

An Overview of Singapore Land Law

SECTION 1 INTRODUCTION

29.1.1 Land law in Singapore is based on English land law. English land law was received here together with other English law and doctrines by virtue of the Second Charter of Justice 1826. This provided for the English doctrines of tenure and estates and other real property concepts to apply in Singapore. It was, however, applied subject to such local modifications that were considered necessary to prevent any injustice or oppression. In this way, English common law rules were adapted to accommodate local religious rules as well as local Chinese family customs.

29.1.2 The Application of English Law Act 1993 continued the application of such English law so far as it was part of Singapore law immediately before 12 November 1993 as well as clarified its application. One of the ways this was done was by listing the provisions of English statutes that still formed part of Singapore law thereby removing doubts about the extent of their applicability.

29.1.3 Early post-1826 statutes made minor changes to the land law in Singapore in a piecemeal way but later legislation made more substantial changes.

29.1.4 The Torrens system of land registration from Australia was implemented locally by the Land Titles Ordinance of 1956 and improved upon through subsequent amendments. In fact, a leading English land law professor has described it as 'one of the better variants of the Torrens model to be found anywhere in the common law world'. Land in Singapore was progressively converted from the older system of registration under the Registration of Deeds Act over the years and the project to convert all land to the Torrens system was largely completed by 31 December 2002. During the conversion, some existing interests took on new qualities. For example, mortgages registered under the older system are notified in the new land title document and deemed by law to be a registered mortgage under the Land Titles Act. For practical reasons, the rest of this chapter will proceed mainly on the basis of land under the Land Titles Act. Another major change was the passing of the Land Titles (Strata) Act of 1967 to facilitate the ownership and maintenance of flats and the buildings they are located in. The reclamation of land in Singapore was facilitated by amendments to the Foreshores Ordinance in 1964 to provide that there shall be no compensation as of right in respect of any land or any interest in land affected by the execution of land reclamation works.

29.1.5 After independence in 1965, despite a recommendation of a Constitutional Commission, no constitutional right to property was enacted. In addition, the Land Acquisition Act 1966 was passed to facilitate the compulsory acquisition of land for public purposes without placing a heavy financial burden on Singapore as a newly independent and developing country. The previous bill for the Land Acquisition Act 1966 actually faced

constitutional difficulties when it was introduced in 1964 because Singapore was then part of the Federation of Malaysia and there was a constitutional right to property in the Federation's Constitution. The Land Acquisition Act 1966 did not follow Western models that compensated based on the potential value of the land and instead provided for compensation on the basis of the acquired land's pre-development value. For many years, this value was fixed at no higher than the market value of the acquired land as at November 30, 1973. However, the Land Acquisition Act has been amended a number of times over the years and in 2007, a major amendment provided for compensation based on the prevailing market value of the acquired land.

29.1.6 In 2001, the Singapore Land Authority was constituted as the statutory authority with responsibility for land matters in Singapore. Its wide-ranging functions include responsibility for land registration, compulsory acquisition and the administration of state land.

SECTION 2 LAND & LAND USE

29.2.1 Land may be defined differently in different statutes so it is important to consider the context of the matter. The definition of land may also include other interests (e.g. a right to support) in addition to the physical parcel of land.

29.2.2 English land law rules concerning fixtures applies to land in Singapore as well. Consequently, a chattel (i.e. movable property) can become part of the land under certain circumstances as in the case of *Gebrueder Buehler AG v Peter Chi Man Kwong* [1988] 1 MLJ 356 where equipment installed in a factory was held to become part of the land.

29.2.3 Recent changes to legislation have provided that the definition of land in Singapore would include so much of subterranean space below the land reasonably necessary for its use and enjoyment to a depth of 30 metres below the Singapore Height Datum (a level pegged to the historical mean sea level) unless otherwise specified in the title.

(1) Government Land Sales Programme

29.2.4 The Singapore government regularly sells land through the Government Land Sales Programme for commercial, hotel, private residential and industrial developments by the private sector in line with its planning strategies. The Urban Redevelopment Authority is the Singapore government's main land sales agent but other bodies like the Singapore Land Authority and the Jurong Town Corporation also act as land sales agents for the government.

(2) Public housing

29.2.5 Public housing comes under the purview of the Housing and Development Board, a statutory body set up under the Housing and Development Act. It implements the housing policies of the Singapore government including the government's 'Home Ownership Scheme' which currently has about 80 per cent of the Singapore resident population living in HDB sold flats. The HDB also provides flats for rental purposes and a very small percentage of the Singapore resident population live in HDB rental flats.

29.2.6 As HDB flats are subsidised, there are stringent criteria for the purchase or rental of HDB flats. Depending on the type of flat concerned, the requirements currently include Singapore citizenship, family nucleus, age, income and non-ownership of other residential property, building or land. There is also an Ethnic Integration Policy (implemented to promote racial integration and harmony) as well as a Singapore Permanent Resident Quota for permanent resident families buying resale HDB flats. The Ethnic Integration Policy prevents the formation of racial enclaves by ensuring a balanced ethnic mix among the various ethnic communities while the Singapore Permanent Resident Quota prevents similar enclaves among permanent residents. The Singapore Permanent Resident Quota also ensures that permanent resident families can integrate into the local community for the purposes of social cohesion. HDB flat purchasers have many obligations under the terms of their HDB lease. These include the requirement for continuous occupation, proper use and the prohibition against subletting with prior approval.

(3) Executive Condominium (EC)

29.2.7 The Executive Condominium is a hybrid property that comes under the Executive Condominium Scheme Act created to satisfy the desire for the ownership of private property. The purchaser will get a subsidiary strata certificate of title just like an owner of a private condominium unit. However, there are stringent eligibility conditions (many similar to those for HDB flats) for their purchase. After occupying for the minimum occupation period of five years, most of the restrictions are removed and the flat may be sold. However, it may only be sold to a Singapore citizen or permanent resident from the 6th to the 10th year. From the 11th year onwards, it may be sold like any other private condominium unit.

(4) Residential property

29.2.8 The purchase of residential property that come under the Residential Property is basically confined to Singapore citizens and approved purchasers. These include residential land, residential houses, strata landed houses (that are not within approved condominium developments) and shophouses (for non-commercial use). However, a foreign person may purchase certain residential properties without approval including a condominium unit, a flat unit and strata landed houses (that are within approved condominium developments).

29.2.9 Singapore companies and Singapore limited liability partnerships where not all the directors, members and partners are Singapore citizens are also restricted from acquiring residential property affected by the Residential Property Act without the relevant approval.

29.2.10 Purchasers who are not exempted from the Residential Property Act but who are housing developers intending to purchase the residential property to develop or redevelop may apply for specific approval (called a qualifying certificate) to do so under section 31 of the Residential Property Act. However, such approval comes with certain conditions including the requirement to complete building and selling all the units within specified time periods. There are also provisions for the payment of extension charges for extending any such period as well for the forfeiture of the security for the breach of approval conditions.

(5) Planning Act, zoning and use

29.2.11 The control of land use, planning and development comes under the Planning Act and the Act provides for a statutory land use plan called the Master Plan that is periodically updated. Enacted originally as the Planning Ordinance of 1960, the Act was based on the UK Town and Country Planning Act 1947. The latest version of the Master Plan is the Master Plan 2014 that was gazetted on 6 June 2014. The Planning Act covers activities on land that require permission such as development, conservation or subdivision and its reach can be very wide. For example, the display of advertisements in any external part of a building not normally used for that purpose involves a material change in the use of the building that requires permission under the Act. A development charge is payable when planning permission is granted to carry out development projects that increase the value of the land e.g. rezoning the land to a higher value use.

SECTION 3 ESTATES & INTERESTS IN LAND

29.3.1 Due to the feudal origins of land law that applies in Singapore, all land ultimately belongs to the state and other persons can only own an estate or some lesser interest in the land. Basically, 5 types of grants of land may be made by the state under the State Lands Act:

1. estates in fee simple;
2. estates in perpetuity;
3. leases;
4. temporary occupation licences; and
5. tenancy agreements.

29.3.2 New grants of estates in fee simple (the largest possible English estate of indefinite duration) are only made in the limited circumstances allowed e.g.

as a regrant after the surrender of an existing estate in fee simple for subdivision purposes. An estate in perpetuity (a statutory rather than a common law estate) is of unlimited duration like the estate in fee simple. However, such estates are subject to a number of covenants and conditions e.g. the payment of any applicable rent. The leases created under the State Lands Act are also subject to various terms and conditions, many of which are similar to those that apply to estates in perpetuity. Temporary occupation licences and tenancy agreements are subject to many similar conditions under the State Lands Rules e.g. the Collector of Land Revenue may revoke a temporary occupation licence or determine a tenancy agreement at any time. However, the temporary occupation licence does not create a tenancy or give exclusive right to possession. The main differences between a tenancy agreement with the state and a state lease appears to be the term limit of 3 years and the fact that a tenancy agreement is not considered a disposal of land that requires the President's approval.

29.3.3 In general, smaller estates or interests may 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. However, the creation of some estates or interests may require prior written approval from the relevant authority e.g. subdivision approval under the Planning Act is required for the creation of certain leases.

29.3.4 A further point to note is that if the interest created is not registrable (e.g. an equitable mortgage) or does not comply with the applicable prescribed form to enable its registration (e.g. a lease that is not in the form prescribed under the Land Titles Rules), it may then only be notified on the land register through the registration of a caveat.

(1) Strata Title

29.3.5 The Land Titles (Strata) Act facilitates the ownership of flats and communal living. Basically, a development or building may be subdivided into strata units that are capable of being separately owned (by subsidiary proprietors) as well as common areas called common property that are used together with other subsidiary proprietors. A strata unit is in effect a defined space that may be below, on or above the surface of the land that is marked out on a strata title plan. A legal entity called a management corporation is constituted to control as well as maintain the common property. The management corporation is funded through contributions made by the subsidiary proprietors who hold the common property as tenants in common in proportion to the share value stated in their subsidiary strata certificates of title.

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(1) Abolition of Adverse Possession

29.3.7 The acquisition of title to land through adverse possession was abolished with effect from 1 March 1994 and section 50 of the Land Titles Act provides that no title may be acquired by adverse possession except for the limited cases saved by the transitional provisions of the Act.

SECTION 4 SOME INTERESTS IN LAND

A. Leases, Licences, Easements and Restrictions

29.4.1 A lease is basically an estate in land whereby a landowner (usually called the lessor or the landlord) grants another person (usually called the lessee or the tenant) the right to exclusive possession and use of his land in return for a monetary consideration called rent. The rights and duties of the two parties would be determined by the agreement between them and would usually be reflected in a document called a lease or tenancy agreement.

29.4.2 If the term of the lease exceeds 7 years (including the extended term allowed by an option to renew), it needs be registered under the Land Titles Act in the prescribed form to be effectual – see section 45 of the Land Titles Act.

29.4.3 If the lease does not exceed 7 years (including the extended term allowed by an option to renew), it cannot be registered but it may be notified through the registration of a caveat. This kind of lease will bind a purchaser of the land provided the lessee is in occupation at the time the purchaser is registered as the proprietor – see section 46(1)(c)(vi) of the Land Titles Act.

29.4.4 A lease that exceeds 7 years not in the prescribed form may also be notified through the registration of a caveat but such a lease can only be considered an equitable lease based on an enforceable agreement. There are implied powers in favour of lessors in registered leases e.g. the power to enter the leased premises twice a year to inspect its state of repair and to require the lessee to repair any defect – see section 93(1)(a) of the Land Titles Act.

29.4.5 A licence is not an estate in land and ‘only makes an action lawful which, without it, had been unlawful’ according to Vaughan CJ in the famous English case of *Thomas v Sorrell* (1673) Vaugh 330. It can sometimes be difficult to determine whether an occupier of land is there as a licensee or a lessee. Generally, it will depend on the relevant intention.

29.4.6 According to section 95(2) of the Land Titles Act, the Registrar of Titles shall not notify a licence on the land-register. However, licences relating to the use or enjoyment of land that are legally binding on the assignees of the licensor are deemed to be interests in land capable of supporting the registration of a caveat.

29.4.7 An easement is an interest in land that gives a landowner a right or rights over the land belonging to another person. A common example is an easement giving a right of way. Under the Land Titles Act, an easement is a legal interest that generally has to be registered or it will not pass any interest in the land. This may be done through an easement in the prescribed form or by appropriate words in the instrument of transfer or instrument of lease. Certain easements may also be implied by statute e.g. there are implied easements for the passage of water, electricity, drainage, gas and sewerage in respect of each lot of land that forms part of the same development under section 98 of the Land Titles Act.

29.4.8 A restrictive covenant or similar burden on the land may be registered as a restriction under the Land Titles Act and notified on the land-register. However, unlike common law restrictive covenants, a restriction has a life span of 20 years from the entry of the notification on the land-register unless it has been extended.

SECTION 5 SECURITY INTERESTS IN LAND

A. Mortgages and Charges

29.5.1 The two main security instruments provided by the Land Titles Act are the mortgage and the charge. Both have to be in the prescribed form to be registrable. Failure to register will mean that they may not be fully effectual.

29.5.2 Basically the instrument of mortgage secures the payment of a debt but it does not operate as a transfer of property like a common law mortgage and only takes effect as a security. However, the registered mortgagee is given the common law mortgagee's right to foreclose by statute.

29.5.3 The instrument of charge secures payment of a rentcharge, annuity or other periodical sum, or of any money other than a debt. The registered chargee, like the registered mortgagee, has a number of rights including the right of entry to possession as well as a right of sale.

29.5.4 Generally, while exercising the power of sale, the mortgagee has a duty to act in good faith and to take reasonable steps to obtain the true market value of the mortgaged property at the date of the sale – see *How Seen Ghee v Development Bank of Singapore Ltd [1994] 1 SLR 526*.

29.5.5 The Land Titles Act also provides for the registration of submortgages. A submortgage is defined to mean 'the mortgage of a mortgage and the mortgage of a charge' under section 71 of the Land Titles Act.

29.5.6 The taking of further advances or further credit is allowed under section 80 of the Land Titles Act subject to the conditions provided.

29.5.7 Equitable security interests like mortgages and charges that are not registrable because they do not comply with the prescribed form may be notified on the land register through the registration of caveats.

29.5.8 With respect to registered mortgages and charges, their priority is determined by their date of registration. The priority of unregistered security interests (e.g. an equitable mortgage by way of a mortgage executed in escrow) are determined through the date of registration of the related caveats.

SECTION 6 CONTRACTS RELATING TO THE SALE OF LAND

29.6.1 In general, in a contract for the sale and purchase of property, there must be certainty as to the parties, the property as well as the price (otherwise known as the three Ps). Section 6(d) of the Civil Law Act requires such sale agreements to be in writing (or be the subject of a memorandum or note in writing) and signed by the party to be charged in order to be enforceable. The Singapore High Court has recognised electronic correspondence to be writing that would satisfy the section – see ***SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd [2005] SGHC 58***.

29.6.2 In the absence of such an agreement, memorandum or note, it might be possible to rely on the equitable doctrine of part performance under the right circumstances – see ***Joseph Mathew v Singh Chiranjeev [2010] 1 SLR 338***. On the other hand, as shown in the Court of Appeal decision in ***Ting Siew May v Boon Lay Choo [2014] SGCA 28***, an agreement may be rendered void or unenforceable by reason of illegality.

29.6.3 For properties that are being developed or built for sale by property developers, there are statutory safeguards to protect purchasers.

29.6.4 The Housing Developers (Control and Licensing) Act governs residential property developers while the Sale of Commercial Properties Act deals with developers of non-residential property developments.

29.6.5 Under the Housing Developers (Control and Licensing) Act, the developers of all developments of more than four units of housing accommodation are required to be licensed. The definition of housing developer is wide and would include persons who finance the development. Generally, such developers are only allowed to sell units in their development upon the grant of certain approvals (including building plan and subdivision approvals). The sale must follow terms and conditions in prescribed

contractual documents that are fair to purchaser and progress payments under the sale are required to be paid into special project accounts that are regulated under the rules passed pursuant to the Act. There are also provisions on dealing with necessary disclosures as well as regulating the developers' advertisements.

29.6.6 The Sale of Commercial Properties Act regulates the sale by a property developer of units in a non-residential development of more than four units. It also provides for standard contractual documents (under the Sale of Commercial Properties Rules) that the developer has to follow when selling to a purchaser and no variance is allowed without the relevant prior written approval. All terms that are inconsistent with the prescribed terms and conditions are null and void to the extent of the inconsistency.

SECTION 7 REGISTRATION OF TRANSFERS OF INTERESTS IN LAND

29.7.1 Transactions relating to interests in land under the Land Titles Act are registered through prescribed forms. Subsequently, a memorial of the important details is entered in the appropriate folio of the land register.

29.7.2 The Singapore Land Titles Registry has been moving towards a fully electronic environment and a computerisation of its records in recent years. It has also progressively required more documents to be lodged through the Singapore Land Authority's web-based electronic lodgment system, Singapore Titles Automated Registration System (or STARS).

29.7.3 Changes and improvements to the land registration system in Singapore have not gone unnoticed. In the World Banking Doing Business Survey, Singapore's global ranking in registering properties has been improving over the years. In 2012, Singapore was ranked 36th, in 2013, the country was ranked 28th and in 2014, it was ranked 24th.

29.7.4 Essentially, any person who becomes the registered proprietor of land under the Land Titles Act holds the land free from all 'encumbrances, liens, estates and interests whatsoever', except those that are registered or notified or those that are provided by law e.g. a statutory easement or a statutory charge. Consequently, the title or estate of the registered proprietor is often described as paramount or indefeasible. However, there are a number of exceptions to indefeasibility e.g. fraud or forgery to which the registered proprietor or his agent was a party.

29.7.5 Owners of interests in land that do not comply with the prescribed forms or that are unregistrable (like beneficial ownership under a trust of land) may notify them on the land register by the lodging of caveats. A caveat does not create an interest in land but it generally gives that interest notified by the caveat priority over any other unregistered interested not so protected at the time the caveat was entered. The life span of a caveat is generally five years but an extension may be lodged before the five years lapse.

(1) Assurance fund

29.7.6 The effect of the various legislative provisions basically means that the Singapore Land Authority as the national land registration authority issues and guarantees land titles. For landowners unfairly deprived of their rightful interests through the operation of the statute, there is possible recourse to compensation under an assurance fund established under the Land Titles Act. The fund is financed mainly from a portion of the fees collected by the Registrar of Titles under the Act. If the assurance fund is inadequate, the shortfall may be paid out from the Consolidated Fund.

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