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Singapore REAL ESTATE

Contributor

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Singapore.

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SINGAPORE REAL ESTATE



1. Overview

Singapore land law follows the common law system. There are 2 systems of land registration in Singapore where land falls under:

(i) the Registration of Deeds Act 1988 (RODA). Under the RODA, lands are known as 'common law land' or 'unregistered land'; or

(ii) the Land Titles Act 1993 (LTA) or the Land Titles (Strata) Act 1967 (LTSA). Lands registered under the LTA or the LTSA are 'registered land'. This system of registration of 'registered land' is derived from the Torrens system.

Nearly all land in Singapore is now registered land as the Singapore Land Authority has been converting unregistered land into registered land.

Singapore courts will administer law as well as equity. As such, remedies are available to claimants under law or in equity. In particular, equitable remedies such as specific performance and injunction may be granted in actions relating to contracts for sale of land or interest in real estate.

2. What is the main legislation relating to real estate ownership?

Main legislation relating to ownership of real estate includes:

(i) the Registration of Deeds Act 1988 relating to the registration of deeds for 'common law land' or 'unregistered land';

(ii) the Land Titles Act 1993 or the Land Titles (Strata) Act 1967 for registration of titles to 'registered land';

(iii) the Conveyancing and Law of Property Act 1886 relating to the practice of conveyancing;

(iv) the Land Acquisition Act 1966 relating to compulsory acquisition of private land for public purposes;

(v) the Residential Property Act 1976 which restricts purchase or transfer of residential properties including vacant land; and

(vi) the State Lands Act 1920 which regulates the alienation and occupation of State lands.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2022 or are there any major anticipated new laws which are expected to materially impact them in the near future?

The Singapore Budget 2023 announced the increase in the tiered rate of buyer's stamp duty (BSD) for both residential and non-residential properties with effect from 15 February 2023. The highest rate of BSD for residential properties rose to 6% of the purchase price or market value of the property, from the previous highest rate of 4% whilst BSD for non-residential properties increased to 5% from the previously highest tier of 3%.

Furthermore, on and after 27 April 2023, the rate of additional buyer's stamp duty (ABSD) for purchase of residential properties was increased. A buyer of a residential property is subject to BSD and (depending on the profile of the buyer and count of residential properties owned by the buyer) ABSD. The rate of ABSD (computed on the higher of the purchase price or market value of a property) was raised from 17% to 20% for Singapore citizens buying their second residential property and from 25% to 30% for those buying their third and subsequent properties. Permanent residents buying their second residential property will pay ABSD with a rate increased from 25% to 30% and their third and subsequent residential property at a rate increased from 30% to 35%. Foreign individuals buying residential properties are required to pay ABSD at a rate of 60%, up from 30%. Entities buying residential properties must pay ABSD at a rate of 65%, a sharp increase from 35%. There was no change to the rate of ABSD which housing developers are required to pay in their purchase of any

residential property, which held steady at 35% (which may be remitted), plus an additional 5% which is non-refundable.

The revised BSD and ABSD rates similarly apply to Additional Conveyance Duties for Buyers (ACDB) in the case of qualifying transfers of equity interests in property holding entities that own primarily residential properties in Singapore.

Another significant change of law is the removal of 'Commercial & Residential' zone from the list of land use zones that had been designated as non-residential property. With this change taking effect on 20 July 2023, foreign persons (including both individuals and entities) wishing to acquire an interest in a land zoned or property permitted for 'Commercial & Residential' use, must first obtain approval from the Controller of Residential Property under the Residential Property Act 1976 (RPA). This will have an impact on potential investors of land or property intended for development or redevelopment to residential use as conditions are typically imposed when approvals are granted under the RPA. Conditions include requirements for construction and sale of all residential units in the new project, to be completed within specified time frames. Hefty extension fees are imposed in the event of failure to comply with such conditions.

4. How is ownership of real estate proved?

As mentioned in paragraph 1 above, there are 2 main systems of land registration in Singapore:

(i) For lands under the Registration of Deeds Act 1988, ownership is proved by way of tracing of title through the documents of title and the searches in the registry of deeds.

(ii) For registered land, the land register shows proof of ownership as the effect of registration provides indefeasibility of title where title is unqualified. Under this system, registration is required to give effect to the transfer of real estate.

5. Are there any restrictions on who can own real estate?

The Residential Property Act 1976 (RPA) restricts the holding of residential lands or residential properties (as defined in the RPA). A foreign person means any person who is not a citizen of Singapore, a Singapore company, a Singapore limited liability partnership or a Singapore society.

Foreign persons are permitted without the need to obtain the approval of the Minister of Law, to purchase or acquire interest in non-restricted residential properties such as any flat in a development permitted for residential purposes, any unit in a condominium or any unit sold under the Executive Condominium Housing Scheme Act 1996. A foreign person may apply for approval to purchase, acquire or retain restricted residential property and approval when given will be subject to terms and conditions.

In certain cases, there may be conditions or restrictions imposed on the title to properties, such as leases, regarding subsequent purchasers or beneficiaries in future acquisition of real estate. For instance, the sale, transfer or assignment of leases granted by JTC Corporation (the statutory board which manages industrial land and business parks) is typically subject to the approval of JTC Corporation.

6. What types of proprietary interests in real estate can be created?

Proprietary interests which may be created in real estate are as follows:

(i) estate in fee simple which is derived from a State Grant;

(ii) estate in perpetuity which is a statutory land grant with title for an unlimited duration typically subject to payment of quit rent; or

(iii) leasehold estate which may be for different lease terms.

7. Is ownership of real estate and the buildings on it separate?

Generally, the buildings go with the ownership of the land.

8. What are common ownership structures for ownership of commercial real estate?

Commercial real estate may be held by individuals or other vehicles. It is common for commercial and industrial real estate to be owned by companies (including special purpose companies), limited liability partnerships or trusts (for example, as in the case of real estate investment trusts) or special purpose trusts.

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

Legal due diligence for the purpose of acquiring real estate typically involves the following:

- review of title documents and title searches;
- review of legal requisition search results.
Legal requisitions are specific searches made with certain government authorities or statutory bodies and replies received will assist a buyer to ascertain if there are any specific issues relating to the real estate being acquired;
- review of winding up or bankruptcy searches are also conducted prior to entry into a contract for sale and purchase of real estate and prior to completion of acquisition of real estate;
- review of contracts relating to the real estate such as leases or tenancy agreements, building maintenance contracts, builders' or suppliers' warranties and indemnities.

The legal due diligence process may take a number of weeks or (as may be required) a few months depending on the number of title documents, searches and contracts.

In the case where acquiring real estate involves the transfer of an entity or structure held by the sellers, the legal due diligence process may also be carried out in respect of the relevant entity or structure.

10. What legal issues (if any) cannot be covered by usual legal due diligence?

Encumbrances and encroachments may not be uncovered as part of the typical legal due diligence process. In some cases, encumbrances are created but the interest is not registered in the Land Register. Similarly, encroachments are not generally shown on the title searches. Buyers, acquirors, mortgagees and chargees are advised to carry out separate surveys on boundaries to ascertain whether the subject properties are affected by encroachments.

In addition, unregistered interests or agreements relating or affecting properties are not covered during the legal due diligence process unless disclosed by the sellers. Unregistered interests may include compliance with planning and building control requirements, health and safety regulations, restrictions, easements, rights of way or rights pertaining to use of the property or

agreements relating to financial contribution for upkeep of neighbouring land. Buyers, acquirors, mortgagees and chargees will have to carry out environmental studies to determine if there is any contamination.

Physical defects or building safety risks and issues on the properties are also not covered. Buyers and acquirors will have to carry out technical or building audits to ascertain defects or issues regarding the properties.

11. What is the usual process for transfer of commercial real estate?

A typical process relating to the transfer of real estate is as follows:

- (i) Option to Purchase (OTP) or Sale and Purchase Agreement (SPA). The parties negotiate and enter into the OTP or SPA upon agreement of the terms. A caveat is typically lodged with the Singapore Land Authority to notify of the buyer's interest in the real estate;
- (ii) Arranging for completion of the transfer of real estate, including the payment of purchase price and redemption of any mortgage or charge; and
- (iii) Lodging of all relevant instruments with the Land Register as part of post-closing action.

For common law land or unregistered land under the Registration of Deeds Act 1988, the transfer of title is by conveyance or assignment. The registration of the indentures or deeds may give priority to the documents.

For registered land under the Land Titles Act 1993, transfer instruments must be registered with the Registry of Titles to pass title. No instrument is effectual to pass any estate or interest unless it is registered.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Share transfers have become quite common in transfers of commercial or industrial real estate as purchasers may be keen to own the entities which hold the land. As the rate of stamp duty chargeable on transfer of shares is much less than the rate of buyer's stamp duty chargeable on transfer of real estate, share transfers are a popular method of such transfers.

13. On the sale of freehold interests in land

does the benefit of any occupational leases and income automatically transfer?

Rent and the benefit of occupational leases generally go with the transfer of freehold interests in land. The Conveyancing and Law of Property Act 1886 provides that rent reserved by a lease and the benefit of covenants and provisions contained in the lease and on the lessee's part to be observed or performed, shall go with the reversionary of the land.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

The following rights, interests and burdens can be created against the title to real estate:

- (a) Leases;
- (b) Mortgages;
- (c) Restrictions or Restrictive Covenants; or
- (d) Easements or Rights of Way.

For common law land or unregistered land under the Registration of Deeds Act 1988, leases, mortgages, restrictions or restrictive covenants or (as the case may be) easements or rights of way are often created in conveyance or assignment of land which are registered in the Register of Deeds.

For registered land, instruments of lease, mortgage, restrictions or easements may be registered in the Land Titles Register. Upon registration, the title held by any owner, subsequent purchaser or party claiming any rights to the land, will be subject to such lease, mortgage, restrictions or easements.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised

A split of legal and beneficial ownership is recognised although the ownership rights of real estate comprising legal and beneficial ownership typically go together upon a conveyance or transfer.

In the case of trust structures, it is accepted that a trustee may hold only legal title whereas the beneficial ownership may be vested in separate beneficiaries. An example is ownership of real estate by a real estate investment trust (REIT) where an appointed trustee holds legal title to real estate for and on behalf of the

REIT (the beneficial owner). Both capacities and interests can be notified on an instrument of transfer registered on the land register.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

There are no specific requirements for public disclosure of the ultimate beneficial owners of real estate.

However, the Residential Property Act 1976 requires that where the beneficiary of a conveyance or transfer of restricted residential real estate is a foreign person, such beneficiary must be disclosed to the Controller of Residential Property and the relevant approval obtained before any conveyance or transfer of real estate may be effected.

17. What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?

Property tax is payable by any person who receives rent from a property, whether on his own account or as agent or trustee for another person; or who would receive the same if the property were let to a tenant.

Stamp duties are payable by buyers of real estate and in certain cases relating to residential and industrial properties, stamp duties are also payable by sellers. Please refer to paragraph 3 regarding buyer's stamp duty and additional buyer's stamp duty.

Where share transfers are effected as a structure for acquisition of real estate, stamp duties are payable by buyers in respect of the share transfers. In specific cases of share transfers relating to property holding entities that own primarily residential real estate, additional conveyance duties are payable by both buyers and sellers of the share transfers.

Stamp duties are also payable on lease of real estate. Goods and Services Tax can be payable on the sale or lease of non-residential real estate.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Commercial leases generally have the following terms:

- (i) fixed terms or periods of lease without any right of termination by parties save in the case of specific or identified events (such as damage by fire, compulsory

acquisition of the real estate by authorities or redevelopment of the building);

(ii) rents and service charge payable on a periodic basis;

(iii) a security deposit to secure performance by the lessees;

(iv) insurance required to be taken up and maintained by tenants;

(v) covenants, conditions and restrictions on the use of the leased premises;

(vi) restriction against assignment, subletting, underletting or parting with possession of the premises;

(vii) right of lessors to terminate the leases in the case of certain events (such as default on the part of the lessees, winding up or bankruptcy);

(viii) rights of renewal (which often include a mechanism for the revision of rent).

There are currently no regulatory controls on terms of commercial leases although there is an industry led Code of Conduct for Leasing of Retail Premises in Singapore (Code) which sets out specific terms (save for permitted deviations) for the lease of qualifying retail premises. This Code took effect in June 2021 and has been voluntarily adopted by both government landlords and some major private sector landlords. However, the Lease Agreements for Retail Premises Bill has been passed on 3 August 2023 would make it mandatory for qualifying retail leases to be compliant with the Code. This legislation is expected to take effect in February 2024.

19. How are use, planning and zoning restrictions on real estate regulated?

Use, planning and zoning restrictions are regulated pursuant to various legislation which include the Planning Act 1998, the Building Control Act 1989, the Residential Property Act 1976 and other relevant legislation.

20. Who can be liable for environmental contamination on real estate?

Any owner or occupier may be responsible for environmental contamination on real estate.

21. Are buildings legally required to have

their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

All new buildings and existing buildings undergoing addition or extension works with gross floor area of a minimum quantum of square metres, may apply for a Green Mark certification. To achieve such Green Mark rating, there is specific criteria for the building works including energy efficiency, water efficiency, environmental protection, indoor environmental quality and innovative green features.

New buildings and existing buildings undergoing addition or extension works have to meet minimum energy performance requirements. To achieve the Singapore Green Building Masterplan 2030, the Building and Construction Authority (BCA) (the statutory board which develops and regulates Singapore's building and construction industry) has raised the minimum energy performance levels for new buildings and existing buildings undergoing addition and extension works to more energy efficient levels.

The BCA requires periodic energy audits and annual energy consumption data to be submitted for new buildings and existing buildings that have undergone a major energy-use change and are required to meet the prescribed Green Mark standard for existing buildings. All energy audits are required to abide by the Code on Periodic Energy Audit of Building Cooling System.

22. Is expropriation of real estate possible?

Land acquisition is possible. The Land Acquisition Act 1966 (LAA) will apply in cases where land is acquired or intended to be acquired by the State. The LAA provides for compensation to be made in the case of acquisitions.

23. Is it possible to create mortgages over real estate and how are these protected and enforced?

Mortgages may be created over real estate. Please refer to paragraph 14 above.

24. Are there material registration costs associated with the creation of mortgages over real estate?

Registration fees are payable in respect of registration of mortgages against title to the real estate but the fees payable are not significant.

25. Is it possible to create a trust structure for mortgage security over real estate?

Trust structures are not uncommon in structuring for the purchase of real estate. It is possible for a trustee to hold

mortgage security over real estate for lenders. In the case of syndicate or club financing, it is common that a mortgagee of real estate may be a security trustee or agent for a syndicate or club of lenders. Such security trustee or agent is empowered to enforce the mortgage on behalf of the lenders-beneficiaries.

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