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Temporary Relief Measures against Disruptions Caused by COVID-19 and 'Circuit Breaker' Measures for Eligible Property Developers & Married Couples

Introduction

In-line with the extension¹ of the 'circuit breaker' measures implemented by the Singapore Government² from 4 May to 1 June 2020, the relevant authorities have issued advisories to property developers and the construction industry on the extension of, amongst others, the closure of show galleries set up by property developers to market and sell their properties³ and the suspension of building works⁴.

The cumulative prolonged impact of the domestic measures imposed by the Singapore Government to control the spread of COVID-19, which took effect as early as sometime in early February 2020 when the DORSCON alert level was raised to Orange, and the public health and border-control measures imposed by governments worldwide, including Singapore, to combat the COVID-19 pandemic have adversely affected the sales of real estate in Singapore and have disrupted the property development supply chains, resulting in shortages of construction materials and manpower which are essential for building works. With the implementation of the 'circuit breaker' by the Singapore Government on 7 April 2020, construction sites across Singapore came to a complete standstill⁵.

On 6 May 2020, the Singapore Government announced temporary relief measures ("**Temporary Relief Measures**") which, although offer immediate relief for eligible property developers and married couples affected by the 'circuit breaker' measures implemented by the Singapore Government and the various measures imposed by governments worldwide to control the spread of the COVID-19 pandemic, do not alter the Government's prevailing residential property market cooling measures.

Contribution Note: This Client Update was written by Norman Ho, Senior Partner, and Gazalle Mok, Partner, Corporate Real Estate, with contributions from Dexter Yeo, Associate, from Corporate Real Estate.

¹ For more details, please refer to the Singapore Government's press release (accessible [here](#))

² COVID-19 (Temporary Measures) Act 2020 and the COVID-19 (Temporary Measures) (Control Order) Regulations 2020

³ For more details, please refer to Controller of Housing's Advisory published on 23 April 2020 (accessible [here](#))

⁴ For more details, please refer to Building and Construction Authority's Advisory For the Construction Industry – Suspension of Non-essential services to reduce COVID-19 Transmission dated 2 May 2020 (accessible [here](#))

⁵ *ibid*; save for building works that are essential services.



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Temporary Relief Measures for Property Developers

Temporary Relief for Eligible Developers

The introduction of these targeted Temporary Relief Measures offers timeous relief to eligible property developers by granting them six months' extension of time to comply with the various regulatory and authority-imposed timelines / deadlines, including completing the construction of the development projects and selling the units being built, without any requirement for submission of requests or appeals to the relevant authorities (save for Singapore Land Authority ("**SLA**") in respect of waiver of extension charges chargeable under the terms of the qualifying certificate ("**QC**") granted pursuant to Section 31 of the Residential Property Act (Cap. 274) ("**RPA**").

These targeted Temporary Relief Measures granted to eligible property developers, which are to be implemented with immediate effect, are summarised in the table below.

	Project Completion Period ("PCP") imposed on residential and non-residential development projects on Government sale sites, or on residential and non-residential land which was directly alienated from or had their lease renewed by SLA	Additional Buyer's Stamp Duty ("ABSD") post-remission conditions for non- licenced and licenced housing developers⁶		QC Regime for foreign housing developers⁷
Existing timelines / deadlines	Dependent on terms of purchase, alienation and/or lease renewal (as the case may be) imposed by the authorities.	Commencement of residential development within two years from the date of purchase of land (or collective sale order).	Completion of construction of residential development and sale of all housing units in the residential development: (i) (for licenced housing developers) within five years from the date of purchase of land (or collective sale order); and (ii) (for non-licenced housing developers)	(1) Completion of construction of residential development and obtaining the Temporary Occupation Permit (" TOP ") or Certificate of Statutory Completion (" CSC ") within five years from the date of issue of the QC (or collective sale order); and/or

⁶ For more details, please refer to the Stamp Duties (Housing Developers) (Remission of ABSD) (Amendment) Rules 2020 (accessible [here](#)); Stamp Duties (Housing Developers) (Remission of ABSD) Rules 2013 (accessible [here](#)) & Stamp Duties (Non-Licensed Housing Developers)(Remission of ABSD) (Amendment) Rules 2020 (accessible [here](#)); Stamp Duties (Non-Licensed Housing Developers)(Remission of ABSD) Rules 2015 (accessible [here](#))

⁷ Section 31 of the RPA

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	Project Completion Period ("PCP") imposed on residential and non-residential development projects on Government sale sites, or on residential and non-residential land which was directly alienated from or had their lease renewed by SLA	Additional Buyer's Stamp Duty ("ABSD") post-remission conditions for non- licenced and licenced housing developers⁶		QC Regime for foreign housing developers⁷
			three years from the date of purchase of land (or collective sale order).	(2) Disposal of all housing units within two years from the issue of TOP or CSC.
Extension granted under Temporary Relief Measures	Extension of PCP by six months .	Extension of timeline for commencement of residential development by six months .	Extension of timeline for completion of residential development and sale of all housing units in the residential development project by six months .	Grant of waiver of extension charges of up to total of six months for existing completion and/or disposal deadlines.
Qualifying Criteria (all conditions must be met)	(i) The land was awarded on or before 1 June 2020, or the land was directly alienated or had their lease renewed by SLA on or before 1 June 2020; and (ii) The original timeline for the project to be completed was on or after 1 February 2020.	(i) The land was purchased on or before 1 June 2020; and (ii) The original timeline for commencement of the residential development expired on or after 1 February 2020.	(i) The land was purchased on or before 1 June 2020; and (ii) The original timeline for completion of the residential development and sale of all housing units in the development expired on or after 1 February 2020.	(i) The QC or SLA approval requiring the completion and sale of all units in the residential development was issued on or before 1 June 2020; and. (ii) The original timeline for completion and sale of units in the residential development expired on or after 1 February 2020.
Applicability of Relief	Eligible developers will be notified by the respective agencies. No application is necessary.	Eligible developers will be granted extension automatically. No application is necessary.	Eligible developers will be granted extension automatically. No application is necessary.	Eligible developers can write to SLA's Land Dealings Approval Unit (LDAU) at SLA_LDU@sla.gov.sg by 1 December 2020 to apply.

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Temporary Relief Measures for Eligible Married Couples

Under the prevailing ABSD regime, amongst other conditions⁸, a married couple⁹ purchasing a second residential property in joint names¹⁰ has to sell their first residential property within the specified timeline, failing which they will not be eligible for a remission of the ABSD paid on their second residential property. The specified timeline for sale of the first residential property is (i) six months after the date of purchase of the second property, if it is a completed property or (ii) (if the second property is uncompleted at the time of purchase) six months after the issue date of the TOP or CSC of the second property, whichever is the earlier.

Eligible married couples will be granted an additional six months to the abovementioned specified timelines under the Temporary Relief Measures. To qualify, the married couple must satisfy the conditions under Stamp Duties (Spouses) (Remission of ABSD) Rules 2013, the conditions set out below, and submit an application (together with the requisite supporting documentation) for remission of ABSD to IRAS within six months after the date of sale of the couple's first residential property:

- (i) the married couple's second residential property was jointly purchased on or before 1 June 2020; and
- (ii) the original specified timeline (last date by which the couple must sell the first residential property to fulfil the ABSD remission conditions) expired on or after 1 February 2020.

Efficacy of Temporary Relief Measures for Property Developers

The Temporary Relief Measures are intended to, and will no doubt provide some interim relief to eligible property developers. However, in light of turbulent economic forecasts and reports of looming a recession not only in Singapore but countries worldwide that are reeling from the repercussions of the COVID-19 pandemic, property developers with timelines imposed under the ABSD post-remission conditions and the QC regime expiring in year 2020 may still find the extension of six months to sell all the residential units insufficient to meet the abovementioned authority-imposed timelines / deadlines. Amid such volatile and uncertain circumstances, prospective purchasers and any bullish sentiments of the residential property market in Singapore would invariably be dampened.

In the bigger scheme of things, with the Temporary Relief Measures granted to eligible property developers, it can be expected that the relief sought by eligible contractors and suppliers under the provisions of the COVID-19 (Temporary Measures) Act 2020 for their inability to perform construction contracts or supply contracts caused by the COVID-19 situation will perhaps be met with less resistance and challenges by property developers.

⁸ Please refer to Stamp Duties (Spouses) (Remission of ABSD) Rules 2013

⁹ Comprising at least one Singapore Citizen

¹⁰ Property must only be purchased in the names of the married couple

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However, as is always the case for property developers of residential and commercial developments whose sales of units are regulated by the Housing Developers (Control and Licensing) Act (Cap. 130) ("HDA") and the Sale of Commercial Properties Act (Cap. 281) ("SCPA"), other than the various regulatory and authority-imposed timelines / deadlines that they have to comply with, such property developers are also contractually bound to deliver vacant possession of such sold units to their respective purchasers by a specified date as stipulated in the sale and purchase agreements. Such contractual obligations of the property developers have not been varied or extended by the Temporary Relief Measures.

In light of the aforesaid, eligible property developers who have contracted with their respective purchasers to deliver vacant possession of the units in a development on a specified date that does not extend beyond extensions granted under the Temporary Relief Measures may still find themselves at risk of additional financial burdens if they are unable to meet such contractual deadlines. Property developers that are regulated under the HDA and the SCPA who fail to deliver vacant possession of such sold units by the contracted date stipulated in the sale and purchase agreements with their purchasers will be liable to pay liquidated damages to purchasers, prescribed at the rate of 10% per annum (calculated on a daily basis) on the total sum of all the instalments paid by the purchaser towards the purchase price of the unit¹¹.

In this connection, it is also germane to point out that unlike a property developer's contract with its main contractor for the construction of the development which would typically contain a *force majeure* provision, the prescribed form of the sale and purchase agreement under the HDR and SCPR does not contain a *force majeure* provision to allow either party to a sale and purchase agreement to suspend performance of contractual obligations (e.g. delivery of vacant possession of a unit) upon the occurrence of certain specified events which parties have no control over (e.g. natural disasters, war, acts of government) which may impede or obstruct performance of (or an obligation under) the sale and purchase agreement. Perhaps it is time for the relevant agencies and authorities to consider introducing a *force majeure* provision to afford some level of protection to property developers who may find themselves caught between a rock and a hard place when faced with looming deadlines for delivery of vacant possession of units and contractors who are asserting or claiming triggering of *force majeure* clauses.

Conclusion

COVID-19 has plunged the world-at-large into unprecedented times and challenges. With the constantly evolving COVID-19 situation, it is still too early to measure and to fully appreciate the disruptive effects of COVID-19 on property developers, the construction industry and the associated supply chain. Notwithstanding the uncertainty in the days ahead, the introduction of the six months' extension of time for regulatory and authority-imposed timelines / deadlines provides timely reprieve for eligible property

¹¹ For more details and specifics, please refer to the prescribed format of the sale and purchase agreement under the Housing Developer Rules ("HDR") and the Sale of Commercial Properties Rules ("SCPR").

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developers and married couples. It is also comforting to note that the Singapore Government is actively and closely monitoring the situation instead of taking a backseat approach.

However, as mentioned earlier, property developers who have contracted to deliver vacant possession of units in accordance with the prescribed form of the sale and purchase agreement under the HDR and SCPR are not home free since they are at risk for liquidated damages. These property developers are still contractually obliged to deliver vacant possession of the units on the date specified in the sale and purchase agreements with their respective purchasers, which is typically derived and calculated by developers based on their development's projected construction timelines and estimated TOP date for the development (which is likely to be earlier than the timelines / deadlines imposed under the PCP, ABSD post-remission conditions and QC conditions). Property developers should be mindful of the extent of the relief granted under the Temporary Relief Measures and assess their situation carefully whilst taking into consideration their obligations with the various stakeholders and third parties in a development project. Property developers should aim to work closely with their main contractors and marketing agents to ensure timely and smooth completion of the construction work and the sale of the units being built.

For more articles and updates from our teams across the region on COVID-19 and related legal issues, please visit [Rajah & Tann Asia's COVID-19 Resource Centre](#).

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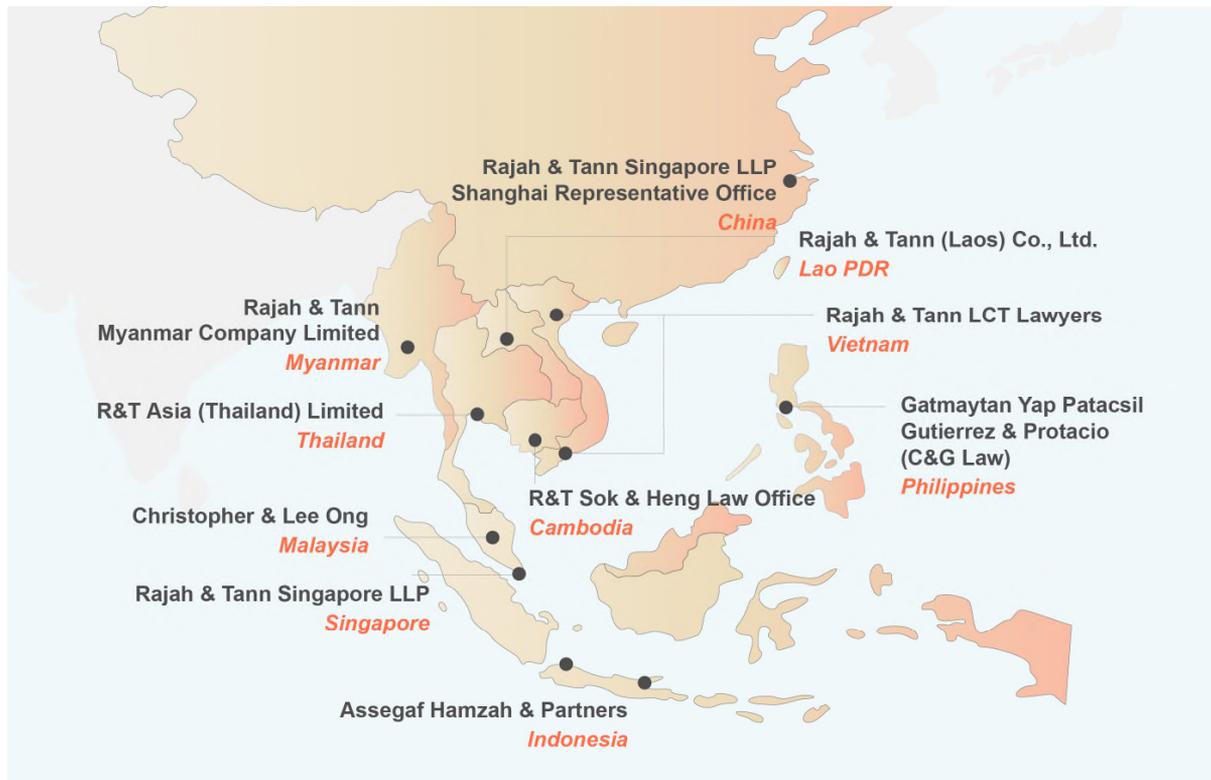
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