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The International Comparative Legal Guide To Real Estate 2010

A practical cross-border insight
into real estate law



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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in Singapore. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.

Real estate in Singapore is divided into 3 broad categories, namely freehold land, i.e. estate in fee simple, leasehold land and land granted under the State Lands Act (Chapter 314) known as Statutory Land Grants for an estate in perpetuity. All land in Singapore is held under either:

- (a) the common law system which is regulated by the Conveyancing and Law of Property Act, Chapter 61 (“CLPA”), and the Registration of Deeds Act, Chapter 269 (“RODA”); or
- (b) the Torrens system of registration, which is governed by the Land Titles Act, Chapter 157 of Singapore (“LTA”) and the Land Titles (Strata) Act, Chapter 158 (“LTSA”).

The main laws governing real estate in Singapore are found in the following statutes:

- (a) **LTA**, which makes provisions for the registration of titles to land. Under this system, the registration of a dealing of an interest in land is necessary for the validity and conferring priority in respect of the dealing and title is passed by registration;
- (b) **LTSA**, which facilitates the subdivision of land into strata, and deals with collective sales of property and the disposition of strata titles;
- (c) **Building Maintenance and Strata Management Act, Chapter 30C**, which provides for proper maintenance and management of strata subdivided buildings;
- (d) **Sale of Commercial Properties Act, Chapter 281**, which regulates the sale of certain commercial property by a developer;
- (e) **Housing Developers (Control and Licensing) Act, Chapter 130**, which regulates the licensing and control of housing developers;
- (f) **Residential Property Act, Chapter 274 (“RPA”)**, which contains restrictions on the sale or transfer of residential properties to foreign persons (please see details in response to question 2.1);
- (g) **CLPA**, which governs the common law system of conveyancing whereby an interest in land is created, transferred and assigned by deed in the English language. This Act is of limited relevance today as the LTA has replaced the common law legal estate with a statutory registered estate; and

- (h) **RODA**, which governs the system of registration of deeds for common law titles. This Act is similarly of limited relevance today.

1.2 What is the impact (if any) on real estate of local common law in Singapore?

Singapore’s legal system is a common law system based on English common law. Whilst statute governs the majority of real estate law, it is not a statutory code and the common law still plays an important role in understanding the statutes and expanding rules for equitable interests in property.

1.3 Are international laws relevant to real estate in Singapore? Please ignore EU legislation enacted locally in EU countries.

Please see response to question 1.2.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

Non-residential real estate

A foreign person may freely acquire, hold and dispose of non-residential property such as:

- (a) commercial real estate such as office and retail malls;
- (b) any hotel registered under the provisions of the Hotels Act, Chapter 127 of Singapore; and
- (c) industrial properties.

Residential real estate

General rule

1. There are restrictions in Singapore on ownership of certain “residential property” (as defined in the RPA) by foreign individuals or corporations which are not Singapore companies within the meaning of the RPA.
2. Sale and transfer of residential property under the RPA is restricted to citizens of Singapore and an “approved purchaser” (as defined in RPA). Prior to the purchase of any residential real estate, foreign housing developers are required to apply for a qualifying certificate under the RPA, which stipulates certain conditions such as time frames for completion of the construction works and the deposit to be furnished.
3. Any transaction which is contrary to the RPA would be struck down as void.

Exceptions

1. A foreign person can purchase certain categories of non-restricted property such as apartments, whether or not the development has condominium status. However, a foreign person will not be permitted to purchase all the flats in any development without approval.
2. A foreign person can occupy residential property as a tenant, but the term in the lease must not exceed a period of seven years, including any further renewed term.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in Singapore? Are any of them purely contractual between the parties?

The following are some of the types of rights over land in Singapore:

- An easement, which is a right attached to a particular piece of land which allows the owner of the land to use the land of another person in a particular manner.
- A restrictive covenant, which is a right attached to a particular piece of land which prohibits the owner of the land to use the land in a particular manner.
- An option, which is a contractual right that gives the grantee of the option an option to purchase a property from the owner within a specified period of time stated in the option (usually 14 days), failing which the option will lapse and the option fee paid by the grantee of the option to the owner will be forfeited.
- A licence, which gives the licensee a contractual right to occupy or use the property for specified purposes but which does not operate as a lease and the licensee does not have any estate, title or interest in, or exclusive possession of, the licensed area.

4 System of Registration

4.1 Is all land in Singapore required to be registered? What land (or rights) are unregistered?

Please see response to questions 4.3 and 4.4.

4.2 Is there a state guarantee of title? What does it guarantee?

Titles registered with the Singapore Land Authority (“SLA”) are guaranteed by the state and are conclusive as to title. The Registrar of Titles may, upon such evidence as appears to him sufficient, correct errors and omissions in the land register. The court may also order rectification of the land register in certain circumstances, including where the court is satisfied that the registration or notification of an instrument has been obtained through fraud, omission or mistake. Subject to certain conditions and limitations stated in the LTA, any person who is deprived of land or sustains loss or damage through any omission, mistake or misfeasance of the Registrar of Titles or any member of his staff, in the registration of an instrument may bring an action for the recovery of damages against the assurance fund.

4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

Registration with the SLA is essential for all land governed by the Torrens system. The effect of non-registration of an instrument in respect of land held under the Torrens system is that the estate or interest of the transferor or mortgagor will not pass to the transferee or mortgagee, as the case may be.

4.4 What rights in land are not required to be registered?

LTA provides for a list of interests to which the registered proprietor is subject. These interests are not registered nor are they otherwise notified on the land register, but they override the registered title.

4.5 Where there are both unregistered and registered land or rights is there a probational period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probational period following first registration of title. The title on the land register is either unqualified or qualified. Qualified title contains a “caution” endorsed on it indicating that the land is subject to any interest which affected it at the date of issuance of the title document. A caution is effective until it lapses or is cancelled.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

A buyer has an equitable interest in the property prior to completion of the sale and purchase of the property and may protect that interest by lodging a caveat against the property. Legal title is conferred to the buyer only after final registration of the relevant transfer instrument with SLA.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

Interests appearing in the land register have priority according to the order of their registration or notification, irrespective of the dates of the instruments by which those interests were created or evidenced.

5 The Registry / Registries

5.1 How many real estate registries operate in Singapore? If more than one please specify their differing rules and requirements.

There is one real estate registry in Singapore, namely the Land Titles Registry, which comes under the umbrella of SLA which handles the registration of property transactions in Singapore.

5.2 Does the Land Registry issue a physical title document to the owners of registered real estate? Can any transactions relating to registered real estate be completed electronically? Can information on ownership of registered real estate be accessed electronically?

Yes. Original title documents will need to be produced for

registration purposes (which is done online with original documents handed over physically to SLA). Land registry searches which reveal information on ownership of registered real estate (e.g. details of registered proprietor, land area, tenure of land and registered interests on the land) are available to the public and can be done electronically for a fee.

5.3 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Yes, please see response to question 4.2.

5.4 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

Please see response to question 5.2.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Singapore? Please briefly describe their roles and/or duties.

Property Agents

Property agents would market the real estate and carry out the work involved in marketing and arranging a sale. Real estate in Singapore however can be bought or sold without the involvement of property agents.

Lawyers

Lawyers acting for the buyer will undertake legal due diligence. Lawyers are used by both parties to draft and negotiate the relevant documentation, carry out completion of the transaction as well as certain post-completion matters. Lawyers are also involved in corporate and tax structuring.

Others

Accountants are engaged to advise on tax structuring; building consultants or surveyors are engaged to conduct building and technical due diligence and structural surveys on the real estate; and environmental consultants are engaged to conduct environmental baseline studies on the real estate, typically for industrial properties.

6.2 How and on what basis are these persons remunerated?

Property agents charge commission as a percentage of sale consideration. Lawyers charge on varying bases, including hourly rates and set fees negotiated at the outset. Other consultants charge fees based on services rendered.

6.3 What are the main observable consequences on the real estate market in Singapore arising out of the global credit crunch and worldwide recession in 2008/9? Please include both local and international investors in your answer.

In Singapore, with the falling prices of residential projects arising from the global credit crunch, sales of residential properties picked up significantly in the second half of 2009 as speculators and investors saw the potential upside of the property prices. The Monetary Authority of Singapore has reported in November 2009

that new sales for the year 2009 reached about 13,000 units as at September 2009, exceeding the 4,300 units sold in the whole of 2008. Although the bulk of investors are Singaporeans and permanent residents, the share of foreign individual buyers and companies also rose, reaching 12.5% in Q3 2009, up from 8% seen in Q2 2009.

In the years before the onset of the global credit crunch, Singapore listed Real Estate Investment Trusts ("S-REITs") were on an aggressive asset acquisition strategy. However, with the global credit crunch, property acquisitions were virtually off the table and the focus for S-REITs were on financing instead. Access to loans to meet their large refinancing needs became constrained with falling property valuations and tightened credit conditions imposed by banks. A substantial number of S-REITs faced limited funding options and refinancing risks were evident in late 2008 and 2009, although most S-REITs successfully weathered the challenges brought about by the onset of the global financial crisis in late 2008.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The minimum formality for a sale and purchase of real estate is that there should be a contract or memorandum in writing.

Even if there is no memorandum in writing, part performance (e.g. payment of purchase price) may enable the plaintiff to seek equitable remedies such as specific performance and injunction.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

Apart from special express terms to the contrary, a buyer purchases real estate in Singapore on a *caveat emptor* basis. The seller has no duty to disclose any physical defects, latent or patent, and makes no warranty as to the condition of the property. However, in the absence of contrary provision, the seller has an obligation to deduce a good title.

7.3 Can the seller be liable to the buyer for misrepresentation?

If a buyer conducts due diligence on a property prior to entering into the contract for sale and purchase with the seller and submits enquiries, the seller's answers will constitute representations on which the buyer will ordinarily rely when entering into the sale and purchase contract. If the buyer had relied on such representations and they turn out to be wrong, the buyer will have the normal remedies for misrepresentation. The extent to which a buyer can rely on representations made by a seller is usually a point for negotiation between the parties and depends on the relative bargaining position of the parties.

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

Warranties may be given by the seller depending on the type of real estate and the bargaining position of the buyer.

Such warranties would typically relate to the property, e.g. in relation to physical defects in the property, planning approvals, use of the property and legal proceedings in respect of the property.

Even in cases where warranties are given, it is usual for buyers to nevertheless conduct its own due diligence on the property.

7.5 Does the seller warrant its ownership in any way? Please give details.

There are implied covenants at law as to title in a sale e.g. right to convey, quiet enjoyment, and title being free from encumbrance.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

The sale and purchase agreement will set out the negotiated terms relating to the liabilities of the buyer.

In addition to the sale price, the buyer will normally have to pay (a) ad valorem stamp duty and (b) goods and services tax (“GST”) (other than residential property which is an exempt supply) where the seller is a taxable person under the Goods and Services Act, Chapter 117A of Singapore (“GSTA”).

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

If a person carries on the business of moneylending in Singapore, pursuant to the provisions of the Moneylenders Act 2008 of Singapore (“Moneylenders Act”), that person would only be able to do so if they (a) have obtained a licence under the Moneylenders Act, (b) have applied to the Registrar of Moneylenders for an exemption or (c) fall within certain categories of excluded moneylenders. An excluded moneylender would include licensed banks in Singapore.

If no such licence or exemption is obtained, or if the person is not an excluded moneylender, a contract for loan granted by an unlicensed moneylender shall not be enforceable and any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law. These requirements would apply to moneylenders in Singapore which lend money to resident and non-resident persons. These requirements would also apply to moneylenders outside Singapore which lend money to persons in Singapore.

Banks in Singapore can lend money to finance real estate purchases, subject to certain regulations, one of which is set out in the Banking Regulations 2001 which provides that the ‘property sector exposure’ of a bank in Singapore shall not exceed 35% of the total eligible assets of the bank (or such other percentage as the Monetary Authority of Singapore may determine).

Banks may grant Singapore dollar credit facilities to non-resident financial institutions for any purpose whether in Singapore or overseas as long as the aggregate Singapore dollar credit facilities do not exceed S\$5 million per entity. For financial institutions seeking to obtain Singapore dollar credit facilities, each subsidiary is considered a separate entity while the head office and all overseas branches of a financial institution are collectively regarded as one entity. There are certain conditions that will apply where amounts exceed S\$5 million per entity. Such conditions apply only to Singapore dollar credit facilities granted to non-resident financial entities and do not apply to

individuals and non-financial entities. These restrictions would apply to any form of Singapore-dollar lending by banks in Singapore to non-resident financial entities, and are not restricted to property-related financing.

As far as the granting of loans to a borrower to facilitate the purchase of residential property, banks in Singapore may not grant credit facilities to borrowers in excess of 90% of the purchase price of the property or the current market valuation of the property, whichever is the lower. There are also prohibitions against interest-only loans (i.e. where only interest is payable and none of the principal amount under the credit facility is repayable for a certain period during the term of the credit facility).

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

The main method by which a lender protects itself is by putting into place a series of appropriate provisions in the loan documentation itself. This includes:

- (a) provisions of sufficient security to be taken (typical security taken for a real estate financing includes an assignment of insurances and mortgages over the relevant real properties, and a fixed and floating charge over the properties of the borrower);
- (b) representations and warranties by the borrower (common representations and warranties include those relating to the status and power of the borrower, that no default on the loan has occurred and that no winding-up or insolvency of the borrower has occurred);
- (c) undertakings by the borrower to ensure that the creditworthiness of the borrower remain stable whilst the loan is outstanding. It is not uncommon for a borrower to be a special purpose vehicle, in which case the lenders may impose certain covenants on the sponsor/shareholder, e.g. completion undertakings required of sponsors to ensure that the borrower completes the project or minimum shareholder thresholds for the shareholder to ensure that it owns not less than X% of the shareholding in the borrower);
- (d) covenants relating to the following:
 - (i) in a construction development financing, where the lender would generally impose construction milestones and minimum disposal price;
 - (ii) right for the lender to carry out periodic valuations, the borrower’s undertaking to maintain a specified loan to value ratio and the lender’s right to call for the topping up of security; and
 - (iii) requirements relating to the maintenance of financial ratios to ensure a certain level of profitability of the borrower and reduce the level of default risk; and
- (e) provision of events of defaults to aid the lender in recovering its investments.

8.3 What minimum formalities are required for real estate lending?

These arise mainly from the taking of security over the assets of the borrower. They include:

- (a) searches on the borrower company to ascertain the types of properties encumbered and the parties to the transactions and also whether there are any restrictions that prohibit the creation of further security over the same property;
- (b) due diligence on tenancies underlying each property financed;
- (c) valuation by independent third party valuers confirming the value of the relevant real estate;

- (d) if security is taken over land, searches on the asset(s) in question to ascertain if the asset is encumbered; and
- (e) seeking and obtaining consents/approvals from various authorities (if required, depending on what type of property is in question e.g. JTC Corporation (“JTC”) or Housing and Development Board (“HDB”) or state land).

8.4 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Please see response to question 8.2.

In addition, where security is taken over real estate, the lender should ensure that the perfection steps in connection with the taking of the security, e.g. registering all necessary charges and mortgages, are registered with the Accounting and Corporate Regulatory Authority of Singapore and the SLA respectively are complied with.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Stamp duty is payable. Currently, stamp duty is at approximately 3% of the purchase price on the conveyance of the real estate or the execution of the sale and purchase agreement, whichever is the earlier. There is relief from stamp duty that may be available under the Stamp Duties Act, Chapter 312 of Singapore for transfers pursuant to reconstruction or amalgamation of companies or transfers between associated companies provided that certain stipulated conditions are met.

Stamp duty is payable anytime before executing the document. However, once it is executed, it must be stamped: (a) within 14 days after the date of the document (if the document is executed in Singapore); or (b) within 30 days after the date of its receipt in Singapore (if the document is executed overseas).

Stamp duty is normally payable by the buyer of the property, unless otherwise agreed between the parties.

9.2 When is the transfer tax paid?

Please see response to question 9.1.

9.3 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

If the real estate is a non-residential property, there may be GST payable on the sale of the real estate if the seller is a taxable person under the GSTA.

On the other hand, the sale and leasing of residential land is considered an exempt supply and GST is not chargeable on the making of such supplies, however, the supplier may not be able to claim input tax credits for any GST incurred in the making of those exempt supplies.

Currently, GST is levied at the rate of 7%.

There is relief from GST that may be available if the real estate is transferred as or as part of a going concern (e.g. transfers of investment rental property as an ongoing business or part thereof), depending on whether stipulated conditions for the relief can be fulfilled. The parties can contractually decide who is to bear the GST, but the seller is responsible for accounting to the Inland Revenue Authority of Singapore for the GST to be charged.

9.4 What tax or taxes (if any) are payable by the seller on the disposal of a property?

Singapore does not tax capital gains. However, Singapore income tax is payable on any gain of an income nature that is sourced in or received in Singapore. Hence, any gains made on the disposal of property which are held as capital or investment assets will not be taxable in Singapore. However, any gains from the disposal of property which are considered to be gains of an income nature from any trade, business, profession or vocation carried on by the seller would be subject to Singapore income tax if such gains are sourced or received in Singapore (or deemed as such).

Companies pay Singapore income tax at the fixed corporate tax rate of 17%. Tax resident individuals are taxed on a progressive scale with a maximum tax rate of 20%. Non-tax resident individuals are generally taxed at the rate of 15% if their gains from disposal of a property are taken to be income from a trade, business profession or vocation.

9.5 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

- (a) Instruments for the conveyance, assignment or transfer on the sale of shares of companies incorporated in Singapore, or whose shares are registered in a register kept in Singapore are liable to stamp duty at the rate of 0.2%, irrespective of whether the company holds any Singapore real estate. The transfer of shares in a company is an exempt supply for GST purposes.
- (b) A Limited Liability Partnership (“LLP”) in Singapore is considered to be a body corporate with separate legal personality from its partners, although the LLP is tax transparent. If an LLP holds real estate, generally stamp duty may be payable if there is a “significant change” in the partners or their interests of the LLP, in which case any partner who increases his or her share of the LLP assets will be liable to stamp duty on a proportionate value of the real estate held by the LLP. A supply of an interest in an LLP is considered an exempt supply for GST purposes.
- (c) A Limited Partnership (“LP”) in Singapore does not have a separate legal personality from its constituent partners, but provides for limited liability for its limited partners. If an LP holds real estate in Singapore and any change in its partners or their interests thereof results in the transfer of interests in real estate between current or outgoing partners, stamp duty may be payable upon the instrument which effects the transfer. As the LP has only recently been introduced as a business vehicle in Singapore, it is currently not clear precisely when changes in the partners or their respective interests in the LP will result in stamp duty being payable on the relevant instrument. GST may be applicable upon a change in partners or their interests in an LP depending on the particular LP partnership deed and how provision is made for changes in partners or transfers of partnership interests.
- (d) If ownership of any entity is transferred, Singapore income tax may be payable if the resulting gains are considered to be in the nature of income, and either sourced or received in Singapore (or deemed as such), irrespective of whether the relevant entity holds any real estate.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

Under the CLPA, a lease (other than one for a period of seven years and below) must be by deed in the English language, otherwise the lease operates as a lease in equity.

Under the LTA, a lease of over seven years should be in the registered form and registered at the SLA. If such a lease is not registered, an equitable lease will arise.

10.2 What types of business lease exist?

Leases in Singapore are usually fixed term leases with a maximum duration which is fixed from the commencement of the lease. A fixed term lease comes to an end automatically on the expiration of the term, although the parties may by a term in the lease agree that it may terminate at an earlier point of time, e.g. if there is breach or insolvency. Business leases include leases of retail, office and industrial premises.

10.3 What are the typical provisions for leases of business premises in Singapore regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

The terms and conditions of business leases are freely negotiated in Singapore and depend on the relative bargaining position of the parties.

(a) Length of Term

Typical leases of retail and office premises in Singapore are usually granted for fairly short terms. The typical tenancy term is 3 years with an option to renew for a further 3 years. For tenants leasing larger premises, the typical tenancy term may be longer (e.g. from 5 to 10 years) with option(s) to renew. Statutory boards, e.g. JTC or HDB may grant longer lease terms for industrial properties of up to 30 years with an option to renew for a further 30 years.

(b) Rent increases

Rent may be fixed for the duration of the term or subject to rental escalation during the term depending on the commercial negotiation between the parties and the type of property leased (e.g. JTC leases will usually provide for annual escalation of rent). The rent payable during the renewal term (if any) is usually subject to agreement of the parties or agreed to be revised to the prevailing market rent.

(c) Tenant's right to sell or sublease

The tenant's right to assign or sublease is usually subject to the landlord's approval. If the tenant specifically requires an express right to assign or sublease without the landlord's approval, this is usually a negotiated term in the lease document.

(d) Insurance

The tenant is usually required to take up a public liability insurance policy with a reputable insurance company in Singapore (if required by the landlord in the joint names of the tenant and the landlord and with a waiver of subrogation against the landlord) for personal injury, death or property damage or loss, arising out of all operations of the tenant in the premises.

(e) (i) Change of control of the Tenant

Change of control of the tenant usually requires the landlord's consent.

(e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

The transfer of lease as a result of a corporate restructuring may constitute a deemed assignment of the lease by the tenant, which usually requires the landlord's consent.

(f) Repairs

The obligation to repair and maintain the premises will usually rest with the tenant. The landlord is usually responsible for capital

expenditure and structural repairs. The respective obligations of the landlord and tenant are commercial terms which are usually negotiated and set out in the lease document.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

- Stamp duty is payable upon the execution of an agreement for lease at the relevant rates. Please see the response to question 9.1.
- GST (currently at the rate of 7%) is chargeable on the supply of commercial properties for rent by a taxable person.
- Rent from a business lease of Singapore real estate will be taxable income in the hands of the landlord. Companies pay Singapore income tax at the fixed corporate tax rate of 17%, while tax resident individuals are taxed on a progressive scale with a maximum tax rate of 20%. Non-tax resident individuals will be taxed on rental income at the rate of 20%.
- Singapore imposes property tax yearly upon the owners of immovable properties and lands in Singapore based on a certain percentage (currently at the rate of 10%) of the Annual Value of such properties or lands. The Annual Value of a property is determined by the Chief Assessor via different methods, depending on the property at hand although one of the more common methods of determining Annual Value is by reference to the market annual rent of a comparable property.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.). Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

A business lease can be terminated in the following circumstances:

- by expiry of time (in a fixed term lease), unless terminated earlier as may be provided by the express terms of the lease;
- by express agreement between the parties, usually by giving a specified period of notice. Whether any compensation is paid to the landlord for such surrender is a commercial term to be agreed between the parties and included as express terms of the lease;
- due to the breach of the tenant, e.g. non payment of rent. The lease document will usually set out grounds upon which the landlord may re-enter, take possession of the property and terminate the lease. On termination of the lease, the landlord may sue the tenant for damages suffered by the landlord arising from the tenant's breach but the landlord must mitigate his losses.

Provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other on termination for any reason are commercial issues to be negotiated between the parties and set out in the lease document.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

Successors in title e.g. third party purchasers are only bound by covenants in the lease if they touch and concern the land e.g. covenant to repair the property, covenant relating to user and covenant to pay rent.

In practice, if a landlord or tenant wishes to cease to be liable for their respective obligations under the lease once it has sold its

interest, they will procure a novation agreement to be signed with the third party on completion of the sale. The effect is that the party which sells will be discharged from all obligations which will be assumed by the third party with effect from a certain date.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the “environmental footprint” of a building. Please briefly describe any “green obligations” commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Currently, leases in Singapore generally do not have “green obligations”.

11 Zoning and Environmental Issues

11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws. Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

Zoning and Environment

The Planning Act, Chapter 232 of Singapore governs the planning and control of land in Singapore and provides for a Master Plan and Certified Interpretation Plans (which are detailed interpretations of the Master Plan).

The Master Plan addresses issues such as zoning, plot ratios, designation of conservation areas and any other purpose relating to the use of land and provision is made for it to be amended at least once every 5 years.

The Planning Act also requires planning permission to be obtained from the Urban Redevelopment Authority (“URA”) before any development works are carried out.

In Singapore, a developer will usually consult a qualified person on the planning and technical issues, including permits, consents and approvals for the development and operation of a real estate project. The qualified person would be the appropriate person to liaise with the relevant authorities on any queries on the planning, technical and design requirements of a project and advise on the relevant timelines for obtaining the relevant permits, consents and approvals required. The qualified person will also submit the building plans in relation to the proposed project to the various technical departments of the National Environmental Agency of Singapore (“NEA”) (e.g. Pollution Control Department (“PCD”), Central Building Planning Unit (“CBPU”)) for clearance with regard to the relevant environmental regulations.

Once plans are submitted by the qualified person, the PCD and CBPU will check the building plans, assess any impact on the environment which may be caused by such proposed building plans and ensure that the proposed buildings are properly sited and are compatible with surrounding land use.

The PCD has a code of practice for pollution control containing standards which it applies and the code serves as a guide to the qualified person on pollution control requirements for the submission of building plans.

State Acquisition of Land

In Singapore, the government may acquire private land at any time for public development projects and landowners are compensated in

return. The legal framework for the acquisition of private land by the government is provided for in the Land Acquisition Act, Chapter 152 of Singapore.

The Land Acquisition Act sets out various factors to be taken into account as well as factors that will not be taken into account when determining the quantum of compensation awarded.

Compensation is based broadly on the market value of the land at the time of notification by the state declaring that the land is required for specific purposes.

The landowner is not entitled to appeal against the decision to acquire the land, but can only appeal against the quantum of compensation awarded.

11.2 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Land use/zoning and occupation

The URA regulates land use/planning in Singapore. Singapore is currently divided into planning areas which are incorporated as part of the statutory Master Plan to guide all development of land in Singapore. The Master Plan provides a clear guide to landowners on what their land can be used for in terms of land use and intensity. A buyer can obtain information on this from URA directly, or any existing planning permissions or pending planning applications.

Environment

The NEA is the main body that regulates the environmental laws in Singapore. JTC also plays a role in implementing environmental laws relating to industrial land by requiring an environmental baseline study to be conducted on land used for certain industrial activities to establish the baseline level of potential contaminants in soil and groundwater beneath the land and assess the extent of contamination on the land. A buyer can obtain information on this from the NEA or JTC directly.

11.3 What main permits or licences are required for building works and/or the use of real estate?

The Planning Act requires planning/written permission to be obtained from the URA before any development works are carried out. The Building Control Act, Chapter 29 of Singapore (“BCA”) requires a building plan approval to be obtained for all building works and a permit to be obtained for structural works to be carried out, unless exempted under the BCA.

Unless specifically exempted, planning permission for a change of use is required when (a) the change in the use is from one use class to another use class or (b) the change of use involves uses which do not fall into any use class.

11.4 Are building/use permits and licences commonly obtained in Singapore? Can implied permission be obtained in any way (e.g. by long use)?

Building and land use permits and licences are commonly applied for in Singapore and can be obtained as long as requirements set out in the respective guideline are met. Such permits and licences cannot be implied (e.g. by long use) and are only valid for a certain period.

11.5 What is the appropriate cost of building/use permits and the time involved in obtaining them?

Costs of land use permits are continually updated and can be obtained from the websites of the relevant government authorities e.g. URA. Time involved in obtaining permits varies on the type of application.

Costs of building plan applications are found in the Second Schedule of the Building Control Regulations, and are computed based on the type and the floor area of the intended works. Time involved in obtaining the approval varies on the type of application.

Applications for change of use are for e.g. generally processed on a first-come-first-serve basis. Applications submitted electronically will be processed within 2 weeks so long as all relevant supporting documents and information are submitted. For formal electronic change of use applications, URA is committed to, within 30 days, either process a qualified application with all required supporting documents or respond in the event of a delay.

11.6 In what circumstances (if any) is environmental clean up ever mandatory?

The relevant legislation governing environmental clean up are the Environmental Protection and Management Act, Chapter 94A of Singapore (“**EPM Act**”), the Environmental Public Health Act, Chapter 95 of Singapore (“**EPH Act**”) and the Environmental Protection and Management (Trade Effluent) Regulations 1999 (Rg 5) (“**EPM Regulations**”).

Under the EPM Act, trade effluent may not be discharged into any drain or land unless a licence has been obtained. The EPM Regulations also require that the holder of a licence for the discharge of any trade effluent must treat all trade effluent before it is discharged into any land, unless an exemption is granted by the Director General of the Environmental Protection of the NEA (“**EP Director General**”). The EP Director General has the power to require any person who has discharged or spilled any toxic substance, trade effluent, oil, chemical, sewage, hazardous substance or polluting matters onto any land or into any drain or the sea, to remove and clean up such discharge or spillage within a specified time to be fixed by the EP Director General as he considers fit. The EP Director General also has the power to require the owner or occupier of any premises to remove any hazardous substances to a disposal facility, if in the opinion of the EP Director General, such hazardous substances are likely to threaten the health and safety of any person or cause pollution of the environment.

The Director General of Public Health of the National Environmental Agency of Singapore (“**PH Director General**”) has the power to require the occupier of any premises to remove periodically industrial waste from such premises to a disposal facility. The PH Director General also has the power to require the occupier to recycle or treat any industrial waste before it is brought to any disposal facility. Any person who owns or is in possession of any dangerous substance or toxic industrial waste or the residue from the treatment thereof must obtain the written permission of the PH Director General before bringing such substance or waste to any disposal facility for disposal.

11.7 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Singapore.

Such requirements are governed by the BCA and its subsidiary legislation and codes.

The energy performance of buildings in Singapore is regulated by the Building Control (Environmental Sustainability) Regulations 2008 (the “**Regulations**”) under the BCA. The Regulations only apply to the following building works (where application for planning permission is submitted on or after 15 April 2008):

- all building works which involve a gross floor area of 2,000 square metres or more;
- building works which involve increasing the gross floor area of an existing building by 2,000 square metres or more; and
- building works relating to an existing building which involve a gross floor area of 2,000 square metres or more.

The Code for Environmental Sustainability of Buildings (the “**Code**”) sets out the minimum environmental sustainability standard for buildings and the administrative requirements. The Code adopts the Building Construction Authority Green Mark assessment criteria as the compliance method to assess the environmental performance of a building, and sets out the minimum environmental sustainability standard for buildings. The Green Mark assessment criteria consist of five main categories, namely energy efficiency, water efficiency, environmental protection, indoor environmental quality and other green features, and the building will be awarded a Green Mark score and rating based on the above criteria.

The Building and Construction Authority has also put in place incentive schemes under the 2nd Green Building Masterplan to encourage both new and existing buildings to become more energy efficient and improve their energy performance standards.

The Energy Sustainability Unit of the National University of Singapore and the NEA has also developed an initiative which aims to promote energy efficiency and conservation in the buildings sector by according recognition to energy efficient buildings in the form of an award (a certificate and an Energy Smart Building Label). The programme aims to reduce energy consumption and carbon emissions within the building sector, as well as enhance the company’s corporate image.

12 General

12.1 Are there any current proposals for significant reform of real estate law in Singapore? Please give details.

The Ministry of Law (“**MinLaw**”) intends to bring in new measures to further protect conveyancing monies. The key features of the measures are:

- Lawyers (or other persons) will no longer be allowed to receive and hold conveyancing moneys in their normal client accounts as they do today. Breach of this new prohibition will be a criminal offence.
- Lawyers will only be allowed to receive and hold conveyancing moneys in a new type of account, called a Conveyancing Account, with an Approved Bank or through an escrow agreement between buyers’ and sellers’ lawyers for the transaction.
- There will be strict controls governing withdrawal of moneys from Conveyancing Accounts. Approved Banks will require signatures from both parties’ (generally, buyers’ and sellers’) lawyers before they allow money to be paid out from the Conveyancing Accounts.
- For moneys traditionally held by a lawyer on behalf of both parties, such as the option deposit, an alternative would be for clients to place these with the Singapore Academy of Law.

MinLaw is now seeking a new round of feedback on the revised measures and supporting legislation that would be introduced.

12.2 Date at which law is stated.

28 January 2010.

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