



New Rules for En Bloc Sales to Provide Safeguards and Ensure Transparency

The Land Titles (Strata) (Amendment) Bill which amends the en bloc sales provisions in the Land Titles (Strata) Act ('Act') was passed by Parliament on 20 September 2007. While it has been passed, the amendment act is not yet in force. It is, however, expected to come into force before the end of the year.

The changes in the rules aim to provide additional safeguards and ensure more transparency for all owners, both the minority and majority owners, without making the process unduly onerous. The main areas of change are:

- an additional condition for consent based on total area of units;
- the regulation of the collective sale committee, its formation, composition, constitution and proceedings; and
- a widening and clarification of the powers of the Strata Title Board ('STB').

In this update, we take a look at the major changes proposed and their impact on the en bloc sale process.

Who Will Be Affected by the New Rules

Amended Act to apply unless CSA already signed

The new rules will apply to all developments except those where the required majority of owners have signed the collective sale agreement ('CSA') as at the date of the commencement of the amended Act. Those developments where the en bloc sale process have begun but have not yet attained the requisite majority when the new rules come into effect will have to begin the process all over again in compliance with the new rules.

Additional Condition for Consent Based on Total Area of Units

Change Implemented

Currently, consent based on share value

An application for an en bloc sale may be made if the requisite percentage of owners give their consent. Currently, the requisite percentage is calculated based only on the share value owned. For



developments more than 10-years old, the requisite percentage is 80%. For developments that are less than 10 years, it is 90%.

Additional consent based on total area

The amended Act adds a second condition: that the owners with at least 80% or 90%, as the case may be, of the total area of all the lots in the development, must consent to the en bloc sale.

Impact

Helps to promote en bloc sales of mixed developments

This change mitigates a bias against residential owners in a mixed development. The present ratio of share values in a mixed development is 1 : 4 : 5 (residential : office : shop). This change would help to promote en bloc sales of mixed developments.

Regulation of the Collective Sale Committee

Changes Implemented

There are currently no rules regarding the collective sale committee under the Act. However, the amended Act stipulates various requirements in its regard:

Sale committee to be set up before CSA signed

- Under the new rules, a collective sale committee must be constituted to act jointly on behalf of the owners before the signing of the CSA. The committee, which must comprise at least three and not more than 14 members, must be elected at a general meeting properly convened for the purposes of a collective sale.

Member of committee must meet criteria

- A person standing for election to the committee must meet the stipulated eligibility criteria. For example, he must be an owner of a unit or be nominated by an owner which is a company, and he must not be a bankrupt.

Member must disclose conflicting interests

- A person standing for election must disclose his interest in any property developer, property consultant, marketing agent or legal firm that may conflict with the proper performance of his functions as a member of the committee.

General meeting must be convened

- The committee must convene a general meeting before any owner signs the collective sale agreement to consider key issues such as the appointment of lawyers, property consultant or marketing agent; the apportionment of sales proceeds; and the



Updates of consent levels

- terms and conditions of the collective sale agreement.
- The committee must provide an update on the consent level every four weeks instead of the current eight weeks. In addition, after the requisite majority of owners have signed the collective sale agreement, the committee then has to convene a general meeting to update the owners as to the total number of owners who signed and to provide information on the sale process.

Updates of outcome

- Finally, after the launch of the sale, the committee has to convene a general meeting to keep the owners informed as to the outcome of the public tender or auction or private treaty.

Impact

Changes provide fair representation

The new rules ensure that there is fair representation, making it less likely that any one person or group of persons will be able to dominate the committee or the sale process. However, the disclosure of interest provision may not go far enough as the person standing for election does not have to disclose whether he is a nominee for other owners, or whether he has an indirect interest in more than one unit (whether through immediate family members, trusts, nominees or other vehicles).

Duties of committee should be spelt out

The exact scope of the committee's duties and liabilities jointly as well as at the individual level remain unclear. From a practical perspective and for prudence, the sale committee may wish to consider having its scope of duties, as well as its mandate, clearly outlined either in the resolution for appointment or in a separate letter of appointment.

Regulation of the Collective Sale Agreement

Changes Implemented

The Act is currently silent with regards to the CSA. In order to better protect the interests of owners, the amended Act sets out various requirements that seek to ensure that they enter into the collective sale with their eyes open:

CSA must come with preface

- The collective sale committee must provide a preface to the CSA indicating where key information such as the reserve price; the apportionment method for the proceeds of sale; and the fees



- payable to the lawyers, marketing agent, or other person handling the sale are to be found in the body of the agreement.
- *Signing before lawyer* The CSA has to be signed in the presence of a lawyer appointed by the collective sale committee.
 - *5-day cooling off* A five-day cooling off period has been imposed, during which time the owner may rescind his agreement to the CSA. However, the owner may only change his mind once.

Impact

- *Updates on consents should take 5-day period into account* The changes make information more readily available and accessible to an owner about to sign a CSA. The cooling-off period gives the opportunity to owners who feel as if they have signed under duress or pressure to change their minds. From a practical perspective, when providing an update on the consent levels, the announcements on the number of owners who have signed the CSA should ideally distinguish between those who are within the five-day period and those who have passed it.

The provision for the presence of a lawyer at the signing of the CSA, while laudable, does raise some issues:

- *Must lawyer explain terms?* The lawyer's role in witnessing the signing is uncertain. The popular presumption is that the lawyer will be required to explain the terms of the agreement to the individual owners. However, the amended act does not expressly state this. Furthermore, such a role may be incompatible with the lawyer's duty to the sale committee, for whom he acts.
- *Must lawyer-witness be lawyer of committee?* The provision also restricts the owner to signing in the presence of the lawyer appointed by the collective sale committee. Although this does not prevent individual owners seeking legal advice from their own lawyers, it would seem that they must still sign the CSA in the presence of the sale committee's lawyers and not their own.

Regulation of the Process and Mode of Collective Sale

Changes Implemented

- *Sale by auction or* The Act does not currently regulate how the collective sale is to be



tender only

conducted. In contrast, the amended Act requires the collective sale to be launched for sale only by way of a public tender or auction. If the public sale or auction is not successful, the committee may, within 10 weeks of the close of the public tender or auction, enter into a private treaty for an en bloc sale.

Independent valuation must be obtained

In addition, the sale committee has to obtain a report by an independent valuer on the value of the development at the date of the close of the public tender or auction.

Impact

When preparing for the tender/auction, a sale committee may wish to consider and prepare for two potential areas of concern:

Difference between valuation and price?

- It may be thought that the requirement for a report from an independent valuer at the close of the public tender or auction will go some way towards reducing disagreement over the final sale price by giving the owners an idea of the current market price in a fast moving market. However, it may instead become a source of contention if there is a marked difference between the valuation provided and the final sale price. Such a difference may raise the thorny issue of whether a sale committee may rescind a sale or reject a public tender bid based on this difference.

Authority to enter into private treaty?

- The sale committee may wish to establish at the outset of its appointment what it can or cannot do should it wish to enter into a private treaty for an en bloc sale after an unsuccessful auction or bid. One potential issue is whether it has the authority to close a private treaty with a bidder if its price did not meet the minimum reserve price set for the auction.

STB May Increase Proceeds of Sale to Objecting Owner

Changes Implemented

STB may increase individual's proceeds

Currently, the STB has no such power. Under the amended Act, the STB will be empowered to increase the sale proceeds to an owner who has filed a valid objection to the CSA. However, it may also do this if it thinks it would be fair and equitable to do so. The increase in



the sale proceeds will be funded from the pool of sale proceeds made up by contributions by other owners. The contribution required from each owner is capped at 0.25% of the sale proceeds or S\$2,000 whichever is the higher.

Impact

Allows STB to deal with hardship cases

This power allows the STB to deal with the complaints of minority owners who may feel that they have not been fairly treated in the distribution of sale proceeds, or whose individual circumstances are such that they suffer some hardship. Previously, the STB could only approve or reject an application for en bloc sale. With this change, the STB can, within limits, award something more to an objecting owner, where it thinks it fair and equitable, to address a particular grievance or set of circumstances.

STB May Overlook and Rectify Technical Irregularities

Changes Implemented

STB may overlook minor irregularities

Currently, the STB must dismiss any defective application. In contrast, the amended Act provides that the STB must not invalidate an application only because of any non-compliance with any requirement if it is satisfied that this non-compliance does not prejudice the interest of any person. It also allows the STB to rectify the non-compliance.

Impact

May help to avoid a Horizon Towers scenario

Majority owners will not need to re-apply merely because of technical or procedural errors or irregularity so long as no one is prejudiced. Apart from saving time and costs, this power would make a difference to cases—like the Horizon Towers case—where the application might otherwise have been rejected for technical defects or irregularities.



Allowable Deductions in Financial Loss Claims

Changes Implemented

No guidelines on what is financial loss

The STB is entitled to reject an application on the grounds of financial loss. Currently, the Act deems that an owner will have incurred a financial loss if, after any deduction allowed by the STB, his sale proceeds are less than the price he paid for the unit. There are no guidelines to show what deductions are allowed and owners can only rely on STB's previous decisions as precedents.

Greater clarity provided

The amended Act lists several deductions which the STB may allow:

- stamp duty on the purchase of the unit;
- legal fees paid in relation to the purchase of the unit; and
- costs related to privatisation and costs pursuant to the collective sale which are to be shared by all owners as provided under the CSA.

The STB may take into account other deductions as well.

Buyers post-CSA cannot claim for loss

Significantly, the amended Act makes it clear that a person who purchased the unit after the committee had signed a sale and purchase agreement for the en bloc sale of the development is not entitled to file a claim for financial loss if the proceeds of sale for his lot (including all or any of the deductions specified) are less than the price he paid for it.

Impact

The new rules give slightly more clarity for owners as to what deductions will be taken into account in deciding financial loss. However, the STB still retains the discretion to decide which deduction to allow or disallow or even to take into consideration deductions not listed in the amended Act.

CPF "losses" still not claimable as deductions

It should be noted that the amended Act does not set out CPF moneys and the interest thereon as being items that may be taken into account for the purposes of the deduction. In April 2007, in the

LegisWatch

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Waterfront View case, the STB rejected a couple's claim for financial loss because, although they suffered a loss of about \$90,000 comprising interest on the CPF moneys which they had withdrawn to finance the purchase of their unit, the CPF Board did not require them to refund the said amount.

If you would like information on this or any other area relating to corporate real estate, you may wish to contact the lawyer at WongPartnership that you normally deal with or contact the following partners from the CRE Practice:

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