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Real Estate

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Law and Practice

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WongPartnership LLP has over 300 lawyers with offices in Beijing, Shanghai and Yangon, as well as in Abu Dhabi, Dubai, Jakarta, Kuala Lumpur and Manila through member firms of WPG, a regional law network. WongPartnership has one of the largest teams of real estate lawyers in the country and has worked on a diverse range of deals in Singapore and throughout the region and across different real estate investment products. The firm's Corporate Real Estate Practice offer expert advice on acquisitions, divestments and financing arrangements, joint ventures, purposed design and build projects, commercial leasing or small or extensive development projects. The firm's expertise also includes structuring, preparing and negotiating leases and other documents on behalf of landlords and tenants (including

long-term leases of industrial land or co-working spaces for various complex developments), advising major developers, landlords and tenants across all asset classes (including commercial, retail, residential and mixed-use developments), 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. WongPartnership's clientele includes high net worth individuals and families, major developers, foreign and local property funds, public listed and private real estate companies, financiers, government-linked companies and statutory bodies.

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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 of real estate (Planning Act), development and construction (Building and Construction Act), management of strata units in flats and buildings (Building Maintenance and Strata Management Act), and taxes relating to the transactions involving real estate (Stamp Duties Act).

1.2 Main Market Trends and Deals

Riding on the back of a whole slew of collective or 'en bloc' sales of old developments (both residential and commercial) in 2017, 2018 commenced with several analysts predicting positive growths and real estate developers having a more bullish approach. These developers saw opportunities to improve their land banking. Indeed up until mid-2018, the en bloc sales amounted to over SGD10 billion, with one of the developments, Pacific Mansion, selling for nearly SGD1 billion. Correspondingly, in the first half of 2018, prices of residential real estate started to rise significantly as demand increased, backed by better economic growth.

In July 2018, to further cool the market, the government announced new measures, namely, a 5% increase in the rate of additional buyer's stamp duty and tightening loan-to-value ratio by 5% for all housing loans, including those loaned to first-time homeowners. This was in addition to the existing additional buyer's stamp duty which applies only to the purchase of residential properties, and additional

conveyance duty imposed on the transfer of equity interests in property-holding entities whose primary assets are residential properties (see below, **2.10 Taxes Applicable to a Transaction** for details.) Needless to say, after July 2018, the en bloc transactions petered out, with only one other taking place after July 2018, and residential real estate transactions also slowed.

2018 also saw the merger of ESR-Reit with Viva Industrial Trust to establish the fourth-biggest industrial REIT in Singapore plus a Canadian pension fund investing in Singapore real estate through Cape Investments II Pte Ltd which directly owns the commercial building at 78 Shenton Way in the central business district.

The largest single asset industrial deal in 2018 was the purchase and leaseback by LOGOS (a logistics specialist) of a 25-hectare site comprising an integrated industrial and warehouse facility.

Other major deals include the sale of the office component of OUE Downtown to OUE Commercial REIT, sale of Westgate to CapitaLand Mall Trust, and the Concept & Price Tender by the Government of the Holland Village Extension site which sold for SGD1.213 billion.

The co-working space phenomenon continued its rapid growth with blue-chip developers also engaging in the business.

1.3 Proposals for Reform

There had been hopes in early 2017 that the government would relax some of the curbs imposed but this did not occur. The aggressive bids for government land sales and existing old developments by developers, together with a rise in private home prices, particularly in the first half of 2018, resulted in the government instituting further curbs to stabilise the residential property market.

Unless the measures moderating the residential property market are lifted, transactions of residential properties are likely to remain moderate.

The call for the use of technology to improve legal services and in the property sector remains. Law firms can apply for grants to help ease the often high investment costs involved for the use of technology. More law firms are now embracing technology and working with service providers to enhance legal practices, such as document generation and data analysis. In mid-March of 2018, three large property agencies combined to launch an online platform to provide real-time accurate information for agents and consumers. This aims to introduce a wider base of investors to the property sector and may present opportunities for some interesting innovation in the market.

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

Under the Residential Property Act, there are restrictions on foreign ownership of vacant land or landed residential property. Any foreign purchase of landed residential property is subject to the approval of the government. However, foreign individuals and entities do not need approval to acquire condominiums or landed strata units in condominium developments or flats in buildings of at least six storeys; furthermore, Singapore permanent residents and foreigners are allowed to purchase landed homes in Sentosa Cove (situated on the island of Sentosa, south of mainland Singapore) without government approval. Subject to certain rules and conditions, foreign developers may acquire landed residential property for the purpose of developing and/or redeveloping the property for sale. There is generally no restriction against a foreigner purchasing Singapore commercial property, except that specific approvals are required in some instances pursuant to the titles of the commercial properties.

2.3 Effecting Lawful and Proper Transfer of Title

As mentioned above in **2.2 Laws Applicable to Transfer of Title**, transfers of title to registered land are effected by way of 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 in recent times there have been a few transactions which included title insurance.

2.4 Real Estate Due Diligence

Buyers usually carry out title searches, which can be conducted online in the case of registered lands. In the case of unregistered lands, title must be deduced by inspection of the title documents for a period of at least 15 years prior to the date of tracing or the date of the agreement for sale and purchase. Buyers of large buildings will typically carry out (either internally or by the appointment of consultants) a building audit (particularly a structural survey) and a technical inspection of the real estate to ascertain the state, condition and the structural soundness of the buildings, as well as encroachment surveys on the land. For industrial land,

it is not uncommon for the buyer also to carry out (or in some cases, the buyer may require the seller to carry out) an environmental study to ascertain whether there are any environmental contaminants on the land.

In addition, buyers commonly carry out legal requisition searches with various government agencies and statutory bodies, which may reveal matters that adversely affect the real estate (eg, notices of government action or pending government action against the property, road, drainage lines, reserves, railway lines or schemes affecting the property) and information relating to the real estate (eg, zoning or approved use).

Buyers will usually review sellers' documents in relation to the real estate. Documents relating to title, tenancy information (if applicable), services contracts, building warranties, property tax bills, invoices for maintenance fees and sinking fund charges will be of relevance to buyers.

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 provide any representations or warranties as regard to the real estate. However, the Singapore Law Society's Conditions of Sale 2012 (a set of terms and conditions typically incorporated by reference in agreements for sale and purchase of properties) provide for a seller to warrant to a buyer that there are no unauthorised alterations or additions to the property.

In many cases involving large properties, the parties do not rely on the Singapore Law Society's Conditions of Sale, with the buyers instead negotiating that the sellers provide warranties on the real estate. The scope and extent of the warranties will depend largely on the bargaining powers of the sellers and buyers. Typical seller warranties may include the following:

- that there are no outstanding notices from government agencies;
- that contracts such as tenancy agreements are valid, binding and enforceable; and
- that there is no breach of the approved use of the property.

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

2.6 Important Areas of Law for Investors

An investor in real estate should consider laws governing ownership of real estate (eg, prohibitions against foreigners purchasing 'residential property' as defined under the Residential Property Act 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), laws governing the usage (or proposed usage) of the real estate and zoning requirements. Given that 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 cap and right of first refusal granted to lessor in the case of 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, as owner, be responsible even if they did not cause the pollution or contamination.

Certain laws and regulations pertaining to the protection of the environment may be applicable, depending on the type of building works proposed in relation to the real estate and the area in which such works are carried out. Environmental obligations are generally more relevant in the case of industrial real estate, particularly where land is used for pollutive purposes.

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 under the Environmental Protection and Management Act where, in the case of discharge of toxic substances or hazardous substances into water, it is presumed that the occupier is at fault.

Jurong Town Corporation (JTC) typically imposes decontamination obligations on its lessees. Where a lessee wishes to sell or assign its lease to a purchaser, JTC's approval of the sale or assignment is generally required. In such event, JTC may require the lessee to carry out an environmental study to ascertain whether there is contamination. Where contamination is found, the lessee will be required to conduct decontamination before the sale or assignment of lease may be permitted.

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 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. It will assist a buyer to find out important planning information, such as whether the land is affected by public schemes and specific urban design or planning parameters.

2.9 Condemnation, Expropriation or Compulsory Purchase

The Land Acquisition Act allows the state compulsorily to acquire land 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 of public utility or 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 in Singapore 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 to the persons known or believed to be interested in the real estate. Such award of compensation shall take into account (where the acquisition takes place after 11 February 2007) 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 on the real estate.

Other than the Land Acquisition Act, legislation such as the Street Works Act and the Sewerage and Drainage Act empowers statutory boards to enter private lands and take possession of the lands or part thereof for public purposes, or vests parts of land in the government 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

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). Prior to 20 February 2018, BSD rates of up to 3% applied to all properties, whether residential or non-residential. However, from 20 February 2018, BSD rates have been differentiated between residential and non-residential properties with the top marginal BSD rate for residential properties increased to 4%.

The BSD rates (of up to 3%) for non-residential properties remain unchanged. In the case of a mixed-use or mixed-zoning property, the new BSD rates of up to 4% and 3% apply on the residential and non-residential components respectively. The market value of the residential and non-residential components can be determined by a professional valuer.

Depending on the profile of the buyer, an additional buyer's stamp duty (ABSD) of between 5% and 30% of the acquisition price or market value of the property (whichever is higher) is also payable for the purchase of residential property (the ABSD rate prior to 6 July 2018 was between 5% and 15%). Housing developers are generally subject to 30% ABSD of which 25% may qualify for remission of ABSD for the acquisition of residential property for development and sale, subject to certain terms and conditions.

Besides BSD and ABSD which are payable by the buyer, 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 its acquisition. The holding period of up to three years applies to residential properties acquired on or after 11 March 2017 and to industrial properties acquired on or after 12 January 2013. 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). For completeness, it may be noted that a holding period of four years applies to residential properties acquired between 14 January 2011 and 10 March 2017, with rates ranging up to 16%.

Licensed housing developers need not pay SSD when selling residential units developed by them.

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). Exemption may apply in certain circumstances (eg, transfers between associated companies).

Where there is a transfer of equity interests in a property-holding entity whose primary tangible assets, owned directly or indirectly, are residential properties in Singapore (residential PHE), additional conveyance duty (ACD) may be payable on the transfer. ACD was introduced in March 2017 and is designed to address the stamp duty rate differential between direct acquisition/disposal of residential properties and indirect acquisition/disposal of residential properties via a transfer of the equity interest in a holding entity.

The ACD regime applies to the acquisition and disposal of equity interests in a residential PHE by an entity who is a significant owner of the residential PHE or who becomes one after the acquisition. A ‘significant owner’ of a residential PHE is one who beneficially owns 50% or more of the equity interests in the residential PHE or has 50% or more of voting power in the residential PHE, either on its own or together with its associates. There are two types of PHE:

- an entity that owns Singapore residential properties directly, and the market value of the residential properties makes up at least 50% of the value of its total tangible assets (type 1 PHE); and
- an entity that beneficially owns (directly or indirectly) at least 50% equity interests in one or more type 1 PHEs (the related entities) and the sum of the market value of the residential properties beneficially owned by the target entity and its related entities is at least 50% of the total tangible assets of the target entity and all the entities in which the target entity has 50% or more beneficial interest, directly or indirectly (type 2 PHE).

ACD, if applicable, is imposed on both the buyer and seller in a transaction. ACD for buyers is approximately 34% of the value of the equity interests transferred for transfer instruments executed on or after 6 July 2018. ACD is also payable in addition to the prevailing stamp duty of 0.2% for the transfer of shares in companies. 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 by the sellers for more than three years.

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

The sale of non-residential real estate is subject to goods and services tax (GST) of 7%. The sale and purchase of residential property is exempt from GST.

2.11 Legal Restrictions on Foreign Investors

As mentioned above (2.2 Laws Applicable to Transfer of Title), the Residential Property Act sets out restrictions on foreign ownership of residential property in Singapore, but there are a number of exemptions. Non-Singaporeans and non-Singapore entities may acquire approved condominium developments or flats in buildings of at least six storeys. Subject to other rules, foreign developers may acquire residential property for the purpose of developing and/or redeveloping the property for sale. Foreign investors may also purchase residential properties in Sentosa Cove without the need to obtain approval from the government.

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. Given tax incentives and the low-interest environment, in recent years purchasers have turned to corporate bond issuances as an alternative to direct borrowing. Notwithstanding interest generated by crowdfunding – and, in some cases, direct lending of debt funds, particularly to SMEs – 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 (being the borrower) will typically grant a mortgage on the real estate to the lender(s).

Where separate title to the real estate has been issued, an investor may provide security by way of a mortgage that 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 assignment of the 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 the real estate. The mortgage will be executed in escrow and held by the lender until separate title to the real estate has been issued. When separate title is issued, the lender will register the mortgage.

Most of the rights and interests under contracts relating to the real estate (eg, assignment of tenancy agreements and rental proceeds or assignment of insurances) may also be assigned to the lender. If the real estate is under development, there may also be an assignment of the project documents. An investor who purchases real estate for development may also provide a charge over accounts or a debenture to the lender.

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, in the case of leasehold real estate, some leases provide restrictions against the grant of security over real estate without the prior approval of the lessor. Leases issued by JTC and Housing and Development Board (HDB) commonly have such restrictions against mortgages over real estate. In respect of leases issued by JTC, where a mortgage is granted to a financial institution permitted under the laws of Singapore to lend to the borrower, the written approval of JTC is generally not

required. In the case of leases issued by HDB, a mortgage granted to a bank licensed under the Banking Act or to a finance company licensed under the Finance Companies Act will generally not be subject to the written approval of HDB.

Financing in the context of ‘lending of moneys’ is a regulated activity subject to the jurisdiction of a number of 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 monies.

We have not encountered the Foreign Investment Risk Review Modernisation Act of 2018 (FIRRMA) in the context of Singapore real estate financings.

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. There is also a registration fee of SGD68.30 payable for the registration of the mortgage.

3.5 Legal Requirements Before an Entity Can Give Valid Security

Under the Companies Act, companies incorporated in Singapore are prohibited from directly or indirectly providing financial assistance in connection with the acquisition of shares of a holding company, including the provision of real estate assets as security. As of 1 July 2015, the Companies Act has been amended to limit the scope of this prohibition to public companies incorporated in Singapore or companies whose holding company is a public company. With this amendment, acquisition financing is simplified for acquisitions of private companies. ‘Whitewash’ procedures will no longer be required if the target and its subsidiaries are expected to provide security over their real estate to finance the acquisition.

The July 2015 amendments to the Companies Act also provided a new ‘whitewash’ procedure, based on a test of whether the financial assistance is ‘materially prejudicial’ and whether the terms of that financial assistance are fair and reasonable to the company that is providing it.

With some exceptions, the Companies Act also prohibits companies from giving security for loans made to another company if the directors of the first company are interested in 20% or more of the total number of equity shares in the latter company.

The Companies Act requires that a director “shall 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.

Borrowers and lenders should also review the terms of the title documents to ascertain whether there are any restrictions against 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 the 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 the power of sale (the most common form of enforcement of security) is in respect of real estate held under a lease issued by JTC, the real estate can only be sold to an assignee/transferee subject to JTC’s prior consent and in accordance with terms and conditions set by JTC. For real estate held under an HDB lease, the security holder is not allowed to exercise its right of foreclosure if the 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.

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 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 Environmental Protection and Management Act. For example, where toxic substances or hazardous substances are discharged into water, it is presumed that an occupier is at fault.

The definition of ‘occupier’ under the Environmental Protection and Management Act is very broad and includes any “person in occupation of the premises or having the charge,

management or control thereof". This definition may therefore include a mortgagee who has taken possession of the real estate and is exercising rights of management or control of the real estate.

3.9 Effects of Borrower Becoming Insolvent

Under the Companies Act, 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 (ACRA) 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 at an undervalue or that constitute an unfair preference. A transaction is at an undervalue where the consideration received by a company is of a significantly lower value than that which it provided. A transaction constitutes an unfair preference when it is both intended to, and actually does, put a creditor in a better position than it would otherwise have been upon liquidation of the company. The claw-back period is five years for undervalue transactions and six months 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

At this juncture, a definitive replacement for LIBOR has yet to be determined, although alternative benchmarks are currently subject to market consideration. There is concern that existing loan documentation extending beyond 2021 maturity and which rely on LIBOR rates may not contain sufficient provisions to cater to the scenario where LIBOR ceases entirely to be available. The waterfall alternative fallback 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 Loan Market Association (LMA) or Asia Pacific Loan Market Association (APLMA) type loan documentation may expose borrowers to lenders' individual cost of funds rather than resulting in an objective market benchmark.

However, lending documentation published by the LMA and the APLMA have, in previous years, been updated to provide for alternative/replacement benchmark rates ('replacement of screen rate') to apply with the consent of the majority lenders and the obligors. Whilst reference in loan documentation to the precise replacement of LIBOR will likely evolve over time, once alternative benchmarks are identified (at the time of writing, it appears that SOFR, or the 'secured overnight financing rate' is gaining traction in the USA), parties

to loan documentation should ensure that in future all loan documentation should be negotiated or amended to contain the replacement of screen rate clause to cater to the cessation of and transition to a benchmark rate, while due consideration should be taken regarding the level of consent required to enact such 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, 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 exempted from the requirement for planning permission.

4.2 Legislative and Governmental Controls

Applicable to Design, Appearance and Method of Construction

Save for those works (such as insignificant building works) that are exempted under the Building Control Act, all building works require building plan approvals, including the refurbishment of existing buildings.

The approval process for any building works is an ongoing process involving an 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 building 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 Building Control Act, its regulations and various codes. The Building Control Act also requires the licensing of builders, particularly those performing specialist works, as prescribed in the Building Control (Licensing of Builders) Regulations 2008.

Where relevant, approvals will also have to be obtained from other government authorities such as:

- the Land Transport Authority (relating to vehicular entries/exits for the building and public transport reserves);
- the URA (if the works affect any public drains and drainage reserves);
- the National Environment Agency (to ensure compliance with environmental requirements stipulated in codes).

- of practice generally and more specifically for related building services such as waste, sewerage, surface water drainage and pollution control systems);
- the National Parks Board (if any trees are required to be felled within the proposed development and to regulate the placement of fire engine hardstandings); and
 - the Civil Aviation Authority of Singapore (which regulates the maximum allowable height of the development, the construction equipment and temporary structures such as cranes, piling rigs, etc).

4.3 Regulatory Authorities

The URA regulates the uses in 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 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, who may advise the developer, prior to formal application, to make an appointment with an URA officer to discuss the URA's specific planning requirements for the proposed application for planning permission.

After the QP submits a development application to the URA for planning permission, assuming the URA does not refuse the application, the common types of planning permission that may be granted are provisional permission (PP) and grant of written permission (WP). Permissions may be unconditional, or subject to such conditions as the URA may think fit, with reasons being given in writing. Conditions may include a permission granted for a specified period and/or restrictions on the height, design, appearance or siting of buildings.

A PP is typically given where a proposal needs to comply with planning requirements/conditions such as use quantum or building setback requirements. The PP is valid for six months to allow the QP to revise or amend the proposal or to comply with the relevant planning requirements. The QP then resubmits the proposal to follow up on the PP and a WP will be granted when the relevant planning requirements have been complied with. A WP is typically valid for two years and may be extended if required, subject to conditions. The URA has the discretion to extend any planning

permission on such terms and for such further period as it thinks fit.

For the development of a building, while the land developer may submit in parallel an application for approval of structural plans to the Commissioner of Building Control, any approval by the commissioner will only be granted after WP or PP has first been granted by the URA.

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

There is no formal process for a third party (eg, a member of the public) to intervene in the planning 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 applicant so aggrieved by that decision 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.

5. Investment Vehicles

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

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 on the owner or occupier a notice requiring them to, *inter alia*, provide information relating to the 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:

- a fine not exceeding SGD200,000 or imprisonment for a term not exceeding 12 months or both; and
- in the case of a continuing offence, a further fine not exceeding SGD10,000 for every day or part thereof during which the offence continues after conviction.

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. Singapore companies generally have the full capacity to carry on or undertake any business or activity, perform any act or enter into any transaction, and have full rights, powers and privileges to do so, unless these are restricted by law or by express provision in their constitution. The constitution of some Singapore companies used to invest in real estate will have as express objects in their constitution the capacity and authority to acquire and deal with real estate.

5.3 Minimum Capital Requirement

There is no minimum capital required to set up a Singapore company.

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, or under the direction or supervision of, the directors, who may exercise all the powers of a company except any power that the Companies Act or the constitution of the company requires the company to exercise in a general meeting.

5.5 Annual Entity Maintenance and Accounting Compliance

Save for a dormant company or a small company (both as defined in the Companies Act), companies generally will have to prepare and audit their financial statements on an annual basis, and appoint a qualified auditor for this purpose. In addition, companies have to keep certain statutory registers, minute books and records, and if they do not have the resources to undertake this in-house, they will need to outsource the maintenance. The Companies Act requires every company to have at least one secretary who is a natural person with his principal or only place of residence in Singapore, who is not debarred from acting as secretary of the company. The directors must take reasonable steps to ensure that the secretary is a person who appears to have the requisite knowledge and experience to discharge the functions of secretary. For public companies, there are additional prescribed requirements relating to experience, professional and academic requirements, and membership of professional associations. It is difficult to quantify the compliance cost as it depends 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 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 cutting down and removal of timber).

6.2 Types of Commercial Leases

In Singapore, commercial leases can generally be divided according to the uses of the premises – eg, office, retail and industrial leases.

6.3 Regulation of Rents or Lease Terms

Terms of lease (including rent) are freely negotiable between the parties.

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.

6.5 Rent Variation

Whether the rent remains unchanged during the length of the lease term depends on the agreement between the lessor and the lessee. In some agreements, the rent remains unchanged whilst in others there may be a variable rent structure.

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

Goods & Services Tax (GST) is payable on rent, except in the case of leases of residential properties which are exempt from GST.

6.8 Costs Payable by Tenant at Start of Lease

In addition to rent, a tenant may be required to pay service charges or charges for furniture and fittings. The tenant

will typically pay a security deposit as security against the breach of terms of the lease. The landlord's legal costs and/or administration fees may also be payable by the tenant for the preparation of the lease.

6.9 Payment of Maintenance and Repair

Landlords are typically responsible for costs of maintenance and repair of common areas shared by several tenants.

6.10 Payment of Utilities and Telecommunications

Tenants will arrange directly with the suppliers for the supply of and payment for 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 respective tenants.

6.11 Insuring the Real Estate that is Subject to the Lease

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 all of the tenant's property at the leased premises against damage by fire and other risks, and all plate-glass windows and doors of the leased premises for the full insurable value.

6.12 Restrictions on Use of Real Estate

A landlord will stipulate in a lease the use that a tenant is permitted in respect of the premises. Under the Planning Act, there are uses permitted for various premises. Accordingly, in a lease, a landlord may require that a tenant shall not use the leased premises other than for 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, but the plans for the fitting-out works may be subject to the landlord's approval. A tenant will be required to obtain the prior written consent of the landlord before carrying out any alterations or improvements to the real estate. Conditions imposed by a landlord for approval to alterations or improvement works may include the following:

- the tenant has to submit plans, proposed specifications and materials in respect of the proposed works for the landlord's approval;

- the landlord is entitled to engage its own architect, engineer or other consultant(s) for the purpose of considering the plans, specifications and materials relating to the proposed works and for the purpose of supervising works carried out by the tenant;
- in the case of any mechanical and electrical engineering works, such works are to be carried out by a specialist contractor nominated by the landlord;
- all planning and other consents for proposed works shall be applied for and obtained by the tenant;
- works must be carried out in accordance with plans, layouts, designs, drawings, specifications and using materials approved by the landlord and in a good and workmanlike manner; and
- works must be carried out in such a way as to minimise interference and not disrupt the quiet enjoyment of other tenants in a multi-tenanted building.

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. For example, if a landlord of real estate approved for use as a shop intends to lease the real estate for use as a gym or a showroom, a change of use application will be required to be made to the URA. Similarly, if a landlord of a light industrial building (where processes can be carried out or machinery installed without polluting the area) intends to lease the real estate as a general industrial building (where processes or manufacture carried out involves some level of pollution), such use will not be permitted without a prior approval for change of use.

6.15 Effect of Tenant's Insolvency

Leases will generally provide that if the tenant becomes insolvent, 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 (or if the security deposit is furnished by way of a banker's guarantee, to call on the guarantee) and apply it towards unpaid rent and other outstanding obligations.

Under insolvency legislation, there would be limits to the possible remedies that the landlord has in the event of insolvency of the tenant. If (where the tenant is a natural person) bankruptcy or (where the tenant is a company) 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 an issue as to whether the landlord is entitled to use the security deposit without the consent of court, the official assignee or the liquidator, as the security deposit may be considered as part of the tenant's assets that all his creditors are entitled to.

6.16 Forms of Security to Protect Against Failure of Tenant to Meet Obligations

A landlord will collect a security deposit whether payable by way of cash, banker's guarantee or both 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. In some cases, landlords may require a guarantee from a parent company or major shareholder of the tenant.

6.17 Right to Occupy After Termination or Expiration of a Lease

If a tenant continues to occupy the real estate after the expiration or termination of a lease without consent of the landlord, that would constitute a breach of the terms of the lease. Under the Civil Law Act, subject to anything expressed to the contrary in the lease, a tenant remaining in the property after determination of a lease will be chargeable with double rent (or double value). The landlord may also be entitled to claim for mesne profits, which is the benefit accruing to the tenant during the wrongful holding-over period.

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 to the tenant that the landlord does not consent to his/her remaining in the property after expiry or determination of the lease. This is particularly important in cases where towards the end of a lease, parties engage in negotiations for renewal of lease. A landlord should inform the tenant early that if negotiations for renewal of the lease do not result in an agreement by a fixed date, the tenant is required to leave on the date agreed.

6.18 Right to Terminate Lease

A tenant would typically have minimal or no right to terminate the lease. The lease will, however, provide that the landlord would be able to terminate the lease and exercise the re-entry in the event of (i) non-payment of rent or other sums payable under the lease, or (ii) breach of any term or condition of the lease. Other instances under which the landlord may be able to terminate the lease include:

- the event of compulsory land acquisition by authorities;
- where there is major damage and destruction of the building in which the leased premises are comprised;
- insolvency of the tenant; and
- where there is a prolonged force majeure event.

6.19 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 governs the exercise of a landlord's right of forfeiture, including prescribing for notice requirements. Where the requirements

are complied with (eg, it is clear that a breach of a covenant in the lease entitles the landlord to re-enter and forfeit the lease, the landlord has not waived the breach and a notice has been served on the tenant containing the particulars required under the Conveyancing and Law of Property Act), the landlord may then exercise its right of re-entry.

Re-entry is usually effected by the 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. The Conveyancing and Law of Property Act provides that a tenant has a right to apply to court for relief. 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 a period of not less than four weeks from the date of the order (which may be extended by the court if possession of the land has not been recovered by the landlord) 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 recovery of possession.

6.20 Termination by Third Party

The government (and the relevant government agencies) has the right, in certain circumstances, compulsorily to acquire real estate (and rights in real estate). The Land Acquisitions Act allows the state compulsorily to acquire land where a particular piece of land 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 of public utility or in the public interest; or
- for any residential, commercial or industrial purposes.

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 to the persons known or believed to be interested in the real estate. Such 'persons interested' will include any person claiming an interest in the land, which will include the landlord and tenants (but not does not include a tenant by the month or at will).

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

The length of the process of compulsory acquisition will depend on the urgency by which the real estate is needed by the state or relevant agencies and whether there are objections by the persons interested.

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 type of contract used ultimately depends on how clearly defined the details of the project are at the time tenders are sought.

The lump sum contract is the most common form of construction contract and is used where the type and quantities of the works are clearly defined. As its name suggests, the contractor submits a tender for a lump sum price after taking into account the type and quantities of work required. A Bill of Quantities (BOQ) is frequently prepared by the employer and issued as part of the tender documents. A BOQ contains an itemised list of the materials, parts and labour required, against which the contractors tendering for the project would have to enter their rates. This provides a helpful basis of comparison for the employer when evaluating tenders. Subject to the conditions of the contract, the amount ultimately paid out under a lump sum contract may be subject to change, arising out of, for example, the addition or omission of works, justifiable extensions of time resulting in costs and expenses, and/or fluctuations in the prices of materials.

Conversely, 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 scenario, instead of a lump sum price, the contractor usually submits a schedule of rates (SOR) setting out the cost of each type of materials, parts and labour required for the project. Upon completion of the project, 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 owner/developer of the real estate (employer) will engage a third-party consultant (in the case of a building project, an architect and in the case of an engineering project, an engineer) through a consultancy agreement to administer/lead the project on behalf of the employer. Separately, the employer (with the assistance of appointed consultants) will issue a tender for the project and engage a main contractor to construct it; the contractor may subcontract part of its works (including specialist works) to various subcontractors.

Under this model, the architect or (as the case may be) engineer will be the lead consultant responsible for the preparation and completion of the design. The lead consultant will provide the relevant plans and documents for the purpose of obtaining tenders from contractors and will oversee the development of the project together with other consultants (eg, quantity surveyor, civil and structural engineer, and mechanical and electrical engineer) engaged by the employer. Such a lead consultant will usually be the administrator or superintending officer of the main construction contract acting on behalf of the employer and supervising the works. Commonly, he would also undertake the role of an independent certifier who would certify payment, assess claims by the contractor and certify the works done and, ultimately, the completion of the project, fairly and independently, notwithstanding being appointed by the employer.

In such a model, the responsibility for design lies with the consultants and 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 the main contractor for any delay or defects in the building works that are not design related. The main contractor will in turn ensure it has direct contractual recourse to its subcontractors. 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 any 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 such specialist works or material to the employer.

Alternatively, it is increasingly common for employers to enter into a 'design and build' contract where the 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. The main

contractor, as the single point of responsibility, undertakes the obligations and risk of the design (through its employment of the relevant architects, engineers and consultants) and the construction of the project.

Save where there is specific legislation requiring professional oversight or where there are duties prescribed by statute – eg, Architects Act (Chapter 12), Professional Engineers Act (Chapter 253) – under this design and build model, it is not essential for an employer to engage consultants to administer the design and build contract comprehensively. Instead, the employer only appoints a representative who may be an officer in the employer's organisation, or an external consultant, to administer the contract. In this model, as with subcontractors, 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 under the design and build main contract.

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 issued by a financial institution in lieu of a cash deposit, from the contractor. 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 only 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. 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 terms of the contract, or in the performance bond itself. In some cases, employers may also require a parent company guarantee to be procured by the contractor.

Aside from obtaining a security deposit, the building contract usually provides for various measures to ensure that the works are properly done. Payment mechanisms are also designed to provide payment for works that have already been done, rather than in advance, where a contract administrator is often tasked to certify that the works have been done, whilst reserving the rights to require any rectification of defects, or to dispute the propriety of such works should they be found to fall short of the employer's requirements. In the event that advance payment is agreed to be made, security deposit for such advance payments is often required. Further, the employer usually reserves rights to have access to and inspect the works, or require the opening up of the works for inspection. Certain criteria may also need to be

satisfied before the works can be certified as completed. The employer usually also incorporates a contractual right to require the main contractor to rectify any 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 (eg, bankruptcy of the contractor, failure to start works, failure to comply with material obligations under the contract). The requirements under such contractual provisions (eg, notice requirements, cure period) allowing for termination, given the severity of the impact of termination, would have to be strictly complied with as otherwise the employer may be exposed to a claim of wrong-ful repudiation of the construction contract.

Contractors are also usually obliged to provide certification and warranties for certain types of works. For example, specialist subcontractors providing doors frequently have to obtain fire-rating certificates from the necessary authorities for those doors. Another example is water-proofing warranties provided to guarantee the water-tightness of the roof and wet areas of a building.

Insurance is also particularly crucial in building contracts for managing risks. The employer often requires contractors to procure construction all-risks insurance, public liability insurance and other insurances as may be prudent to procure. Such requirements for insurances are pegged at a minimum value depending on the nature and value of the project. For consultants, employers usually require them to obtain professional indemnity insurance. Workmen's 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 (Chapter 354), which will be utilised to compensate the employees for any personal injury by accident arising out of and in the course of the employment.

7.4 Management of Schedule-related Risk

A key risk of a construction project is failure to deliver the completed project by a fixed deadline. Accordingly, most building contracts will contain provisions dealing with events allowing for extensions of time and the provision for payment of liquidated damages in the event of delay in the completion of the project. Allowance for valid grounds of extensions of time is crucial in any building contract to prevent time from being set at large, where, for example, a delay is caused by the employer. If time is set at large, the main contractor will be allowed a reasonable time to complete the works, which may not coincide with the schedule earlier agreed between the parties.

A liquidated damages clause allows the employer a remedy of receiving an agreed sum, accrued usually on a daily basis,

based on an agreed genuine pre-estimate of the loss in the event that there is delay in the completion of the project. A liquidated damages provision is crucial to both parties as it sets out a clear demarcation of the contractor's exposure to damages in the event of delay and also serves to limit the contractor's exposure to delay-related claims such as indirect or consequential losses suffered by the employer resulting from the delay. Liquidated damages provisions are commonly enforced by the court, to the extent that they are genuine pre-estimates of the losses caused to the employer arising from the delay, and do not amount to a penalty. Contractors may negotiate for a limitation of liability with the employer, or the exclusion of certain liabilities (eg, indirect and consequential losses).

In the event that it appears that there is going to be delay in the works, the employer's first course of action would usually be a request for the contractors to expedite their works to catch up with the work programme. Depending on the form of contract used, the employer may also request that the consultant issues an instruction or direction to the contractor setting out the delay and requiring that works be expedited. The contractor will not be allowed to claim any additional losses or expenses arising from such delay if the delay is not excusable under any ground for an extension of time.

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.

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

See above, 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 (Chapter 30B) to a lien of movable property over unfixed and unpaid goods supplied by the contractor, in the event that the contractor has obtained an adjudication determina-

tion in its favour under the said 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, before occupation of the building is permitted, the QP has to apply to the Building and Construction Authority for a Temporary Occupation Permit (TOP) and subsequently for a Certificate of Statutory Completion. Upon issuance of a TOP, the project can be inhabited.

8. Tax

8.1 VAT

Singapore 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. The Government had announced in its Budget 2018 that the GST rate is set to increase to 9% sometime between 2021 and 2025. 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 prescribed conditions for exemption are satisfied. Supplies of residential property are exempt from GST.

8.2 Mitigation of Tax Liability

Subject to fulfilment of conditions, 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 which grants broad powers to the Commissioner of Stamp Duties to challenge any arrangement which 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 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.

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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, electrical appliances) is not claimable.

8.6 Key Provisions in the Federal Tax Reform

Legislation

The matter is not applicable in this jurisdiction.