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Land Betterment Charge Bill Introduced to Replace Development Charge and Differential Premium

Introduction

The Land Betterment Charge Bill ("**Bill**") was passed in Parliament on 10 May 2021. The Bill provides for the imposition of a tax (called a Land Betterment Charge or "**LBC**") on the increase in the value of land resulting from a chargeable consent given in relation to land.

Under the existing framework, landowners and developers currently have to pay either a Development Charge ("**DC**"), Temporary Development Levy ("**TDL**") or a Differential Premium ("**DP**") to either the Urban Redevelopment Authority ("**URA**") or the Singapore Land Authority ("**SLA**") where there is an enhancement in land value for various reasons.

The LBC would replace the DC, TDL and DP and would be payable to a single entity, consolidating these charges and taxes under SLA. The principles for computing LBC and the proposed rates of charging remain largely unchanged from the current regime.

The Bill sets out the framework for the operation of the LBC, including the rules for calculating the applicable tax, who is liable for payment, and how the obligation is to be satisfied and enforced. In this Update, we highlight the key features of the Bill and the LBC regime and how it differs from the current regime, as well as what developers should be aware of regarding their liability for payment of LBC.

Current Taxes and Charges

Before the Bill comes into operation, the current framework of taxes and charges will continue to be in force.

The existing DC and TDL are taxes imposed under the Planning Act and administered by URA. They are levied when planning permission is granted to carry out development projects which increase the value of the land, and are payable by the owner of the land or the developer applying for planning permission. The DC rates are reviewed every six months by the Chief Valuer at the Inland Revenue Authority of Singapore ("**IRAS**").

Contribution Note: This Client Update was written with contributions from Calvin Lim, Associate, from Corporate Real Estate.

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The DP is a charge payable for the lifting of title restrictions on State land so as to account for enhancements in land value, and is administered by SLA. State Titles may stipulate use and intensity restrictions, and SLA imposes a DP in granting an application to lift such restrictions for the purpose of development works to put the site to a higher use of intensity. The DP amount is generally computed based on the DC table of rates, and is payable by the landowner or the developer applying for the lifting of the title restriction. As DP is not a tax payment per se, stamp duty is therefore usually levied on the DP amount payable.

Key Features of the Bill

The Bill provides for a singular tax, the LBC, to be imposed on the increase in the value of land resulting from a chargeable consent given in relation to land. The LBC will be administered and collected by SLA.

The Bill seeks to provide a transparent and certain process for the upfront determination of LBC so as to ensure certainty and predictability for the property development industry. It also seeks to raise funds from developers undertaking new building projects to fund the infrastructure, services and amenities needed as a result of development.

When is the LBC incurred?

The LBC is incurred when there is a "chargeable consent" given in relation to any land, resulting in an increase in the value of land. There are three types of chargeable consent:

- The grant of planning or conservation permission allowing development of the land;
- The varying of a restrictive covenant in a State title relating to the land by SLA, as a result of which a person is entitled to carry out a development or subdivision of the land, or is entitled to carry on or not carry on an activity, or stop carrying on an activity, that is the subject of the restrictive covenant (such as changing club membership rules); or
- The accepting of a lodgment of any plans for a development of the land.

This means that all planning authorisations for the development of land would constitute chargeable consents. The subdivision of land would only attract tax liability under the Bill if the State title contains a restrictive covenant restraining subdivision.

The LBC regime would not be triggered in the following scenarios (which are not deemed to be instances of chargeable consent):

- Easements are varied, released or cancelled under sections 105, 105A and 106 of the Land Titles Act (whether by the owner, the Courts or the Land Titles Registry) which may result in the enhancement of the value of the servient land; or

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- The restriction over the servient land is varied, released or removed under section 140(1), 140(5) and 141 of the Land Titles Act (whether by the owner, the Courts or by the Land Titles Registry) which may result in the enhancement of the value of the servient land.

The LBC regime also does not apply to the renewals of the leasehold tenure of State Leases. Instead, a Land Renewal Premium is payable on such renewals.

The scope of the LBC regime effectively consolidates the DC and TDL currently payable for the grant of planning or conservation permission, as well as the DP collected by SLA for the varying of restrictive covenants. The Bill also serves the purpose of codification – while the Singapore Land Authority Act empowers SLA to assess and collect the DP, the DP is currently not otherwise codified under any statute.

What is the applicable LBC rate?

The LBC is a tax on the increase in the value of the land likely to accrue from the giving of the chargeable consent. The effective tax rate is not set out in the Bill, and will be prescribed by the Minister of Law by way of Regulations, which would be subject to periodic review.

Clause 8 of the Bill sets out the two categories of tax rates:

- A lower tax rate will be applied to chargeable consents allowing development of land.
- A higher tax rate will be applied to chargeable consents in relation to:
 - The variation of a special condition (with few exceptions), in a directly allotted State title relating to the land, resulting in the land to be developed or subdivided or to be used for certain activity(ies) or to discontinue the use of certain activity(ies) for the land; or
 - The variation of "additional land premium" condition(s) in a State title to allow an intensification or change of use of that land; or
 - The variation of a restrictive covenant in a State title dealing with subdivision or controlled activities on the land unconnected with development of land.

The Second Minister for Law ("**Minister**") stated in his Second Reading Speech on the Bill ("**Minister's Speech**") (available [here](#)) that the lower LBC rate will be generally set at 70% of the increase in land value likely to accrue from the giving of the chargeable consent, which is similar to the current general rate for the DC. The Minister also stated that the higher LBC rate is intended to be 100% of the enhancement of land value, which is also similar to the current general rate for the DP on the equivalent variations of restrictive covenants and special conditions.

The Minister has further confirmed in Parliament that no stamp duty would be payable on the chargeable consent.

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How is the LBC calculated?

Clause 9 of the Bill sets out two methods for assessing the amount of LBC, which are not dissimilar to how the DC, TDL and DP are currently calculated:

- **Valuation method** – This method is to be used for the categories of chargeable consents subject to the higher tax rate (as set out above). It involves a valuation by a valuer to be designated by SLA.
- **Table of Rates method** – This method applies for all other categories of chargeable consents, unless it is inapplicable to the particular development or all taxable persons concerned elect (before a Liability Order is given to the taxable persons) for the Valuation method to be used. It uses a table of rates to derive the pre-chargeable valuation and post-chargeable valuation and then calculating the difference in amount.

The Table of Rates method is similar to the Table of Development Charge Rates under the First Schedule to the Planning (Development Charges) Rules. The table would be prescribed in the relevant Regulations, which as of the date of this Update has not been published or circulated.

The Minister has also highlighted in the Minister's Speech that there would be an adjustment for State leases with a residual tenure of 99 years or less when computing LBC to account for the remaining tenure of the leasehold land. This would be different from the treatment under the DC regime and would make for a more accurate reflection of value. This is currently not reflected in the Bill and would likely be part of Regulations to be prescribed.

Who is liable to pay LBC?

The Bill refers to the person liable to pay the LBC as the "taxable person". The taxable person liable to pay the LBC in respect of a chargeable consent given in relation to any land is by default every person who, when the chargeable consent is given, is an owner of the land or a person who has a "material interest" in the land. A material interest is defined as a legal interest which is:

- An estate in fee simple;
- An estate in perpetuity;
- A leasehold estate under a State title; or
- Subject to the above, an interest in the land entitling the person to receive rent if the land is let to a tenant (or is in fact let) for more than 10 years.

If there are other person(s) besides the owner of the land who has/have a material interest in the land, then the liability to pay the LBC will be apportioned between/amongst each of the persons with material interest in the land. If there are joint owners of a material interest in land, they are each jointly and severally liable to pay the LBC in respect of that material interest. Subject to certain exemption or

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deferment of liability or transfer of deferred liability granted by the Minister for Law or SLA (as the case maybe), the taxable person's liability continues despite the taxable person disposing of the land or other changes in ownership of the land.

However, other persons may also become liable to pay the LBC.

- **Assumption of liability** – A person who gives an "assumption of liability notice" (provided for under Clause 16 of the Bill) assumes the liability to pay the LBC, thus becoming the taxable person.
- **Deferment determination** – In the event that the LBC liability of a taxable person is reduced by or under a deferment determination (provided for under Clause 20 of the Bill), such deferred liability may be transferred to another person. This would generally only apply to situations where the taxable person is a charitable institution and the land will be used for charitable purposes.

This would be similar to the current position under Planning (Deferment of Payment of Development Charge by Charities) Rules 2017 and the Planning (Deferment of Payment of Temporary Development Levy by Charities) Rules 2016.

Remission of LBC and any late payment interest may be allowed by the Minister for Law at his/her sole discretion if:

- the natural person liable to pay any LBC has suffered such a loss or if in the circumstances the payment of the full amount of the LBC would entail serious hardship;
- the payment of the LBC by a taxable person is likely to cause substantial hardship; or
- pursuant to the peculiar facts of the case the LBC payable by the taxable person is not compatible with the purposes of the LBC.

When is the LBC payable?

Every taxable person must be given a Liability Order by SLA stating:

- The amount of LBC payable (or an estimate thereof, where relevant);
- That the LBC must be paid within the prescribed timeline; and
- The timeline the taxable person may appeal to the Minister for Law against the Liability Order.

Under Clause 24 of the Bill, the LBC is payable at the end of one month after a Liability Order is given to the taxable person, subject to any extension granted by SLA. If the Liability Order is revised by SLA, resulting in a Revised Liability Order, the LBC is payable at the end of one month after the Revised Liability Order is given.

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For a chargeable consent that is a planning permission or conservation permission, or a varying of a restrictive covenant in a State title that concerns development only, the Liability Order must be given as soon as practicable after one of the following dates, whichever is applicable:

- **Where no provisional permission is granted** – The date a planning permission or conservation permission is granted in respect of the development of the land; or
- **Where provisional permission is granted** – The date where the competent authority or Land Planning Minister notifies SLA that it intends to grant final permission under section 17(4) of the Planning Act 1998.

This means that the Liability Order would, in a number of development cases, be given ahead of when the chargeable consent is actually given. Developers should thus be aware that the running of the timeline for payment may begin even before they receive the chargeable consent.

The timeline for payment of the DC under the current regime is comparable to the timeline for payment of the LBC – the DC has to be paid within 30 days of service of an Interim Order by URA. The difference is that URA will not grant planning or conservation permission until *after* the DC is paid or secured.

However, as compared to the timeline for payment of the DP, the timeline for payment of the LBC may appear rather truncated. Under the current regime, the DP is typically only payable on acceptance of the Offer made by the relevant authorities in respect of the proposed enhancements to / intensification of use of the land. Under the LBC regime, it appears unclear when an applicant would be able to have sight of the conditions to the Offer and be able to refuse, reject or discontinue with the proposed development pursuant to the grant of the provisional permission/ planning permission/ conservation permission. The Minister has noted that the LBC would be payable after planning permission but before the grant of written permission. As the LBC has to be paid within one month after the liability order is given, the timeline for payment may be seen to be shortened.

The taxable person may appeal to the Minister for Law against a Liability Order or Revised Liability Order under Clause 47 of the Bill. Such appeal must be in writing and must be made within 30 days after the relevant Order is given to the taxable person.

How is the LBC enforced?

The Bill imposes certain penalties for violations:

- **Late interest** – Under Clause 38 of the Bill, a taxable person who does not pay the LBC within the prescribed time is liable to pay to SLA interest, at the prescribed rate, on the unpaid LBC, calculated on a daily basis.

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- **Penalty tax** – Under Clause 39, where a person has carried out any illegal development of land, or where a person has carried on, or stopped carrying on, a controlled activity that is the subject of a controlled activity restrictive covenant in a State title relating to any land, that person would be liable to pay a penalty tax upon SLA issuing a rectification order. The Minister has mentioned in the Minister's Speech that this penalty tax would be 30%.

A rectification order can either direct the person to whom it is given to resume or restore of the developed or subdivided land or the resumption or stop of any controlled activity to alleviate the effect of the improper development, subdivision or activity at the person's cost.

The Bill provides that any LBC that is unpaid may be recovered as a debt in any court of competent jurisdiction in the name of SLA, and that SLA may at any time take action or remedy for recovery of LBC and late interest.

Clause 33 provides for the priority of payment of any LBC or penalty tax in the event of the insolvency or bankruptcy of the taxable person, ranking such payment ahead of all other debts in the distribution of property.

Where a taxable person makes default in payment of any LBC, and the land is subject to any lease or occupied by any person, then the lessee or occupier may be made responsible for the payment of the contribution.

- All such payments are deemed to be made on behalf of the defaulting taxable person.
- The responsibility of the lessee or occupier under this section is limited to any rent or payments due to the taxable person at the time of demand made by SLA.
- The Bill does not provide for a mechanism for the lessee or occupier to recover the amounts paid from the taxable person (if the two are different).

If the land is subject to a mortgage or charge over rental proceeds in favour of a mortgagee, such payments of the rent to SLA may prejudice the rights of the mortgagee and trigger an event of default under the mortgage or charge over rental proceeds.

Concluding Words

The introduction of the LBC regime fundamentally changes the planning regime for developers. The system of DC, TDL and DP payments for development projects which increase the value of the land, and for the lifting of restrictive covenants on state land, is set to be replaced by the LBC.

Developers should familiarise themselves with how the LBC operates – in particular, it is important to note when the LBC is payable and how it is calculated. In this regard, further Regulations are set to be issued to provide further guidance and details. We will continue to monitor these developments to keep you informed.

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