



CHAMBERS
Global Practice Guides

Real Estate

Singapore – Law & Practice

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WongPartnership LLP

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SINGAPORE

LAW & PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law & Practice

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WongPartnership LLP is a market leader in Singapore known for the provision of high quality legal services which extend beyond the shores of Singapore, with a particular focus on the Asia Pacific region. WongPartnership has over 280 lawyers, with offices in Singapore, Beijing, Shanghai and Yangon, and in Abu Dhabi, Dubai, Jakarta and Kuala Lumpur through partner firms. The firm one of the largest team of real estate lawyers in Singapore which consists of 18 fee earners, all of whom are focused on real estate work. Lawyers have worked on a diverse range of deals in Singapore and across the region and across different real estate investment products. The firm's corporate real estate practice is reputed for its work in highly structured acquisitions and financing arrangements, divestments, joint ventures,

commercial leasing and extensive development projects. The team's wide-ranging experience includes preparing leases and other documents on behalf of landlords including long term leases of industrial land for various complex developments, acting for major developers, landlords and tenants across all asset classes including commercial, retail, residential and mixed use developments, advising investors in the purchase and tenders of land from government and private or statutory bodies, and acting for both lenders and borrowers in property financing/refinancing transactions. As a full-serviced law firm, the team has the ability to call upon lawyers with different expertise to help support our clients' needs in all sorts of transactions.

Authors



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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: (i) the Registration of Deeds Act where lands are typically known as “un-registered land”; and (ii) 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

The real estate market in the last 12 months has been subdued and prices have been softening as a result of the larger macro-economic outlook and expectation of higher interest rates. Based on data from the Urban Redevelopment Authority (“URA”), Singapore’s planning authority, rental rates have been softening across the residential, office and industrial segments.

Major transactions were largely concentrated in the office segment, with highlights including the sale by the Central Provident Fund Board (the statutory board responsible for investing the contributions made by working Singapore citizens and permanent residents to a compulsory savings plan) of its iconic headquarters, CPF Building, for SGD550 million; a SGD1.1 billion Profit Participation Securities transaction between City Developments Limited and Alpha Investment Partners Limited involving three prime office assets; and the sale of AXA Tower for SGD1.7 billion. Separately, Australian developer Lend Lease won a state tender for the purchase of a land parcel for a mixed development (including an office component) for SGD1.67 billion.

1.3 Proposals for Reform

There have been proposals from industry players and even a member of parliament that the Singapore government should consider lifting measures that were previously introduced to curb speculative activity in the residential real estate market. Those measures include the imposition of additional stamp duty on purchasers of residential properties (Singapore citizens and permanent residents who purchase their second or subsequent residential properties or foreigners who purchase residential properties are subject to Addi-

tional Buyer’s Stamp Duty) and stricter limits on the amount financial institutions can lend to purchasers in connection with a housing loan (the Total Debt Servicing Ratio is a limit on the amount borrowers can spend on debt repayments relative to their gross monthly income).

The Ministry of National Development has indicated that it is premature to relax the cooling measures on real estate. Given that the measures were put in place to moderate the demand for residential properties and therefore stabilise the real estate market, it is felt that any lifting of measures at this stage could cause a market rebound.

In the industrial segment, since October 2014 Jurong Town Corporation (“JTC”) – the statutory board which is Singapore’s principal developer and manager of industrial estates – has only allowed end-user lessees of JTC industrial land to sublet up to 30% of the gross floor area of a building. This is a reduction from the maximum cap of 50% under previous rules. JTC instituted a three-year grace period (until the end of 2017) to allow existing lessees and subtenants time to adjust to this new policy.

In 2015, the Housing and Development Board (“HDB”) – the statutory board responsible for public housing – announced that tenants of HDB industrial properties will no longer be allowed to sublet their industrial properties, except that HDB will renew existing subletting arrangements until the end of 2017.

Given these changes, it is expected that affected subtenants of JTC and HDB Land will have to search for replacement premises by the end of 2017 (subject to any potential extension of such grace period), which is likely to drive up demand for small to medium-sized industrial spaces.

JTC also announced in 2014 that real estate investment trusts (“REITs”) and other third party facility providers who are lessees of JTC land must sublet at least 70% of the gross floor area of a building to anchor subtenants. This is an increase from the minimum cap of 50% under previous rules. Under new rules effective from October 2015, “anchor subtenants” are subtenants who satisfy JTC’s assessment of value-added, remuneration per worker and skilled worker profile in addition to the minimum gross floor area requirement of 1,000 sq m. JTC instituted a three-year grace period (until the end of 2017) to allow REITs and other third party facility providers to adjust to this new policy. With this policy, those subtenants who meet the profile requirements of JTC as “anchor subtenants” may be able to bargain for better rental rates with REITs and other third party facility providers.

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, and both 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 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.

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 and 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 to also 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 or road or drainage lines or reserves or 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, 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 regards 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.

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 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 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 to compulsorily acquire land where it is needed (i) for any public purposes, (ii) by any person, corporation or statutory board for any work or an undertaking which, in the opinion of the Minister for Law, is of public benefit or of public utility or in the public interest, or (iii) 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") of approximately 3% of the acquisition price or market value of the property (whichever is higher). Depending on the profile of the buyer, an additional buyer's stamp duty ("ABSD") of between 5% and 15% of the acquisition price or market value of the property (whichever is higher) is also payable for the purchase of residential property.

Developers may qualify for remission of ABSD for the acquisition of residential property for development and sale, subject to certain terms and conditions.

In addition to BSD and ABSD, 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. 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 16% of the sale price or the market value (whichever is higher).

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).

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 of 7%. The sale and purchase of residential property is exempt from goods and services tax.

2.11 Legal Restrictions on Foreign Investors

As mentioned above, 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 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 (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. 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 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 moneys.

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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 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 which 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: (i) the appointment of a receiver, (ii) obtaining possession of the real estate (eg, by court order or by consent) and subsequently exercising the power of sale; or (iii) 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, though 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 which are at an undervalue or which 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.

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) and steers the development of Singapore. 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 the engagement of the Building & Construction Authority (“BCA”) via a qualified person (either an architect registered under the Architects Act or a professional engineer registered under the Professional Engineers Act) (“QP”).

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.

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, and also 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 which 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 & Control, Building & 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. The QP may advise the developer, prior to formal application, to make an appointment with a URA officer to discuss URA’s specific planning requirements for the proposed application for planning permission.

After the QP submits a development application to URA for planning permission, assuming URA does not refuse the application, the common types of planning permission which 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 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 condi-

tions. 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 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, 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.

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 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 (i) a fine not exceeding SGD200,000 or imprisonment for a term not exceeding 12 months or both; and (ii) 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. Investment Vehicles

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

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

In many acquisitions of real estate, companies are used as investment vehicles. Generally, limited liability companies as separate legal entities are considered to be entities that best protect owners (shareholders) from personal liability while retaining the right to control the operations. Separately, where a special purpose company holds only one real estate asset, the sale of the real estate asset may be effected either by direct asset sale or through the sale of shares of the special purpose company.

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, do any act or enter into any transaction, and full rights, powers and privileges to do so, unless these are restricted by law or by express provision in its constitution. The constitution of some Singapore companies used to invest in real estate will have as their 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 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 and who is not debarred from acting as secretary of the company. The directors must take reasonable steps to secure 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 which grant limited rights (eg right of way) and *profit a prendre* (which allows the right holder to take or use something on the land eg the 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 required to maintain and upkeep the repair of the real estate in a good and tenantable 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 les-

sor 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 a certain increase of an index such as the consumer price index or the prevailing market rent. The exact mechanism is up to parties to negotiate.

6.7 Payment of VAT

Goods and services tax is payable on rent except in the case of leases of residential properties, which are exempt from goods and services tax.

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 in the case of where several tenants share the common areas.

6.10 Payment of Utilities and Telecommunications

Tenants will arrange directly with the suppliers for the supply of and pay for the costs 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 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 which 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 the tenant's 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.

6.12 Restrictions on Use of Real Estate

A landlord will stipulate in a lease the use which 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 carry out fitting-out works during the 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 which 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 which 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 consent of court, the official assignee or the liquidator, as the security deposit may be considered as part of the tenant's assets which 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, the tenant holding over 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 any holding over 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 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: (i) the event of compulsory land acquisition by authorities; (ii) where there is major damage and destruction of the building in which the leased premises are comprised; (iii) insolvency of the tenant; and (iv) 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 physically effect peaceable re-entry of 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 and 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, to compulsorily acquire real estate (and rights in real estate). The Land Acquisitions Act allows the state to compulsorily acquire land where a particular piece of land is needed (i) for any public purposes, (ii) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister for Law, is of public benefit or of public utility or in the public interest or (iii) 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 which is required, against which the contractors tendering for the project would have to enter their rates. This provides a helpful comparison for the employer when comparing tenders. The amount ultimately paid out under a lump sum

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contract may be subject to various changes arising out of, for example, the addition or omission of works, events resulting in costs and expenses and/or fluctuations in the prices of materials. In such cases, the BOQ would also be useful in determining the value of such variations.

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 an event, instead of preparing a lump sum price, the contractor usually submits a "Schedule of Rates" ("SOR") setting out the cost of each of the types of materials and works which could be carried out. Upon completion, parties would carry out measurements to determine the type and quantities of works, and compare this against 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 will engage a third party (in the case of a building project, an architect and, in the case of an engineering project, an engineer) to administer/lead the project on behalf of the owner/developer.

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, who will provide the relevant plans and documents for the purpose of obtaining tenders for contractors and will oversee the development of the project together with other consultants (eg quantity surveyor, structural engineer, and mechanical and electrical engineer) engaged by the employer.

The owner/developer as the employer (with the assistance of appointed consultants) will tender for and engage a main contractor who may subcontract specialist works to various subcontractors.

In such model, the responsibility for design lies with the consultants and not the contractor. The contractor will be responsible for the construction/building works and the consultants, particularly the lead consultant (ie the architect or the engineer), play an important role of supervision and administration of the main construction contract.

The employer will have direct contractual recourse to its directly appointed consultants and the main contractor. The main contractor will have 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 waterproofing works). This would require the specialist subcontractor to extend a warranty in relation to such specialist works to the employer.

It is increasingly common for employers to enter into a "design and build" contract where the responsibility of both design and construction lie primarily with the main contractor.

Save where there is specific legislation requiring professional oversight or where there are duties prescribed by statute (eg Professional Engineers Act), under this "design and build" model, it is not essential for an employer to engage consultants to comprehensively administer the "design and build" 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

Both 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 performance bond from the contractor, issued by a financial institution. This provides the employer with some recourse in the event of non-performance by the contractor. Performance bonds typically secure about 5% to 10% of the value of the contract and is usually only valid up to 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). In some cases, employers may also require a parent company guarantee to be procured by the contractor.

Ordinarily, one key risk of a construction project is schedule-related and the requirement to deliver works 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 project. A liquidated damages clause allows the employer a remedy based on an agreed pre-estimate of the loss in the event that there is delay in the project. However, with some exceptions, a liquidated damages provision may also serve as a limit to the contractors' exposure to delay-related claims from the employer. Liquidated damages provisions are commonly enforced by the court, to the extent that they do not amount to a penalty. Contractors may also negotiate a limitation of liability with the employer, or the exclusion of certain liabilities (eg indirect and consequential losses).

Typically, the employer would also have various contractual rights to terminate a construction contract in certain pre-

greed 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 wrongful 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 watertightness of the roof and external walls of a building.

7.4 Management of Schedule-Related Risk

Please see generally 7.3 Management of Construction Risk.

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 accelerate 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 accelerated. If delay nevertheless results, the employer would be entitled to remedies under the contract (including the imposition of liquidated damages against the contractor if provided for).

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

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

Please see 7.3 Management of Construction Risk.

7.6 Liens or Encumbrances in the Event of Non-Payment

Contractors and/or designers may not take a lien on immovable property without first filing a writ of seizure and sale and obtaining an order of court affirming their rights of lien over

the immovable property. For other forms of encumbrances in relation to immovable property, eg mortgage or charge, the contractor will require the consent of the owner of the real estate to allow the real estate to be used as security for non-payment. Generally a contractor has the statutory right under the Building and Construction Industry Security of Payment Act 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 determination 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 BCA 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 goods and services tax ("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. A purchaser of non-residential real estate will be liable for payment of the GST. 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, 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,

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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, electrical appliances) is not claimable.