RESPONSE TO FEEDBACK RECEIVED FROM PUBLIC CONSULTATION ON PROPOSED CHANGES TO THE EN BLOC SALE LEGISLATION

1 Introduction

1.1 MinLaw held a public consultation from 2 April to 12 May 2007 on the Ministry's proposed changes to the en bloc sale legislation. We received over 400 suggestions from more than 100 contributors. Following the public consultation, we held discussions with about 40 industry players experienced in handling en bloc sales, including lawyers, property consultants, developers, academics and representatives of the Singapore Institute of Surveyors and Valuers (SISV). We also obtained further input from the Strata Titles Boards (STB).

1.2 The vast majority of the suggestions were about making the en bloc sale process clearer, fairer and more transparent, with nearly 60% of the suggestions related to the formation and proceedings of the sale committee.

1.3 MinLaw carefully considered the feedback and suggestions received. In considering the amendments to the Land Titles (Strata) Act, the main guiding principle was to provide additional safeguards, greater clarity and transparency for all owners involved in en bloc sales, while not making it unduly onerous to bring about en bloc sales. The eventual amendments that were adopted comprised those that MinLaw had proposed for the public consultation, except that the additional consent requirement will be based on the area of lots as shown in the subsidiary strata certificates of title instead of the number of units, and some suggested changes received from the public consultation. The Land Titles (Strata) (Amendment) Act came into force on 4 October 2007.

1.4 The suggestions which MinLaw received in the public consultation can be grouped as follows:

a) additional consent requirement and consent levels;
b) eligibility to attempt en bloc sale;
c) assignment of voting rights;
d) formation and proceedings of en bloc sale committee;
e) apportionment of sale proceeds / replacement units;
f) collective sale agreement;
g) launch of en bloc sale;
h) applications to, hearings by and decisions made by the STB;
i) disbursement of sale proceeds;
j) other miscellaneous issues; and
k) timing of the implementation of the amendments.

MinLaw's responses to each group of suggestions are given below.

2 Additional consent requirement and consent levels

Feedback

2.1 To address the problem, especially felt in mixed-use developments, where residential unit owners hold lesser share values despite owning a substantial floor area and a substantial number of units, MinLaw had proposed an additional consent requirement based on number of units. There were suggestions that the additional consent requirement be based on area of lots instead It was felt that owners of larger strata lots should have more say, and that the 'number of units' approach could result in commercial unit owners subdividing their lots into many smaller ones to garner more votes.

Response

2.2 MinLaw agreed with the suggestion that the proposed additional consent requirement be one based on area of lots as shown in the subsidiary strata certificates of title, instead of the number of units, for the following reasons:

a) Consent by number of units could result in owners of large commercial units subdividing their property into many strata lots so as to "create" additional votes for themselves. That would defeat the intention of the additional consent requirement, which is to mitigate the current bias against residential owners in a mixed-use development.

b) Consent by number of units means that a commercial unit will have exactly the same voting right as a residential unit, notwithstanding that the commercial unit may be many times larger in size. This will not be fair to owners of large units. Using the area of lot as the basis for the second consent requirement will mitigate the current bias against residential unit owners in a mixed-use development; but not to the extent of causing bias against owners of commercial units with much larger areas.

Feedback

2.4 There was a range of suggestions on the consent level. To better protect the interests of the minority, some suggested reverting to unanimous consent for all or younger estates while some suggested that the consent level be set at 90% for all developments regardless of age. On the other hand, some others suggested that the consent level be lowered, especially for older estates, so as to facilitate redevelopment.

2.5 Some suggested that, in order to address the needs of particular groups of owners, separate consent levels be required from the different sub-groups of owners, eg. owner-occupiers versus investor-owners, residential unit owners versus commercial unit owners in a mixed-use development, etc.

Response

2.5 We have maintained the existing 80%/90% consent level for all owners, which is in line with the approach in some other jurisdictions such as Hong Kong, Ontario, Hawaii and Nova Scotia. A higher consent level, especially unanimous consent, will make it unduly onerous to bring about an en bloc sale, which would affect rejuvenation and redevelopment. The existing consent level is appropriate given the importance of the decision that has to be made by the owners. Having separate consent requirements for sub-groups of owners could allow a sub-group holding only say 5% of the total votes in a development to block an en bloc sale even though it is supported by all the other sub-groups holding 95% of the total votes.

3. Eligibility to attempt en bloc sale

Feedback

3.1 There were suggestions that the government should prohibit estates below a certain age from attempting en bloc sales, or that attempts can only be allowed for estates which have structural integrity problems. It was also suggested that there should be a limit on the number of developments in the same locality that can concurrently undergo an en bloc sale. There were also suggestions that there should not be any further en bloc sale attempt within a specified time-period after each unsuccessful attempt.

Response

3.2 Rather than impose any arbitrary limit or restriction, it is better to leave it to the market to determine the viability, timing and location of en bloc sales. Even if a development does not have structural defects, it may lack modern amenities or facilities and/or require maintenance at high costs. Owners of such developments have to spend large amounts of money to retrofit their developments, to maintain or replace aging lifts or M&E systems, and/or to install disabled-friendly facilities. En bloc sale offers an alternative for these owners to seek new accommodation with the necessary facilities.

Feedback

3.3 It was suggested that provisions be introduced to allow developments registered under the LT(S)A where there are subsisting registered leases of at

least 850 years in all or some of the lots comprised in the strata title plan to apply for en bloc sale.

Response

3.4 We agreed with the suggestion and had introduced provisions to allow for this category of developments to apply for en bloc sale.

4. Assignment of voting rights

Feedback

4.1 There were suggestions that more voting rights should be given to certain groups of owners. For example, owners who live in the development should have more voting rights than those who do not; owner-occupiers who own only one unit should have more voting rights than all other owners; voting rights should increase proportionally to an owner's length of stay in the development; or owners of units with higher valuation should have more voting rights. It was also suggested that the voting rights of major share-holders be capped so that they will not be able to block (or push through) a sale according to their own agendas. There was also a suggestion that the votes cast by the buyer-developer who owns unit/s in the development should not be considered.

Response

4.2 The existing system of assigning voting rights will be maintained, as all owners of units in a property should be given their due rights. Excluding votes cast by the buyer-developer will pose operational problems, since the identity of the buyer-developer will only be known after the requisite consent level has been attained and the buyer-developer has been selected. In any case, the STB has the power not to approve an en bloc sale application if it is satisfied that the sale is not made in good faith in view that the relationship of the buyer to any of the sellers presents a conflict of interests.

Feedback

4.3 It was suggested that voting by proxy should be disallowed as it can be subject to abuse.

Response

4.5 To prevent abuse, we had enacted provisions to regulate the appointment of proxies. Disallowing voting by proxy would not be fair to companies who own units in the development as they can only vote through proxies, and to individual unit-owners who are unable to vote in person for some reason.

5. Formation and proceedings of en bloc sale committee (SC)

Feedback

5.1 There were many suggestions on how a SC should be formed, such as:

- The SC could be appointed at an annual general meeting (AGM), not necessarily an extraordinary general meeting (EOGM).
- There should only be one SC per development at any time.
- SC members should be elected via voting at a general meeting.
- Those standing for election to the SC must meet certain eligibility criteria.
- The above should extend to properties registered under the Registration of Deeds Act or Land Titles Act, which can apply for en bloc sale under sections 84D and 84E of the LT(S)A.
- The size of the SC should be proportional to the size of the development
- Prospective buyers and persons who are serving on the council of the management corporation are not allowed to be in the SC, to avoid conflict of interests.
- Persons who are against the sale cannot be in the SC; on the other hand, the SC must comprise persons who are for the sale, persons who are against the sale, and persons who are neutral.
- The composition of the SC should represent the make-up of the estate, e.g. if the development comprises tower blocks and townhouses, then there should be 'tower block' representatives and 'townhouse' representatives in the SC.

5.2 There were also suggestions regarding the termination of the SC. Some suggested that the tenure of the SC will lapse once the CSA expires or once it is dissolved by ordinary resolution at an AGM or EOGM, while others suggested that the tenure of the SC should lapse once there is an unsuccessful en bloc attempt. There were also suggestions that the council of the management corporation should be empowered to sack SC members.

Response

5.3 We agreed with some of the suggestions and had introduced provisions for rules to regulate the formation of the sale committee and the sale committee's proceedings. These rules are adapted from the provisions in the Building Maintenance and Strata Management Act (BMSMA) 2004 in respect of the council of the management corporation. For example,

- A decision to form a SC will have to be made by ordinary resolution passed at a general meeting (EOGM or AGM).

- Similarly, a SC may be dissolved by ordinary resolution at a general meeting; or it will be dissolved upon the termination or expiry of the CSA.

- There should only be one SC per development at any time.

- Members of the SC will have to be elected at a general meeting.

- A person standing for election to the SC must meet certain eligibility criteria. For example, such a person has to be an owner of a unit in the development; or be nominated by an owner which is a company; or be a member of the immediate family of the owner who is nominating him.

- A person standing for election to the SC must declare his interest or relationship, if any, with a property developer, property consultant, marketing agent or legal firm.

- A SC shall not comprise less than 3 members and more than 14 members.

- Similar rules will apply for properties registered under the Registration of Deeds Act or Land Titles Act.

5.4 Any owner or his eligible nominee should have the right to stand for a free and fair election to the SC. It is best to leave it to the owners to vote for any eligible candidate whom they would like to serve on the SC.

<u>Feedback</u>

5.5 There were many suggestions on regulating the proceedings of the SC such as:

- The SC must register with the STB before it can commence an en bloc sale attempt.

- The names of the SC members should be submitted to the Police.

- The SC should convene general meetings to discuss important issues.

- The SC should be empowered to appoint the lawyer and the property consultant; on the other hand, only the owners should have the power to make such appointments.

- Minutes of general meetings and other meetings of the SC must either be displayed on the notice board or be distributed to all owners.

- The SC should not be allowed to use the management corporation's funds; on the other hand, the SC should be allowed.

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- There should be a Code of Conduct to regulate the behaviour of the SC, lawyers and property consultants.

- The SC should be made responsible for any costs arising from abuse of power or misconduct of SC members or the appointed agents.

- The SC must appoint auditors to verify the results of any voting

Response

5.6 We agreed with some of the suggestions and had introduced provisions on the proceedings of a SC. For example,

- The SC shall convene general meetings to consider key issues such as the appointment of any lawyer, property consultant or marketing agent; the apportionment of sale proceeds; the terms and conditions of the CSA; and the terms and conditions of the sale and purchase agreement. This ensures that owners will have the opportunity to discuss such key issues before consenting to them.

- The SC shall keep minutes of its proceedings and must, within 7 days after each meeting, either display the minutes on the management corporation's notice board or pass the minutes to all owners.

- The SC should not use the management corporation's funds for its activities, except to convene general meetings as provided in the Act.

5.6 Rules which will present practical implementation difficulties or make it unduly onerous to bring about an en bloc sale have not been included.

6. Apportionment of sale proceeds / Replacement units

Feedback

6.1 It was suggested that there should be a standard method for apportioning sale proceeds. However, respondents differed in the formula to adopt – based solely on strata area; solely on share value; solely on valuation; on a combination of share value and strata area, etc. There were also suggestions for factors such as the orientation, storey level and/or other unique features of a unit; length of residency of the owner; age of the owner, etc., to be considered.

6.2 It was suggested that the SC should not be allowed to set aside a compensation fund for use to make ex-gratia payments to certain owners to secure these owners' consent to the en bloc sale. It was also suggested that a flat 10% be deducted from the majority owners' share of the proceeds of sale for use to increase the sale proceeds received by the minority owners.

Response

6.3 It is best to give the majority owners the flexibility to decide on an apportionment method, with advice from the property consultant, that would take into account the peculiar circumstances of their development and the interests of all owners. It is also best to give the SC and the majority owners the flexibility to decide on how to accommodate the objections of the minority. For transparency, we have provided that one of the items that the SC must include in the preface to the CSA is the amount of the compensation fund, if any. The interests of minority owners are safeguarded by the STB having the authority not to approve an en bloc sale application if it is satisfied that the sale is not in good faith after taking into account the method of distributing the proceeds of the sale.

Feedback

6.4 It was suggested that the buyer-developer must always offer owners a replacement flat in the new development.

Response

6.5 It is best to leave it to the owners to negotiate with the developers for a deal that suits them. A developer who must make provisions for replacement flats is likely to offer a lower purchase price as the need to build replacement units will place constraints on how he can build the new development. Consequently, owners who do not wish to have a replacement flat will be disadvantaged as they end up with lower sale proceeds. The replacement flats may also not meet owners' expectations in terms of price, size, layout, orientation, etc.

7. Collective Sale Agreement

Feedback

7.1 There were several suggestions on how to deal with the issue of owners signing the CSA under duress or due to misrepresentation. One suggestion was that there should be a cooling off period during which an owner can withdraw his consent to the CSA. Another suggestion was that a lawyer should be present to witness the signing of the CSA so that owners would be able to seek any clarification before signing the CSA. It was also suggested that a standard CSA be drafted with language that laymen can understand.

Response

7.2 We agreed with some of the recommendations and had introduced the following provisions:

- The SC must provide a preface to the CSA listing the clause numbers and page numbers where important information such as reserve price, apportionment method, etc. may be found.

- When an owner signs the CSA in Singapore, the lawyer appointed for the en bloc sale will have to be present to explain the legal terms and liabilities and address any doubts that the owner may have.

- An owner can rescind his agreement to be a party to the CSA within a 5-day cooling-off period after signing the CSA for the first time.

Feedback

7.3 There was a range of suggestions regarding amendments to the terms of the CSA. Some suggested that the CSA can be changed so long as there is majority consent of the owners who have signed the CSA, while others felt that the CSA can only be changed if there is unanimous consent of the owners who have signed the CSA. Some suggested that the owners who have signed the CSA should be allowed to withdraw if there are any changes to the terms, while others suggested that the owners who have signed the CSA should not be allowed to withdraw.

Response

7.4 It is best to leave it to the owners / SC to instruct the lawyers on the drafting of the relevant clauses in the CSA in the way that serves their interests.

Feedback

7.5 It was suggested that the validity of the CSA be shortened from the current 1-year period.

Response

7.6 We have maintained an upper bound of 1 year for the validity of the CSA in the legislation. A shorter validity period may not be adequate for large developments. In developments where owners desire a shorter validity period, they can instruct the lawyer to draft the CSA accordingly.

Feedback

7.7 There were suggestions that the lawyer certify the updates on the consent level gathered, and that these updates be provided by the SC.on a monthly basis. Some also suggested that the updates include the names of the signatories.

Response

7.8 We agreed with some of the suggestions and had provided in the legislation that the updates on the consent level must be provided every 4 weeks, and the lawyer will certify the updates. Including the names of signatories may present privacy concerns.

8. Launch of en bloc sale

Feedback

8.1 It was suggested that every launch of an en bloc sale must be via a public tender or auction, as competitive bidding will ensure a fair market price for the development. It was also suggested that the results of the tender must be announced within 24 hours of the tender closing. There was also a suggestion that the decision on the winning bidder (in a tender) should be made by the owners rather than the SC.

Response

8.2 We agreed with some of the suggestions and had provided in the legislation that every launch of an en bloc sale must be by public tender or auction. Following a tender or auction, especially one which fails to achieve the price acceptable to the SC, the SC can engage in follow-up negotiations for sale by private treaty with any bidder to get the best deal for the owners. However, any sale by private treaty must be concluded within 10 weeks of the close of the tender/auction. The SC shall provide owners with information on the bids received as soon as practicable after the close of the tender or auction or, where applicable, after the sale committee has entered into a sale by private treaty.

Feedback

8.3 It was suggested that there should be regular valuations and reviewing of the reserve prices in view of the fast rising market.

Response

8.4 We agreed with the suggestion and had introduced a provision that the SC be required to obtain, from an independent valuer, a valuation report on the value of the en bloc sale site as at the date of the close of the tender or auction on the same date.

9. Applications to, hearings by and decisions made by STB

Feedback

9.1 It was suggested that the format of the advertisement on an en bloc sale application to the STB be simplified.

Response

9.2 We agreed with the suggestion and had dispensed with the requirement for the advertisement to include the names of the owners, their addresses, unit numbers and strata lot numbers, if any, of their flats. We have also dispensed with the requirement to list the names of mortgagees, chargees and other persons with an estate and interest in the affected units. Henceforth, the advertisement need only include:

a) information on the development, (eg. the name and postal address of the development);
b) brief details of the en bloc sale application; and
c) the place at which the affected parties can inspect documents for the en bloc sale application

Feedback

9.3 It was suggested that the procedure for service of notice on the owners and other persons with an estate and interest in the affected units regarding the en bloc sale application to the STB be simplified.

Response

9.4 We agreed with the suggestion. In lieu of the requirement to place a copy of the notice (and requisite documents such as the CSA, sale and purchase agreement, valuation report, etc.) under the main door of every unit, the SC will be required to only place a notice (without the documents) in the mail boxes of all the owners of the units and common property. The notice will inform the owners

of the proposed en bloc sale application and that the relevant documents can be obtained from the marketing agent or the SC.

9.5 Instead of having to serve a copy of the notice of the en bloc sale application on the mortgagee and chargee of each unit, the SC will henceforth be required to serve only one copy of the notice of the en bloc sale application, which will contain the details of all the affected units and their respective owners, on the same bank regardless of the number of units mortgaged to the bank, and on the CPF Board regardless of the number of units charged to the Board.

Feedback

9.6 It was suggested that the time taken by STB to hear en bloc sale applications should be reduced.

Response

9.7 We have increased the number of deputy presidents and members in the STB. We have also empowered a presiding member of a board or the Registrar of the STB to hear the less complex applications, such as applications under section 84C for the appointment of persons to represent owners who are unable to effect the sale.

Feedback

9.8 There were suggestions that unsuccessful objectors shall bear costs of the appeal to the STB as well as the opportunity costs of the delay. On the other hand, there were suggestions that genuine objectors should not be required to pay the associated fees for the en bloc sale.

Response

9.9 It is best to leave it to the STB to order costs against objectors in instances where the STB finds merits to do so. Minority owners with valid objections should not be deterred from making them to the STB because of having to bear the costs of the appeal.

9.10 Once an en bloc sale is approved, the terms should apply equally to all owners. As minority owners receive proceeds from an en bloc sale, minority owners should also pay the associated fees for the sale. If minority owners are exempted from paying the fees, it might result in owners withholding their consent just to avoid paying these fees.

Feedback

9.11 To avoid conflicts of interest, it was suggested that the STB should be non-partisan, for example, the STB should not comprise lawyers and property consultants who handle en bloc sales.

Response

9.12 There are rules in place to avoid conflicts of interest. For example, STB members will not hear cases that they have a vested interest in. The majority and minority owners can also ask for a member to be replaced if they are of the view that their case is being heard by a member with a vested interest in their case.

Feedback

9.13 It was suggested that the STB should not appoint representatives to sign for the transfer of properties on behalf of the owners who are unable to effect the sale.

Response

9.14 Section 84C of the LT(S)A, where the STB can on application appoint representatives on behalf of the owners who are unable to effect the en bloc sale, e.g. owners who are unable to act (eg. a deceased owner), or unwilling to act (eg. a dissenting owner who does not want to comply with STB's order to sell), is necessary to ensure that the en bloc sale can proceed.

Feedback

9.15 There were several suggestions with regard to the proposal to require each owner to contribute the higher of 0.25% of the sale proceeds of his unit or $2,000 to the pool that STB may use to increase the sale proceeds for minority owners who have filed valid objections. On one hand, it was suggested that STB should not be given this discretion, as it would encourage owners to submit objections in order to qualify for the increase in sale proceeds. Alternatively, if the proposal has to be implemented, then STB should be required to do a preliminary assessment of whether the appeal from the minority owner merits further consideration. On the other hand, it was suggested that the amount of contribution from each unit to the pool be raised, particularly for older developments.

Response

9.16 We had proceeded to enact the provision, as in our proposal, to give the STB the discretion to increase the sale proceeds for minority owners who have valid objections where STB is satisfied that it would be just and equitable to do so. We had also kept the contribution caps of 0.25% or $2000, whichever is

higher. Collectively, this will give the STB a fairly meaningful amount which it can use for the purpose. It is not practical for STB to do a preliminary assessment of objections as STB needs to carefully consider them.

Feedback

9.17 There were several suggestions regarding the assessment of financial loss claims. On one hand, it was suggested that the deductions allowable by STB in assessing financial loss claims should include renovation costs, rental income loss, time value of money, and interest on housing and CPF loans. On the other hand, it was suggested that claims for financial loss made by a person who purchased a unit after the SC has signed a sale and purchase agreement for the en bloc sale shall be disallowed.

Response

9.19 We have empowered the STB to issue guidelines on the allowable expenditures that will be taken into account in the evaluation of financial loss claims. As of now, the allowable expenditures are stamp duty, legal fees, costs related to privatisation of HUDC estates, and costs incurred pursuant to the en bloc sale which are to be shared by all owners as provided under the CSA. This list is not intended to be exhaustive.

9.20 We had also introduced a provision to make clear that the purchase price of a unit will not be considered for financial loss claims if the unit was sold after an en bloc sale has been awarded to a buyer.

10. Disbursement of sale proceeds

Feedback

10.1 It was suggested that the moneys in the sinking fund and management fund be returned to all owners when the sale is completed, in accordance with the method by which contributions were made.

Response

10.2 We agreed with the suggestion and had provided in the legislation that upon the legal completion of an en bloc sale, the moneys in the management fund and sinking fund of a management corporation shall be returned, as soon as practicable, to owners of the lots in the development, in shares proportional to the contributions levied on the owners by the management corporation.

Feedback

10.3 It was suggested that there should be a standard time schedule for the payment of proceeds from an en bloc sale to the owners.

Response

10.4 It is not practical to set down such a standard time schedule, as the timing will depend on whether there are any objections to the sale, whether minority owners appeal against a sale order by the STB, etc.

11. Miscellaneous

Feedback

11.1 It was suggested that maintenance of the development must continue until all owners have moved out. It was also suggested that the Commissioner of Buildings conduct additional checks on developments that are attempting an en bloc sale so as to ensure the council of the management corporation does not neglect maintenance of these developments.

Response

11.2 There are already provisions under the BMSMA to ensure that the council of the management corporation carries out proper maintenance of the development. Owners can report to the Commissioner of Buildings if proper maintenance has not been done. It will not be practical for the Commissioner of Buildings to conduct additional checks on all developments that are attempting en bloc sale.

Feedback

11.3 It was suggested that provisions be introduced to make clear the milestones to use to determine the age of a privatised HUDC that is applying for en bloc sale as some HUDC developments may not have TOP or CSC.

Response

11.4 We agreed with the suggestion and had provided in the legislation that in determining the age of a privatised HUDC estate that is applying for an en bloc sale under the LT(S)A, reference can, in addition to the date of issue of the latest Temporary Occupation Permit or the latest Certificate of Statutory Completion, also be taken from the date of completion of construction of the building as certified by the relevant authority (eg. HDB).

Feedback

11.5 There were some suggestions on the handling of moneys involved in an en bloc sale. It was suggested that the moneys should be managed by reputable parties, such as banks. It was also suggested that the stakeholder should not be allowed to keep the interest derived from these moneys.

Response

11.6 It is best to give the owners the flexibility to decide on the approach that is most appropriate for their case. To help owners make an informed decision, we have provided that one of the key items that the SC must highlight in the preface to the CSA is the person who is entitled to any interest derived from the moneys held by the stakeholder.

12. Timing of implementation of the amendments

Feedback

12.1 It was suggested that certain developments should be exempted from the amendments to the LT(S)A when they are implemented. For example, developments that have already started the CSA process or those that have attained half the statutory consent level should be allowed to continue under the old legislative framework.

Response

12.2 As indicated in the public consultation, the proposed changes to the en bloc sale legislation will not apply to developments where the required 80% or 90% majority of owners, based on share value, have signed the CSA as at the date of commencement of the amended Act. These developments will not need to comply with the new requirements set out in the amended Act.

12.3 As MinLaw has given indications on the timing of the application of the new rules at the Committee Of Supply debate in March and also in the public consultation, the sale committees of developments with insufficient number of owners to form the required majority and are keen to avoid coming under the new rules should have stepped up the pace to obtain the statutory consent level before the commencement date of the amended Act. Developments which are unable to meet the deadline would likely be those where a sufficient number of owners not in the majority would prefer that the en bloc sale be placed under the new rules.

13. Conclusion

13.1 MinLaw thanks all respondents for their feedback and suggestions.