

## STATE OF SABAH

### HOUSING DEVELOPMENT (CONTROL AND LICENSING) ENACTMENT 1978 (Sabah No. 24 of 1978)

#### LIST OF AMENDMENTS

| <i>Enactment No.</i> | <i>Sections amended</i>  | <i>Effective date of amendment</i> |
|----------------------|--|------------------------------------|
| 11/1993              | 3 (definitions of "bank", "estimated cost of development", "finance company", "housing developer", "housing development", "unit"), 6, 8A, 10, 21, 23, 26(2)  | 1-7-1995                           |
| 3/1998               | 6, 17  | 7-5-1998                           |
| 4/2005               | PART I, 1,2,3 (definitions of "abandoned housing development", "certificate of fitness", "Controller", "Housing Development Account", "housing lot", "Local Authority", "Minister", "officer and servants", "purchaser", "stakeholder" and "Tribunal", 4, PART II, 5 (1), (3), (4), (5), (6) & (7), 6 (1), (1A) & (2), | 02/07/2007                         |

PART III, 7 (7A), 8, 8A, PART  
IV, 10 (1), (1A) & (3), 10A,  
10B, 10C, 10D, 10E & 10F,  
PART V, 11, 12A, PART VI,  
PART VII, PART VIII, 20, 21,  
21A, 22, 23, 24, 25, 25A, 25B,  
25C & 25D, 26.

An Enactment to provide for the control and licensing of housing developers and for matters connected therewith.

[28 December 1978]

PART I  
PRELIMINARY

**Short title.**

1. This Enactment may be cited as the Housing Development (Control and Licensing) Enactment 1978.

**Saving and exemption.**

2. (1) Nothing in this Enactment shall apply to —

(a) *(Deleted)*

(b) any body or agency established and incorporated by statute and under the control of the Government of Malaysia or the Government of any State.

(2) *(Deleted)*

(3) The provisions of this Enactment which relate to a company shall be construed as in addition or supplementary to, and not in derogation from, the provisions of any written law relating to companies.

**Interpretation.**

**3.** In this Enactment, unless the context otherwise requires —

“abandoned housing development” means where a licensed housing developer had refused to carry-out or delayed or suspended or stooped or ceased works continuously for a period of six months or more or beyond the stipulated period of completion as agreed under a sales and purchase agreement ;

“bank” means a bank which is in possession of valid licence granted under the Banking and Financial Institutions Act 1989 [Act 372] or under the Islamic Banking Act 1983 [Act 276];

“body of persons” means a group of persons, not being an incorporated body or group;

“certificate of fitness for occupation” means any certificate issued under the various Enactments or Ordinances or By-laws for the purpose therein ;

“Company” means any company incorporated, formed or registered under any written law for the time being in force in Malaysia relating to companies, and includes any body corporate established under any written law in force in Malaysia;

“Controller” means the Controller of Housing or the Deputy Controller of Housing appointed under section 4;

“estimated cost of development” means cost of development of a housing development and includes the cost of land, financial costs, overhead costs, and all other expenditures necessary for the completion of the housing development;

“finance company” means a finance company which is in possession of a valid licence granted under the Banking and Financial Institutions Act 1989 [Act 372];

“firm” means an unincorporated body of persons (whether consisting of individuals or corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business;

“housing accommodation” includes any building, tenements or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises;

“housing developer” means any person, body of persons, company, firm or society (by whatever name described), who or which engages in or carries on or undertakes or causes to be undertaken a housing development;

“housing development” means to develop or construct or cause to be constructed in any manner more than four units of housing accommodation and includes the collection of monies or the carrying on of any building operations for the purpose of erecting housing accommodation in, on, over or under any land; or the sale of more than four units of housing lots by the landowner or his nominee with the view of constructing more than four units of housing accommodation by the said landowner or his nominee; and for the purposes of this definition, “develop” means to construct or cause to be constructed, and includes the carrying on of any building operations for the purpose of constructing housing accommodation in, on, over or under any land with the view of selling the same or the land which would be appurtenant to such housing accommodation;

“Housing Development Account” means an account opened and maintained by a licensed housing developer pursuant to section 8A;

“housing lot” means any piece of land surveyed or otherwise to which a lot number has been assigned to it and which is subject to the category of ‘building’ in accordance with the Local Government Ordinance 1961;

“Inspector” means an Inspector appointed under section 4;

“licence” means a licence granted under section 5;

“Local Authority” means Local Authority as defined under the Local Government Ordinance 1961;

“Minister” means the Minister for the time being charged with the responsibility for housing;

“officers and servants” means officers and servants appointed under section 4 of the Enactment;

“prescribed” means prescribed by the Minister under this Enactment;

“purchaser” means any person who purchases a housing accommodation or who has any dealing with a licensed housing developer in respect of the acquisition of housing accommodation and includes a person who has subsequently purchased a housing accommodation from the first purchaser of the housing accommodation;

“stakeholder” means any solicitor holding moneys as stakeholder for payment to a licensed housing developer pursuant to a sale and purchase agreement in respect of a housing development which the licensed housing developer is engaged in, carries on or undertakes or causes to be undertaken;

“Tribunal” means the Tribunal for Housing Purchaser Claims established under Section 19A;

“unit” means a horizontal stratum of any building or part thereof, whether such stratum is on one or more levels, and is intended for use in accordance with the provisions of any written law as a complete and separate unit for residential or commercial purpose.

**Appointment of Controller, Deputy Controller, Inspectors and other officers and servants.**

4. (1) The Minister shall, by notification in the *Gazette*, appoint an officer to be the Controller of Housing who shall, subject to the direction of the Minister, perform all duties imposed and exercise all powers conferred on the Controller by this Enactment.

(2) There shall be appointed a Deputy Controller of Housing and such number of Inspectors of Housing and other officers and servants as are necessary to assist the Controller in the carrying out of his functions under this Enactment.

(3) Without prejudice to subsection (1), the Controller may, in writing delegate any of his powers and functions in respect of investigation of offences and the enforcement of this Enactment to any public officer or officer of a Local Authority.

(4) Any delegation under subsection (3) may be revoked at any time by the Controller and does not prohibit the Controller from exercising the powers or performing the functions so delegated.

PART II  
LICENSING HOUSING DEVELOPERS

**Prohibition against housing development except by virtue of a licence and provisions relating to the grant of a licence.**

5. (1) No housing development shall be engaged in, carried on or undertaken or caused to be undertaken except by a housing developer who —

- (a) is in possession of a licence issued under this Enactment; and
- (b) has made a deposit with the Controller of a sum equivalent to five per cent of the estimated cost of the development in cash or in such other form as the Minister may determine:

(2) Except with the written consent of the Controller, no housing developer other than a licensed housing developer shall assume or use in relation to his business or any part of his business the words “housing developer” or any of its derivatives or any other word or words indicating the carrying on of the business of housing development.

(3) A housing developer who desires to engage in, carry on or undertake or caused to be undertaken a housing development may apply to the Controller for a licence and any such application shall be made in the prescribed form and in the case of any applicant listed in column (1) of the Schedule, the application shall be accompanied by the documents listed against him in column (2), every such document being verified by means of a statutory declaration made by the person listed in column (3) of the Schedule.

(4) Upon receiving an application for a licence under this section, the Controller may grant or refuse to grant the licence, and in granting such licence, the Controller may impose such conditions as he may deem fit.

(5) Subject to section 14, the Controller may at any time vary, cancel, or alter the conditions imposed under subsection (4) or impose any new or additional conditions; or,

where the licence is not subject to any conditions, impose thereon such conditions as the Controller may deem fit for carrying out the provisions of this Enactment.

(6) There shall be a fee payable to be determined by the Minister upon the application of a licence or permit.

(7) Where a housing development is to be undertaken in phases within a housing development area, a licence may be issued to the housing developer for each phase of such housing development.

**Conditions or restrictions for the grant of a licence.**

6. (1) Subject to the exercise of power of waiver by the Minister under subsection (2), the licence applied for under section 5 shall not be granted —

- (a) unless the applicant has a capital issued and paid up in cash of not less than two hundred and fifty thousand ringgit, if the application is made by a company; or
- (b) unless the applicant makes a deposit with the Controller of not less than one hundred thousand ringgit in cash or in such other form as the Minister may determine, if the application is made by a person or body of persons or a firm or a society; or
- (c) unless the applicant is not himself nor is any member or partner thereof a person convicted of an offence involving fraud or dishonesty or an undischarged bankrupt, if the application is made respectively by a person, or a body of persons or a firm; or
- (d) unless no one who is convicted of an offence involving fraud or dishonesty or who is an undischarged bankrupt or who is or was a partner of a firm, shareholder or director of a company which was the subject of bankruptcy or winding-up proceedings or who is or was a partner of a firm, shareholder or director of a company which was involved in or has undertaken a housing development but such housing development has failed to be completed is holding office as director, manager or secretary or other similar office or position, if the application is made by a company

or is holding office as president, secretary or treasurer or other similar office or position, if the application is made by a society; or

- (e) unless, at the time the application is made, the applicant or any member or partner of the applicant has not been involved in any housing development which has been declared abandoned by the Minister or has not, during his involvement in any housing development, failed to fulfil his obligations under a sales and purchase agreement for any housing development or if the applicant is a body of persons or a firm, or a director, manager or secretary of the applicant, or if the applicant is a company, has not been convicted of an offence under this Enactment; or
- (f) if the registration of the applicant's architect or engineer has been cancelled and has not been reinstated under the Architects Act 1979 [Act 117] or the Registration of Engineers Act 1967 [Act 138] at the time the application is made.

(1A) For the purposes of paragraphs (1) (e) and (f), if the applicant is a company, the expression 'applicant' shall include the holding company of the applicant, or subsidiary of the applicant or a subsidiary of holding company of the applicant.

(2) The Minister may in his absolute discretion waive any or all of the conditions set out in subsection (1) (a), (b), (d), (e) and (f) or substitute any or all of the said conditions for such other conditions as he may consider fit and proper for the purpose of carrying into effect the objective of this Enactment.

### PART III

#### DUTIES OF A LICENSED HOUSING DEVELOPER

##### **Duties of a licensed housing developer.**

7. In addition to the liabilities and duties imposed in sections 8 and 9, a licensed housing developer shall —

- (a) within four weeks of the making of any alterations in or to any of the documents submitted to the Controller under subsection (3) of section 5, furnish to the

Controller written particulars of the alterations;

- (b) make available at all times in any office and branch office of the licensed housing developer a copy of his licence, advertisement and sale permit and a copy of his last audited balance sheet as soon as the same is available and such information as the present or former full name, usual residential address, nationality, nationality of origin (where the present nationality is not that of origin), business or occupation (if any) of each person who has the control and management of the business of the licensed housing developer and particulars of any other directorship held by that person;
- (c) keep or cause to be kept in his office in the State such accounting and other records as will explain the transactions and the financial position of the licensed housing developer and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause the records to be kept in such manner as to enable them to be conveniently and properly audited;
- (d) every year appoint an auditor or auditors in the manner required under section 9;
- (e) within three months after the close of the financial year of the licensed housing developer in question, send to the Controller a copy of the report of the auditor prepared under section 9 together with a copy of his balance sheet and profit and loss account;
- (f) not later than the 21st day of January and the 21st day of July of each year, send to the Controller a statement in such form and containing such information as the Controller may from time to time determine, on the progress of the housing development which, the licensed housing developer is engaged in, carries on or undertakes or causes to be undertaken; and
- (g) where he considers that he is likely to become unable to meet his obligations to the purchasers at any stage of the housing development before the issuance of the certificate of fitness for occupation, forthwith inform the Controller of such fact.

**7A.** (1) A licensed housing developer whose licence has expired may still be liable under sections 7, 8, 10, 11 and 12 of the Enactment.

(2) Any company, firm, society, cooperative society, a body of persons or individual whose licence has expired may still be liable under sections 7, 8, 10, 11 and 12 of the Enactment.

**Arrangement or agreement affecting the business of a licensed housing developer.**

**8.** (1) Where a licensed housing developer proposes to enter into an arrangement or agreement to sell, transfer, assign, dispose of or reconstruct his business or management relating to housing development either by amalgamation or otherwise, the licensed housing developer shall as soon as possible notify the Controller of the proposed arrangement or agreement and unless approved by the Controller under subsection (2), the licensed housing developer shall not proceed with that arrangement or agreement.

(2) Where the Controller receives the notification of the proposed arrangement or agreement under subsection (1), the Controller may approve the arrangement or agreement or refuse to give approval thereto; and in approving the same he may impose thereon such conditions as he may deem fit and proper for the purpose of carrying into effect the provisions of this Enactment.

**Housing Development Account.**

**8A.** (1) Subject to subsection (10), every licensed housing developer shall open and keep an account (referred to in this Enactment as a "Housing Development Account") with a bank or finance company for each housing development undertaken by a licensed housing developer.

(2) Where a housing development is to be developed in phases, the licensed housing developer shall open and keep a Housing Development Account under subsection (1) for each phase of such housing development.

(3) The licensed housing developer shall pay into the Housing Development Account of a housing development the purchase moneys received by the licensed housing

developer from the sale of the units in the housing development and any other sum or sums of moneys which are required by rules made under this Enactment to be paid into the Housing Development Account.

(4) The licensed housing developer shall not withdraw any money from the Housing Development Account except as authorised by rules made under this Enactment.

(5) Subject to subsection (6) (b), all moneys in the Housing Development Account and all moneys held by the stakeholder shall, notwithstanding any other written law to the contrary, be deemed not to form part of the property of the licensed housing developer in the event —

(a) the licensed housing developer enters into any composition or arrangement with his creditors or has a receiving order or adjudication order made against him; or

(b) the licensed housing developer, being a company, goes into voluntary or compulsory liquidation.

(6) Upon the happening of any of the events referred to in subsection (5) —

(a) the moneys in the Housing Development Account and all moneys held by the stakeholder shall vest in the Controller to be applied for all or any of the purposes for which moneys in the Housing Development Account are authorised by rules under this Enactment to be withdrawn; and

(b) any money remaining in the Housing Development Account and all moneys held by the stakeholder, after all payments have been made pursuant to paragraph (a) and all liabilities and obligations of the licensed housing developer under the sale and purchase agreements in respect of the housing development have been fully discharged and fulfilled, shall be held by the Official Receiver, trustees in bankruptcy or liquidator as the case may be as moneys belonging to the licensed housing developer to be applied in accordance with the law relating to bankruptcy or the winding up of companies.

(6A) (a) all moneys in the Housing Development Account shall be deemed not to

form part of the properties of the licensed housing developer in the event the housing development is abandoned by the licensed housing developer or when the housing development has been declared abandoned by the Minister;

- (b) all moneys in the Housing Development Account shall be vested with the Controller in the event the housing development has abandoned by the licensed housing developer or when the housing development has been declared abandoned by the Minister.

(7) Notwithstanding any other written law to the contrary, all monies in the Housing Development Account and all moneys held by the stakeholder shall not be garnished until all liabilities and obligations of the licensed housing developer under the sale and purchase agreements in respect of the housing development have been fully discharged and fulfilled.

(8) Subject to the provisions of the Banking and Financial Institutions Act 1989 [Act 372] and the Islamic Banking Act 1983 [Act 276], the Minister may, if he thinks necessary, appoint an approved company auditor as defined in the Companies Act 1965 [Act 125] to investigate the books, accounts and transactions of a Housing Development Account and the licensed housing developer shall pay all the expenses incurred in and incidental to the investigation.

(9) Any account opened by a licensed housing developer with a bank or finance company for the purpose of depositing purchase moneys received from purchasers in respect of a housing development remains to be completed on the date of coming into force of this section shall be deemed to be a Housing Development Account which has been opened pursuant to this section.

(10) This section shall not apply to any housing development carried on by —

- (a) a licensed housing developer where all the units in the housing development will not be offered for sale and purchase before the completion of the housing development and the issuance of certificate of fitness for occupation;
- (b) a licensed housing developer who has furnished to the Controller a banker's guarantee of an amount equivalent to not less than 140% of the

total estimated cost of development of the housing development as certified by the architect in charge of the housing development.

(11) Any licensed housing developer who contravenes or fails to comply with this section shall be guilty of an offence and shall on conviction be liable to a fine not less than fifty thousand ringgit and not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Audit.**

9. (1) Subject to subsection (2), every licensed housing developer shall every year or as often as the need arises appoint a firm of registered auditors to be auditors; and where a licensed housing developer fails to make the appointment or fails to appoint another firm of registered auditors in place of such a firm which have wound up or dissolved or whose appointment has been terminated, the Minister may appoint any firm of registered auditors which in his opinion are fit and proper to be auditors for the licensed housing developer in question and fix remunerations which shall be paid to the auditors so appointed and such remunerations shall be paid by the licensed housing developer for whom the auditors are so appointed.

(2) The auditors of a licensed housing developer shall make a report to the Controller as to the annual balance sheet and profit and loss accounts of the licensed housing developer for whom the auditors are appointed and shall state in every such report whether or not in their opinion —

- (a) the balance sheet and the profit and loss accounts are properly drawn up and so as to give a true and fair account of the state of the licensed housing developer's affairs;
- (b) the accounting and the records examined by them are properly kept; and
- (c) if the auditors have called for an explanation or information from the officers or agents of the licensed housing developer, such explanation or information has been satisfactory.

(3) The auditors of a licensed housing developer shall have a right of access at all times to the accounting and other records of the licensed housing developer and shall be

entitled to require such information and explanation as they desire for the purpose of audit from the officers of the licensed housing developer or from any other person who is in possession of the information or who could give the information or explanation.

(4) In addition to the duties and powers under this section, the auditors of a licensed housing developer may also exercise the powers and perform the duties conferred or imposed upon the Controller and Inspectors under section 10 relating to the investigation into the affairs of a licensed housing developer or his accounting or other records and must report to the Controller their findings.

#### PART IV INVESTIGATION AND ENFORCEMENT

##### **Investigation.**

**10.** (1) Either on his own volition or upon being directed by the Minister under subsection (2), the Controller or any officer authorised by the Controller may –

- (a) without the order of the Public Prosecutor exercise all or any of the special powers in relation to police investigations given by the Criminal Procedure Code [Act 593] in any seizable offence under this Enactment;
- (b) exercise the special powers in relation to police investigations given by the Criminal Procedure Code [Act 593] after obtaining an order to investigate from the Public Prosecutor in any non-seizable offence under this Enactment.

(1A) Any police officer may conduct an investigation under this Enactment in accordance with the Criminal Procedure Code [Act 593].

(2) The Minister may direct the Controller or an Inspector to make an investigation under subsection (1) —

- (a) if he has reason to believe that the housing developer in question is carrying on his business in a manner detrimental to his purchaser; or has assets insufficient to meet his liabilities or is contravening any of the provisions of this Enactment; or

- (b) if an application for such an investigation is made to him, and every such application shall be supported by not less than five purchasers and accompanied with such evidence and such security as the Minister may require for the purpose of satisfying himself that the application is made in good faith, and of paying the costs of such an investigation.

(3) *(Deleted)*

**Powers of entry, inspection, seizure and arrest.**

**10A.** (1) The Controller or any officer authorised by the Controller or any police officer may, without warrant –

- (a) arrest any person who he has reason to believe is about to commit or has committed an offence under this Enactment;
- (b) enter, search and inspect any premises, place or site which he has reason to believe that an offence has been committed;
- (c) inspect, make copies of, or take extracts from any book or other documents;
- (d) take possession of, and remove from the premises any property, book or other documents;
- (e) take photographs, video or audio recordings or make sketches of the premises or any other things on the premises, place or site which he has reason to believe an offence has been committed under the Enactment;
- (f) break open, examine, and search any article container or receptacle; or
- (g) stop, detain or search any vehicle or conveyance which he has reason to believe has been used in the commission of an offence under this Enactment.

(2) In effecting any entry, seizure and detention under subsection (1), the Controller or any other officer authorised by the Controller or any police officer may use such force as

may be reasonably necessary.

(3) A person arrested under subsection (1) shall be brought to a police station or be produced before a Magistrate to be dealt with as provided under the Criminal Procedure Code [Act 593].

**List of things seized and detained.**

**10B.** (1) The Controller or any officer authorised by the Controller or any police officer who seized and detained any thing or document under this Enactment shall prepare a list of all things seized and detained and forthwith sign the list.

(2) The Controller or any officer authorised by the Controller or any police officer shall request the licensed housing developer, his agent or servant from whom the things or documents has been seized and detained under subsection (1), to acknowledge the list.

(3) Except where the seizure and detention were made in the presence of the licensed housing developer, his agent or servant, as the case may be, the Controller or any officer authorised by the Controller or any police officer shall whenever possible post conspicuously a list of things and documents seized and detained at the premises, place or site.

**Requirement to provide translation.**

**10C.** (1) Where the Controller or any officer authorised by the Controller or any police officer finds, seizes, detains or take possession of any book or document in exercise of any power under this Enactment, and such book or document or any part of it is in a language other than the National Language or the English Language, may require such person who had the possession, custody or control thereof to furnish a translation in the National Language or English Language.

(2) Any person who made an inaccurate translation of any book or document under subsection (1) shall be guilty of an offence and on conviction shall be liable to a fine not less than one thousand ringgit and not exceeding ten thousand ringgit.

**Offences committed by body corporate.**

**10D.** (1) Where a person charged with an offence under this Enactment is a body corporate, every person who at the time of the commission of the offence is a director or officer of the body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such director or officer shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

(2) Any person who would be liable under this Enactment to any penalty for anything done or omitted if the thing had been done or omitted by him personally, he shall be liable to the same penalty if the thing had been done or omitted by his agent unless he proves that he took reasonable precautions to prevent the doing or omission of the thing.

**Non-liability of Government, Controller and officers.**

**10E.** (1) No suit shall lie against the Controller or any officer authorised by the Controller or any police officer in respect of anything done or omitted to be done by him in good faith and in the intended exercise of any power conferred or performance of the duty imposed by this Enactment.

(2) No suit shall lie against the Government, the Controller or any officer authorised by the Controller or any police officer for any damages caused to anything whatsoever seized and detained in the exercise of his powers and duties under this Enactment.

**Presumption and proof.**

**10F.** Where in a prosecution for any offence under this Enactment in so far as it may be necessary to establish the offence charged, it shall be presumed until contrary is proved that any drawing, sketch, plan, form, book, agreement or document is accurate for the purpose of this Enactment.

PART V  
POWERS OF MINISTER

**Powers of the Minister to give directions for the purpose of safeguarding interests of purchasers.**

11. (1) Where on his own volition a licensed housing developer informs the Controller or where as a result of an investigation made under section 10 or for any other reason the Controller is of the opinion that the licensed housing developer becomes unable to meet his obligation to his purchasers or is about to suspend his building operations or is carrying on his business in a manner detrimental to the interests of his purchasers, the Minister may without prejudice to the generality of the powers of the Minister to give directions under section 12 for the purpose of safeguarding the interests of the purchasers of the licensed housing developer —

- (a) direct the licensed housing developer in question to take such steps as he may consider necessary to rectify any matter or circumstances;
- (b) direct that a person be appointed or himself appoint a person to advise the licensed housing developer in the conduct of his business;
- (c) direct a company to assume control and carry on the business of the housing developer upon such terms and conditions as the Minister may determine;
- (ca) declare that the housing development has been abandoned;
- (d) direct that the licensed housing developer present a petition to the High Court for the winding up of his business; or
- (e) take such action as the Minister may consider necessary in the circumstances of the case for carrying into effect the provisions of this Enactment.

(1A) In giving his direction or decision under paragraph (1) (a), (b), (c) or (e), the Minister may specify that any cost and expense reasonably incurred by such person in carrying out such direction or decision of the Minister be paid from the Housing Development

Account or from the moneys due to the account.

(2) Every such direction of the Minister made under subsection (1) shall be binding on the licensed housing developer and the purchasers.

(3) Where a company has, in pursuance of a direction of the Minister under subsection (1) (c), assumed control of and carried on the business of a licensed housing developer, the following provisions shall apply —

- (a) the licensed housing developer in question shall submit his business to the control of the company and shall provide the company with such facilities as the Controller may consider necessary for the purpose of carrying on the business of the licensed housing developer;
- (b) the company shall take over and become in control of and continue to carry on the business of the licensed housing developer until such time as the Minister may in writing otherwise direct; and
- (c) every such assumption and cessation of control of the business of a licensed housing developer pursuant to a direction of the Minister made under subsection (1) (c) shall be published by the Controller in the *Gazette*.

**Powers of the Minister to give general directions.**

**12.** The Minister may give to a licensed housing developer such directions as he considers fit and proper for the purpose of ensuring compliance with this Enactment, and to protect the interests of purchasers, and any such direction shall be made in writing and shall be binding on the licensed housing developer to whom the direction is made.

**Statutory termination of sale and purchase agreement.**

**12A.** (1) Notwithstanding anything contained in any agreement, a licensed housing developer shall apply to the Minister for approval to terminate all the sale and purchase agreements entered into in respect of a housing development or any phase thereof which the licensed housing developer is engaged in, carries on or undertakes or causes to be undertaken if –

- (a) six months after the execution of the sale and purchase agreements, development of the housing accommodation in that housing development has not commenced; and
  - (b) at least seventy-five per cent of all the purchasers who have entered into the sale and purchase agreements have agreed with the licensed housing developer in writing to terminate the sale and purchase agreements.
- (2) Any application made under subsection (1) shall be supported by –
  - (a) the written consent of the licensed housing developer and of each of the purchaser who has agreed to terminate the sale and purchase agreements and such consent shall have been duly executed by the licensed housing developer and the purchaser, as the case may be, and witnessed by his solicitors or a Commissioner for Oaths; and
  - (b) such other documents or evidence as the Minister may require or as may be determined including such evidence which may satisfy the Minister that the licensed housing developer is financially capable of refunding to the purchasers and their financiers all the moneys paid by them to the licensed housing developer if the Minister approves such application.
- (3) For the purpose of this section, joint purchasers irrespective of any number in a sale and purchase agreement shall be considered as one purchaser.
- (4) Upon receipt of an application under subsection (1), the Minister may grant or refuse the application for approval.
- (5) In granting the approval under subsection (4) the Minister may impose such conditions as he may deem fit.
- (6) The decision of the Minister shall be final and shall not be questioned in any court and it shall be binding on the licensed housing developer and all the purchasers and their financiers and no injunction shall be granted to restrain any person from carrying out the decision of the Minister.
- (7) All the sale and purchase agreements in respect of the housing development

which is subject to an approval under subsection (4) including those of the remaining purchasers who have not agreed to the termination shall be deemed to have been duly terminated.

(8) The licensed housing developer shall within fourteen days from the date of receipt of the Minister's approval inform all the purchasers in writing of the Minister's approval.

(9) The licensed housing developer shall refund all moneys received by the licensed housing developer from the respective purchasers free of any interest within the period stated in the Minister's approval.

(10) Upon receipt of the refund under subsection (9), the purchasers shall immediately cause all encumbrances on the land to be removed and the cost and expenses for such removal shall be borne by and may be claimed as a civil debt from the licensed housing developer.

(11) Any person who fails to comply with any of the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not less than five thousand ringgit and not exceeding fifty thousand ringgit and to a further fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

PART VI  
POWERS OF CONTROLLER

**Revocation and suspension of a licence.**

**13.** If any licensed housing developer —

- (a) is carrying on his business, in the opinion of the Controller, in a manner detrimental to the interest of the purchasers or to any member of the public;
- (b) has insufficient assets to cover his liabilities;
- (c) is contravening any of the provisions of this Enactment; or

(d) has ceased to carry on housing development in the State,

the Controller may, subject to the provisions of section 14 relating to the giving of opportunity of being heard, revoke the licence issued to the licensed housing developer or suspend it for such period as the Controller may determine.

**Opportunity of being heard to be afforded before revocation or suspension of a licence and in certain other cases.**

14. Before revoking or suspending a licence under section 13 or before varying, cancelling or altering any conditions imposed on a licence or before imposing thereon any new or additional conditions under section 5 (5), the Controller shall notify the housing developer who is affected by the action proposed to be taken by the Controller of the aforesaid proposed action and shall give the licensed housing developer an opportunity to submit reasons or an explanation why the aforesaid proposed action should not be carried out.

**Individual not eligible to take part in management of the business of a licensed housing developer.**

15. (1) Without prejudice to anything contained in any written law relating to companies, co-operative societies, societies and partnerships, any person who acts or holds office of a director, manager or secretary of a licensed housing developer or a similar office or position shall cease to hold that office or position —

(a) if he becomes bankrupt or suspends payment or compounds with his creditors; or

(b) if he is convicted of an offence involving dishonesty or fraud.

(2) No person who has been a director of, or been directly concerned in the management of, the business of a licensed housing developer which has been wound up by a court shall, without the approval in writing of the Minister act or continue to act as a director of, or be directly concerned in, the management of the business of any licensed housing developer.

**Refund or forfeiture of deposit under section 6.**

**16.** The Controller shall refund to the licensed housing developer the deposit made under paragraph (b) of section 6 (1) at the expiry of the licence issued under section 5 or on the request of the licensed housing developer, earlier, if the Controller is satisfied that there is no housing development engaged in, carried on or undertaken by the licensed housing developer which remains to be completed and that the licensed housing developer does not intend to engage in, carry on or undertake any housing development for the remaining period of the licence:

Provided that the Controller shall not refund such deposit on the expiry of the licence if any housing development engaged in, carried on or undertaken by the licensed housing developer remains to be completed, in which event such deposit shall be deemed to be the deposit for the purpose of a new licence applied for by the licensed housing developer or within one month of the expiry of the licence the housing developer has not made an application for a new licence, the Controller shall forfeit such deposit.

**Refund or appropriation of deposit under section 5.**

**17.** (1) Subject to subsection (2), (3) and (4), the Controller shall refund to the licensed housing developer the deposit made under paragraph (b) of section 5 (1) on completion of the housing development in respect of which such deposit was made.

(2) The Minister may, upon a certificate by the Controller and on being satisfied thereon, without prejudice to any other or any further remedy or penalty that the licensed housing developer may incur or be liable for, determine that any deposit made under paragraph (b) of section 5(1) or any part thereof be applied for all or any of the following purposes —

- (a) the remuneration of any auditor or auditors appointed by the Minister under section 9 (1); and
- (b) any expenses incurred by any person other than the licensed housing developer in complying with or arising from or consequential upon any direction given by the Minister under section 11 (1).

(2A) Notwithstanding subsection (2) or any other provision in this Enactment, the

Minister may, upon a certificate by the Controller and on being satisfied thereon, without prejudice to any other or any further remedy or penalty that a licensed housing developer may incur or be liable for, determine that any deposit made under paragraph (b) of section 5 (1) or any part thereof be forfeited and be paid into the fund as specified by the Minister.

(3) For the purposes of this section and preceding section, “completion of the housing development” shall mean the production of the Certificate of Fitness for Occupation of the appropriate authority in respect of and the delivery of vacant possession to the purchaser or purchasers of all units of housing accommodation comprised in the housing development and any grammatical variation thereof shall be construed as having reference to such meaning.

(4) Notwithstanding subsections (1) and (3), the Controller may in his discretion retain such sum out of the deposit stipulated under paragraph (b) of section 5 (1) which is deemed sufficient by the Controller to meet the obligations of the licensed housing developer under the terms of the sale and purchase agreement including but not limited to the procurement of the issue document of title to the purchasers’ respective land, lot or parcel.

**Right of appeal to the Minister by an aggrieved licensed housing developer against the decision of the Controller.**

18. An applicant applying under section 5 (3) or a licensed housing developer, as the case may be, who is aggrieved by the action or decision of the Controller —

- (a) in refusing to grant a licence to him under section 5;
- (b) in varying, altering or cancelling any conditions of his licence or imposing thereon any new or additional conditions under section 5 (5);
- (c) in refusing to give approval to an arrangement or agreement proposed to be entered into by a licensed housing developer under sections 8, or in approving the same but subject to conditions being imposed thereon;
- (d) in revoking or suspending his licence under section 13; or
- (e) in forfeiting any deposit made under paragraph (b) of section 6 (1) in accordance with section 16,

may, within fourteen days after having been notified of the action or decision of the Controller appeal against that action or decision to the Minister; and the decision of the Minister made thereon shall be final and shall not be questioned in any court.

**Indemnity and protection against suit and proceedings.**

**19.** No action shall lie against the Government, the Minister, the Controller, Inspector or against any officer of the Government or any person acting under the direction of the Minister, the Controller or Inspector for damages in any civil court for anything *bona fide* done, ordered or omitted to be done pursuant to this Enactment; and all actions which may lawfully be brought in respect of anything done, ordered or omitted to be done pursuant to this Enactment shall be instituted within six months from the date of the act or omission complained of, and not afterwards.

PART VII

TRIBUNAL FOR HOUSING PURCHASER CLAIMS

**Establishment of Tribunal for Housing Purchaser Claims.**

**19A.** A tribunal to be known as the "Tribunal for Housing Purchaser Claims" is established.

**Membership of Tribunal.**

**19B. (1)** The Tribunal shall consist of the following members:

- (a) a Chairman to be appointed by the Minister from amongst members of the State Legal Service or ex-officer who has served at least twelve years in the State Legal Service;
- (b) a Deputy Chairman to be appointed by the Minister from amongst members of the State Legal Service or ex-officer who has served at least twelve years with the State Legal Service or advocates and solicitors of the High Court in Sabah and Sarawak who have practised in Sabah for at least twelve years; and
- (c) not more than three other members to be appointed by the Minister if

necessary from amongst members of the State Legal Service or ex-officer who has served at least ten years with the State Legal Service or advocates and solicitors of the High Court in Sabah and Sarawak who have practised in Sabah for at least ten years or person who is a member of any registered professional bodies in Malaysia who has experience in the housing industry for at least ten years.

(2) If the appointment under paragraph (1) (a) is made from ex-officer, he shall hold office for a term not exceeding three years and shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

(3) If the appointment under paragraph (1) (b) is made from ex-officer or advocates and solicitors of the High Court in Sabah and Sarawak, he shall hold office for a term not exceeding three years, and shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

(4) If the appointment under paragraph (1) (c) is made from ex-officer or advocates and solicitors of the High Court in Sabah and Sarawak or person who is a member of any registered professional bodies, he shall hold office for a term not exceeding three years and shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

(5) No member who has attained the age of sixty-six years shall sit as a member of the Tribunal.

(6) Any advocate and solicitor or any member of any registered professional bodies who has been appointed as member of the Tribunal shall cease his practice during the term of his appointment.

**Temporary exercise of functions of Chairman.**

**19C.** Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

**Vacation of office.**

**19D.** The office of a member of the Tribunal shall become vacant –

- (a) upon the death of the member;
- (b) upon the member resigning from such office by giving three months' written notice to the Minister;
- (c) upon expiration of his term of office; or
- (d) upon the member of the State Legal Service being transferred back to the State Attorney-General Chambers or upon him reaching the age of compulsory retirement.

**Revocation of member's appointment.**

**19E.** The Minister may revoke the appointment of a member of the Tribunal appointed under section 19B (1) –

- (a) if in his opinion the conduct, whether in connection with his duties as a member of the Tribunal or otherwise, shall bring discredit to the Tribunal or the member has become incapable of carrying out his duties;
- (b) if the member has been charged in Court for an offence in respect of –
  - (i) an offence involving fraud, dishonesty or moral turpitude;
  - (ii) an offence under a law relating to corruption;
  - (iii) an offence under this Enactment; or
  - (iv) any other registrable offences under the Registration of Criminals and Undesirable persons Act 1969 [Act 7].
- (c) if he is adjudicated a bankrupt;
- (d) if he has been found or declared to be of unsound mind;

- (e) if he has otherwise become incapable of managing his affairs; or
- (f) if he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

**Resignation.**

**19F.** Except for a member appointed from the State Legal Service, any member may at any time resign his office by giving three months' written notice to the Minister.

**Filling of vacancy.**

**19G.** Where a member ceases to be a member of the Tribunal, the Minister may appoint another person to fill the vacancy.

**Remuneration.**

**19H.** The members of the Tribunal appointed shall be paid such fixed allowances and other allowances as the Minister may determine.

**Secretary to Tribunal and other officers.**

**19I.** (1) There shall be a Secretary to the Tribunal and such number of officers from the State Public Service to be appointed for carrying out the functions of the Tribunal.

- (2) The Chairman shall have general control of the officers of the Tribunal.

**Sitting of Tribunal.**

**19J.** (1) The jurisdiction of the Tribunal shall be exercised by any of the following persons sitting alone –

- (a) the Chairman;
- (b) the Deputy Chairman; or
- (c) any member as may be determined by the Chairman.

(2) The Tribunal shall where reasonably possible conduct the hearing in one continuous sitting until completion at such time and place convenient to the Tribunal taking into consideration the nature of complaint and administrative convenient.

(3) A member of the Tribunal having an interest in any matter before it, shall as soon as the member is aware of his interest, disclose the fact and nature thereof to the Chairman and shall take no part or further part in the proceedings of the Tribunal and in such circumstances, the Chairman may appoint a replacement member.

(4) Every disclosure of interest shall be recorded.

(5) If a member of the Tribunal presiding over any proceedings in respect of a claim, dies or becomes incapacitated, or is for any other reasons unable to complete or dispose of the proceedings, the claim shall be heard afresh by another member of the Tribunal, unless the parties agreed that the proceedings be continued by another member of the Tribunal.

**Procedure of Tribunal.**

**19K.** Prior to the Minister making rules to prescribe the procedure of the Tribunal, the following procedures shall apply

- (a) a party who intends to file a claim (hereinafter called the “claimant”) with the Tribunal shall give a notice of the claim to the other party (hereinafter called the “respondent”) in a prescribed form issued by the Tribunal;
- (b) the claimant upon filing a notice of claim with the Tribunal shall state the grounds of his claim and attach therewith all documents and evidence in support thereof;
- (c) the Tribunal may direct the claimant to submit within two weeks all documents and correspondences to substantiate the claim;
- (d) the Tribunal may direct the claimant to give written statement to substantiate his claim and may direct a copy thereof to be extended to the respondent;
- (e) the Tribunal may allow amendments to be made to the grounds of the claim or statement before the hearing and a copy thereof shall be extended to the

- respondent;
- (f) within a period of time to be determined by the Tribunal, the respondent shall communicate his statement of defence in writing to the claimant and the Tribunal;
  - (g) the respondent may enclose together with the statement of defence documents on which he relies for his defence;
  - (h) the respondent may make a counter-claim arising out of a sale and purchase agreement;
  - (i) the Tribunal shall fix a hearing date and inform all parties concerned with necessary directions;
  - (j) the hearing may be by way of written statement which may contain facts and law or orally or a combination thereof;
  - (k) the Tribunal may allow expert witness to be called and such cost shall be borne by the party who called the witness;
  - (l) the Tribunal may hear and determine the claim before it, notwithstanding the absence of any party to the proceedings, if it is proved to the satisfaction of the Tribunal that a notice of the hearing has been duly served on the absent party;
  - (m) the law of evidence shall not be applicable in a hearing before the Tribunal;
  - (n) the Tribunal shall give its reasons in writing for its award within a period of two months after completion of the hearing;
  - (o) no costs shall be awarded to either parties;
  - (p) the Tribunal may award interest not exceeding eight percentum per annum;
  - (q) before the Tribunal makes an award, it may refer any question of law of public importance to the High Court which has not been previously decided by any court and such question of law shall be accompanied by a summary of facts of the case and the Tribunal shall give its legal opinion regarding the question of

- law;
- (r) the decision of the High Court shall be binding on the parties and the Tribunal shall make its award in conformity with such decision;
  - (s) one copy of the reference shall be served on the State Attorney-General and he may assist the Court in the reference;
  - (t) any person who appears as a witness during a hearing is required to take an oath before the Tribunal;
  - (u) the Tribunal may generally direct and do all such things as may be necessary or expedient for the expeditious determination of the hearing;
  - (v) the hearing of the Tribunal shall be open to the public;
  - (w) the Tribunal may, at the conclusion of the proceedings, order that any document, record, material or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

**Fee for filing a claim.**

**19L.** The Minister may prescribe a fee for the purpose of filing a claim, pending which, the fee shall be fifty ringgit.

**Scope of claim.**

**19M.** A purchaser may lodge a claim with the Tribunal for any loss suffered or any matter concerning his interests under a sale and purchase agreement.

**Jurisdiction of Tribunal.**

**19N.** (1) Subject to section 19P, the Tribunal shall have jurisdiction to hear a claim lodged under section 19M where the amount in dispute or the value of the subject matter does not exceed the amount to be determined by the Minister, pending which, the amount shall be forty thousand ringgit.

(2) Any counter-claim shall not exceed the amount to be determined by the Minister, pending which, the amount shall be forty thousand ringgit, unless agreed by the parties subject to section 19Q.

(3) A claim before the Tribunal shall be filed at anytime before the certificate of fitness for occupation being issued by the relevant authority or not later than twelve months from the date of the issuance of the certificate of fitness for occupation for the housing accommodation or before the expiry date of the defect liability period as set out in the sale and purchase agreement.

(4) Claims may not be split, nor more than one claim be brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal.

(5) No claim shall be entertained by the Tribunal if there is already a suit filed in any civil court relating to the same issue in dispute.

(6) The Tribunal has no jurisdiction to award a prohibitory, *mandamus*, declaration, specific performance or an injunction order.

(7) No proceedings of the Tribunal or award shall be set aside or quashed for want of form.

(8) The Tribunal shall have jurisdiction to hear a claim which arose prior to the setting up of the Tribunal subject to section 19M of this Enactment.

(9) (a) the Tribunal may during the proceedings of any claim where necessary, give notice to any financial institution or any other third party affected by the claim to be a party to the proceedings.

(b) for the purpose of paragraph (a) the Tribunal shall extend a copy of the claim, defence and a summary of the facts to the relevant party;

(c) upon receipt of the document in paragraph (b), the financial institution or third party shall within two weeks file their explanation or defence with the Tribunal; and

- (d) for the purpose of this section, the Tribunal may make an award against the financial institution or the third party.

**Mediation.**

**190.** The Minister may prescribe a mediation procedure to assist the Tribunal when conducting mediation, pending which, the following procedure shall apply –

- (a) the Tribunal may encourage parties to a claim to enter into a mediation process before a hearing, by having an informal preliminary conference with the parties either separately or jointly;
- (b) the parties shall be informed that the mediation shall be on a “without prejudice” basis and the parties shall decide on the issues and reach their own settlement;
- (c) a Tribunal member who acts as a mediator shall assist the parties at building a consensus and agreement voluntarily, as to reach a mutual settlement;
- (d) a mediator shall not act as a judge as to how the parties should resolve their dispute or give advice or make recommendation, and shall maintain neutrality throughout the mediation process;
- (e) a mediation process may be conducted separately or jointly and it is encouraged to have a joint session –
  - (i) to assist in identifying what caused the misunderstanding as to cause the dispute by asking the right questions and clarifying issues to draw the real underlying problem;
  - (ii) to help and understand the other party's position and needs;
  - (iii) to assist the parties to identify and explore options for settlement by asking the right questions;
- (f) upon the misunderstanding and underlying problem being identified, the mediator shall inform each party of the other party's needs, point of views, concerns or problems;

- (g) upon a consensus being reached, the mediator may assist the parties to clearly summarize the agreement in writing or may prepare a summary of the agreement for both parties signature and the Tribunal shall then record the terms of the agreement as an award;
- (h) any outstanding issue which has not been agreed upon during mediation, may be brought for hearing before the Tribunal;
- (i) a Tribunal who acts as a mediator may continue to sit and hear the claim;
- (j) for the purpose of mediation, no evidence shall be recorded by the Tribunal and any matter raised during the mediation shall not be used against the parties in the proceedings of the claim;
- (k) a mediator or any party may terminate the mediation at any time after discussion and the Tribunal may proceed to hear the claim.

**Limitation of jurisdiction.**

**19P.** (1) Except as expressly provided under this Enactment, the Tribunal shall have no jurisdiction in respect of any claim –

- (a) for the recovery of land, or any estate or interest in land;
- (b) in which there is a dispute concerning –
  - (i) the entitlement of any person under a will or settlement, or on intestacy (including partial intestacy);
  - (ii) goodwill;
  - (iii) any chose in action; or
  - (iv) any trade secret or other intellectual property right.

(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from a sale and purchase agreement entered into between the purchaser and the licensed housing developer.

(3) Notwithstanding subsection (2), no claim shall be affected or defeated on the ground that no sale and purchase agreement has been entered into between the purchaser and the licensed housing developer at the time when the cause of action accrues if there exists a previous dealing between the purchaser and the licensed housing developer in respect of the acquisition of the housing accommodation.

(4) The Tribunal has no jurisdiction to hear in respect of any claim arising from personal injury or death.

**Extension of jurisdiction by agreement.**

**19Q.** Notwithstanding section 19N (1), if agreed by both parties, the Tribunal may hear a claim not exceeding eighty thousand ringgit.

**Decision of Tribunal to be final.**

**19R.** (1) Every award made by the Tribunal shall be final.

(2) An award of the Tribunal shall be registered by the Tribunal with a Magistrate Court and shall be enforced as though it is a decision of a Court having jurisdiction in a place in which the award relates or in a place where the award was made.

(3) The Magistrate Court upon receipt of the award from the Tribunal shall cause the award to be recorded in the court's record.

**Criminal penalty for failure to comply.**

**19S.** (1) Any person who fails to comply with an award made by the Tribunal shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

(3) Prosecutions in respect of any offence committed under this section may be

conducted by any public officer authorised in writing in that behalf by the Public Prosecutor.

**Act or omission done in good faith.**

**19T.** No action or suit shall be instituted or maintained in any court against –

- (a) the Tribunal;
- (b) a member of the Tribunal; or
- (c) a person authorised to act or on behalf of the Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Enactment.

PART VIII  
MISCELLANEOUS

**Offences relating to a licence under section 5.**

**20.** Any housing developer who —

- (a) in contravention of section 5 (1) engages in, carries on, or undertakes housing development without having been duly licensed under that section;
- (b) in contravention of section 5 (2) assumes or uses in relation to his business or any part of his business the words “housing developer” or any of the derivatives or any other word or words indicating the carrying on of the business of housing development: or
- (c) fails to comply with any of the conditions imposed on the licence granted under sections 5,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

**Offences by a housing developer.**

- 21.** Any housing developer who —
- (a) in contravention of any of the provisions of section 7 fails to perform any of the duties imposed by that section;
  - (aa) enters into an arrangement or agreement in contravention of section 8 or fails to comply with any condition imposed pursuant to subsection (2) of that section;
  - (b) *(Deleted)*];
  - (c) after the Minister has, pursuant to section 11(1) (c), directed a company to assume control of and carry on the business of the housing developer, in contravention of section 11(3) fails to submit his business to the control of that company or fails to provide the company with such facilities as the Controller may consider necessary for the purpose of carrying on the business of the licensed housing developer;
  - (cc) fails to comply with any direction given by the Minister under paragraph (a), (b), (d), or (e) of section 11(1); or
  - (d) in contravention of section 12, fails to comply with any direction given by the Minister under that section,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and shall also be liable to a further fine of five hundred ringgit for every day during which the offence is continued after the conviction.

**Withdrawal of money not related to the implementation of the housing development.**

**21A.** Any licensed housing developer or any other parties involved in the housing development who withdraw or cause to withdraw any money from the Housing Development Account for purposes not related to the implementation of the housing development shall be guilty of an offence and shall on conviction be liable to a fine not less than fifty thousand ringgit and not exceeding five hundred thousand ringgit or to imprisonment for a term not

exceeding three years or to both.

**Offences by a director of or a person connected with the business of a licensed housing developer in certain cases.**

**22.** Any person who —

- (a) in contravention of section 15 (1) continues to act as or hold office of a director, manager or secretary of a licensed housing developer or any similar office or position in the employ of the licensed housing developer notwithstanding that he has become bankrupt or suspended payment to or compounded with his creditors or is convicted of an offence involving fraud or dishonesty; or
- (b) in contravention of section 15 (2) acts as or holds or continues to act as or hold office of a director or is directly concerned in the management of the business of any licensed housing developer without the approval in writing of the Minister after the business of that licensed housing developer has been wound up by a court,

shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which shall not be less than twelve months but which shall not exceed three years and shall also be liable to a fine not exceeding fifty thousand ringgit.

**Penalty for offences not otherwise provided for.**

**23.** Any housing developer guilty of an offence against this Enactment for which no penalty is expressly provided shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Liability of director, manager and other officials for offences committed by companies and liability of a person for acts done by others.**

**24.** (1) Where any offence against any provision of this Enactment has been committed by a housing developer, any person who at the time of the commission of the offence was a director, manager or secretary or holds any similar office or position or was an agent, clerk or servant of the housing developer shall be deemed to be guilty of that offence, unless he

proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances and shall on conviction be liable to imprisonment for a term which shall not be less than twelve months but which shall not exceed three years and shall also be liable to a fine not exceeding fifty thousand ringgit.

(2) Any person liable under this Enactment to any punishment or penalty for any act or omission shall be liable to the same punishment or penalty for any such act or omission by

—

- (a) his partner;
- (b) his agent acting on his behalf;
- (c) his clerk or servant acting in the course of his employment; or
- (d) the clerk or servant of his partner or agent acting in the course of employment in circumstances that had the act or omission been committed by the partner or agent the aforesaid person would have been liable under this subsection:

Provided that nothing herein shall relieve the partner, agent, clerk, or servant or the clerk or servant of that partner or agent from liability to prosecution.

**Prosecution.**

**25.** Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code [Act 593] may conduct prosecution for offences under this Enactment or the rules made thereunder.

**Power of the Minister to declare any licensed housing developer to be incompetent.**

**25A.** Any licensed housing developer who contravened any of the provisions of this Enactment shall be deemed to be an incompetent developer and shall not be allowed to carry out any housing development until the Minister declares otherwise.

**Public servants and public officers.**

**25B.** The Controller, Deputy Controller, every Inspector or authorised officer and all members and officers of the Tribunal shall be deemed to be public servants or public officers for the purpose of the Penal Code [Act 574], Criminal procedure Code [Act 593] or any other written law.

**Application of Public Authorities Protection Act 1948.**

**25C.** The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the Minister, Controller, Deputy Controller, any Inspector or authorised officer, any member or officer of the Tribunal in respect of any act, neglect or default done or committed by him in such capacity.

**Compound.**

**25D.** (1) The Controller or any officer authorised by the Controller may, with the general or special approval of the Minister, compound any offence under this Enactment or rules made thereunder by making a written offer to such person to compound the offence upon payment to the Government of such amount not exceeding the maximum fine for that offence within such period as may be specified in the offer.

(2) Where the amount specified in the offer is not paid within the stipulated period, prosecution for the offence may be instituted at any time thereafter against the person.

(3) Where the amount specified in the offer is paid within the stipulated period, no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

**Powers to make rules.**

**26.** (1) Subject to this section, the Minister may make rules for the purpose of carrying into effect the provisions of this Enactment.

(2) In particular and without prejudice to the generality of the foregoing power, the rules may —

- (a) regulate the advertisements of a licensed housing developer;
- (b) regulate the use of names of housing estates developed by a licensed housing developer;
- (c) prescribe the form or forms of contracts which shall be used by a licensed housing developer, his agent, nominee or purchaser both as a condition of the grant of a licence under this Enactment or otherwise;
- (d) regulate payments (under whatever name these may be described) which may be made by a purchaser either before, during or after the construction of the house, flat or other accommodation for which that purchaser is required to make the payments, including the amount of the payments, the time when the payments become due and conditions that shall be fulfilled by a licensed housing developer before he may ask for the payments;
- (e) regulate and prohibit the conditions and terms of any contract between a licensed housing developer, his agent or nominee and his purchaser;
- (f) prescribed the fees which are payable under this Enactment;
- (g) prescribe the period within which the Controller shall decide whether to grant or refuse to grant a licence applied for under section 5;
- (gg) prescribe the monies which shall be paid into or withdrawn from the Housing Development Account and the conditions for such withdrawals;
- (h) prescribe that any act or omission in contravention of any of the rules shall be an offence and provide for the penalties therefor either by way of fine or imprisonment or both; and
- (i) provide for any matter which under this Enactment is required or permitted to be prescribed or which is necessary or expedient to be prescribed to give effect to this Enactment:

Provided that any fine so provided shall not exceed five thousand ringgit and a term of imprisonment so provided shall not exceed three years, and in addition thereto may also

provide for the cancellation and suspension of a licence issued under this Enactment.

(3) A copy of all rules made under this section shall be published in the *Gazette* and laid before the Legislative Assembly as soon as possible after they have been made.

SCHEDULE  
(Section 5 (3))

| (1)              | (2)   | (3)   |
|------------------|---|---|
| <i>Applicant</i> | <i>Documents to be submitted</i>  | <i>By whom document to be verified</i>  |
| Person ...       | 1. A copy of the latest audited balance sheet, if any, relating to all housing developments undertaken by that person.  | That person himself.  |
| Body of persons  | 1. A copy of an agreement between or amongst persons forming that body.<br>2. A copy of the latest audited balance sheet, if any, relating to all housing developments undertaken by that body of person. | Any of the persons forming that body.   |
| Company ....     | 1. A copy of memorandum of association.<br>2. A copy of articles of association.<br>3. A copy of the latest audited balance sheet.  | A director, managing director, general manager, secretary or any senior officer of the company. |

- |              |   |                         |
|--------------|---|-------------------------|
| Firm .....   | 1. A copy of the partnership agreement.           | A partner.              |
|              | 2. A copy of the latest audited balance sheet.    |                         |
| Society .... | 1. A copy of the rules or by-laws of the society. | President or secretary. |
|              | 2. A copy of the latest audited balance sheet.    |                         |

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