

State Lands (Amendment) Bill

Bill No. 6/2015.

Read the first time on 12 February 2015.

A BILL

intituled

An Act to amend the State Lands Act (Chapter 314 of the 1996 Revised Edition) to clarify the ownership of the subsoil below the surface of any land, to make related amendments to the Boundaries and Survey Maps Act (Chapter 25 of the 2006 Revised Edition) and the State Lands Encroachments Act (Chapter 315 of the 1985 Revised Edition), and to make consequential amendments to certain other written laws.

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 State Lands (Amendment) Act 2015 and comes into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2 of the State Lands Act (referred to in this Act as the principal Act) is amended by deleting the full-stop at the end of the definition of “grantee” and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

10 “Singapore Height Datum” has the same meaning as in the Boundaries and Survey Maps Act (Cap. 25);

“State title” means any grant, any grant in fee simple or estate in perpetuity, or any State lease (of whatever tenure) whenever issued or granted by or on behalf of the Crown, the State or the East India Company;

“subterranean space” means the subsoil below the surface of the earth.”.

Amendment of section 3A

20 3. Section 3A of the principal Act is amended by deleting the words “all substances thereunder” in paragraph (a) and substituting the words “so much of the subterranean space below”.

New sections 3B and 3C

4. The principal Act is amended by inserting, immediately after section 3A, the following sections:

25 “What is subterranean space reasonably necessary for use and enjoyment of surface earth

30 **3B.**—(1) To avoid doubt, it is declared that for all purposes, any land includes only so much of the subterranean space as is reasonably necessary for the use and enjoyment of the land, being —

(a) such depth of subterranean space as is specified in the State title for that land; or

(b) if no such depth is specified, subterranean space to -30.000 metres from the Singapore Height Datum.

(2) To avoid doubt, nothing in this section derogates from —

(a) any reservation, by or under this Act or other written law, in favour of the State — 5

(i) to all mines and minerals, mineral oil, natural gas, stone, clay, sand, gravel, and other natural deposits; or

(ii) to enter upon any land and to search for and take any minerals, mineral oil, natural gas, stone, clay, sand, gravel, and other natural deposits which may be found in or below the land; 10

(b) any condition implied (by or under this Act or other written law) in any State title for any land with respect to opening of or working any mines or quarries, or digging for minerals, mineral oil, natural gas, stone, laterite, clay, sand, gravel, and other natural deposits; or 15

(c) any rule of law or written law relating to ownership of any column of space above any defined parcel of the surface of the earth. 20

(3) Any reference in any written law other than this Act to so much of the subterranean space below any land as is reasonably necessary for the use and enjoyment of the land is a reference to —

(a) such depth of subterranean space as is specified in the State title for that land; or 25

(b) if no such depth is specified, subterranean space to -30.000 metres from the Singapore Height Datum.

Easement of subjacent support

3C.—(1) To avoid doubt, it is further declared that for all purposes, there is implied — 30

(a) as belonging to each parcel of land, an easement for the subjacent support by any other parcel of land capable of affording such subjacent support; and

5 (b) as affecting each parcel of land, an easement for the subjacent support of any other parcel of land that is capable of being so supported.

(2) Subject to subsections (3) and (7), the easement implied under subsection (1) also entitles the grantee or lessee of the parcel of land that is the dominant tenement —

10 (a) to erect or install within subterranean space any structure necessary for the support of the parcel of land, including underpinning or strengthening any building on that parcel of land;

15 (b) to maintain, replace, renew or restore any such structure erected or installed for the support of that parcel of land; and

20 (c) to have, upon giving reasonable notice, such access to the servient tenement (through agents and employees) as is reasonably required for erecting or installing any structure referred to in paragraph (a), or for maintaining, replacing, renewing or restoring any such structure.

(3) The person entitled to the benefit of the easement implied under subsection (1) —

25 (a) cannot exercise any rights under the easement in a way that unreasonably prevents another person from enjoying the use and occupation of the other person's land; and

30 (b) must, when exercising any rights under the easement, take reasonable steps to minimise damage to land or other property from work or activities carried out in the exercise of those rights.

(4) Without prejudice to subsection (2), the easement implied under subsection (1) confers and imposes all ancillary rights and obligations reasonably necessary to make it effective.

(5) The easements implied under this section take effect and are enforceable without any registration or notification under the Land Titles Act (Cap. 157) on the folios relating to the parcel of land concerned.

(6) In this section, any reference to a grantee or lessee of any parcel of land is a reference to the Government if the parcel of land is not the subject of any State title. 5

(7) Nothing in this section —

(a) derogates from the requirements or effect of any other written law for the time being in force relating to planning and use of land or to building and construction, or from any rule of law relating to lateral support for land; or 10

(b) prevents the exercise by any public authority or any licensed provider of a utility service of any power under any other written law in good faith and with reasonable care.”. 15

Related amendments to Boundaries and Survey Maps Act

5. The Boundaries and Survey Maps Act (Cap. 25) is amended —

(a) by inserting, immediately after the definition of “Authority” in section 2(1), the following definition: 20

““bench mark” means any survey control mark in Singapore that is used as vertical control to determine the vertical distance between the Singapore Height Datum and a survey point above or below;” 25

(b) by inserting, immediately after the definition of “repealed Act” in section 2(1), the following definition:

““Singapore Height Datum” means the fixed datum surface set at 0.000 metres of Singapore’s historical mean sea level;” 30

(c) by deleting the words “or height of which is determined” in the definition of “survey control mark” in section 2(1) and

substituting the words “or vertical distance from the Singapore Height Datum which is determined, and includes a bench mark”; and

(d) by inserting, immediately after section 7, the following section:

“Bench marks deemed conclusive evidence of height, etc.

8. Every bench mark placed under the supervision of the Chief Surveyor in accordance with this Act is conclusive evidence for the purposes of determining the vertical distance between the Singapore Height Datum and any survey point above or below.”.

Related amendment to State Lands Encroachments Act

6. The State Lands Encroachments Act (Cap. 315) is amended by inserting, immediately after section 7, the following section:

“Defence relying on implied easement of support

7A.—(1) In any proceedings against a person for an offence under section 7 for erecting or installing any structure in any subterranean space that is State land, or for maintaining, replacing, renewing or restoring any such structure, it is a defence for the person charged to prove, on a balance of probabilities, that —

- (a) the person, or the company or association or body of persons of which the person is a director, manager, partner, secretary or other officer, is entitled to exercise rights under the easement of support implied under section 3C of the State Lands Act (Cap. 314);
- (b) the erection or installation of the structure, or the maintenance, replacement, renewal or restoration of the structure, as the case may be, is in accordance with section 3C of the State Lands Act; and
- (c) the person, or the company or association or body of persons of which the person is a director, manager, partner, secretary or other officer, is authorised by or

under the written law for the time being in force relating to planning and use of land to erect or install the structure, or to maintain, replace, renew or restore the structure, as the case may be.

(2) A defence under this section is additional to any other defence available to the defendant apart from this section.” 5

Consequential amendment to Conveyancing and Law of Property Act

7. Section 34B of the Conveyancing and Law of Property Act (Cap. 61, 1994 Ed.) is amended by inserting, immediately after subsection (4), the following subsection: 10

“(5) To avoid doubt, the reference in subsection (1) to an easement includes a reference to an easement for subjacent support that is implied by section 3C of the State Lands Act (Cap. 314).” 15

Consequential amendments to Land Titles Act

8. The Land Titles Act (Cap. 157, 2004 Ed.) is amended —

(a) by deleting the words “all substances thereunder” in paragraph (a) of the definition of “land” in section 4(1) and substituting the words “so much of the subterranean space below”; 20

(b) by inserting, immediately after the words “and 104” in section 46(1)(ii), the words “and section 3C of the State Lands Act (Cap. 314)”; and

(c) by inserting, immediately after the words “except as may be provided in this Act” in section 97(1), the words “or section 3C of the State Lands Act”. 25

Consequential amendment to Rapid Transit Systems Act

9. Section 2 of the Rapid Transit Systems Act (Cap. 263A, 2004 Ed.) is amended by deleting the words “all substances under the surface” in paragraph (a) of the definition of “land” and substituting the words “so much of the subterranean space below 30

the surface as is reasonably necessary for the use and enjoyment of the land”.

Consequential amendment to Registration of Deeds Act

5 **10.** Section 2(1) of the Registration of Deeds Act (Cap. 269, 1989 Ed.) is amended by deleting the words “all substances thereunder” in paragraph (a) of the definition of “land” and substituting the words “so much of the subterranean space below the surface”.

Consequential amendment to Sale of Commercial Properties Act

10 **11.** Section 2 of the Sale of Commercial Properties Act (Cap. 281, 1985 Ed.) is amended by deleting the words “all substances under the surface” in the definition of “land” and substituting the words “so much of the subterranean space below the surface as is reasonably
15 necessary for the use and enjoyment of the land”.

EXPLANATORY STATEMENT

This Bill seeks to amend the State Lands Act (Cap. 314) to clarify the ownership of the subsoil below the surface of any land of which a person is an owner.

The Bill also makes related amendments to the Boundaries and Survey Maps Act (Cap. 25) to define expressions and prescribe the means by which to measure the depth of subterranean space, and to the State Lands Encroachments Act (Cap. 315) to prescribe a defence because of the implied easement of subjacent support.

Consequential amendments are further made to the Conveyancing and Law of Property Act (Cap. 61), the Land Titles Act (Cap. 157), the Rapid Transit Systems Act (Cap. 263A), the Registration of Deeds Act (Cap. 269) and the Sale of Commercial Properties Act (Cap. 281) to align provisions and expressions in these Acts with the amendments to be made by the Bill.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to introduce the definitions to 3 terms used in the amendments, namely “Singapore Height Datum”, “State title” and “subterranean space”.

The term “subterranean space” means the subsoil below the surface of the earth. That level may be above or below the Singapore Height Datum (which is essentially the fixed datum surface set at 0.000 metres of Singapore’s historical mean sea level).

Clause 3 amends section 3A(a) to make it clearer that the expression “as is reasonably necessary for the use and enjoyment thereof” applies to both subterranean space and airspace.

Clause 4 inserts 2 new sections.

First, the new section 3B clarifies the law on ownership of the subsoil below the surface of any land of which a person is an owner. The new section 3B(1) declares that for all purposes, any land that is the surface of any defined parcel of the earth includes only so much of the subterranean space below the land as is reasonably necessary for the use and enjoyment of the land. This is defined to mean such depth of subterranean space as is specified in the State title for that land. However, if no such depth is specified in the State title, the land includes subterranean space to -30.000 metres from the Singapore Height Datum.

The new section 3B(2) makes it clear that the new section 3B will not derogate from the reservation by or under the Act or any other written law in favour of the State, to enter upon any land and to search for and take any minerals, mineral oil, natural gas, stone, clay, sand, gravel, and other natural deposits, which may be found therein. Nor will the new section 3B derogate from any implied condition in any State title with respect to opening of or working any mines or quarries or digging for any minerals, mineral oil, natural gas, stone, laterite, clay, sand, gravel, and other natural deposits.

Finally, the new section 3B(3) ensures that references in all other written laws to so much of the subterranean space below any land as is reasonably necessary for the use and enjoyment of the land will all be read to mean such depth of subterranean space as is specified in the State title for that land, and if no such depth is specified, it will refer to subterranean space to -30.000 metres from the Singapore Height Datum.

Next, the new section 3C clarifies the common law on natural rights of subjacent support. For every parcel of land, the new section 3C implies in favour of the grantee or lessee of the parcel of land, and as appurtenant thereto, an easement for the subjacent support of that parcel of land by the subterranean space below the surface level of the land, and by every parcel of subterranean space capable of affording support. This is in line with the Court of Appeal decision in *Xpress Print Pte. Ltd. v Monocraft Pte. Ltd.* [2002] 2 SLR(R) 614.

The easement of subjacent support further entitles the grantee or lessee of the parcel of land that is the dominant tenement to erect or install directly beneath the land any structure necessary for the support of the parcel of land, including

underpinning or strengthening any building that exists on that parcel. The support however, cannot extend into the adjacent surface parcel of land.

The implied easement of subjacent support also entitles the grantee or lessee of the dominant tenement to maintain, replace, renew or restore any such support erected or constructed for that dominant tenement. This includes having such access to the servient tenement (through agents and employees) as is reasonably required for erecting or installing the structure or for maintaining, replacing, renewing or restoring it.

However, the person entitled to exercise rights under this easement of subjacent support must, when exercising rights under that easement, make reasonable efforts to minimise damage to land or other property from work or activities carried out in the exercise of rights conferred by the easement.

The easement of subjacent support in the new section 3C is not absolute. The person entitled to exercise rights under that easement cannot do so in a way that unreasonably prevents another person from enjoying the use and occupation of the other person's land.

The new section 3C does not displace the requirements or effect of any other written law for the time being in force relating to planning and use of land or to building and construction. The land owner who wants to construct or restore, etc., subjacent support for his or her land must still obtain written permission to develop the land and approval for building works before starting. The new section 3C also does not affect the common law relating to lateral support for land.

The new section 3C also does not prevent any public authority or licensed provider of a utility service from exercising power under any written law in good faith and with reasonable care.

The easement of subjacent support implied by the new section 3C does not require any registration or notification on the land register before it is effective. Consequential amendments (see clause 8) therefore have to be and are made to section 46(1)(ii) of the Land Titles Act so that a registered proprietor of registered land will hold that land subject to the statutory easement implied by the new section 3C, and to section 97(1) of the Land Titles Act to support the subsistence of this implied statutory easement on registered land.

Clause 5 makes 2 related amendments to the Boundaries and Survey Maps Act. The first set of related amendments is to define various expressions which are essential to fixing with certainty the depth of subterranean space.

The key expression is "Singapore Height Datum", which is essentially the fixed datum surface set at 0.000 metres of Singapore's historical mean sea level. The Singapore Height Datum can be determined from bench marks installed and maintained by the Chief Surveyor in Singapore.

A “bench mark” is a type of survey control mark in Singapore with a known height or depth.

The final related amendment to the Boundaries and Survey Maps Act is to introduce a new section 8, which makes any bench mark placed in accordance with that Act to be conclusive evidence of the vertical distance between the Singapore Height Datum and any survey point above or below.

Clause 6 makes a related amendment to the State Lands Encroachments Act by creating a defence in a prosecution for an offence under section 7 of that Act against erecting or constructing any structure in any subterranean space that is State land, or for maintaining, replacing, renewing or restoring any such structure. The defence is available to anyone who is entitled to exercise rights under the easement of subjacent support conferred by the new section 3C of the State Lands Act (introduced by clause 4). This would usually be the grantee or lessee of land. The person must also be able to show that the erection or construction of the structure, or the maintenance, replacement, renewal or restoration of the structure, as the case may be, even if deeper than -30.000 metres from the Singapore Height Datum, is reasonably necessary to give effect to the easement of support, and the person has planning permission to do so. This defence is additional to any defence otherwise available to the defendant.

Clause 7 makes a consequential amendment to the Conveyancing and Law of Property Act to make it clear that a person with an interest in land which is subject to the burden of an easement of subjacent support implied by the new section 3C of the State Lands Act may apply to court for an order to vary or extinguish wholly or in part the easement over that land. The fact that the easement is implied by statute does not prevent such an application being made.

Clauses 8, 9, 10 and 11 make consequential amendments to the Land Titles Act, the Rapid Transit Systems Act, the Registration of Deeds Act and the Sale of Commercial Properties Act, respectively, to bring the definitions of “land” in these Acts in line with the clarifications introduced by clause 4. Reading these amendments with the new section 3B(3) of the State Lands Act inserted by clause 4, the references in these written laws to so much of the subterranean space below any land as is reasonably necessary for the use and enjoyment of the land will all be read to mean such depth of subterranean space as is specified in the State title for that land, and if no such depth is specified, it will refer to subterranean space to -30.000 metres from the Singapore Height Datum.

EXPENDITURE OF PUBLIC MONEY

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