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STAMP DUTIES ACT (CHAPTER 312)

STAMP DUTIES (SECTION 23) ORDER 2017

ARRANGEMENT OF PARAGRAPHS

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In exercise of the powers conferred by section 23D(2) of the Stamp Duties Act, the Minister for Finance makes the following Order:

Citation

1. This Order is the Stamp Duties (Section 23) Order 2017.

Commencement of sections 23 to 23C of Act

2. Sections 23 to 23C of the Act are deemed to have come into operation on 11 March 2017.

Holding period

3. The holding period under section 23(8)(b) of the Act is 3 years.

Prescribed percentages

4.—(1) The equity-owning percentage under section 23(11)(a) of the Act is 50%.

(2) The voting power percentage under section 23(11)(b) of the Act is 50%.

(3) The Type 1 PHE percentage under section 23(13)(a) of the Act is 50%.

(4) The Type 2 PHE percentage under section 23(13)(b) of the Act is 50%.

(5) The significant stake percentage under section 23(16) of the Act is 50%.

Prescribed immovable property

5. For the purposes of the definition of “prescribed immovable property” in section 23(21) of the Act, prescribed immovable property is any immovable property that is —

(a) zoned, or situated on land that is zoned, under the Master Plan as follows:

(i) “Residential”;

(ii) “Commercial and Residential”;

(iii) “Residential/Institution”;

(iv) “Residential with Commercial at 1st Storey”; or

(v) “White”;

(b) permitted to be used by a written permission given under section 14(4) of the Planning Act (Cap. 232) (not being one that is given for a period of 10 years or less), for solely residential purposes or for mixed purposes one of which is residential;

(c) permitted to be used by a notification under section 21(6) of the Planning Act, for solely residential purposes or for mixed purposes one of which is residential; or

- (d) used for solely residential purposes or for mixed purposes one of which is residential, in a case where the property was so used on 1 February 1960 and has not been put to any other use since that date, and where such use is not the subject of a written permission mentioned in sub-paragraph (b) or a notification mentioned in sub-paragraph (c).

Associates

6.—(1) For the purposes of section 23(20)(d) of the Act —

- (a) an entity (*X*) is associated with another entity (*Y*) if —
- (i) *X* beneficially owns the voting capital and voting power in *Y* to a significant extent; or
 - (ii) a third entity (*Z*) beneficially owns the voting capital and voting power in both *X* and *Y* to a significant extent;
- (b) if an individual beneficially owns the voting capital and voting power in an entity to a significant extent, then the individual is associated with the entity; and
- (c) if an individual beneficially owns —
- (i) the voting capital and voting power in an entity to a significant extent; and
 - (ii) the voting capital and voting power in another entity to a significant extent,

then those entities are associated with each other.

(2) For the purposes of sub-paragraph (1)(a), *X* beneficially owns voting capital and voting power in *Y* to a significant extent in any of the following circumstances:

- (a) *X* beneficially owns the voting capital and voting power in *Y* directly and to a significant extent;
- (b) *X* beneficially owns the voting capital and voting power in *Y* indirectly and to a significant extent, through a single chain of one or more intermediate entities, where —

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- (i) *X*, and each intermediate entity in the chain, beneficially owns voting capital and voting power in the entity following it next in the chain directly and to a significant extent; and
 - (ii) *X* beneficially owns voting capital and voting power in *Y* indirectly and to a significant extent;
- (c) either —
- (i) *X* beneficially owns the voting capital and voting power in *Y* directly, and beneficially owns the voting capital and voting power in *Y* indirectly through one or more chains of intermediate entities that satisfies the condition in sub-paragraph (3); or
 - (ii) *X* beneficially owns the voting capital and voting power in *Y* indirectly through 2 or more chains of intermediate entities that satisfies the condition in sub-paragraph (3),

and the sum of each of *X*'s beneficial ownership of the voting capital and voting power in *Y* under sub-paragraph (i) or (ii) are to a significant extent.

(3) The condition mentioned in sub-paragraph (2)(c) is that each entity in the chain (including *X* but not the entity immediately before *Y*) must beneficially own voting capital and voting power in the entity following it next in the chain directly and to a significant extent.

(4) Sub-paragraphs (2) and (3) apply for the purposes of sub-paragraph (1)(a)(ii), as if —

- (a) a reference in sub-paragraphs (2) and (3) to *X* were a reference to *Z*; and
- (b) a reference in sub-paragraphs (2) and (3) to *Y* were a reference to *X* or *Y*, as the case may be.

(5) For the purposes of sub-paragraph (1)(b) and (c), an individual beneficially owns voting capital and voting power in an entity to a significant extent in any of the following circumstances:

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- (a) the individual beneficially owns the voting capital and voting power in the entity directly and to a significant extent;
 - (b) the individual beneficially owns the voting capital and voting power in the entity (called in this sub-paragraph and sub-paragraph (6) the ultimate entity) indirectly and to a significant extent, through a single chain of one or more intermediate entities, where —
 - (i) the individual, and each intermediate entity in the chain, beneficially owns voting capital and voting power in the entity following it next in the chain directly and to a significant extent; and
 - (ii) the individual beneficially owns voting capital and voting power in the ultimate entity indirectly and to a significant extent;
 - (c) either —
 - (i) the individual beneficially owns the voting capital and voting power in the ultimate entity directly, and beneficially owns the voting capital and voting power in the ultimate entity indirectly through one or more chains of intermediate entities that satisfies the condition in sub-paragraph (6); or
 - (ii) the individual beneficially owns the voting capital and voting power in the ultimate entity indirectly through 2 or more chains of intermediate entities that satisfies the condition in sub-paragraph (6),and the sum of each of the individual's beneficial ownership of the voting capital and voting power in the ultimate entity under sub-paragraph (i) or (ii) are to a significant extent.

(6) The condition mentioned in sub-paragraph (5)(c) is that the individual and each entity in the chain (but not the entity immediately before the ultimate entity) must beneficially own voting capital and voting power in the entity following it next in the chain directly and to a significant extent.

(7) For the purposes of this paragraph, where —

- (a) a person (whether an entity or an individual) beneficially owns (either directly or through one or more applications of this paragraph) voting capital or voting power in an entity (called in this paragraph the 1st level entity); and
- (b) the 1st level entity beneficially owns directly voting capital or voting power in another entity (called in this sub-paragraph the 2nd level entity),

then the person is taken to beneficially own indirectly voting capital or voting power in the 2nd level entity of a percentage that is calculated as $A \times B$, where —

- (i) A is the percentage which the value of voting capital or voting power in the 1st level entity beneficially owned by the person bears to the total value of all voting capital or voting power in the 1st level entity; and
- (ii) B is the percentage which the value of voting capital or voting power in the 2nd level entity beneficially and directly owned by the 1st level entity bears to the total value of all voting capital or voting power in the 2nd level entity.

(8) In this paragraph —

“significant extent” means —

- (a) in relation to voting capital in an entity, 75% or more of its voting capital; and
- (b) in relation to voting power in an entity, more than 50% or more of its voting power;

“voting capital” means —

- (a) in relation to a company, its issued share capital (by whatever name called) other than issued share capital which consists of shares that do not entitle its holder to the right to vote at a general meeting;

- (b) in relation to a partnership —
 - (i) the proportion of the partnership property that a partner is entitled to on the dissolution or winding up of the partnership, as specified in the partnership agreement; or
 - (ii) if none is specified, the proportion of the profits of the partnership that a partner is entitled to; and
- (c) in relation to a property trust, a unit in the trust.

Application of paragraph 6 to VCCs

6A.—(1) Subject to section 60L(5) of the Act and sub-paragraph (2), a reference to an entity in paragraph 6 includes a VCC and for this purpose —

- (a) the voting capital of an entity that is a VCC is its issued share capital (by whatever name called) other than issued share capital which consists of shares that do not entitle its holder to the right to vote at a general meeting; and
- (b) the voting power of an entity that is a VCC is the voting power conferred by the shares mentioned in sub-paragraph (a).

(2) The determination of —

- (a) whether, in a case where an umbrella VCC is a party to the instrument concerned in relation to a sub-fund, another person is an associate of the umbrella VCC in relation to the sub-fund; or
- (b) whether an umbrella VCC is an associate of a party to the instrument concerned in relation to any of its sub-funds,

is to be made in accordance with sub-paragraph (3) or (4).

(3) Paragraph 6 applies for the purpose of making the determination under sub-paragraph (2) subject to the following modifications:

- (a) where the umbrella VCC is entity *X* in paragraph 6(1)(a)(i), *X* beneficially owns the voting

capital and voting power in *Y* to a significant extent if *X* owns the voting capital and voting power in *Y* for the purpose of the sub-fund to a significant extent;

- (b) where the umbrella VCC is entity *Y* in paragraph 6(1)(a)(i) or (ii), *X* or *Z* (as the case may be) beneficially owns the voting capital and voting power in *Y* to a significant extent if *X* or *Z* owns the voting capital and voting power of *Y* in respect of the sub-fund to a significant extent;
- (c) where the umbrella VCC is entity *X* in paragraph 6(1)(a)(ii), *Z* beneficially owns the voting capital and voting power in *X* to a significant extent if *Z* owns the voting capital and voting power of *X* in respect of the sub-fund to a significant extent;
- (d) where the umbrella VCC is the entity in paragraph 6(1)(b) or either of the entities in paragraph 6(1)(c), the individual beneficially owns the voting capital and voting power in that entity to a significant extent if the individual owns the voting capital and voting power of the entity in respect of the sub-fund to a significant extent;
- (e) paragraph 6(2) to (7) and the definition of “significant extent” in paragraph 6(8) apply accordingly.

(4) For the purpose of making the determination under sub-paragraph (2), a person is an associate of the umbrella VCC if the VCC has an agreement or arrangement for the purpose of the sub-fund with that person, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of equity interests in, or with respect to the exercise of their votes in relation to, the entity in question.

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Notice to Commissioner of arrangement

7.—(1) For the purposes of section 23C(2)(b) of the Act, the person mentioned in sub-paragraph (2) must, within 14 days after the completion of an arrangement in section 23C(3) of the Act that has the effect mentioned in section 23C(1)(a) of the Act, give to the

Commissioner a notice of the arrangement in the form set out at the Internet website at <https://www.iras.gov.sg/>.

(2) For the purpose of sub-paragraph (1), the person is the one who is liable to pay the duty that is chargeable under section 23C(2) of the Act or, if there is more than one such person, each of them.

(3) A person who contravenes sub-paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty that is otherwise chargeable on the notice.

Period in which arrangement causing entity to be no longer PHE must take place

8. The period under section 23C(6)(c) of the Act is one year.

Made on 21 March 2017.

TAN CHING YEE
*Permanent Secretary,
Ministry of Finance,
Singapore.*

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(To be presented to Parliament under section 23D(7) of the Stamp Duties Act).