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# Real Estate

## Singapore

Dorothy Marie Ng, Monica Yip,  
Tan Kay Kheng and Tay Peng Cheng  
WongPartnership LLP

# SINGAPORE

## Law and Practice

Contributed by:

Dorothy Marie Ng, Monica Yip,  
Tan Kay Kheng and Tay Peng Cheng  
WongPartnership LLP see p.15



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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 (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

Notwithstanding the unexpected measure by the Singapore Government to cool the property market just after the middle of 2018, global economic uncertainties and analysts’ forecasts of a possible recession, the residential property market in 2019 climbed to a five-year high in the second quarter.

A couple of large office transactions in 2019 included the sale of the entire interest in Oxley Beryl (which holds 30 Raffles Place (now called Chevron House)) for SGD1.025 billion and Ophir-Rochor Commercial Pte Ltd (which holds Duo Tower and Duo Galleria) for SGD1.575 billion.

The last 12 months saw, firstly, the creation of Asia’s largest diversified real estate group with the SGD11 billion merger between CapitaLand and Ascendas-Singbridge, followed by the merger of OUE Commercial REIT and OUE Hospitality Trust and the combination of two hospitality REITs, Ascott Residence Trust and Ascendas Hospitality Trust.

### 1.3 Impact of Disruptive Technologies

Apart from instruments and deeds registered or to be registered under the Land Titles Act, the Land Titles (Strata) Act and the Registration of Deeds Act, there is currently no explicit legislation in Singapore governing the use of digital instruments or “tokens” to transact real estate generally. Some “proptech” companies have used or offered blockchain platforms which enable investors to tap into funding for real estate, mainly for purpose of raising funds for projects outside of Singapore. Unless there is a change in the laws governing digital economy, it is not likely that there will be any significant change in the transaction of real estate in Singapore.

### 1.4 Proposals for Reform

Whilst there is presently no concrete proposal for reform, the Singapore Government has been looking at existing legislation and considering the potential need to review or supplement it to keep up with developing and new technologies, such as blockchain and smart contracts, and electronic transactions. When new legislation or amendments to existing legislation come into effect, digital platforms will be able to play a larger role in real estate transactions in Singapore.

## 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 RPA, there are restrictions on foreign ownership of vacant land or landed residential property. Save for landed homes in Sentosa Cove (situated on Sentosa island), any foreign purchase of landed residential property is subject to the approval of the government. Subject to certain rules and conditions, foreign developers may acquire landed residential property to develop for sale. There is generally no law against a foreigner purchasing Singapore commercial property.

### 2.3 Effecting Lawful and Proper Transfer of Title

As mentioned 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. Where the land is unregistered, title must be deduced by inspection of the title documents. Buyers of large buildings will typically carry out (either internally or by the appointment of consultants) a building audit and a technical inspection of the real estate to ascertain the state, condition and the structural

soundness of the buildings, and encroachment surveys on the land. For industrial land, it is not uncommon for the buyer to carry out (or in some cases, require the seller to carry out) an environmental study to ascertain environmental contaminants on the land.

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

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

## 2.5 Typical Representations and Warranties

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

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

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

If there is a breach of a warranty, the buyer's remedies will be governed by the negotiated agreement between seller and 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 caps and rights of first refusal granted to the lessor in the case of a subsequent sale). In addition, where an investor intends to purchase land for development, laws and regulations relating to rights of development and terms and conditions imposed on approvals granted for development should be con-

sidered. 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 the owner, be responsible even if they did not cause the pollution or contamination.

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

## 2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

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

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

## 2.9 Condemnation, Expropriation or Compulsory Purchase

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

- for any public purposes;
- by any person, corporation or statutory board for any work or an undertaking that, in the opinion of the Minister for Law, is of public benefit or 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 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. The award of compensation must take into account the market value of the real estate compulsorily acquired.

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

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

## 2.10 Taxes Applicable to a Transaction

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). 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. For a mixed-use or mixed-zoning property, the BSD rates of up to 4% and 3% apply on residential and non-residential components respectively. The market value of residential and non-residential components can be determined by a professional valuer.

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 purchase of residential property. 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.

Seller's stamp duty (SSD) is payable by the seller for disposal or sale of residential and industrial property if the property was sold within a period of up to three years after acquisition. Depending on the holding period of the property, the rate of SSD payable for 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 sale of residential property ranges from 4% to 12% of the sale price or the market value (whichever is higher). 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 (residential PHE) the primary tangible assets of which, owned directly or indirectly, are residential properties in Singapore, additional conveyance duty (ACD) may be payable on the transfer.

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

ACD, if applicable, is imposed on both the buyer and seller in a transaction. ACD for buyers can range up to 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 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), currently at the rate of 7%. The sale and purchase of residential property is exempt from GST.

## 2.11 Legal Restrictions on Foreign Investors

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

## 3. Real Estate Finance

### 3.1 Financing Acquisitions of Commercial Real Estate

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

remain the predominant sources of financing for large commercial acquisitions.

### **3.2 Typical Security Created by Commercial Investors**

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

Where separate title to real estate has been issued, an investor may provide security by way of a mortgage 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 rights under the relevant contract for sale (eg, a building agreement or a sale and purchase agreement in respect of real estate). The assignment of the contract will be executed together with a mortgage over real estate which is executed in escrow and held by the lender until separate title to the real estate has been issued, when the mortgage is then registered.

### **3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders**

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

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

The Foreign Investment Risk Review Modernisation Act of 2018 (FIRRMA) has not been encountered 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. A registration fee is payable for the registration of the mortgage.

### **3.5 Legal Requirements Before an Entity Can Give Valid Security**

Under the Companies Act (CA), 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 CA was 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.

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

The CA 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.

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

### **3.6 Formalities When a Borrower Is in Default**

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

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

Where the exercise of power of sale is in respect of real estate held under a lease issued by the JTC, the real estate can only be sold subject to the JTC’s prior consent and in accordance with terms imposed. Some real estate held under a lease from a statutory board prohibits the security-holder from exercising 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 EMPA 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 EMPA, such as the presumption that the occupier is at fault where toxic substances or hazardous substances are discharged into water.

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

### 3.9 Effects of Borrower Becoming Insolvent

Under the CA, a company granting security over real estate will be required to file a statement containing the particulars of the charge created with the Accounting and Corporate Regulatory Authority (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 deemed to be at an undervalue or that constitute an unfair preference. 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

Presently, a definitive replacement for LIBOR has yet to be determined, although the Sterling Over Night Index Average (SONIA) for sterling loans and the Secured Overnight Financing Rate (SOFR) for US dollar loans appear to be front-runners as alternative benchmarks. It is likely that the Singapore Dollar Swap Offer Rate (SOR) will be replaced by the Singapore Overnight Rate Average (SORA). There is concern that existing loan documentation extending beyond 2021 maturity and which relies on LIBOR rates may not contain sufficient provi-

sions to cater to the scenario where LIBOR ceases entirely to be available. The waterfall alternative fall-back rates and market disruption regime in most existing loan documentation are only intended to address temporary issues in interest rate availability. From a borrower's perspective, relying on the market disruption regime in the Loan Market Association (LMA) or Asia Pacific Loan Market Association (APLMA) type of loan documentation may expose borrowers to lenders' individual cost of funds rather than resulting in an objective market benchmark.

However, lending documentation published by the LMA and the APLMA have, in previous years, been updated to provide for alternative/replacement benchmark rates to apply with the consent of the majority lenders and the obligors.

Whilst references in loan documentation to the precise replacement of LIBOR will likely evolve over time, once alternative benchmarks in the respective markets are identified, parties to loan documentation should ensure that in future all loan documentation should be negotiated or amended to contain replacement of a screen rate clause to cater for the cessation of and transition to a benchmark rate, while due consideration should be taken regarding the level of consent required to enact such a replacement.

## 4. Planning and Zoning

### 4.1 Legislative and Government 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 Government Controls Applicable to Design, Appearance and Method of Construction

Save for works (such as insignificant building works) that are exempted under the Building Control Act (BC Act), all building works require building plan approvals.

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

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

Approvals will also have to be obtained from other government authorities for compliance with requirements such as height restrictions, access to and from public roads, discharge of waste, sewerage or surface water and fire safety.

### **4.3 Regulatory Authorities**

The URA regulates the 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.

After the QP submits a development application to the URA for planning permission, the common types of planning permission that may be granted are provisional permission and grant of written permission. Permissions may be unconditional, or subject to such conditions as the URA 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.

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

There is no formal process for a third party (eg, a member of the public) to intervene in the 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 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 Government 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, inter alia, to provide information relating to use of the real estate. Once a breach is ascertained, the relevant authority has the right to serve an enforcement notice, which may require, inter alia, the alteration, demolition or removal of any building or works. The possible penalties for non-compliance are fines and/or imprisonment.

## **5. Investment Vehicles**

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

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

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

### **5.2 Main Features of the Constitution of Each Type of Entity**

There are no particular requirements to be included in the constitution of a company used to invest in real estate. The consti-

tution of Singapore companies used to invest in real estate will generally 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. However, if a company intends to obtain a licence under the Housing Developers (Control and Licensing) Act, it has to comply with the minimum paid-up capital requirements.

### **5.4 Applicable Governance Requirements**

A company will have a sole director or a board of directors. The company must have at least one director who is ordinarily resident in Singapore. The business of the company must be managed by, 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**

It is difficult to quantify 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 the cutting-down and removal of timber).

### **6.2 Types of Commercial Leases**

In Singapore, commercial leases can generally be divided according to their use, 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 or is variable during the length of the lease term depends on the agreement between the lessor and lessee.

### **6.6 Determination of New Rent**

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

### **6.7 Payment of VAT**

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**

The tenant usually pays for stamp duty chargeable on the lease and a security deposit as security against breach of terms of the lease. He or she may also be required to pay service charges or charges for hire of furniture and fittings and the landlord's legal costs and/or administration fees.

### **6.9 Payment of Maintenance and Repair of Communal Areas**

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

### **6.11 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 (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**

Under the Planning Act, there are uses permitted for various premises. Accordingly, in a lease, a landlord will stipulate the permitted use and require that a tenant shall not use the premises other than for the permitted use or that approved by law.

## **6.13 Tenant's Ability to Alter and Improve Real Estate**

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

## **6.14 Specific Regulations**

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

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

## **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 (and sometimes a parent-company guarantee) at the commencement of a lease

to secure against non-performance or default on the part of the tenant with respect to its obligations under the lease.

## **6.17 Right to Occupy After Termination or Expiry of a Lease**

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

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

## **6.18 Right to Assign Leasehold Interest**

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

## **6.19 Right to Terminate Lease**

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

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

## **6.20 Registration Requirements**

A lease of land for a period not exceeding seven years shall be void under Singapore law unless it is made by deed in the English language. There is no formal requirement for registration of leases but a lease of registered land for a term exceeding seven years may be registered under the land-registration system. A registration fee is payable by the party submitting the lease for registration.

## 6.21 Forced Eviction

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

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

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

Upon the purported exercise by the landlord of a right to forfeit the lease, the tenant may apply to court for relief from forfeiture. The CLPA 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 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 landlord's possession.

## 6.22 Termination by Third Party

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

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 lump sum contract is the most common form of construction contract and is used where the type and quantities of works

are clearly defined. In this form of contract, the contractor is paid a lump-sum price for works described in the contract. Subject to the conditions, the lump-sum price may be subject to change, arising out of, eg, addition or omission of works, extensions of time resulting in increased costs and expenses, and/or agreed fluctuations in prices of materials.

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

### 7.2 Assigning Responsibility for the Design and Construction of a Project

Under the traditional contracting model, the employer, who is the owner of the project, will engage a third-party consultant (in a building project, an architect and in an engineering project, an engineer) who will be the lead consultant responsible for the preparation and completion of the design. That lead consultant typically also oversees the development of the project, together with other consultants engaged by the employer, and acts as the contract administrator or superintending officer for the main construction contract. He or she 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 having been 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 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 those specialist works or material to the employer.

Alternatively, it is increasingly common for employers to enter into a “design and build” contract where responsibility for design and construction lies solely with the main contractor. In this model, the employer provides a desired outcome and broad specifications for the project. 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. In this model, the employer typically does not have direct contractual recourse against the architect and engineers who are appointed by the main contractor, but would have recourse to the main contractor.

### 7.3 Management of Construction Risk

Contractors and specialist subcontractors are typically required to furnish undertakings and/or indemnities relating to specific works. Employers of large projects would commonly require a security deposit, in the form of a cash deposit or a performance bond. This provides the employer with some security in the event of non-performance by the contractor. Performance bonds typically secure about 5% to 10% of the value of the contract and are usually valid up to the expiry of the defects’ liability period. It is also common for performance bonds to be drafted as “on demand” bonds, which would require the issuer of the performance bond to make payment to the beneficiary on demand. A restraint on payment under such bonds will only be allowed on limited grounds (eg, fraud or unconscionability), although unconscionability can be excluded as a ground for such restraint under the contract, or in the performance bond. In some cases, employers may also require a parent-company guarantee from the contractor.

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

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

ance with the contractual provisions (eg, notice requirements, cure period).

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

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 having regard to the work. For consultants, employers usually require them to obtain professional indemnity insurance. Workers’ compensation insurance is required to be taken out by all parties (including the employer and the contractor) by law under the Work Injury Compensation Act to compensate employees for any personal injury by accident.

### 7.4 Management of Schedule-Related Risk

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

A liquidated damages clause 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 a delay in the completion of the project. Contractors may also 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 a delay in the works, the employer’s first course of action would usually be a request for contractors to expedite their works. Depending on the form of contract used, the employer may also request that the contract administrator issue 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 that 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 7.3 Management of Construction Risk.

## **7.6 Liens or Encumbrances in the Event of Non-payment**

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

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

## **7.7 Requirements Before Use or Inhabitation**

Upon completion of the works in a building project, 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 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. Recently, the Government has confirmed that the GST rate will not be increased in 2021 but an increase to 9% will still be needed by 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.

## **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.

**WongPartnership LLP** has over 400 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 offers domain knowledge on acquisitions, divestments and financing arrangements, joint ventures, purposed build-to-suit 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, industrial, 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 and funds, financiers, government-linked companies and statutory bodies.

## Authors



**Dorothy Marie Ng** is the head of the corporate real estate practice at WongPartnership. Her practice spans over 30 years across a full spectrum of real estate and real estate-related advice and transactions. Her experience includes working on acquisitions, disposition, leasing and development/joint development of properties and property companies, funds, statutory boards, real estate investment trusts, real estate advisory work, and real estate redevelopment; advising on structuring of real estate and real estate related transactions and restructuring of property companies and entities; asset and estate planning. Dorothy's practice is often integrated with other practice areas in transactions such as those involving secured-asset bilateral or syndicated loans, joint ventures, joint developments, asset and business acquisitions, asset restructuring, debt restructuring, project financing and development financing and special leases. Dorothy has been a member of the Disciplinary Tribunal appointed by the Chief Justice under the Legal Profession Act since 1995; she has also been a member of the Singapore Institute of Legal Education Compliance Committee since its inception in 2011 and is an adjudicator for the Law Society's panel of Expedited Adjudication Scheme. Dorothy is admitted to the Singapore Bar and the Roll of Solicitors of England & Wales.



**Monica Yip** is the head of the corporate group and a partner in the corporate real estate practice at WongPartnership. Her main practice areas are property-related corporate transactions and investment work, acquisitions, disposals, securitisations, management and leasing of commercial, industrial and residential properties, property advisory work, property development and finance work, joint development and government land sales. She has extensive experience in the real estate sector and regularly advises real estate investors, including corporates, individuals, societies, funds and real estate investment trusts. Monica is admitted to the Singapore Bar, and has over 29 years of legal experience; she is a member of the Law Society of Singapore and the Singapore Academy of Law. She is also a Commissioner for Oaths and a Notary Public.

## Authors Continued



**Tan Kay Kheng** heads the firm's tax practice and is also a partner in the litigation and dispute resolution group. In the field of revenue law, Kay Kheng's practice encompasses both contentious and advisory/transactional work relating to income tax, stamp duty, property tax

and goods and services tax; this includes real estate transactions, where he works closely with his colleagues from other practices and provides tax advice on structures and implications for his clients. Kay Kheng regularly appears as counsel in the Singapore Court of Appeal and High Court, as well as specialist tribunals such as the Land Acquisition Appeals Board, the Income Tax Board of Review, the Goods and Services Tax Board of Review and the Valuation Review Board. His professional service includes being a board member of the SIATP and on the Inquiry Panel and the Disciplinary Tribunal Panel for the legal profession. At the Law Society of Singapore, he serves as vice-chairman of its Compensation Fund Committee, and is also involved in committees with CPA Australia. Additionally, he served on the Accounting Standards Council (2010-15), the board of the Tax Academy of Singapore (2012-17) and as a divisional councillor of CPA Australia (2016-18) and taught at the School of Law, Singapore Management University (2012-13).



**Tay Peng Cheng** is joint head of the energy, projects and construction practice. He has an active practice with focus on the energy and utility industries, construction and engineering projects, civil, commercial and property developments. Peng Cheng represents clients in court and arbitration

proceedings, including acting for and advising developers, contractors and consultants in disputes arising out of large-scale energy and utilities projects, construction and engineering contracts, and supply and offtake agreements. Projects that he has advised on include private and commercial developments, utility facilities, waste-to-energy plants, and offshore installations. On the non-contentious front, Peng Cheng is also active in drafting and reviewing contracts for commercial plants and installations, project documentation and construction-related documents, as well as the management of construction claims. He regularly advises clients on the suite of standard form construction and engineering contracts in use both locally and internationally, and bespoke contracts. Peng Cheng is an accredited adjudicator appointed under the Building and Construction Industry Security of Payment Act (Cap 30B). He has also been appointed to the Asian International Arbitration Centre's (AIAC) Panel of Adjudicators, and is a Fellow of the Chartered Institute of Arbitrators and the Asian Institute of Alternative Dispute Resolution. Peng Cheng is a member of the Society of Construction Law, Singapore, and was a tutor in Building and Construction Law at the Law Faculty of NUS.

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## WongPartnership LLP

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

Tel: +65 6416 8000  
Fax: +65 6532 5711 / 5722  
Email: [contactus@wongpartnership.com](mailto:contactus@wongpartnership.com)  
Web: [www.wongpartnership.com](http://www.wongpartnership.com)

