Commercial real estate

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General market overview

Singapore continues to be one of the most vibrant and energetic city-states in the world. As a thriving financial centre in South-East Asia, Singapore has emerged as one of the world's most attractive real estate markets to invest in, especially given its limited land supply, transparent legal and land ownership system and stable political environment. Notwithstanding the relatively high prices of real estate in Singapore, we expect investors' attraction to the Singapore real estate market to continue, supported by the below observations:

The residential property market in Singapore showed remarkable resilience in the face of the ongoing COVID-19 global pandemic. In fact, throughout the pandemic, strong demand for residential properties was fueled by upgraders and investors alike. Singapore residents, a large proportion of which had to work from home for the greater part of 2020 and 2021, sought to purchase or rent larger spaces, while developers, seeing the rising demand, sought to replenish their depleted land banks for new developments. According to flash estimates released by the Urban Redevelopment Authority **(URA)**, private home prices have increased by an overall 10.6% per cent in 2021, compared with a 2.2% increase in 2020. On 15 December 2021, the Government announced the latest round of property cooling measures for residential properties, increasing the Additional Buyer's Stamp Duty **(ABSD)** rates applicable to second property purchases by Singapore citizens and Permanent Residents by at least 5%, and increasing the ABSD rates on foreigner purchasers and entities (including property developers) to new headline rates of 30% and 35% respectively.

Many market watchers predict that the new cooling measures are likely to dampen the developers' risk appetite to acquire large residential land sites for redevelopment, as well as the interest from foreign investors who do not come within any of the existing ABSD remission exceptions.

On the other hand, upgraders are unlikely to be deterred, as they would sell existing properties before upgrading. The year 2021 saw some record-setting Good Class Bungalow transaction prices, and it is unlikely that this niche high value trophy asset class will be impacted much by the new cooling measures, as ownership of GCBs are restricted to Singaporeans and GCB buyers would usually buy the asset as their first residential property so that they do not pay ABSD on the purchase.

In the industrial property sector, there is significant interest in industrial properties which can operate as cloud kitchens as such businesses are pandemic proof. In addition, warehouse leasing demand, arising from the third-party logistics and e-commerce sectors, continue to contribute to the rising industrial rent. In September 2021, the JTC All Industrial Rental Index registered an increase for the third straight quarter. A large portion of industrial property in Singapore is regulated by the Government, typically on 10 to 30 year leases. The JTC Corporation is the main statutory board regulating Government industrial property leases.

The commercial leasing market had witnessed growth in alternate segments such as co-working and co-living spaces. Demand for these sub-sectors continue to see an uptick in 2021 as more companies seek out flexible working arrangements with shorter lease term commitments. While some companies continue to downsize, leasing activities from the technology and financial services sectors remain robust in 2021. The supply of Grade A offices projected for 2022 remains tight due to the displacement of tenants from buildings slated for redevelopment, there are prospects for occupier activity and rents to continue picking up in 2022, on the back of improving business sentiments with the successful COVID-19 vaccines roll out.

2021 also saw strong levels of activity in the commercial conservation shophouse space, approximately 30% increase in activity volume in the first half of 2021 in comparison to the second half of 2020, as they represent a more flexible and usable size and format, and are favoured by many asset management companies and family offices. Due to their limited supply, they are also a keenly sought after asset class for longer term capital appreciation, with prices reported to be approximately 59.5% higher in 2021 in comparison to 2020.

Overall, the Singapore property market outlook in 2022 will be impacted by global events and investor sentiments including the anticipated relaxation of border and travel restrictions on business activity in Singapore and the region.

1. Sale and purchase

1.1 Real estate ownership

Forms of real estate ownership
Land in Singapore generally comprises Government-owned land and privately-owned freehold land. For the former, leasehold interests in the land may be granted to individuals, corporations or other entities. Leases can also be issued by freehold private land owners.

There are generally no legal restrictions on the ownership of commercial properties in Singapore. Industrial properties are more regulated, particularly Government-leased properties (e.g. JTC or URA properties, where the relevant Government agency will need to approve any lease or transfer of a lease in accordance with policy-driven regulations). Foreign ownership of residential property is regulated to a large extent, including the express restrictions set out in the Residential Property Act (Cap. 274). Broadly, foreign persons or entities require Government approval to acquire landed residential property, although they may purchase a flat or unit within a residential development without similar restrictions.

Major property legislation
The Conveyancing and Law of Property Act (Cap. 61) is the main property legislation which regulates the ownership, transfer, leasing and mortgaging of properties in Singapore. In addition, other property-related legislation includes:

(a) The Land Titles Act (Cap. 157) which regulates the registration of titles to land;

(b) The Land Titles (Strata) Act (Cap. 158) which regulates the strata subdivision of land and the collective sale of property;

(c) The Building Maintenance and Strata Management Act (Cap. 30C) which regulates the proper maintenance and management of strata-subdivided buildings in Singapore;

(d) The Housing Developers (Control and Licensing) Act (Cap. 130) and its Rules which regulate developers of a residential project with more than four units; and

(e) The Sale of Commercial Properties Act (Cap. 281) and its Rules which regulate the developers of a non-residential project with more than four units.

Title registration
The system of land registration in Singapore is by title registration, adopted from the Torrens system of land registration. This means that entry into the land-register confers an indefeasible title to the registered proprietor, subject to any subsisting registered encumbrances or interests. Conveyance instruments such as Transfer and Mortgage are stamped (where applicable) and registered electronically before the certificates of title are updated and re-issued by the Singapore Land Authority (**SLA**).

The land-register is the public register of title. Public searches may be conducted (subject to payment of fees) on the title to find out the ownership particulars of each property and any encumbrances registered against the property such as mortgages, legal charges and restrictions.

The land-register is maintained by the Registrar of Titles. The register can be accessed online at the Integrated Land Information Service *https://app1.sla.gov.sg/inlis/#/*.

The following documents are registrable in the land-register:

(a) Transfers;

(b) Legal charges;

(c) Discharges;

(d) Court orders affecting land interests;

(e) Registrable leases; and

(f) Any other instruments affecting land interests.

Transfer of real estate ownership
A combination of contract and land law legislation and legal principles govern property transactions in Singapore.

After preliminary negotiations occur and both contracting parties settle on a price, a purchase option agreement is commonly drafted and issued by the vendor to the purchaser in exchange for an option fee (typically 1% of the purchase price). If the purchaser wishes to proceed with the transaction, he must exercise the option within the option period (typically two weeks) and in accordance with the terms of the purchase option agreement, failing which, the option will lapse and the option fee may be forfeited to the vendor.

Once the option has been duly exercised by the purchaser, the purchase option agreement becomes a binding sale contract, and its terms will govern the transaction, including the remedies available to each party for breach or rescission.

Alternatively, contracting parties can negotiate and enter into a Sale and Purchase Agreement (**SPA**).

In both scenarios, an initial deposit is usually paid by the purchaser upon exercise of the option or the signing of the SPA, and such deposit is commonly stakeheld by the vendor's solicitors pending completion of the sale, for the purchaser's protection.

On the date of completion, the purchaser will pay the balance of the purchase price to the vendor in exchange for all existing title deeds and access items (e.g. keys) to the property. If the property is subject to any existing encumbrances, the vendor must also hand over the necessary discharges to the purchaser.

Following completion, the relevant instruments including discharges, transfer, mortgages and/or charges will be lodged. Upon final registration, updated title deeds will be issued by the land registry.

Direct (i.e. asset transfer) vs indirect (i.e. share transfer) transfer of real estate

Asset transfers can take the form of a direct transfer of ownership of the property itself or indirectly through the transfer of shares of the property holding company.

Property holding company share transfers may be the preferred means of acquiring non-residential assets as the stamp duty payable on the transfer of shares (currently 0.2% of the company's net asset value or the transfer price) is significantly lower than that payable on an asset transfer (currently around 3%). Furthermore, a share transfer means that there is no need to assign or novate underlying leases or asset management contracts, although care should be taken with regard to any change of control restrictions.

However, where residential properties or shares in companies holding residential properties are transferred, the transaction may be subject to additional stamp duties (Please refer to Section 5 below).

Considerations for foreign ownership of non-residential real estate

Apart from any head lease covenants or specifically regulated industries, there are generally no restrictions imposed on entities and individuals seeking to own or lease non-residential real estate (including shares in companies holding non-residential properties) in Singapore, and foreigners are allowed to directly purchase non-residential real estate assets.

1.2 Sale and purchase process

Typical process

The following is a summary of the legal due diligence process that is undertaken when acquiring commercial real estate in Singapore:

(a) The purchaser's solicitors will carry out a title search at the land-register. Search fees at the land-register are nominal and results can be obtained almost instantly;

(b) The purchaser's solicitors will also usually send legal requisitions to the following Government agencies as follows:

  (i) National Environment Agency - Environmental Health Department;

  (ii) National Environment Agency - Central Building Plan Department;

  (iii) Public Utilities Board - Water Reclamation (Network);

  (iv) Inland Revenue Authority of Singapore;

  (v) Land Transport Authority (S&L Department) - Rapid Transit System;

  (vi) Land Transport Authority (S&L Department) - Street Works;

  (vii) Building and Construction Authority; and

  (viii) Urban Redevelopment Authority.

  If any of the replies from the relevant Government agencies to the legal requisitions on the property is unsatisfactory, and the vendor is unable to

regularise the unsatisfactory matters disclosed in the replies, the purchaser will usually have the right to annul the transaction under the sale contract terms;

(c) The purchaser's solicitors may conduct further due diligence by requesting additional information from the vendor's solicitors (e.g. whether there are any unregistered documents affecting the property such as tenancy agreements or trust arrangements);

(d) If there are defects in title, such as missing documents or suspected unauthorised building works or other encumbrances, the vendor will need to respond to, or rectify those deficiencies in order to prove good title;

(e) As part of technical due diligence, the purchaser may also engage a surveyor to inspect the physical condition of the property, conduct a survey of the title boundaries, identify whether there are any encroachments affecting the property and ascertain if the fixtures and equipment expressed to be sold are in fact existing and functional as these matters may also affect the valuation of the property;

(f) In respect of strata sub-divided properties, the purchaser's solicitors will also seek confirmation from the relevant management corporation that there are no outstanding management fees or breach of the existing by-laws by the vendor;

(g) Completed properties are typically sold on an "as-is where-is" basis with very limited warranties given on the property; and

(h) If the property transaction is to be effected via a share sale, then corporate due diligence may be necessary as the company may have other existing liabilities not contemplated by the purchaser.

	Direct transfers (asset transfers)	Indirect transfers (share transfer)
Pros	It is relatively straightforward and inexpensive.	Where the target company does not hold any residential properties, stamp duty is payable at a lower rate on shares (0.2% of the higher of the purchase price or the net asset value of the shares) than for a direct transfer of the non-residential asset (around 3% of the higher of the purchase consideration or market value). Please refer to Section 5 below.
Cons	The transfer of the asset is subject to the applicable Buyer's Stamp Duty (**BSD**). Residential properties may also be subject to Additional Buyer's Stamp Duty (**ABSD**). (Please refer to Section 5 below).	(a) Investors may need to take over the liabilities of the company and more extensive due diligence is required; (b) Relatively difficult in financing the acquisition of the shares in the company due to structuring issues and more security documents may be required by the financing bank; (c) Obligations under the Companies Act (Cap. 50) must be complied with; (d) Not all properties are owned in corporate structures, so the pool of available assets may be reduced; and (e) The transfer of the shares may be subject to Additional Conveyance Duty (**ACD**) if the target company holds residential properties (Please refer to Section 5 below).

Other notes

(a) Legal due diligence may not reveal any unauthorised building works, which may expose the purchaser to further liability.

(b) It is also important to pay attention to unregistered interests such as tenancies, uncrystallised floating charges and other interests arising from resulting or constructive trusts that may not be found from the land search records obtained from the land-register and which might not have been disclosed by the vendor.

(c) The Master Plan in Singapore sets out the designated uses of land. Some uses need permission of the Urban Redevelopment Authority and/or the Building and Construction Authority before building works can commence. Certain approvals are given on a temporary basis and may not be renewed.

(d) Development works must not commence without first submitting the outline applications and obtaining the planning approval from the Urban Redevelopment Authority.

(e) A new building cannot be occupied unless a temporary occupation permit has been issued by the Building and Construction Authority.

1.3 Sale and purchase contract

General components of a sale contract

Property contracts can be made voidable for lack of certainty if parties' intentions are not set out in clear and express terms.

The sale contract must contain the following:

(a) Details of the parties;

(b) Property address;

(c) Price of the property; and

(d) Date of completion.

It is also common to include the following terms:

(a) **Deposit.** Timing for payment of the initial deposit (e.g. 1%) and the balance deposit (e.g. 4%);

(b) **Balance purchase price.** Timing for payment of the balance purchase price;

(c) **Other payments.** Payment of the vendor's agent's commission;

(d) **The Law Society of Singapore's Conditions of Sale.** Unless the property transaction is complex, the form of the sale contract is fairly simple and brief, and it is common to supplement the same through the import of standard terms and conditions set out by the Law Society of Singapore by reference in the contract;

(e) **Condition of property.** Whether the property is sold "as-is, where-is" or otherwise;

(f) **Possession.** Whether the property is sold with vacant possession or subject to any existing tenancies;

(g) **Apportionment of rents and outgoings.** Rents and other outgoings are apportioned between the purchaser and vendor up to and including the date of completion;

(h) **Escape clauses.** Clauses which entitle either party to withdraw from the transaction under certain circumstances;

(i) **Good title.** The title deeds must be delivered to the purchaser on completion free of any encumbrance;

(j) **Default.**

   (i) If the purchaser defaults, the deposit will be forfeited, and the vendor can rescind the agreement and resell the property. Any shortfall arising from such resale and expenses relating to it will be paid by the purchaser;

   (ii) If the vendor defaults, the purchaser can enforce specific performance of the agreement or claim for damages. The purchaser may be able to recover any loss suffered from buying another property and expenses relating to it from the vendor.

(k) **Proper assurance.** On completion, the vendor must execute a Transfer to the purchaser to be registered with the land-register.

As for a typical share sale agreement, many of the above provisions (such as terms (g), (j) and (k)) do not apply as the transaction relates to a transfer of title in the shares and there is no separate transfer of title in the property (which the company already owns). Instead, additional clauses dealing with the corporate aspects of the transaction are required.

Transfer of occupational leases and income

If the property transaction is effected by a share transfer, there is no change in the registered proprietor and the benefit of any occupational leases and income remains the same.

If the property is sold as an asset transfer subject to a lease, a novation agreement should (where possible)

also be entered into to replace the vendor with the purchaser as the new landlord, and to assume all the rights, obligations and liabilities under the subsisting lease.

Common rights, interests and encumbrances
Property interests include:

(a) Legal interest in the form of either an estate in fee simple (i.e. freehold) or a leasehold estate;

(b) Legal charge over land (e.g. mortgages or statutory charges);

(c) Equitable interest derived from being the beneficiary of a trust, whether such a trust is intentionally created by a settlor, or arises by operation of the law in the form of a resulting or constructive trust;

(d) Restrictions; and

(e) Easements.

These rights are created by registering the relevant instruments at the land registry. Such registration operates as deemed notice to any third party. Unregistrable interests, such as trusts arising by operation of the law or leases for a term of less than seven years, are protected by common law rules.

Typical representations and warranties
There are no legal requirements for a vendor to give a purchaser any warranties. However, a purchaser will often require a vendor to provide warranties on the following matters:

(a) The vendor has good title to the property;

(b) That the vendor has not received any notices adverse to the vendor's interest in the property;

(c) No third party has any right or interest whatsoever, whether legal or equitable, in the property;

(d) The property is not adversely affected by any encumbrances of which the vendor is aware or could have ascertained on reasonable inquiry; other than those disclosed in the agreement, or which the purchaser is aware of or could have ascertained on reasonable inspection of the property;

(e) Tenancies;

(f) That the property is not subject to any litigation;

(g) Corporate matters;

(h) Vendor's capacity to transfer the title to the purchaser on completion; and

(i) Other matters arising out of the due diligence enquiries.

Whether or not the vendor gives the warranties will depend on the bargaining power of the parties and the commercial imperatives behind the deal. Warranties can be limited by disclosure of specific matters and imposing time limits.

Remedies against misrepresentations
The vendor is liable to the purchaser when he makes an untrue statement of fact which is relied on by the purchaser, and as a result of which loss is suffered.

1.4 Costs relating to sale and purchase of real estate

Tax
Under the Stamp Duties Act (Cap. 312), the purchaser may be liable for the payment of Additional Buyer's Stamp Duty (**ABSD**) in addition to the buyer’s stamp duty (**BSD**) for the acquisition of property, while the vendor may be liable for seller's stamp duty (**SSD**) for disposition of property. However, commercial properties are currently exempted from the ABSD and SSD regime.

If a purchaser acquires a commercial property via a share transfer of a company, the current stamp duty payable will be 0.2% of the higher of the purchase price or the net asset value of the shares. However, if the company's tangible assets are primarily residential properties, additional conveyance duty (**ACD**) may be payable on such transfers, in addition to the existing stamp duty of 0.2%. Exemptions may apply to transfers between associated companies.

For specific tax rates, please refer to Section 5 below.

Estate agent's fees

The estate agent arranges for listing and viewing of property. He/she may assist the vendor and purchaser to negotiate key commercial terms of the sale and purchase. The estate agent may also at times provide a standard form sale contract (which may be reviewed and commented by lawyers). He/she also assists parties in matters like preparing an inventory list and arranging for inspection of the property if so agreed between the contracting parties. Estate agents' fees are charged at a usual rate of 1% of the purchase price but this is open to negotiation. Typically, the fees are payable by the vendor from the sale proceeds.

Legal fees

Lawyers are appointed to, amongst others, negotiate, prepare, execute and register (where applicable) the necessary documents (e.g. the sale contract, instrument of transfer, and directors' and shareholders' resolutions).

The purchaser's lawyer will conduct title review and investigation of the property, and the vendor's lawyer will answer title requisitions (if any) raised by purchaser's lawyer and arrange to remedy any title defect(s).

In a share transfer, the legal due diligence will be carried out by the lawyers.

The vendor's lawyers are also typically involved in discharging the existing mortgage (if any), while the purchaser's lawyers would help in the legal documentation for financing the purchase if the bank does not appoint a separate set of lawyers.

The purchaser's lawyers will typically arrange for stamping and registration of the relevant instruments.

There is no fixed scale of legal fees, and the parties will negotiate the applicable fees with their respective lawyers. However, the Law Society of Singapore has set out the following recommended guidelines to assist solicitors and clients in reaching a fee arrangement which is fair and reasonable, having regard to the circumstances of the individual case:

Solicitor's role	Recommended legal fees
Vendor's Solicitor	0.15% of the sale price / sale consideration, subject to the minimum fee of S$900 for the case where the sale price / sale consideration does not exceed S$2m.
Purchaser's Solicitor	0.3% of the purchase price/purchase consideration, subject to the minimum fee of S$1,800 for the case where the purchase price / purchase consideration does not exceed S$2m.
Mortgagor's Solicitor	0.15% of the total loan / credit facilities quantum, subject to the minimum fee of S$900 where the loan / credit facilities quantum does not exceed S$2m.
Mortgagee's Solicitor	0.3% of the total loan / credit facilities quantum, subject to the minimum fee of S$1,800 where the total loan/credit facilities quantum does not exceed $2m.
Where the same solicitor acts for Purchaser, Mortgagor and Mortgagee	0.4% of the purchase price / purchase consideration, subject to the minimum fee of S$2,500 for the case where the purchase price / purchase consideration does not exceed S$2m.
Where the same solicitor acts for Mortgagor and Mortgagee	0.4% of the total loan / credit facilities quantum, subject to the minimum fee of S$2,500 where the total loan / credit facilities quantum does not exceed S$2m.

Other fees

Stamp duty is applicable (see more in **Section 5** below).

2. Investment vehicles

2.1 Types of investment vehicles

Legal forms of typical investment vehicles

Apart from individuals, there are three main types of investment entities in Singapore:

(a) Private Limited Companies;

(b) Limited Liability Partnerships **(LLP)**; and

(c) Real Estate Investment Trusts **(REITs)**.

Company structures

	Private Limited Companies	Limited Liability Partnerships (LLP)
Costs	Application fee for incorporation: ● Name Application Fee: S$15 ● Registration Fee: S$300	Application fee for registration: ● Name Application Fee: S$15 ● Registration Fee: S$100
Typical time frame for setting up the vehicle	To facilitate the incorporation of a company, one must first reserve the proposed company name. It may take within 14 days to two months if the name application needs to be referred to another agency for approval or review. Once the proposed name has been reserved, one may proceed to register the company by submitting an incorporation form, the constitution of the company and the registration fee. The notification of incorporation will generally be issued within one hour after submission of the application to the Accounting and Corporate Regulatory Authority (**ACRA**).	To facilitate the registration of an LLP, one must first reserve the proposed LLP name. It may take within 14 days to two months if the name application needs to be referred to another agency for approval or review. Once the proposed name has been reserved, one may proceed to register the LLP by submitting a registration form and the registration fee. The notification of registration will generally be issued within one hour after submission of the application to the ACRA.
Governance and Taxation	The incorporation of a private company in Singapore requires at least: One shareholder (but no more than 50 shareholders, and they need not be Singapore residents); One director (at least 18 years old and ordinarily resident in Singapore); One company secretary (ordinarily resident in Singapore); and One auditor (unless exempted from audit requirements). Each Singapore company must have a registered office in Singapore to which all communications and notices may be addressed. The registered office must be open and accessible to the public for at least three hours during ordinary business hours on each business day. The address of the registered office must be stated in the incorporation form filed with the ACRA. Private companies must also hold an annual general meeting within 6 months after the	The registration of an LLP in Singapore requires at least: Two partners (need not be Singapore residents); and One manager (at least 18 years old and ordinarily resident in Singapore). Each LLP must have a registered office in Singapore to which all communications and notices may be addressed. The address of the registered office must be stated in the registration form filed with the ACRA.

	Private Limited Companies	Limited Liability Partnerships (LLP)
	financial year end (unless otherwise exempted).	
Compliance Costs	Singapore companies must file an annual return with the ACRA every year. An unlisted company must file an annual return within 7 months after the financial year end. The filing fee for lodgment of the annual return is S$60. Any changes to particulars of the company or its officers must be lodged with the ACRA within 14 days. No filing fee is chargeable. All companies also have to pay for engaging a company secretary, having a registered office, holding an annual general meeting, keeping accounts and filing tax returns.	The manager of the LLP must lodge a declaration with the ACRA stating whether the LLP is solvent or insolvent once every calendar year at intervals of not more than 15 months. The filing fee for lodgment of the declaration is S$30. Any changes to particulars of the limited liability partnership or its partners or managers must be lodged with the ACRA within 14 days. No filing fee is chargeable.
Tax	Profits are taxed at corporate tax rates.	Profits are taxed at their share of income from the LLP at the partners' personal income tax rates (if individual) or corporate tax rate (if corporation).

Real estate investment trusts (REITs)
A REIT established as a unit trust is regulated as a collective investment scheme under the Securities and Futures Act (Cap. 289).

Furthermore, there are additional regulations under the Code on Collective Investment Schemes issued by the Monetary Authority of Singapore **(MAS)**, which governs the administration, supervision and control of REITs.

REITs have to be either **authorised** or **recognised** by MAS as a collective investment scheme.

MAS may authorise a collective investment scheme which is constituted as a unit trust if the Authority is satisfied that:

(a) There is a manager for the scheme which satisfies the prescribed requirements;

(b) There is an approved trustee for the scheme;

(c) There is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and

(d) The scheme, the manager for the scheme and the trustee for the scheme comply with the Securities and Futures Act (Cap. 289) and the Code on Collective Investment Schemes.

MAS may also recognise a collective investment scheme which is constituted outside Singapore, subject to the satisfaction of requirements prescribed in the Securities and Futures Act (Cap. 289).

Permissible Investments

Subject to the terms of its trust deed, a REIT may invest in real estate, whether freehold or leasehold, in or outside Singapore. Such investment may be made by way of direct ownership or a shareholding in an unlisted special purpose vehicle constituted to hold or own real estate.

When investing in a foreign real estate asset, the manager should ensure the compliance of all applicable laws and requirements in that foreign jurisdiction.

At least 75% of the REIT's deposited property should be invested in income-producing real estate. Generally, the total contract value of property development activities undertaken and investments in uncompleted property developments where separate title has not been issued, should not exceed 10% of the REIT's deposited property.

Valuation of the Real Estate Investments

A full valuation of each of the REIT's real estate assets should be conducted by an independent valuer at least once every financial year.

Aggregate Leverage Limit

Borrowings may be used by REITs for investment purposes and assets may be mortgaged to secure such borrowings.

The total borrowings and deferred payments should not exceed 45% of the REIT's deposited property.

However, in light of the COVID-19 pandemic, on 16 April 2020, MAS raised the leverage limit for REITs from 45% to 50% and deferred the implementation of a new minimum interest coverage ratio requirement for REITs, to 1 January 2022.

Income distribution

A REIT has to distribute 90% of its taxable income to its unitholders in order to enjoy the tax transparency treatment under the Income Tax Act (Cap. 134), under which it will not be taxed on income that is distributed to its unitholders.

To ease the pressure on REITs during the COVID-19 pandemic, on 16 April 2020, the Ministry of Finance and the Internal Revenue Authority of Singapore extended the timeline for REITs to make the distribution of their taxable income for the financial year 2020 from 3 months to 12 months (after the end of the financial year 2020).

Disclosure Requirements

The manager should prepare an annual report at the end of each financial year disclosing, amongst others, the following:

(a) Details of all real estate transactions entered into during the financial year;

(b) Details of all the REIT's real estate assets;

(c) The profile of the tenants of the real estate assets; and

(d) Details of all borrowings.

Listing of REITs

An application for the listing of a REIT must comply with Chapters 2 and 4 of the Singapore Exchange Limited **(SGX)** Listing Manual.

Broadly, the steps in the listing process for investment funds are as follows:

(a) A copy of the listing application is prepared and submitted, together with the relevant supporting documents;

Client Spotlight

Foreign investors: Share transfers of companies are popular with foreign investors because the stamp duty payable is lower unless the target company holds residential properties, in which case Additional Conveyance Duty may be payable (Please refer to Section 5 below).

Funds: Trusts are typically used by fund clients because they can invest in a wide range of properties and fund managers can manage the fund for investors. However, investors must pay performance fees; may have less control over underlying assets owned by the fund; and may not be able to cash out of the fund at a time of their choice.

Family offices / Ultra-High Net Worth Individuals **(UHNWIs)**: Both asset and share transfers of companies are typically used by family office and UHNW clients. For share transfers, stamp duty is payable at a lower rate unless the target company holds residential properties, in which case Additional Conveyance Duty may be payable (Please refer to Section 5 below).

(b) The Singapore Exchange Securities Trading Limited (the "Exchange") will consider the application and may grant approval in-principle;

(c) Where a prospectus is required, the applicant lodges the final copy of the prospectus with the Exchange;

(d) The investment fund invites subscription for its securities;

(e) The investment fund issues securities pursuant to the allotment; and

(f) The investment fund is admitted to an official list of issuers on satisfaction of all the prescribed conditions.

3. Real estate financing

3.1 Common ways of financing commercial real estate acquisitions

The main sources of financing property acquisitions are:

(a) Borrowing from banks; and

(b) Equity raising.

3.2 Typical security created

Typical security interests include:

(a) Mortgage registered over the real property, or in cases where separate title to the property has not been issued, security is provided by way of assigning the rights under the sale contract to the lender and executing a mortgage in escrow;

(b) Debenture incorporating a fixed and floating charge over all assets of the borrower or the company holding the legal title of the property;

(c) Assignment of leases, sale contracts, rental and sale proceeds and a charge over the account and any reserve account into which the proceeds are paid;

(d) Assignment of insurances under insurance policies taken out by the borrower and the proceeds from any claims under the policies; and

(e) A charge over the shares of the borrower or the company holding the legal title to the property.

In order to perfect the security, a charge must be filed with the ACRA within 30 days of its creation, failing which, the charge may be void against all creditors and any future liquidator, and any mortgage must be registered with the SLA Land Titles Registry.

3.3 Restrictions for foreign lenders

Subject to the terms and approval of the Head Lessor (if any) such as JTC Corporation, there are generally no restrictions on Singapore companies granting security over real estate to foreign lenders.

3.4 Costs relating to the granting and enforcement of security

In Singapore, stamp duty of 0.4% on the loan amount is payable where security over real estate or shares is granted to a lender, subject to a maximum amount of S$500.

A registration fee (currently S$68.30) for registration of the charge instrument at the land registry will also be payable.

While the law does not impose any time limit for the registration of an instrument, late registration may lead to a loss of registration priority.

4. Commercial leases

4.1 Lease agreements

Types of leasing arrangements
Generally, Singapore law recognises contractual agreements (whether oral or written) under which occupation and use of real estate is let for a certain period of time. Such arrangements include both leases and licences.

Common terms in commercial leases
Lease agreements can be voidable for lack of certainty if parties' intentions are not set out in clear and express terms.

The lease agreement must contain the following:

(a) Details of the parties;

(b) Address of the demised premises;

(c) Rent; and

(d) Lease term.

Apart from the above, parties are generally free to negotiate and agree on the terms of commercial leases, including the security deposit payable by the tenant and whether the rent payable shall be fixed or adjustable during the lease term. Most commercial leases also grant to the tenant an option to renew prior to the expiry of the lease term.

In terms of apportioning costs, the landlord is generally liable for structural repairs whereas the tenant is obliged to keep the demised premises in good and tenantable condition.

4.2 Managing leasing agreements

Early termination
Whilst a tenant is usually provided with the right to terminate the lease in very limited circumstances, the landlord will often provide for a right to terminate and re-enter the demised premises upon the tenant breaching a condition or a covenant and failing to remedy such breach within a stipulated notice period.

Many leases also include sale and redevelopment clauses which give the landlord a right to terminate the lease, if the building is to be sold by way of a collective sale. Typically, the landlord has to give at least three months' notice in writing to the tenant. The lease will terminate upon the expiry of that notice.

Emergency temporary laws have been progressively introduced in Singapore during the COVID-19 pandemic which, at the time of going to press, is still evolving. These include the rental relief framework for affected small and medium enterprises, as well as measures that allow small businesses and individuals to renegotiate leases and licenses of non-residential immovable property (with a term of 5 years or less) under the government's "Re-Align Framework". Please refer to our other publications on specific COVID-19 emergency laws and temporary measures for further information.

Termination by third party
Occasionally, lands may be required by the Government for public projects and infrastructure developments. The Government has the right under the Land Acquisition Act (Cap. 152) to compulsorily acquire such lands as needed and make the necessary compensation to the affected landowners, typically at market value.

Transfer of lease
The landlord does not usually allow the tenant to do any of the following:

(a) Assign or sublet the lease;

(b) Part with or share possession of the demised premises with others, including with companies in the same group; and

(c) Change control of the tenant.

A breach of any of the above will often give the landlord a right of re-entry and the ability to terminate the lease. It is possible to negotiate carve-outs to these provisions.

4.3 Managing a leased real estate

Restrictions on use
Tenants must abide by the permitted use set out in the lease agreement as well as the use as restricted under the Planning Act (Cap. 232), such as those in the Master Plan.

Alterations
Leases typically limit the extent of or prohibit alterations or improvements to the demised premises. Structural repairs which involve alteration of the building's form and framework are usually not allowed. The landlord's consent should be sought prior to undertaking non-structural alterations.

4.4 Rent

Rent variation
Leases will either set out a fixed rent payable, or a mechanism to calculate the adjustable rent payable, for the entire duration of the lease term.

Taxes for rental
Stamp duty is payable on the lease agreement. The amount depends on the level of rent and the term of the lease. The Stamp Duties Act (Cap. 312) states that stamp duty is to be borne by the tenant.

4.5 Costs for tenants other than rent

Costs payable by tenants at start of lease
Upon execution of the lease, the tenant typically has to pay the stamp duty and the landlord's legal costs and expenses in preparing the lease agreement. Upon taking possession of the demised premises, the tenant will also pay a security deposit to be held by the landlord and refunded (less any proper deductions) within an agreed period from the determination or early termination of the lease.

Stamp duty is payable as follows on the declared rent or the market rent, whichever is higher.

Average Annual Rent (AAR)	Stamp Duty Rate
Where AAR does not exceed S$1,000	Exempted
AAR exceeds S$1,000:	
Lease period of 4 years or less	0.4% of total rent for the period of the lease
Lease period of more than 4 years or for any indefinite term	0.4% of 4 times the AAR for the period of the lease

Utilities and telecommunications
Such services are usually subscribed and paid for by tenants directly with third-party suppliers. If separate metering is not possible for the demised premises or if the landlord is purchasing electricity in bulk for the entire building, the landlord can arrange for the supply of utilities and apportion the charges to the respective tenants accordingly.

Insurance
Tenants are responsible for insuring the demised premises and the landlord will typically require the tenant to take up an insurance policy in the joint names of the landlord and tenant.

5. Taxes

5.1 Tax on acquisitions and disposals

Types of taxes

(a) Buyer's Stamp Duty (BSD)

BSD is payable on the acquisition of immovable properties, based on the higher of the purchase consideration or market value.

The BSD rates are as follows:

Purchase Price or Market Value of the Property	BSD Rates for residential properties	BSD Rates for non-residential properties
First S$180,000	1%	1%
Next S$180,000	2%	2%
Next S$640,000	3%	
Remaining Amount	4%	3%

(b) Additional Buyer's Stamp Duty (ABSD)

A person who purchases or acquires residential properties may have to pay ABSD in addition to the prevailing BSD. Similar to BSD, ABSD is payable based on the higher of the purchase consideration or market value.

The ABSD liability will depend on the profile of the buyer as at the date of purchase or acquisition of the residential property, taking into account one or more of the following factors:

(i) Whether the buyer is an individual or an entity;

(ii) The residency status of the buyer; and

(iii) The count of residential properties owned by the buyer.

The ABSD rates are as follows:

Profile of Buyer	ABSD Rates on/ after 16 December 2021
Singapore Citizens (SC) buying first residential property	Not applicable
SC buying second residential property	17%
SC buying third and subsequent residential property	25%
Singapore Permanent Residents (SPR) buying first residential property	5%
SPR buying second and subsequent residential property	25%
Foreigners buying any residential property	30%
Entities buying any residential property	35%
Housing Developer buying any residential property for redevelopment	5% (not remittable) and 35% (remittable subject to conditions)

(c) Seller's Stamp Duty (SSD)

While ABSD is only applicable to residential properties, SSD targets both residential and industrial properties.

SSD is payable on all residential properties bought on or after 20 February 2010, and all industrial properties that are bought on or after 12 January 2013 sold within the respective holding period as follows:

<u>Residential properties</u>

Date of Purchase or Date of Change of Zoning / Use	SSD Holding Period	SSD Rate (on the actual sale price or market value, whichever is higher)
Between 20 Feb 2010 and 13 Jan 2011 (all inclusive)	-	No SSD payable
Between 14 Jan 2011 and 10 Mar 2017 (all inclusive)	Up to 1 year	16%
	More than 1 year and up to 2 years	12%
	More than 2 years and up to 3 years	8%
	More than 3 years and up to 4 years	4%
	More than 4 years	No SSD payable

On and after 11 Mar 2017	Up to 1 year	12%
	More than 1 year and up to 2 years	8%
	More than 2 years and up to 3 years	4%
	More than 3 years	No SSD payable

Industrial properties

Date of Purchase / Acquisition or Date of Change of Zoning / Use	SSD Holding Period	SSD Rate (on the actual sale price or market value, whichever is higher)
On or after 12 Jan 2013	Up to 1 year	15%
	More than 1 year and up to 2 years	10%
	More than 2 years and up to 3 years	5%
	More than 3 years	No SSD payable

(d) Additional Conveyance Duty (ACD)

Broadly, ACD would apply if the purchaser acquires shares in a property-holding entity (**PHE**) and is either:

(i) already a significant owner of the PHE before the acquisition; or

(ii) becomes a significant owner of the PHE thereafter.

Property-holding entity **(PHE)**

For a target entity to be considered as a PHE, at least 50% of its total tangible assets must comprise of prescribed immovable properties in Singapore – such properties include property that is zoned or situated on land that is zoned "Residential", or that is permitted to be used for solely residential purposes or for mixed purposes one of which is residential.

Significant owner

A significant owner of a PHE refers to a person or entity who beneficially owns at least 50% equity interest or voting power in a PHE either on its own or with its associates.

Associates

Where the buyer/seller is an individual, his/her associates include:

(i) Family members such as grandparent, parent, child, grandchild, sibling or spouse;

(ii) Partners in a partnership, limited partnership or limited liability partnership;

(iii) The entities which the buyer/seller beneficially owns 75% or more voting capital and more than 50% voting power in; or

(iv) Parties to an agreement acting together to acquire the shares in the target entity.

Where the buyer/seller is an entity, its associates include:

(i) Subsidiaries which it beneficially owns 75% or more voting capital and more than 50% voting power in;

(ii) Individuals who or holding entities that beneficially owns 75% or more voting capital and more than 50% voting power in it;

(iii) Other entities in the group that is an associated entity to a common holding entity or individual which meets condition (ii) above;

(iv) Partners in a partnership, limited partnership or limited liability partnership; or

(v) Parties to an agreement acting together to acquire the shares in the target entity.

The ACD payable is calculated by applying the relevant ACD rates on the percentage of equity interest that is subject to the ACD, and the market value of the underlying residential property owned directly/indirectly by the PHE.

In addition to existing stamp duty on shares, the applicable ACD rates are as follows:-

Additional Conveyance Duties for Buyers **(ACD)**:

(i) Existing BSD at 1% to 4%; and

(ii) ABSD at 30% (flat rate).

Additional Conveyance Duties for Sellers **(ACDS)**:

(i) Seller's Stamp Duty at 12% (flat rate).

5.2 Other taxes

(a) Property Tax
Property tax is payable by the landowner regardless of whether the property is owner-occupied, rented out or left vacant.

The amount payable is calculated by multiplying the Annual Value of the property with the applicable property tax rates as follows:

Residential Properties	Non-residential Properties
Owner-Occupier Tax Rates range from 0% to 16%	Properties such as commercial and industrial buildings and lands are taxed at 10%.
Non-owner Occupier Tax Rates range from 10% to 20%	

(b) Goods and Services Tax (GST)
While sales of residential properties are exempted from GST, a purchaser of non-residential property may be liable for payment of the GST.

(c) Capital Gains Tax
Generally, the gains derived from the sale of a property in Singapore are deemed as a capital gain which is not taxable.

However, such gains may be taxable if the property is sold with a profit-seeking motive, or if the vendor is deemed to be trading in properties. Whether a person is deemed to be trading in properties will depend on individual circumstances. Some criteria used to assess if one is trading in properties are as follows:

(i) Frequency of transactions (buying and selling of properties);

(ii) Reasons for acquiring and selling of property;

(iii) Financial means to hold the property for long term; and

(iv) Holding period.

5.3 Tax treaties

Singapore has Free Trade Agreements **(FTA)** under which nationals or permanent residents of our FTA partner countries are eligible for ABSD remission.

In addition, Singapore has comprehensive Double Taxation Agreements/Arrangements **(DTA)** with several jurisdictions. Double taxation arises when two or more tax jurisdictions overlap, such that the same item of income or profit is subject to tax in each, and DTA prevents double taxation and fiscal evasion and encourages cooperation between Singapore and other international tax administrations.

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Tien Gui is a partner in the real estate team.

Tien Gui has over 20 years of corporate and commercial experience particularly in the real estate property sector, and in particular, has represented hotel operators, developers and owners of mixed use/hotel developments on management agreements as well as branded residences, sale and lease back schemes and condotels. This includes negotiating hotel management and franchise agreements, leasing agreements, and real-property acquisitions, evaluating corporate organisation formalities, providing on-site consulting related to hotel operations and compliance issues, developing and implementing employment related programs and advising on dispute resolution and arbitration matters involving the hospitality and leisure sector.

24.01.22

Our real estate practice in Asia

Our real estate team represents a one-stop shop for all types of investors' real estate needs, covering the full life cycle of a property transaction. We have a great deal of experience on the sale and purchase of investment properties and our particular strength is structuring cross-border property transactions effectively.

Our clientele spans across the industry from developers, landowners, investors, lenders and borrowers, banks and fund managers. We aim to establish long-term relationships with our clients at all levels.

Our services include:

- Joint ventures and mergers and acquisitions
- Sale and acquisitions
- Tenancy agreements
- Leases and licenses for residential, commercial and industrial properties
- Development and real estate financing / re-financing

Working in collaboration with our global offices, we are able to coordinate the needs of our clients anywhere their property holdings are.

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