase of residential, commercial and industrial properties by developers. This gave some respite to developers that had suffered delays in the construction of their developments, thereby causing delays in the developers' delivery of the sold units to end-purchasers.

At the beginning of the second quarter of 2021, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings) Order 2020 (the Meetings Orders) was extended until further notice. The Meetings Orders enable various types of entities to convene, hold or conduct meetings through electronic means, regardless of the fact that such meetings were not allowed under statute or any document. This not only afforded subsidiary proprietors of strata units in condominiums the flexibility to hold general meetings virtually, but also helped to facilitate the conduct of meetings required for collective sales of entire developments. This was timely, given that more active attempts for collective sales of old developments were made in 2021.

Towards the fourth quarter of 2021, COTMA was amended to introduce a Rental Waiver Framework. This was intended to provide a framework for working towards an arrangement for a fair sharing of rental obligations between landlords and tenants that are small and medium-sized enterprises and specified non-profit organisations, which satisfy certain criteria.

Real Estate Sectors

The residential property market continued to be active despite the uncertainty in 2021, during which time the Singapore government variously relaxed and tightened the safe management measures. The residential property market registered significant increases in both volume of sales and property prices in all sectors, including private condominiums and landed properties, as well as the resale units in the public housing market. In early February 2021, the Finance Minister mentioned during Budget 2021 that the Singapore government was closely monitoring the housing market. It was therefore not totally unexpected when, just two weeks before the end of 2021, the Singapore government announced measures to cool the housing property market, which included:

- an increase in the rates of additional buyer's stamp duty payable upon the purchase of residential properties;
- a tightening of the total debt servicing ratio of loans for the purchase of residential properties; and
- a lowering of the loan-to-value limit for loans from the Housing and Development Board for public residential property.

The commercial real estate scene saw a comeback in 2021, with two-thirds of investment being in the office and retail sectors, largely driven by overseas capital. The industrial property sector also saw an increase in sale volume and price as some businesses decided to reinstate property assets onto their balance sheets and investors considered investments in properties like data centres, logistics, technology and biosciences attractive.

The need to consider ESG criteria has become increasingly important to governmental authorities, corporations and the general public. It is fairly common for property developers to plan for buildings that can achieve the highest Green Mark Certification from the Building and Construction Authority and, where possible, to undertake works to improve the green mark accreditation of their buildings. Whilst the COVID-19 pandemic has been a catalyst to the booming digital economy, leading to an explosion of demand for data centre services (which consume enormous amounts of energy), since 2019 the Singapore government had sought to moderate the construction of new data centres and the release of state land for such usage, while conducting studies and ongoing industry engagement to look into more sustainable growth for the data centre industry.

The Singapore government has also sought to enhance certain existing land-related legislation and policies. In the middle of 2021, Parliament

passed the Land Betterment Bill, an enhanced piece of legislation that provides for the imposition of a tax on the increase in land value resulting from a “chargeable” consent given by the authorities in relation to land. This consolidates various charges that applied to the development of the land, such as the development charge imposed by the Urban Redevelopment Authority (URA) and the differential premium imposed by the Singapore Land Authority.

The URA gazetted a modern, large-scale, strata-titled development constructed in 1973 as a conserved building for the first time when the subsidiary strata registered proprietors were in the midst of putting the development up for collective sale. As a consequence, a purchaser of that development will not be allowed to demolish the entire development and re-build a new building in its place, as is often the case for purchasers of developments acquired in collective sales. Instead, the purchaser will have to plan its development while keeping the existing building intact or in the manner required by the URA.

In the middle of March 2022, the URA also announced new restrictions on the strata subdivision of commercial buildings in designated areas within the Central Area of Singapore.

This is with a view to ensuring that the quality of developments in prominent areas and routes in the Central Area are well maintained, and to remove concerns related to fragmented ownership of developments located in these key areas. These new restrictions may impact investors’ investment decisions.

In 2021, in the first reported case, the High Court put to rest the question of whether the COVID-19 pandemic can be a factor leading to the frustration of a contract. It was held on the facts of the case that the lease agreement may be terminated or discharged by frustration due to the effects of the “safe-distancing” measures taken by the Singapore government to control the spread of COVID-19.

Conclusion

Looking forward, the impact of the property cooling measures announced at the end of 2021 on the residential market will have to be considered. At the time of writing, the collective sales of three residential developments and one commercial development with a total sale consideration of approximately SGD1 billion have successfully been signed. Interest in the commercial property market is buoyant, and more investments in this sector are anticipated.

WongPartnership LLP is an award-winning law firm and one of the largest in the country, with offices in China and Myanmar. It has affiliate offices in Abu Dhabi, Dubai, Indonesia, Malaysia and the Philippines, through the member firms of the WPG regional law network, which offers the expertise of more than 400 professionals to meet clients' needs throughout the region. WongPartnership has one of the largest teams of real estate lawyers in the country, which has worked on a diverse range of deals throughout the region, across different real estate investment products. The firm's corporate real estate practice offers domain knowledge on acquisitions, divestments and financing arrangements, joint ventures, purposed build-to-suit projects, commercial leasing and small or extensive de-

velopment projects. The firm's expertise also covers structuring, preparing and negotiating leases and other documents on behalf of landlords and tenants; advising major developers, landlords and tenants across all asset classes; advising statutory boards, government bodies and charities on real estate issues; advising investors in the purchase and tenders of land from government and private or statutory bodies or units in collective sales; and acting for both lenders and borrowers in property-backed financing/refinancing transactions. Clients include high net worth individuals and families, major developers, foreign and local property funds, public listed and private real estate companies and funds, financiers, government-linked companies and statutory bodies.

AUTHORS



Dorothy Marie Ng is the head of the corporate real estate practice at WongPartnership. She has more than 30 years' experience across the full spectrum of real estate advice

and transactions, including working on acquisitions, dispositions, leasings and (joint) developments of properties and property companies, funds, statutory boards, real estate investment trusts and real estate redevelopment. She also advises on the structuring of real estate and real estate-related transactions and the restructuring of property companies and entities, and on asset and estate planning. Dorothy is often involved in transactions crossing practice areas, such

as those involving secured asset bilateral or syndicated loans, joint ventures, joint developments, asset and business acquisitions, asset restructuring, debt restructuring, project financing and development financing and special leases. She has been a member of the Disciplinary Tribunal appointed by the Chief Justice under the Legal Profession Act since 1995 and a member of the Singapore Institute of Legal Education Compliance Committee since its inception in 2011; she is also an adjudicator for the Law Society's panel of Expedited Adjudication Scheme and serves as a member of the Valuation Review Board appointed by the Minister of Finance.

Contributed by: Dorothy Marie Ng and Monica Yip, WongPartnership LLP



Monica Yip is the head of the corporate group and a partner in the corporate real estate practice at WongPartnership. Her main practice areas are property-related corporate

transactions and investment work, acquisitions, disposals, securitisations, the management and leasing of commercial, industrial and residential properties, property advisory work, property development and finance work, joint developments and government land sales. She has extensive

experience in the real estate sector and regularly advises real estate investors, including corporates, individuals, societies, funds and real estate investment trusts. Monica is admitted to the Singapore Bar and has over 30 years of legal experience. She is a member of the Law Society of Singapore and the Singapore Academy of Law, and is also a Commissioner for Oaths, a Notary Public and a member of the Accreditation Committee (Accreditation Panel), Continuing Professional Development Scheme of the Singapore Institute of Legal Education.

WongPartnership LLP

12 Marina Boulevard
Level 28
Marina Bay Financial Centre
Tower 3
Singapore 018982

Tel: +65 6416 8000
Fax: +65 6532 5711 / 5722
Email: contactus@wongpartnership.com
Web: www.wongpartnership.com





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