

Housing Developers (Control and Licensing) (Amendment) Bill

Bill No. 7/2013.

Read the first time on 6th February 2013.

A BILL

i n t i t u l e d

An Act to amend the Housing Developers (Control and Licensing) Act (Chapter 130 of the 1985 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Housing Developers (Control and Licensing) (Amendment) Act 2013 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2(1) of the Housing Developers (Control and Licensing) Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately before the definition of “company”, the following definitions:

10 “ “accounts” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“authorised officer” means a public officer or an officer of a public authority authorised by the Controller under section 3(5);

15 “building project” means a building project comprising units of housing accommodation;

“certificate of statutory completion” has the same meaning as in section 2(1) of the Building Control Act (Cap. 29);”;

20 (b) by inserting, immediately after the definition of “Controller”, the following definition:

“ “Deputy Controller” means the Deputy Controller of Housing appointed under section 3(3)(a);”;

25 (c) by deleting the words “insurance company” wherever they appear in the definition of “housing developer” and substituting in each case the word “insurer”;

(d) by deleting the words “section 3(2)” in the definition of “inspector” and substituting the words “section 3(3)(b)”;

30 (e) by deleting the full-stop at the end of the definition of “partner” and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

“ “public accountant” means any person registered or deemed to be registered under the Accountants Act (Cap. 2) as a public accountant;

“public authority” means such board, authority or agency established by or under any public Act to perform or discharge any public function as the Minister approves for the purposes of section 3;

“responsible position”, in relation to a housing developer, means —

(a) in the case of a housing developer that is a company, a director, manager or secretary or a person in a position analogous to that of a director, manager or secretary;

(b) in the case of a housing developer that is a society, a president, secretary or treasurer or a person in a position analogous to that of a president, secretary or treasurer;

(c) in the case of a housing developer that is a partnership, a partner;

(d) in the case of a housing developer that is a limited liability partnership, a partner or manager or a person in a position analogous to that of a manager; or

(e) in the case of a housing developer that is a group of persons, any person in that group;

“show unit” means any representation or reproduction of any house, flat or other housing accommodation, or any part thereof, that is built, or built and furnished, for viewing by prospective purchasers of, or otherwise for the purpose of promoting the sale of, the or any similar house, flat or other housing accommodation;

“unit” means a horizontal stratum of any building or part thereof, whether such stratum is on one or

more levels, and which is intended for use in accordance with the provisions of any written law as a complete and separate unit for residential or commercial purpose.”.

5 **Repeal and re-enactment of section 3**

3. Section 3 of the principal Act is repealed and the following section substituted therefor:

“Appointment of Controller, inspectors, etc.

10 3.—(1) The Minister may, by notification in the *Gazette*, appoint a public officer or an officer of a public authority to be the Controller of Housing for the purposes of this Act.

(2) The Controller shall, subject to any general or special directions of the Minister, be responsible for the administration of this Act and shall perform such duties as are imposed and may exercise such powers as are conferred upon him by this Act and any rules made thereunder.

(3) The Controller may appoint, by name or office, from among public officers or officers of a public authority —

(a) a Deputy Controller of Housing; and

20 (b) such number of inspectors as may be required for the purposes of this Act.

(4) The Deputy Controller may, subject to such directions as may be specified by the Controller, perform all or any of the functions of the Controller or exercise all or any of the powers of the Controller conferred on the Controller by this Act and any rules made thereunder; and any reference in this Act and any rules made thereunder to the Controller shall include a reference to the Deputy Controller.

30 (5) The Controller may authorise any public officer or any officer of a public authority to perform all or any of the functions of the Controller or exercise all or any of the powers of the Controller conferred on the Controller by this Act or any rules made thereunder (except the power of delegation conferred by this subsection), subject to such conditions or limitations as set

out in this Act or as the Controller may specify by directions; and any reference in this Act and any rules made thereunder to the Controller shall include a reference to such authorised officer.

(6) In performing any function or exercising any power under a delegation under subsection (5), an authorised officer must comply with the directions of the Controller.

(7) No delegation under this section shall prevent the exercise of any function or power under this Act or any rules made thereunder by the Controller.

(8) The Controller, the Deputy Controller and every authorised officer and inspector —

(a) shall be deemed to be public servants for the purposes of the Penal Code (Cap. 224); and

(b) in relation to their administration, assessment, collection or enforcement of payment of composition sums, shall be deemed to be public officers for the purposes of the Financial Procedure Act (Cap. 109), and section 20 of that Act shall apply to such persons notwithstanding that they are not or were not in the employment of the Government.”.

Amendment of section 4

4. Section 4 of the principal Act is amended —

(a) by deleting the words “A housing developer” in subsection (2) and substituting the words “Subject to subsection (3A), a housing developer”;

(b) by deleting the words “in the prescribed form” in subsection (2) and substituting the words “, in such form and manner as may be specified by the Controller,”;

(c) by deleting the word “balance-sheet” wherever it appears in subsections (2)(e) and (3) and substituting in each case the words “audited accounts”;

(d) by inserting, immediately after subsection (3), the following subsection:

“(3A) The Controller may, on the request of a housing developer applying for a licence under subsection (2), modify or waive the requirement for the supply of any document or information referred to in that subsection subject to such conditions as the Controller may impose.”;

(e) by deleting subsection (4) and substituting the following subsection:

“(4) Upon receiving an application under subsection (2), the Controller may, subject to section 5 —

(a) grant a licence, unconditionally or subject to such conditions as the Controller considers fit for carrying out the purposes of this Act; or

(b) refuse to grant a licence.”;

(f) by deleting “\$20,000” in subsection (7) and substituting “\$100,000”;

(g) by deleting “\$20,000” in subsection (8) and substituting the words “\$100,000 or to imprisonment for a term not exceeding 3 years or to both”; and

(h) by deleting subsection (9) and substituting the following subsection:

“(9) Any housing developer that is aggrieved by a decision of the Controller under subsection (4) or (5) may, within 10 days after it is notified of the decision, appeal to the Minister whose decision shall be final.”.

Repeal and re-enactment of section 5

5. Section 5 of the principal Act is repealed and the following section substituted therefor:

“Licences not to be granted in certain cases

5.—(1) The Controller shall not grant a licence under section 4(4) to a housing developer that —

- (a) is a company, unless the housing developer —
 - (i) has an issued and paid-up capital of such amount as may be prescribed by the Minister; or
 - (ii) has lodged with the Controller, in such form and manner and on such terms as the Controller may determine, a deposit or security of such sum as may be prescribed by the Minister; 5
- (b) is an individual, a group of persons, a partnership, a society or a limited liability partnership, unless the housing developer has lodged with the Controller, in such form and manner and on such terms as the Controller may determine, a deposit or security of such sum as may be prescribed by the Minister; 10
- (c) has a person holding a responsible position therein who, at any time within a period of 5 years immediately before the date of the application by the housing developer under section 4(2) for a licence — 15
 - (i) has been convicted (whether in Singapore or elsewhere) of an offence involving fraud or dishonesty; or 20
 - (ii) has served any sentence of imprisonment (whether in Singapore or elsewhere) in respect of an offence involving fraud or dishonesty; or
- (d) is an undischarged bankrupt (whether in Singapore or elsewhere) or has an undischarged bankrupt (whether in Singapore or elsewhere) holding a responsible position therein. 25

(2) For the purposes of subsection (1)(a) and (b), the Minister may prescribe for different housing developers or classes of housing developers — 30

- (a) different amounts of issued and paid-up capital; or
- (b) different sums of deposit or security.”.

Amendment of section 6

6. Section 6(2) of the principal Act is amended by deleting “\$20,000” and substituting “\$100,000”.

Amendment of section 7

5 7. Section 7 of the principal Act is amended —

 (a) by inserting, immediately before the word “contravening” in subsection (1)(c), the words “, in the opinion of the Controller,”;

 (b) by deleting the word “or” at the end of subsection (1)(c);

10 (c) by deleting the comma at the end of paragraph (d) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

 “(e) has a person holding a responsible position therein in contravention of section 25(1) or (2);

15 (f) has failed to comply with any condition attached to its licence;

 (g) has failed to comply with any direction issued by the Controller under this Act;

20 (h) without reasonable excuse, fails to furnish any information or particulars required by the Controller under section 11(2); or

25 (i) furnishes or causes to be furnished to the Controller any information or particulars (including any information or particulars in connection with its application for a licence under section 4(2)) which is false or misleading in a material particular,”;

30 (d) by inserting, immediately after the words “may revoke” in subsection (1), the words “, or suspend for a period not exceeding 12 months,”;

 (e) by inserting, immediately after the words “such revocation” in the proviso to subsection (1), the words “or suspension”;

- (f) by inserting, immediately after the words “should not be revoked” in the proviso to subsection (1), the words “or suspended, as the case may be”;
- (g) by inserting, immediately after the word “revoked” in subsection (2), the words “or suspended”; 5
- (h) by inserting, immediately after the word “revocation” where it first appears in subsection (2), the words “or suspension”;
- (i) by inserting, immediately after the word “revocation” where it appears the second time in subsection (2), the words “or suspension, as the case may be,”; and 10
- (j) by deleting the marginal note and inserting the following section heading:

“Revocation or suspension of licence”.

Amendment of section 8

- 8.** Section 8 of the principal Act is amended by deleting subsection (2). 15

Amendment of section 9

- 9.** Section 9 of the principal Act is amended —

- (a) by deleting subsection (2) and substituting the following subsection: 20

“(2) The Controller may, on the application of the licensed housing developer, allow the licensed housing developer to open and keep more than one Project Account for a building project where —

- (a) the building project is to be developed in phases; 25
- or
- (b) the building project comprises units for 2 classes of use, namely residential and commercial purpose.”;
- (b) by deleting the words “an approved company auditor under the Companies Act” in subsection (7) and substituting the words “a public accountant”; 30

(c) by deleting the marginal reference “Cap. 50.” in subsection (7);

(d) by inserting, at the end of subsection (10)(a), the word “or”;

(e) by deleting paragraphs (b) and (c) of subsection (10) and substituting the following paragraph:

“(b) a licensed housing developer that furnishes security to the Controller, in such form and manner and on such terms as the Controller may determine, for an amount equivalent to not less than 140% of the total cost of construction of the building project (as at the time of furnishing of the security) as certified by the architect in charge of the building project.”;

(f) by inserting, immediately after the words “subsection (1)” in subsection (11), “, (3)”;

(g) by deleting “\$10,000” in subsection (11) and substituting “\$50,000”.

Amendment of section 10

10. Section 10 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) Every licensed housing developer shall within 6 months (or such extended period as the Controller may grant under subsection (1A)) after the close of every financial year —

(a) forward to the Controller; and

(b) make available, for a continuous period of not less than 24 months, at its registered office (in the case of a company or limited liability partnership) or principal place of business (in any other case) during office hours, or on its Internet website, for inspection by the public without charge,

a copy of its audited accounts for that financial year and the report made by its auditor under section 13 in respect of that audited accounts.

(1A) The Controller may, in his discretion, extend the time for compliance with subsection (1) but not more than once and such extension shall not in any case exceed 6 months.”;

(b) by deleting “\$10,000” in subsection (2) and substituting “\$50,000”; and

(c) by deleting the marginal note and inserting the following section heading:

“Audited accounts”.

Repeal and re-enactment of section 11

11. Section 11 of the principal Act is repealed and the following section substituted therefor:

“Information on housing development and sale of housing accommodation

11.—(1) For the purpose of advising the Government or providing the public with information on the state of the property market for housing accommodation, the Controller may —

(a) collect, compile and analyse information concerning housing developments, sale of units of housing accommodation and particulars of transactions relating to such sales;

(b) use the information and particulars collected for purposes of any research study or survey by the Controller or any person with whom the Controller enters into any contract, agreement or arrangement pursuant to subsection (3); and

(c) subject to subsection (4), make available, publish or disseminate the information and particulars collected,

the results of any compilation, analysis, research study or survey or any abstract of those results.

(2) Every licensed housing developer shall provide to the Controller —

- 5 (a) all such information concerning every building project undertaken by the licensed housing developer and the sale of units in the building project, including the number of units that are made available for sale for any period of time;
- 10 (b) all such particulars of transactions, including the particulars of purchasers, intending purchasers and assignees of purchasers, in relation to the sale of units in every building project undertaken by the licensed housing developer; and
- 15 (c) all such information on and particulars of agreements (in addition to agreements for sale and purchase) entered or to be entered into with purchasers and intending purchasers in relation to the sale of units in every building project undertaken by the licensed housing developer,
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as the Controller may by notice in writing require and in such form and manner and by such means and within such time or at such regular intervals as the Controller may specify in the notice.

25 (3) Subject to subsection (4), the Controller may, with the approval of the Minister, enter into any contract, agreement or arrangement with any person for the purpose of compiling or analysing any information or particulars collected or carrying out any research study or survey under this section.

30 (4) No person shall disclose any particulars, received under or pursuant to this section, of any purchaser, intending purchaser or assignee of any purchaser of any unit in a building project unless —

- (a) the disclosure is made for the purposes of this section and with the prior approval of the Minister;

- (b) the disclosure is in the form of statistics which do not identify the purchaser, intending purchaser or assignee;
- (c) the disclosure is to the Chief Statistician pursuant to his direction under section 6 of the Statistics Act (Cap. 317) where the particulars are not exempted from section 6(2) of that Act from being furnished; 5
- (d) the particulars are already in the public domain at the time of the disclosure; or
- (e) the disclosure is for the purposes of proceedings for an offence under this Act or any rules made thereunder or any report of those proceedings. 10

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.”. 15

Amendment of section 13

12. Section 13 of the principal Act is amended —

- (a) by deleting the words “balance-sheet and” in subsection (1);
- (b) by deleting the words “balance-sheet is” in subsection (1)(a) and substituting the words “accounts are”; 20
- (c) by deleting the words “balance-sheet exhibits” in subsection (1)(b) and substituting the words “accounts exhibit”; and
- (d) by deleting subsections (2) and (3).

New section 13A

13. The principal Act is amended by inserting, immediately after section 13, the following section: 25

“Application of Companies Act

13A.—(1) Sections 162 and 163 of the Companies Act (Cap. 50) shall apply to a licensed housing developer which is an exempt private company subject to the modification that any reference in those sections to an exempt private company shall 30

not include a reference to the licensed housing developer; and every such licensed housing developer shall comply with the prohibitions in section 162 (relating to loans to its directors) and section 163 (relating to loans to persons connected with the directors of the lending company) of that Act as if it were not an exempt private company.

(2) In this section, “exempt private company” has the same meaning as in section 4(1) of the Companies Act.”.

Amendment of section 15

14. Section 15 of the principal Act is amended by deleting the word “regulations” and substituting the word “rules”.

Amendment of section 17

15. Section 17 of the principal Act is amended —

(a) by deleting “\$10,000” and “\$1,000” in subsection (2) and substituting “\$50,000” and “\$5,000”, respectively; and

(b) by deleting subsection (3).

New section 17A

16. The principal Act is amended by inserting, immediately after section 17, the following section:

“Investigation and enforcement powers in relation to show units

17A.—(1) For the purpose of ascertaining whether a licensed housing developer has complied with any provision of this Act or any rules made thereunder, any condition attached to its licence granted under section 4(4) or any direction issued by the Controller under subsection (3) in relation to any show unit, the Controller may —

(a) enter, inspect and examine, at any reasonable time, any premises which are used or proposed to be used as or to display the show unit;

(b) take such measurements, photographs and video recordings of the premises (including anything therein) as he thinks fit; and

(c) take and retain any article, material, model, map, plan or document, or any sample or copy thereof, in the premises as he thinks fit.

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(2) The licensed housing developer and the occupier of the premises shall furnish to the Controller such information, co-operation and means as the Controller may require for the exercise of any of his powers under subsection (1).

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(3) If the Controller is of the opinion that a licensed housing developer has not complied with any provision of this Act or any rules made thereunder or any condition attached to its licence granted under section 4(4) in relation to any show unit, the Controller may direct the licensed housing developer —

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(a) to take such action as the Controller may consider necessary to rectify any matter relating to the show unit;

(b) to publish, display or disseminate such information relating to the show unit or the building project connected with the show unit, in such form and manner and within such time, as the Controller may determine; or

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(c) to refrain from displaying or advertising, or cease any display or advertisement of, the show unit until the Controller is satisfied that the licensed housing developer has taken all such actions directed by the Controller under this subsection.

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(4) Any person who —

(a) obstructs or delays the Controller in the exercise of any of his powers under subsection (1); or

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(b) fails to comply with any requirement of the Controller under subsection (2),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both.

(5) Any person who fails to comply with any direction of the Controller under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(6) In this section, the reference to the Controller includes a reference to an inspector.”.

Amendment of section 20

17. Section 20 of the principal Act is amended by deleting “\$20,000” and “\$1,000” and substituting “\$100,000” and “\$5,000”, respectively.

Amendment of section 21

18. Section 21(2) of the principal Act is amended by deleting “\$20,000” and “\$1,000” and substituting “\$100,000” and “\$5,000”, respectively.

Amendment of section 22

19. Section 22(2) of the principal Act is amended —

(a) by deleting paragraph (b);

(b) by deleting the words “certificate of fitness of the Deputy Director (Development and Building Control) of the Public Works Department” in paragraph (c)(iv) and substituting the words “certificate of statutory completion”;

(c) by deleting paragraph (f) and substituting the following paragraph:

“(f) the fees and charges to be paid for any matter or thing to be done for the purposes of this Act;”;
and

(d) by deleting the full-stop at the end of paragraph (g) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

- “(h) the regulation of show units for the purpose of ensuring that any information about or depiction of any house, flat or other housing accommodation offered for sale is accurate, including but not limited to — 5
- (i) requiring a licensed housing developer or any class of licensed housing developers to erect, set-up or display a show unit or such type of show units as may be prescribed; 10
 - (ii) prescribing matters, for compliance by a licensed housing developer or any class of licensed housing developers, relating to the erection, furnishing, decoration, setting up or display of a show unit and its contents, including but not limited to its size, dimensions, boundaries, structures, installations, articles, materials and finishes, features, facilities, fittings and appliances; and 15 20
 - (iii) requiring a licensed housing developer or any class of licensed housing developers to provide visitors to a show unit such information, permissions and facilities as may be prescribed; 25
- (i) the requirements relating to any information, map, plan, model or sample of any material that a licensed housing developer or any class of licensed housing developers may display or provide to any purchaser or prospective purchaser in relation to any house, flat or other housing accommodation offered for sale; 30
- (j) the regulation of the manner in which any house, flat or other housing accommodation is marketed or promoted, or the sale thereof is 35

carried out, by a licensed housing developer or any class of licensed housing developers;

5 (k) the regulation of the collection or receipt by a licensed housing developer of any cheque or other form of payment in respect of the sale or prospective sale of any house, flat or other housing accommodation;

10 (l) the publication (in such form and manner as may be specified by the Controller) by a licensed housing developer of the purchase price and such other particulars as may be prescribed relating to an option to purchase or the sale of a house, flat or other housing accommodation; and

15 (m) the regulation of any benefit (in the form of payment, rebate, reimbursement, allowance, discount, voucher or other benefit (whether monetary or otherwise)) that a licensed housing developer (or its agent or nominee) may give or agree to give to a purchaser or an intending purchaser in relation to or conditional upon the sale of any house, flat or other accommodation including —

25 (i) requiring the disclosure of such benefit (including its amount or monetary value) in a contract between the licensed housing developer (or its agent or nominee) and the purchaser or intending purchaser;

30 (ii) requiring the publication (in such form and manner as may be specified by the Controller) by the licensed housing developer of the amount or monetary value of such benefit; and

35 (iii) prescribing the manner of determining the monetary value of such benefit.”.

Amendment of section 23

20. Section 23(2) of the principal Act is amended by deleting “\$10,000” and “\$1,000” and substituting “\$50,000” and “\$5,000”, respectively.

Amendment of section 24

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21. Section 24 of the principal Act is amended —

- (a) by inserting, immediately after the words “the Controller,” where they first appear in subsection (1), the words “the Deputy Controller, any authorised officer,”;
- (b) by deleting the words “any inspector or such officer” in subsection (1) and substituting the words “the Deputy Controller or such authorised officer, inspector or other officer”; and
- (c) by deleting the marginal note and inserting the following section heading:

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“Immunity of Government, Controller, etc.”.

Repeal and re-enactment of section 25

22. Section 25 of the principal Act is repealed and the following section substituted therefor:

“Individuals not eligible to take part in management of business of licensed housing developers

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25.—(1) Without prejudice to any additional restriction or prohibition in any other written law relating to companies, co-operative societies, societies, limited liability partnerships or partnerships —

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- (a) a person who is convicted of an offence (whether in Singapore or elsewhere) involving fraud or dishonesty shall not hold or continue to hold a responsible position in a licensed housing developer until the expiration of 5 years after —

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- (i) the date of his conviction; or

(ii) where he is sentenced to a term of imprisonment,
the date of his release from imprisonment,
whichever date is the later;

(b) a person who is an undischarged bankrupt (whether in
Singapore or elsewhere) shall not hold or continue to
hold a responsible position in a licensed housing
developer; and

(c) any person who holds a responsible position in a
licensed housing developer shall cease to hold that
position if he suspends payment to or compounds with
his creditors.

(2) Any person holding a responsible position in a licensed
housing developer that —

(a) is wound by a court under the Companies Act (Cap. 50)
or the Limited Liability Partnerships Act (Cap. 163A);

(b) is dissolved under section 33, 34 or 35 of the Partnership
Act (Cap. 391) or section 24 of the Societies Act
(Cap. 311); or

(c) is wound up under section 83 of the Co-operative
Societies Act (Cap. 62),

shall not, except with the approval in writing of the Minister,
hold or continue to hold a responsible position in any other
licensed housing developer.

(3) Any person who contravenes subsection (1) or (2) shall be
guilty of an offence and shall be liable on conviction to a fine not
exceeding \$50,000 or to imprisonment for a term not exceeding
3 years or to both.”.

Amendment of section 26

23. Section 26 of the principal Act is amended by deleting
“\$10,000” and substituting “\$50,000”.

Repeal and re-enactment of section 27

24. Section 27 of the principal Act is repealed and the following section substituted therefor:

“Offences by bodies corporate, etc.

27.—(1) Where an offence under this Act or any rules made thereunder committed by a body corporate is proved — 5

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 10

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member of the body corporate in connection with his functions of management as if he were a director of the body corporate. 15

(3) Where an offence under this Act or any rules made thereunder committed by a partnership is proved —

(a) to have been committed with the consent or connivance of a partner of the partnership; or 20

(b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 25

(4) Where an offence under this Act or any rules made thereunder committed by a limited liability partnership is proved —

(a) to have been committed with the consent or connivance of a partner or manager of the limited liability partnership; or 30

(b) to be attributable to any neglect on the part of such a partner or manager,

the partner or manager (as the case may be) as well as the limited liability partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) Where an offence under this Act or any rules made thereunder committed by an unincorporated association (other than a partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member (as the case may be) as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6) In this section —

“body corporate” and “partnership” exclude a limited liability partnership;

“officer” —

(a) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of such a committee, and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(7) The Minister may make rules to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate, limited liability partnership or unincorporated association formed or recognised under the law of a territory outside Singapore.”. 5

New section 27A

25. The principal Act is amended by inserting, immediately after section 27, the following section:

“Composition of offences

27A.—(1) The Controller may, in his discretion, compound any offence under this Act or any rules made thereunder which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following: 10

(a) one half of the amount of the maximum fine that is prescribed for the offence; 15

(b) \$5,000.

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

(3) The Minister may make rules to prescribe the offences which may be compounded. 20

(4) All sums collected under this section shall be paid to the Consolidated Fund.”.

Savings and transitional provisions

26.—(1) Except as expressly provided in this section, this section shall apply without prejudice to section 16 of the Interpretation Act (Cap. 1). 25

(2) Section 4(9)(a) of the principal Act in force immediately before the date of commencement of section 4(h) of this Act shall continue to apply to any right of appeal (from a decision of the Controller under section 4(4) of the principal Act) accrued before that date as if section 4(h) had not been enacted. 30

(3) Section 10 of the principal Act in force immediately before the date of commencement of section 10 of this Act shall continue to apply to every licensed housing developer in relation to each of its financial years which close before that date as if section 10 of this Act had not been enacted.

(4) Section 13(1), (2) and (3) of the principal Act in force immediately before the date of commencement of section 12 of this Act shall continue to apply to every licensed housing developer in relation to each of its financial years which close before that date as if section 12 had not been enacted.

(5) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by rules, prescribe such additional provisions of a savings or transitional nature consequent on the enactment of that provision as he may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Housing Developers (Control and Licensing) Act (Cap. 130) for the following main purposes:

- (a) to tighten the regulation of housing developers;
- (b) to improve the quality of information made available to the public on housing developments and sale of houses, flats and other housing accommodation;
- (c) to regulate the display of show units to ensure greater accuracy in the representation of houses, flats and other housing accommodation offered for sale by licensed housing developers;
- (d) to enhance and refine penalties for offences under the Act; and
- (e) to make miscellaneous changes for the better administration of the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to insert new definitions of expressions used in the Bill and to amend certain existing definitions.

Clause 3 repeals and re-enacts section 3 —

- (a) to empower the Minister to appoint the Controller of Housing (the Controller);
- (b) to empower the Controller to appoint a Deputy Controller of Housing (the Deputy Controller), and inspectors who are empowered under the Act to conduct certain examinations and investigations concerning licensed housing developers;
- (c) to empower the Controller to delegate his powers and functions (except the power of delegation) to authorised officers; and
- (d) to enable the Controller, Deputy Controller, inspectors and authorised officers to be appointed from amongst officers in the Civil Service or officers in public authorities approved by the Minister (see definition of “public authority” in clause 2(e)).

The clause also deems the Controller, Deputy Controller, authorised officers and inspectors to be public servants for the purposes of the Penal Code (Cap. 224), and to be public officers for the purposes of the Financial Procedure Act (Cap. 109) in connection with composition sums payable or paid under section 27A (see clause 25).

Clause 4 amends section 4 (on applications for a licence to carry out or undertake housing development (housing development licence)) —

- (a) to give the Controller the flexibility to specify the form and manner in which the licence application is to be made;
- (b) to empower the Controller to modify or waive in appropriate cases the requirement for any supporting document specified in section 4(2);
- (c) to require applicants to submit their audited accounts (instead of balance-sheets) in support of their licence applications;
- (d) to clarify that the Controller may reject a licence application or grant a housing development licence (with or without conditions attached);
- (e) to increase the maximum fine for the offence of carrying out or undertaking housing development without a licence from \$20,000 to \$100,000;
- (f) to increase the maximum fine for the offence of non-compliance by any licensed housing developer with any of its licence conditions from \$20,000 to \$100,000, to introduce an imprisonment term of up to 3 years for the offence and to empower the courts to punish an offender with either a fine or a term of imprisonment or both; and

- (g) to remove the current avenue of appeal to the High Court against the refusal of a housing development licence and in its place, to provide for such appeals to be made to the Minister.

Clause 5 repeals and re-enacts section 5 to expand the grounds that prohibit the Controller from granting a housing development licence. The clause states that a housing development licence cannot be granted to an applicant if the applicant has a person holding a responsible position (defined in clause 2(e)) who has been convicted of, or has served a sentence of imprisonment for, a fraud or dishonesty related offence in or outside Singapore within a period of 5 years before the date of the licence application.

The clause also provides that no licence shall be granted to an applicant which is a company unless the applicant has a paid-up capital of such amount, or has lodged (with the Controller) a deposit or security of such amount, to be prescribed by the Minister in rules. The clause similarly prohibits the granting of licences to applicants that are societies, partnerships, limited liability partnerships, groups of persons or individuals unless they have lodged a deposit or security (with the Controller) of such amount to be prescribed by the Minister in rules. The clause also empowers the Minister to prescribe in rules different amounts of paid-up capital, deposit or security for different applicants or classes of applicants.

Clause 6 amends section 6 to increase the maximum fine from \$20,000 to \$100,000 for the offence of unauthorised use of the expression “housing developer”, or any word derived from “housing developer” or denoting the carrying on of housing development.

Clause 7 amends section 7 to empower the Controller to suspend the licence of a housing developer for a period of up to 12 months, and to expand the grounds upon which the Controller may revoke or suspend the licence. The additional grounds are as follows:

- (a) if the licensee has a person holding a responsible position who —
 - (i) has been convicted of, or has served a sentence of imprisonment for, a fraud or dishonesty related offence in or outside Singapore within a period of 5 years;
 - (ii) is an undischarged bankrupt in or outside Singapore; or
 - (iii) suspends payment to or compounds with his creditors,
 (such a person, by holding the responsible position in the licensee, would have breached section 25(1) (see clause 22));
- (b) if the licensee has a person holding a responsible position who has also held a responsible position in another licensed housing developer that has been wound up or dissolved under certain provisions of the Companies Act (Cap. 50), Limited Liability Partnerships Act (Cap. 163A),

Partnership Act (Cap. 391), Societies Act (Cap. 311) or Co-operative Societies Act (Cap. 62), and who has failed to obtain the approval of the Minister to hold the responsible position in the licensee (in breach of section 25(2) (see clause 22));

- (c) if the licensee fails to comply with any licence condition;
- (d) if the licensee fails to comply with any direction of the Controller issued under the Act;
- (e) if the licensee fails to furnish, without reasonable excuse, any information required by the Controller under section 11(2) (see clause 11); or
- (f) if the licensee furnishes to the Controller any false or misleading information which is material.

Clause 8 amends section 8 to de-criminalise the failure of a licensed housing developer to inform the Controller of any alteration to its instrument of incorporation, by-laws, partnership agreement, etc.

Clause 9 amends section 9 (on project accounts for building projects) —

- (a) to enable a licensed housing developer, with the approval of the Controller, to open more than one project account in respect of a building project where the building project comprises units for 2 classes of use, namely residential and commercial purpose;
- (b) to delete subsection (10)(b) (which currently exempts licensed housing developers from the requirement to open project accounts in cases where they have entered into building agreements with the Urban Redevelopment Authority);
- (c) to provide the Controller with the flexibility to determine the form and manner of the security to be furnished by a licensed housing developer who wishes to be dispensed from the requirement to open a project account; and
- (d) to increase the maximum fine for offences committed under that section from \$10,000 to \$50,000.

Clause 10 amends section 10 to require a licensed housing developer to submit its audited accounts and the report of its auditor to the Controller within 6 months after the close of every financial year. The Controller may grant an extension of time of up to 6 months for the submission of the documents. The clause also requires a licensed housing developer to allow the public to inspect its audited accounts and the report of its auditor free of charge for a period of 24 months (either via its Internet website or at its registered office or principal place of business). The clause further increases the maximum fine for the offence of non-compliance by a licensed housing developer from \$10,000 to \$50,000.

Clause 11 repeals and re-enacts section 11 to require licensed housing developers to submit to the Controller information concerning their building projects, sales transactions (e.g. purchase price) and agreements (e.g. agreement by a licensed housing developer to reimburse a purchaser for stamp duty paid on his purchase) in relation to the sale of units in building projects. The clause also allows the Controller to publish the information or use the information for purposes of compilations, analysis, research studies or surveys. The clause also prohibits disclosure by any person of the particulars of purchasers (including their assignees) and intending purchasers received under the section except on grounds specified in section 11(4)(a) to (e). Unauthorised disclosure is an offence punishable on conviction by a fine of up to \$10,000 or imprisonment of up to 12 months or both.

Clause 12 amends section 13 (on appointment of auditors of licensed housing developers) to make consequential changes following amendments to section 10 (see clause 10). The clause also de-criminalises the failure of a licensed housing developer to appoint an auditor under section 13(1).

Clause 13 inserts a new section 13A to extend the application of sections 162 (on restrictions on loans to directors) and 163 (on restrictions on loans to related companies) of the Companies Act (Cap. 50) to licensed housing developers that are exempt private companies.

Clause 14 makes an editorial correction to section 15 to refer to rules (instead of regulations).

Clause 15 amends section 17 (on production of documents by licensed housing developers) to increase the maximum fine for the offence of non-compliance from \$10,000 to \$50,000, and the maximum fine for a continuing offence from \$1,000 per day to \$5,000 per day.

Clause 16 inserts a new section 17A to confer investigation and enforcement powers on the Controller and his officers with a view to ensuring that the show units of licensed housing developers are in compliance with statutory requirements, licence conditions and directions of the Controller and enabling appropriate actions to be taken in the event of non-compliance. The statutory requirements relating to show units will be prescribed in rules to be enacted by the Minister (see clause 19 on the power of the Minister to make rules relating to show units). The investigation powers under the new section include powers of entry into premises, examination of premises and retention of articles found therein. The enforcement powers under the new section include powers to direct a licensed housing developer to make rectifications to its show unit and to close its show unit until it has done so. Failure to comply with any direction of the Controller under the new section is an offence punishable on conviction by a fine of up to \$10,000. The obstruction of the Controller or the failure to render assistance required by the Controller in the exercise of his investigatory powers under the new section 17A is also an offence punishable on conviction by a fine of up to \$10,000 or imprisonment of up to 6 months or both.

Clause 17 amends section 20 (on the failure of a licensed housing developer to comply with directions of the Minister under section 18(2)) to increase the maximum fine for the offence of non-compliance from \$20,000 to \$100,000, and the maximum fine for a continuing offence from \$1,000 per day to \$5,000 per day.

Clause 18 amends section 21 (on co-operation required from a licensed housing developer whose business is taken over by another entity pursuant to a direction of the Minister under section 18(2)(c)) to increase the maximum fine for the offence of non-compliance by a licensed housing developer from \$20,000 to \$100,000, and the maximum fine for a continuing offence from \$1,000 per day to \$5,000 per day.

Clause 19 amends section 22 to expand the rule-making powers of the Minister. The new rule-making powers inserted by the clause are primarily concerned with —

- (a) regulating show units of licensed housing developers to ensure accuracy in the representation of houses, flats and other housing accommodation offered for sale;
- (b) requiring licensed housing developers to publish sale prices and other particulars relating to the sale of houses, flats and other housing accommodation;
- (c) ensuring the transparency of purchase prices of houses, flats and other housing accommodation by requiring the disclosure (in contracts to be specified in rules) of rebates, discounts and other benefits offered or given by licensed housing developers to purchasers and intending purchasers, and also requiring licensed housing developers to publish such particulars; and
- (d) ensuring that the marketing, promotion and sale of houses, flats and other housing accommodation are conducted in an orderly and transparent manner.

Clause 20 amends section 23 (on the power of the Controller to issue directions to licensed housing developers) to increase the maximum fine for the offence of non-compliance with any such direction from \$10,000 to \$50,000 and the maximum fine for a continuing offence from \$1,000 per day to \$5,000 per day.

Clause 21 amends section 24 to extend the protection from personal liability for things done or omitted to be done under the Act to the Deputy Controller and authorised officers.

Clause 22 repeals and re-enacts section 25. The re-enacted section —

- (a) prohibits a person who has been convicted of, or has served a sentence of imprisonment for, a fraud or dishonesty related offence in or outside Singapore from holding or continuing to hold a responsible position

(defined in clause 2(e)) in a licensed housing developer for a period of 5 years;

- (b) prohibits an undischarged bankrupt in or outside Singapore from holding or continuing to hold a responsible position in a licensed housing developer;
- (c) requires a person holding a responsible position in a licensed housing developer to cease holding that position if he suspends payment to or compounds with his creditors; and
- (d) requires a person holding a responsible position in a licensed housing developer that is wound up or dissolved under certain provisions of the Companies Act (Cap. 50), Limited Liability Partnerships Act (Cap. 163A), Partnership Act (Cap. 391), Societies Act (Cap. 311) or Co-operative Societies Act (Cap. 62) to seek the approval of the Minister before holding or continuing to hold a responsible position in another licensed housing developer.

The section also makes non-compliance an offence punishable on conviction by a fine of up to \$50,000 or imprisonment of up to 3 years or both.

Clause 23 amends section 26 (which prescribes the general penalty for offences where the Act does not prescribe a specific penalty) to increase the maximum fine for such offences from \$10,000 to \$50,000.

Clause 24 repeals and re-enacts section 27 to incorporate the modern legislative text on the criminal liability of officers, partners, members, etc., of bodies corporate, partnerships, limited liability partnerships and unincorporated organisations in respect of offences committed by such entities under the Act. For example, if a body corporate commits an offence under the Act with the consent or connivance of an officer of the body corporate, the body corporate as well as the officer will be guilty of the offence.

Clause 25 inserts a new section 27A to empower the Controller to compound offences under the Act that are prescribed by the Minister as compoundable offences.

Clause 26 sets out the savings and transitional provisions relating to the amendments made to section 4(9)(a) (on appeals to the High Court), section 10 (on submission of audited accounts) and section 13 (on appointment of auditors and submission of reports of auditors). The clause also empowers the Minister to enact further savings or transitional provisions consequential to any amendment made to the Act by this Bill within a period of 2 years after the amendment comes into operation.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
