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Buying and Selling Real Estate in Singapore

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER SINGAPOREAN LAW

INTRODUCTION

There are two systems of land registration in Singapore: registration under the Registration of Deeds Act, known as “unregistered land”, and registration under the Land Titles Act, known as “registered land”. Currently, most land in Singapore has been converted and brought under the latter registration system. As such, most of this article will be concerned only with land registered under the Land Titles Act. The entity overseeing the land registration in Singapore is the Singapore Land Authority (“SLA”).

Other relevant legislation governing real estate law in Singapore include the Land Titles (Strata) Act, the State Lands Act, the Land Acquisition Act, the Planning Act, the Residential Property Act, and the Housing and Development Act.

ESTATES & INTERESTS IN LAND

Land may be held in different ways such as:

- i) estates in fee simple (or freehold);
- ii) estates in perpetuity; and
- iii) leases (typically, 99-year leasehold);

Both estates in fee simple and in perpetuity are where a person holds the land indefinitely. However, the latter is subject to covenants and conditions such as the payment of quit rent.

Leases are for definite terms and are also subject to covenants and conditions. Leases are distinguishable from tenancy agreements in that the latter are not considered disposals of land which require the approval of the President.

While smaller estates or interests can be carved out of larger estates (e.g. the owner of an estate in fee simple may grant a lease of 99 years to a lessee, or the owner of a 99-year lease may grant a lease of 30 years to a sub-lessee), the creation of some estates or interests may

require the prior written approval from the relevant authority.

All land may be reclaimed by the State under the Land Acquisition Act.

REAL ESTATE OWNERSHIP

Manner of Holding

Property in Singapore may be held in sole or joint ownership. Joint ownership can come in the form of joint tenants or tenants-in-common. In joint tenancy, the joint owners own the whole interest in the property and there is no separation in shares. Conversely, tenants-in-common own the same property in distinct and separate shares. The right of survivorship applies only to joint tenancy, meaning the survivor will eventually own 100% of the property.

It is possible to convert one manner of joint holding to the other. This is usually done by way of registering with SLA a declaration which has been signed before a Commissioner of Oaths.

Public Housing

Public housing in Singapore is subsidised and comes under the purview of the Housing and Development Board (“HDB”) and are more commonly known as “HDB flats”. Currently, more than 80% of Singapore’s population live in HDB flats.

The eligibility criteria for HDB flats are generally assessed based on Singapore citizenship, income, age, family nucleus and non-ownership of other residential property. A person who owns a private property (whether in whole or in part) is precluded from purchasing a HDB flat, unless he sells the private property.

Executive Condominiums (“EC”) are a hybrid public housing property under the Executive Condominium Scheme Act which resembles private condominiums with security and



amenities such as swimming pools and clubhouses. Strict eligibility criteria similar to that for normal HDB flats are imposed. ECs may only be sold after the expiry of a minimum occupation period of five (5) years and until the tenth (10th) year, only to Singapore citizens or permanent residents, after which, they may be sold like any other private condominium.

Planning, Zoning & Use

Planning and control of use of land and its development fall to URA under the Planning Act. Land in Singapore can be zoned as residential, commercial or industrial, each type of zoning carrying its own set of rules for ownership, use and development. Permission from URA or such other relevant authorities may be required for deviations such as change of use of properties, subdivision of land, etc.

LEGAL FORMALITIES IN ACQUISITION

Option to Purchase & Sale and Purchase Agreement

The Civil Law Act requires agreements for the sale and purchase of property to be in writing and signed by the parties involved.

The majority of sales and purchases of property in Singapore are initiated with the issuing of an Option to Purchase (“Option”) by the vendor to the prospective purchaser in exchange for an initial sum paid by the prospective purchaser to the vendor which is typically 1% of the purchase price.

An Option is used to reserve the property for an agreed period, typically 14 days, during which the prospective purchaser may confirm whether he is proceeding with the transaction. In the event that he chooses not to proceed with the transaction, it is usually a term of the Option that the initial sum paid shall be forfeit to the vendor.

The purchaser will confirm the transaction by countersigning the Option and paying the remaining deposit amount to the vendor or the vendor’s appointed lawyer as a stakeholder – this is commonly known as “exercising the Option”. An exercised Option is considered the instrument effecting the sale and purchase of the property and no further agreement is required to capture the intention of the parties.

In some cases where the parties are certain of the transaction, they may decide to enter a Sale and Purchase Agreement immediately.

Completion (or closing) of the sale and purchase typically takes place within 8 to 12 weeks from the time of exercising the Option. This period is to allow the purchaser to complete the investigation of title and government requisitions on the property. This period also allows the purchaser to arrange for financing of the purchase either through his own funds or a bank mortgage.

Properties under Development

Developers of both residential and non-residential properties are subject to specific rules under the Housing Developers (Control and Licensing) Act and the Sale of Commercial Properties Act respectively which are designed to protect purchasers.

Developers of residential properties are required to be licensed. The sale of property by developers of residential and non-residential properties alike are subject to terms and conditions prescribed and regulated by the relevant governing Act.

Registration

A transaction of unregistered land is achieved by way of a deed, signed, sealed, and delivered, and registered with the Registry of Deed to secure priority based on the date of registration. Tracing of title is important with unregistered



land, and usually requires careful checking of at least 15 years prior to its registration to ensure a good root of title.

Registered land relies on only one document of title, on which every transaction affecting the property is endorsed. Registration with SLA is required to effect the transfer of the interest in the land. Upon such registration, SLA will issue a certificate of title to the registered proprietor.

As most land in Singapore has now been converted to registered land, the change in proprietorship of the property will be effected by the execution of the prescribed form. Upon completion of the sale, this form is lodged and registered with SLA together with the pre-existing version of the certificate of title. Following the registration of the form, SLA will update the land registry to reflect the new proprietor(s) of the property and issue a new version of the certificate of title to the new proprietor(s), and to reflect the mortgage or charge, if any, over the property.

TAXES

Stamp duty is payable on the acquisition or disposal of a property situated in Singapore, or both. The amount of duty payable is computed based on the purchase price or market value of the property, whichever is higher. Such dutiable acquisitions or disposals include those by way of gift or by way of a trust (where there is a change in the beneficial ownership of the property), but do not include acquisition of properties by way of inheritance under the terms of a will or by effect of law.

Stamp duty is payable within 14 days of the date of the instrument effecting the acquisition or disposal of the property, if the instrument is executed in Singapore. For instruments executed outside of Singapore, stamp duty is payable within 30 days. A penalty of up to four

(4) times the amount of unpaid duty may be imposed for any late or non-payment.

For Purchasers

A purchaser is liable for Buyer's Stamp Duty ("BSD") and may also be liable for Additional Buyer's Stamp Duty ("ABSD").

Prior to 20 February 2018, the BSD rate was up to 3%. With effect from 20 February 2018, BSD rates differ for residential and non-residential properties, with the BSD rate for the former going up to 4%, depending on the purchase price of the property.

Whether ABSD is payable depends on whether the purchaser is an individual or entity, the residency status of the purchaser and the number of residential properties owned (in whole or in part) by the purchaser prior to the acquisition in question.

Prior to 6 July 2018, the ABSD rate was up to 15%. With effect from 6 July 2018, the ABSD rate has increased to up to 25%. Where there are multiple purchasers, the ABSD payable will be computed based on the purchaser with the profile who attracts the higher rate.

It should be noted that there are also remissions available such as remissions to married couples of certain profiles and remissions under Free Trade Agreements.

Purchasers should also note that where a mortgage is obtained to finance the purchase of the property, the mortgage is also subject to a stamp duty of 0.4% of the loan amount, or if an equitable mortgage, then 0.2% of the loan amount, both capped at a maximum stamp duty of S\$500.

For Vendors

A vendor may be liable for Seller's Stamp Duty ("SSD") if the property is zoned as residential or industrial.

***(i) Residential***

Where a vendor had purchased the property concerned before 11 March 2017, he will be liable for SSD if he sells or disposes of the property before the expiry of four (4) years of the date of his purchase. The applicable SSD rate can go up to 16%, depending on the date on which the vendor had purchased the property and the holding period.

Where the property was purchased on or after 11 March 2017, the vendor will only be liable for SSD if he sells or disposes of the property before the expiry of three (3) years from the date of his purchase. The applicable SSD rate ranges from 4% to 12%, depending on the holding period.

(ii) Industrial

Where a vendor had purchased the property concerned on or after 12 January 2013, he will be liable for SSD if he sells or disposes of the property before the expiry of three (3) years of the date of his purchase. The applicable SSD rate ranges from 5% to 15%, depending on the holding period.

Additional Conveyance Duties (for companies owning primarily residential properties)

Additional Conveyance Duties (“ACD”) was introduced on 11 March 2017 and is applicable on top of the existing stamp duty for share transfers to qualifying acquisitions or disposals of equity interests (e.g. shares or units) in property-holding entities (“PHEs”) that own primarily residential properties in Singapore effected by instruments executed on or after 11 March 2017.

An entity is considered a PHE if at least 50% of its total tangible assets comprise prescribed immovable property pursuant to the Stamp Duties Act, being primarily residential properties.

A qualifying acquisition occurs when equity interest in a PHE is acquired and the buyer

(together with any associates) already held 50% or more equity interest or voting power in the PHE before the acquisition, or following the acquisition, comes to hold 50% or more equity interest or voting power in the PHE.

A qualifying disposal occurs when the seller (together with any associates) hold 50% or more equity interest or voting power in the PHE, the equity interest being disposed of was acquired on or after 11 March 2017 and is being disposed of within three (3) years of its acquisition on a first-in-first-out basis.

Currently, the applicable ACD rate for buyers on instruments executed on or after 6 July 2018 is up to 34%, while the applicable ACD rate for sellers is 12%.

ONGOING COSTS OF PROPERTY OWNERSHIP**Property Tax**

Property tax on residential property is payable, whether owner-occupied or not, and at rates which follow a progressive scale. All other properties are taxed at 10% of the annual value of the property (i.e. the estimated gross annual rent of the property if it were to be rented out).

Property tax reliefs may be available in certain scenarios such as where a residential property is being demolished and rebuilt for subsequent owner-occupation, or where a non-residential property is owned and being used by a registered charity for charitable, public religious worship or educational purposes.

Conservancy & Maintenance Charges

HDB properties are subject to monthly conservancy charges which are dependent on the relevant town council in charge of the property. Similarly, private condominiums and developments are subject to monthly maintenance fees payable quarterly to the relevant management corporation.



PROTECTION OF LANDED RESIDENTIAL PROPERTY

There is generally no restriction on foreign ownership of commercial or industrial property. However, transactions of restricted residential property (generally landed property) involving foreigners require prior approval by the Minister of Law in accordance with the Residential Property Act. Besides individuals who are foreigners, a foreign person is also defined in the Act to include a company incorporated in Singapore if the company has directors or members who are not Singapore citizens.