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Refinements to the Meaning of "Residential Property" under the Residential Property Act

Introduction

On 19 July 2023, the Ministry of Law ("**MinLaw**") and the Singapore Land Authority ("**SLA**") jointly announced certain amendments to the Schedule of the Residential Property Notification ("**RPN**") to update the list of land use zones designated as non-residential property for the purposes of the Residential Property Act 1976 ("**RPA**"). The amendments have taken effect on 20 July 2023.

MinLaw and SLA in their press release noted that "*the update is part of the regular review of the RPA to ensure the land use zones listed in the Schedule [of the RPN] are up to date with the prevailing zoning terminology used by the Urban Redevelopment Authority ("**URA**")*, and to ensure that land use zones predominantly permitted for residential use are regulated under the RPA."

In this Update, we provide a summary of the key changes to the RPN.

Background to the Residential Property Act 1976

Under section 3 of the RPA, there is a prohibition on the transfer to, or purchase or acquisition by, a foreign person of residential property. This would include acquisition by way of a will or intestacy of the registered proprietor.

Who is a foreign person?

A foreign person means any person that is not any of the following:

- (a) A citizen of Singapore;
- (b) **A Singapore company**: This refers to a company which satisfies the following requirements:
 - (i) the company is incorporated in Singapore and its directors and members are all Singapore citizens;

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- (ii) if any member of the company is another company, that other company satisfies the requirements of paragraph (i);
 - (iii) if that other company mentioned in paragraph (ii) has a member which is a company, which in turn has a member which is also a company and so on, all the members of each such company consist only of any or any combination of the following:
 - a. Singapore citizens; and
 - b. companies that satisfy the requirements of paragraphs (i) and (ii); and
 - (iv) if any member of the company is a limited liability partnership, that limited liability partnership is a Singapore limited liability partnership;
- (c) **A Singapore limited liability partnership**: This refers to a limited liability partnership that satisfies the following requirements:
- (i) the limited liability partnership is registered in Singapore under the Limited Liability Partnerships Act 2005 and all its partners are Singapore citizens;
 - (ii) if any partner of the limited liability partnership is another limited liability partnership, that other limited liability partnership satisfies the requirements under paragraph (i);
 - (iii) if that other limited liability partnership mentioned in paragraph (ii) has a partner which is a limited liability partnership, which in turn has a partner which is also a limited liability partnership and so on, all the partners of each such limited liability partnership consist only of any or any combination of the following:
 - a. Singapore citizens; and
 - b. limited liability partnerships that satisfy the requirements of paragraphs (i) and (ii); and
 - (iv) if any partner of the limited liability partnership is a company, that company is a Singapore company; or
- (d) **A Singapore society**: This refers to any society formed or constituted in Singapore and registered or exempted from registration under any written law, all of whose members are Singapore citizens and all of whose trustees are either Singapore citizens or a trust company licensed under the Trust Companies Act 2005.

The definitions of "Singapore company", "Singapore limited liability partnership", and "Singapore society" are strict, and essentially may be understood as looking through to the ultimate individuals who own the respective entities, to ensure that all are Singapore citizens. While a Singapore company may

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be incorporated in Singapore, it is not necessarily true that a company incorporated in Singapore is a "Singapore company" for purposes of the RPA.

What constitutes residential property?

Section 2(1) of the RPA defines "residential property" to include:

- (a) *any vacant land upon which no building or other structure exists or any land upon which exists any building or other structure which is constructed or used contrary to any written law;*
- (b) *any house, building or other premises or any part thereof which is permitted to be used pursuant to the Planning Act 1998 or any other written law as a dwelling house or which is lawfully so used;*
- (c) *any land zoned for residential purposes in the Master Plan; and*
- (d) **such other land or building, in whatever manner zoned in the Master Plan, as the Minister may, by notification in the Gazette, declare to be residential property for the purposes of this Act,**

but does not include —

- (e) *any land, whether or not vacant, which is zoned for industrial or commercial purposes or both such purposes in the Master Plan or which is permitted to be used pursuant to the Planning Act 1998 or any other written law solely for industrial or commercial purposes or both such purposes;*
- (f) *any house, building or other premises, or any part thereof, which is permitted to be used pursuant to the Planning Act 1998 or any other written law solely for industrial or commercial purposes or both such purposes or which is lawfully so used;*
- (g) *any hotel registered under the provisions of the Hotels Act 1954; and*
- (h) **such other land or building, in whatever manner zoned in the Master Plan, as the Minister may, by notification in the Gazette, declare to be industrial, commercial or non-residential property for the purposes of this Act;**

[emphasis added]

On 25 January 1999, the Minister for Law had issued the RPN (which was deemed to have come into operation on 24 December 1998) to declare certain lands to be non-residential properties pursuant to Section 2(1)(h) of the RPA.

Paragraph 3 of the RPN provides as follows:

3. *The following lands are hereby declared to be non-residential property for the purposes of the Act:*

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- (a) *any vacant land zoned in the Master Plan for any of the purposes set out in the Schedule;*
- (b) *any land zoned in the Master Plan and permitted to be used (other than for temporary use) pursuant to the Planning Act (Cap. 232) or any other written law for any of the purposes set out in the Schedule; and*
- (c) *any land permitted to be used (other than for temporary use) pursuant to the Planning Act or any other written law for any of the purposes set out in the Schedule.*

The Schedule to the RPN contains a list of land use zones. Lands that fall within these zones in the Master Plan and/or are permitted to be used for the purposes set out in the Schedule pursuant to the Planning Act 1998 or any other written law will be considered as non-residential property for purposes of the RPA.

If a foreign person intends to acquire residential property, he is required to seek approval from the Land Dealings Approvals Unit ("LDAU") for such acquisition as briefly set out below.

Approvals under the RPA

A foreign person may apply for approval to acquire restricted residential property under the RPA under these sections:

- (a) Section 25 of the RPA, which allows foreign persons to own and occupy the property, subject to such terms and conditions as the Minister may impose;
- (b) Section 25 of the RPA, which allows foreign entities to use the property for the occupation of its employees or executives subject to such terms and conditions as the Minister may impose; and
- (c) Section 31 of the RPA, where the foreign person has to be a housing developer and obtain a Qualifying Certificate. With a Qualifying Certificate, the housing developer has to complete the construction of the development and obtain the temporary occupation permit ("TOP") within five years from the date of approval of the Qualifying Certificate and sell all dwelling units in the development within two years of the issue of the TOP, and comply with any other terms and conditions which the Controller of Residential Property may impose.

Changes in the Schedule to the Residential Property Notification

Prior to 20 July 2023, one of the land use zones listed in the Schedule of the RPN was "Commercial & Residential".

With effect from and including 20 July 2023, land zoned as "Commercial & Residential" has been removed from the Schedule of the RPN. The effect of this change is that the following types of land would now be considered residential properties under the RPA:

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- (i) land zoned under the Master Plan as "Commercial & Residential"; or
- (ii) land permitted to be used (other than for temporary use) pursuant to the Planning Act 1998 or any other written law for commercial and residential purposes;

(collectively, "**CR Land**").

Consequently, foreign persons who wish to acquire CR Land would be required to seek LDAU's approval for such acquisition.

MinLaw and SLA have also added seven other types of land use zones as non-residential properties to the Schedule of the RPN, as "*residential uses are typically not allowed on such land use zones*". These are lands zoned as:

- (a) Business 1 (B1);
- (b) Business 2 (B2);
- (c) Business 1 – White;
- (d) Business 2 – White;
- (e) Commercial/Institution;
- (f) Reserve Site; and
- (g) Special Use.

Based on the list of possible land zoning issued in the Master Plan Written Statement 2019, the latest changes to the Schedule of the RPN would mean that for land which is zoned for the following uses in the Master Plan, LDAU's approval must be sought for foreign persons to acquire such lands:

- (a) Residential;
- (b) Residential with Commercial at 1st Storey;
- (c) Commercial & Residential;
- (d) White (note that this is different from a site that is zoned as "Business 1 – White" and "Business 2 – White");
- (e) Business Park – White;
- (f) Residential/ Institution;
- (g) Place of Worship; and
- (h) Civic & Community Institution.

Applicability of Amendments to RPN

The changes to the Schedule of the RPN have taken effect on 20 July 2023 at midnight.

There is a transitional provision, where foreign persons transferring, purchasing or acquiring in any land that, as at the date of the transfer, purchase, or acquisition, is CR Land pursuant to an option to purchase

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for the sale and purchase of the CR Land ("**OTP**"), can be exempted from obtaining approval under the RPA if all of the following conditions have been met ("**transitional remission conditions**"):

- (a) The OTP is granted by the sellers to potential buyers on or before 20 July 2023;
- (b) The OTP is exercised on or before 9 August 2023; and
- (c) The OTP has not been varied on or after 20 July 2023.

Implications for CR Land

Land to be acquired by foreign persons

Foreign persons defined under the RPA who intend to purchase or acquire an interest in CR Land would need to apply for approval under the RPA. The application can be submitted online at www.sla.gov.sg/ldau.

Where the land is zoned "Commercial", but the permanent approved use is for both commercial and residential use, such properties will now also be considered a restricted residential property under the RPA and approval will now be required for the purchase of such properties by foreign persons. It would thus be prudent for an intending purchaser to check the approved use of the entire property (this can be checked via URA Space at www.ura.gov.sg/maps/) and ensure that all floors are approved for commercial use only, so that the property is not considered a restricted residential property under the RPA.

Land already acquired by foreign persons

Foreign persons who are existing owners of CR Land are exempted from obtaining approval under the RPA if the intention is to retain the CR Land as-is. However, they will need to seek approval under the RPA should they wish to retain and redevelop the CR Land.

For foreign persons who own CR Land where written permission to develop the CR Land (pursuant to section 2 of the Planning Act 1998) ("**Written Permission**") has already been obtained from URA for the current development (regardless of whether construction of the new development has begun), approval under the RPA is not required, provided that the application for the Written Permission was submitted prior to 20 July 2023. Approval will be required for any subsequent redevelopment.

A foreign person who owns a commercial property but intends to redevelop the property into a commercial and residential property will need to apply for and obtain approval under the RPA to change the existing use of the property to include residential use.

If the foreign person had made an application for a Written Permission before 20 July 2023, such foreign persons are not required to seek approval under the RPA for the retention of the CR Land.

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If a foreign person intends to, on after 20 July 2023, redevelop the CR Land, he has to first obtain approval under the RPA to retain and redevelop the CR Land before applying to URA for the Written Permission.

Land acquired / to be acquired by foreign beneficiaries

For persons who are foreign beneficiaries inheriting CR Land from a registered proprietor who passed away before 20 July 2023, such foreign beneficiaries are exempted from seeking approval under the RPA. However, if there is any intention to redevelop the CR Land, then there is a need to seek approval under the RPA.

Such an exemption does not apply to registered proprietors who pass away on or after 20 July 2023 (regardless of when the will was made). In such a scenario, the foreign beneficiaries are to obtain the approval under the RPA to acquire the CR Land pursuant to the will or intestate succession law (as applicable) and if approval is not obtained, they will have to dispose of their interest in the CR Land to a Singapore citizen or an approved purchaser as defined under the RPA within five years from the date of death of the deceased.

Land acquired / to be acquired by foreign legal personal representatives

For persons who are foreign legal personal representatives administering an estate which contains CR Land (where the registered proprietor passed away before 20 July 2023), such foreign legal personal representatives are exempted from seeking approval under the RPA.

The above exemption does not apply to registered proprietors who pass away on or after 20 July 2023 (regardless of when the will was made). In such a scenario, the foreign legal personal representatives are to obtain the approval under the RPA prior to lodging of the Transmission Application on Death of Proprietor (which is required to transmit the CR Land to the foreign legal personal representatives to enable them to administer the estate). The foreign legal personal representatives are also required to dispose of any foreign beneficiaries' interest in the CR Land to a Singapore citizen or an approved purchaser as defined under the RPA within five years from the date of death of the deceased.

Concluding Words

Potential purchasers and developers who would be classified as foreign persons should be aware of the changes imposed by the new measures and determine whether such changes are applicable to their respective transactions.

Purchasers should note that the above changes to the RPN do not affect the purchase of strata-titled properties by foreign persons, who are not restricted from purchasing strata-titled properties, whether approved for residential use or otherwise.

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In addition, the definition of "residential property" under the RPA is slightly different from the definition of "residential property" for stamp duty purposes under the Stamp Duties Act 1929, and hence, any intending purchaser must address his mind to these two considerations carefully to ascertain whether approval under the RPA is required and to ascertain his stamp duty liability.

For further queries, please feel free to contact our team below.

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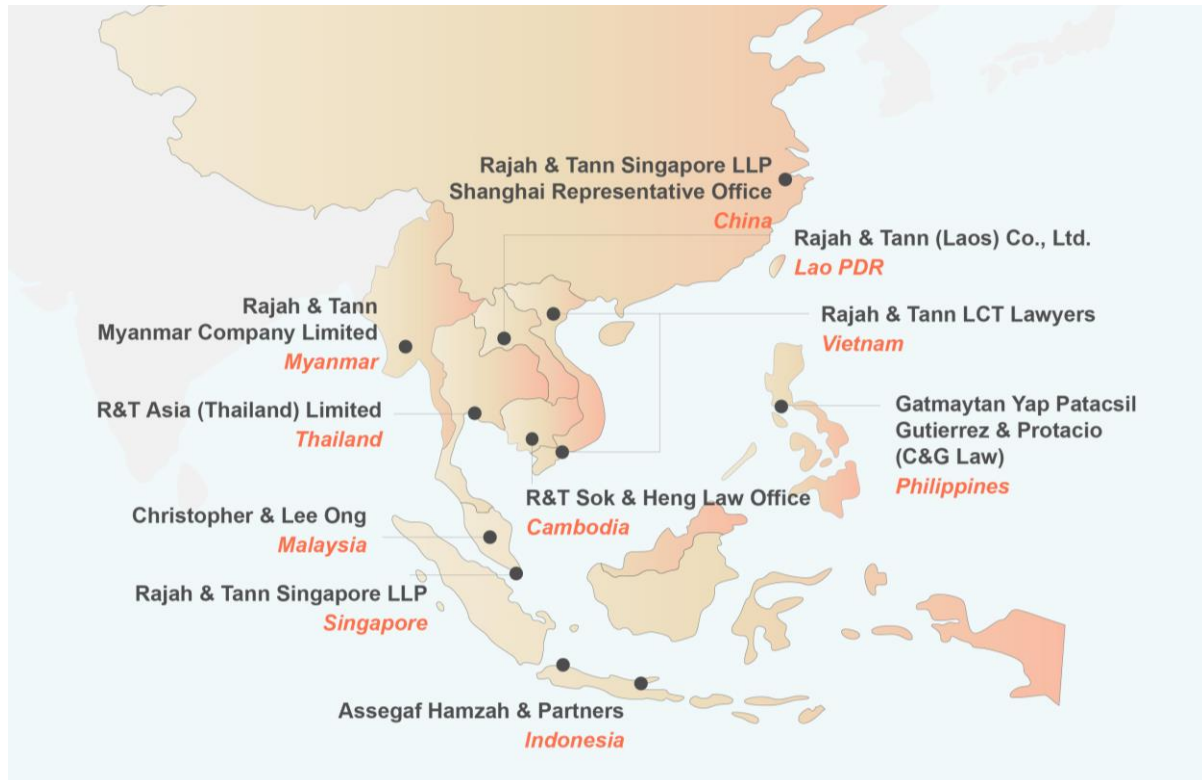
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