CONSULTATION PAPER

BY

THE MINISTRY OF LAW

ON

REVIEW OF

EN BLOC SALE LEGISLATION

UNDER

THE LAND TITLES (STRATA) ACT

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INTRODUCTION

1. The Land Titles (Strata) Act (LT(S)A) was amended in October 1999 to allow the en bloc[1] sale of developments by majority consent of 80% / 90% based on share value (depending on the age of the development) [2] , and approval by the Strata Titles Board (STB). Safeguards were put in place to ensure, amongst others, that the minority owners will not suffer financial loss from the sale.

2. In 2004, MinLaw amended the en bloc sale procedures to provide for more transparency and certainty in the en bloc sale process. For example, we provided for periodic updates on the number and percentage of consenting owners to be made available to all owners. We also required the entire en bloc sale process to be completed within a certain time frame[3].

3. In October 2006, an inter-agency study team was formed under the direction of the Deputy Prime Minister and Minister for Law Professor S. Jayakumar to review the en bloc sale legislation, taking into consideration the various feedback that MinLaw received. The changes proposed by MinLaw are set out in paragraphs 4 to 25 of this paper.

MINLAW'S PROPOSED CHANGES

a) Additional consent requirement from owners

4. Currently, the 80%/90% majority requirement is based on share value as shown in the Subsidiary Strata Certificates of Title. The share value determines the maintenance contribution, share in the common property and voting rights on matters pertaining to the whole development.

[1] The term "en bloc sale" is used in this paper to refer to "collective sale" under the Land Titles (Strata) Act as it is more commonly used by the public.

[2] 80% majority is required for developments 10 years old and above, and 90% majority for developments less than 10 years old.

[3] The collective sale agreement must be executed within 12 months from the date of the first owner signs the collective sale agreement. Additionally, the en bloc sale application must be submitted to the STB within 12 months from the date the collective sale agreement is executed.

5. Members of the public have expressed concern over the use of share value to determine the majority for en bloc sale for mixed developments[4]. As the share value in a mixed development is based primarily on maintenance contribution, the allocation is generally in the ratio of 1:4:5 for residential, office and shop units respectively. This means that a shop will have 5 times the share value of a residential unit of the same size. Consequently, the office and shop units have 4 and 5 times respectively the voting rights of residential units of the same size when it comes to voting for en bloc sale.

6. Residential unit owners in mixed developments have reflected that despite owning a substantial total floor area and number of units in a mixed development, they hold significantly less shares. As a result, any en bloc sale will be determined mainly by the office and shop owners. To address this issue, it is proposed that an additional condition for determining majority consent for en bloc sale be introduced. This condition requires that, in addition to the existing requisite consent from owners of units with 80%/90% of the share value, there must also be consent from owners of 80%/90% of the total number of units in the development.

7. This additional condition will apply to all developments. In the case of mixed developments, the likely desired outcome is that owners of commercial units will have to make greater effort to consult with, and secure the consent of, the owners of residential units. As for developments which comprise exclusively residential units, the proposed additional condition is not expected to have much impact as the distribution of voting rights based on share value will correspond quite closely to that based on the number of units.

Proposal 1: Fine-tune the voting regime for all developments by adding a second condition of requiring consent from the owners of units forming at least 80% of units if the development is more than 10 years and 90% if the development is less than 10 years. This will be in addition to obtaining the existing requisite 80%/90% majority consent based on share value. [See section 84A(1)]

[4] An example of a mixed development is one that consists of residential and commercial units, such as office and retail space.

b) The Strata Titles Board (STB) to be given the power to increase the sale proceeds for minority owners who have filed valid objections in appropriate cases

8. Currently, the method of distributing the en bloc sale proceeds amongst all owners is decided by the majority owners, usually in consultation with their property consultants. The methods most commonly used are distribution based on floor area, share value or a combination of both. As long as the method used is applied across the board to all owners and no owner incurs financial loss, the STB is unlikely to dismiss the en bloc sale application on grounds that the transaction was not made in good faith with respect to the distribution of proceeds.

9. However, there may be instances where, even though there is no financial loss and the STB does not find any aspect of bad faith in the process to justify a dismissal of the en bloc sale application, certain minority owners may not have been treated fairly or equitably in the distribution of the proceeds. For example, a minority owner had carried out $200,000 worth of renovation when there was no en bloc proposal, only to find that 6 months later there is a successful en bloc proposal. While the STB may not be able to find any aspect of bad faith in the process and the minority owner may not suffer a financial loss as defined under the terms of the LT(S)A, it may be inequitable to disregard the renovation costs incurred by the owner in good faith

10. It is proposed that the law should confer on STB the power to increase the sale proceeds for minority owners who have filed valid objections with respect to an en bloc sale of the development if it is of the view that it would be fair and equitable to do so. The STB will authorise the en bloc sale only if the majority owners agree to the increase.

11. It is also proposed that the total amount the STB may increase the sale proceeds for all minority owners who have filed valid objections be capped at an aggregate sum of 0.25% of the sale proceeds or $2,000 from each unit, whichever is higher. Any unused sum from this pool will be returned to the owners[5].

[5] For example, there are 100 units in a development and the sale proceeds from each unit is $1,000,000. Each owner will have to contribute 0.25% of $1,000,000 = $2,500, and the total amount that the STB may use to increase the sale proceeds for minority owners who have filed valid objections is 100 x $2,500 = $250,000.
If the STB increases the sale proceeds of 3 minority owners by $50,000 each, then $100,000 of the $250,000 pool will be unused. This unused sum of $100,000 will be returned to all owners.

Proposal 2A: The STB should be given the power to increase the sale proceeds for minority owners who have filed valid objections with respect to an en bloc sale of the development if it is of the view that it would be fair and equitable to do so. The STB will authorise the en bloc sale only if the majority owners agree to the increase.

Proposal 2B: The total amount that the STB may increase the sale *proceeds for all minority owners who have filed valid objections be capped at an aggregate sum of 0.25% of the sale proceeds or $2,000 from each unit, whichever is higher. [See section 84A(7A) and 84A(7B)]*

c) Establishment of en bloc sale committee to be decided at EOGM

12. Currently, owners interested in exploring a possible en bloc sale of their development will form an ad hoc sale committee to look into it. The sale committee will then liaise with property consultants and lawyers to start the en bloc sale process.

13. Feedback from minority owners is that the process is not transparent and information requested by them was usually not forthcoming. The minority owners felt that their interests in the en bloc process were not protected.

14. In light of these concerns, it would be in the interest of all owners for the establishment of an en bloc sale committee to be officially decided in a General Meeting of the Management Corporation. This will also serve to inform all owners of a possible en bloc sale of their development. Therefore, it is proposed that the Management Corporation be given the power to convene an EOGM for owners to decide if an en bloc sale committee should be formed and if so, to elect members of the committee[6].

Proposal 3: The establishment of an en bloc sale committee should be officially decided in a General Meeting of the Management Corporation. The Management Corporation will be given the power to convene an EOGM for owners to decide if an en bloc sale committee should be formed and if so, to elect members of the committee. [See section 84A(14A)]

[6] For non-LT(S)A developments, the en bloc sale committee should be officially formed at a residents' meeting.

d) The STB to be empowered to issue guidelines on financial loss

15. Section 84A(8)(a) of the LT(S)A provides that an owner "shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after any *deduction allowed by the Board*, are less than the price he paid for his lot". This is intended to give the STB the discretion to evaluate if an expense item incurred by the owner in relation to his unit should be taken into account in the calculation of financial loss.

16. Feedback from those who have gone through the en bloc sale process is that there is some uncertainty over what are the types of allowable expenditure that will be taken into account in the evaluation of financial loss claims. To provide more certainty to both the majority and minority owners, it is proposed that the STB be empowered to issue guidelines on the deductions that it will allow when evaluating financial loss.

Proposal 4: The STB will be empowered to issue guidelines on the deductions that it will allow when evaluating financial loss claims. [See section 84C(5)]

e) The STB to be empowered to disregard any technical/procedural irregularity if it will not prejudice any owner's interest

17. The Schedule of the LT(S)A sets out the procedural requirements that the majority owners must comply with before an application for en bloc sale may be made to the STB. So far, the STB has had to dismiss a few applications purely because of technical non-compliance. When that happens, the majority owners will need to start the application process all over again, including advertising the new application, service of the notice, etc.

18. If the non-compliance is purely technical and will not prejudice any owner's interest, the STB should be given the flexibility to dispense with the non-compliance of the procedural requirements in the Schedule of the LT(S)A. Hence, it is proposed that the STB be empowered to disregard any technical/procedural irregularity if it is satisfied that the irregularity will not prejudice any owner's interest.

Proposal 5: The STB will be empowered to disregard any technical/procedural irregularity if it is satisfied that the irregularity will not prejudice any owner's interest. [See section 84A(3) and 84C(6)]

f) All owners can apply to the STB to settle any compensation dispute with their tenants

19. Currently, only minority owners or their tenants can apply to the STB to decide on the compensation payable if the owner and his tenant cannot agree. The reason for restricting this provision to minority owners is that the majority owners are expected to have resolved such issues with their tenants before they decide to join in the en bloc sale.

20. There is no reason to distinguish between the owners and therefore it is proposed that all owners be allowed to apply to the STB to settle any compensation disputes with their tenants.

Proposal 6: All owners will be allowed to apply to the STB to settle any compensation disputes with their tenants. [See section 84B(3)]

g) En bloc sale applications to include valuation report as at the date of acceptance of the successful bid

21. Currently, an application for en bloc sale must include a valuation report which is not more than 3 months old.

22. However, there had been cases where minority owners have filed objections on the ground that the successful bid from a purchaser was below market value. As property prices can move quickly in a bullish market, a valuation report 3 months ago may not reflect the value of the development at the time when bids are submitted by the interested purchasers. Therefore, it is proposed that a valuation report, from an independent valuer, on the worth of the en bloc sale site as at the date of acceptance of the successful bid should be included in the en bloc sale application.

Proposal 7: A valuation report, from an independent valuer, on the worth of the en bloc sale site as at the date of acceptance of the successful bid should be included in the en bloc sale application. [See paragraph 1(e)(vi) of The Schedule]

h) Advertisement information

23. Currently, the majority owners are required to advertise the particulars of the en bloc sale application before making the application to the STB. The advertisement must include:

a. information on the development;

b. the names of the owners, their addresses, and unit numbers and strata lot numbers, if any, of their flats;

c. the names of the mortgagees, chargees and other persons with an estate and interest in the lots, flats and land;

d. brief details of the en bloc sale application; and

e. the place at which the affected parties can inspect documents for the en bloc sale application.

24. When the legislation was first enacted, the intention was to ensure that anyone who has an interest in any unit would be notified of the en bloc sale application. Therefore, sufficient information had to be given in order that the units are identifiable to those with an interest in any of them, especially the minority owners and those claiming through them. Upon review, it is sufficient to advertise particulars of the development without the need to give personal particulars of the owners and the names of the mortgagees/chargees of all the units. This will also accord a certain degree of privacy to the owners of the units undergoing an en bloc sale process. Hence, it is proposed that the requirement for the information in paragraph 22(b) and (c) to be included in the advertisement of an en bloc application be rescinded.

Proposal 8: In taking out an advertisement on the en bloc sale application, majority owners will no longer be required to include (a) the names of the owners, their addresses, and unit numbers and strata lot numbers, if any, of their flats; and (b) the names of mortgagees, chargees and other persons with an estate and interest in the lots, flats and land. The advertisement will still be required to include (a) information on 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. [See paragraph 3 of The Schedule]

i) Other amendments

25. The following amendments are also proposed:

a. Allow application for en bloc sale by majority consent for 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. This is a development where subsidiary strata certificates of title have been issued and the

subsidiary proprietors of all or some of the lots gave leases of those lots for at least 850 years[7]. Such a development does not come within section 84A, 84D or 84E. [See proposed new section 84G]

b. Clarify that in determining the age of a development that is applying for en bloc sale under Section 84A, 84D or 84E reference can, in addition to Temporary Occupation Permit (TOP) or Certificate of Statutory Completion (CSC) dates, also be taken from the date of completion as certified by the HDB. This is to provide for privatised HUDC estates and old developments where neither a TOP nor a CSC was issued.

c. Simplify the current requirement which stipulates that the notices (and documents[8]) of the proposed en bloc application must be placed under the main doors of all units in the development. With the change, a simple notice with prescribed information will suffice. [See new paragraph 1(f) of The Schedule]

d. Simplify the procedure to require the en bloc sale committee to serve only one copy of the notice of en bloc sale application 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. The notice will contain details of all the affected units and their respective owners. [See paragraph 2(c) of The Schedule]

e. Clarify that the notice (on the number and percentage of share value of owners who have signed the collective sale agreement) should be put up in the last week of every 8-week period starting from the day the first owner signs the collective sale agreement. [See paragraph 1(b) of The Schedule]

IMPLEMENTATION

26. The LT(S)A will be amended to give effect to the confirmed changes. The confirmed changes will apply to all projects except those that have already obtained the majority of 80% / 90% (based on share value) at the time the proposed amendments are passed by Parliament.

[7] A leasehold estate of at least 850 years is required as the reversionary interest of a lot subject to such a lease has been determined to be of nominal value and the owner would be deemed to have transferred his interest to the purchaser when the STB orders the en bloc sale. The period of leasehold estate for sections 84E and 84F was reduced from 999 to 850 years from 1 December 2005.

[8] Documents include the collective sale agreement, the sale and purchase agreement, statutory declaration, minutes of EOGM, valuation report and a report on the distribution method of the sale proceeds.

Proposal 9: The confirmed changes will apply to all projects except those that have already obtained the majority of 80% / 90% (based on share value) at the time the proposed amendments are passed by Parliament. [See Transitional and savings provisions at page 30 of proposed amendments]

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