

A BILL

i n t i t u l e d

An Act to amend the Housing Development (Control and Licensing) Act 1966.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Housing Development (Control and Licensing) (Amendment) Act 2006.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of long title

2. The Housing Development (Control and Licensing) Act 1966 [*Act 118*], which is referred to as the “principal Act” in this Act, is amended in the long title by inserting after the words “Peninsular Malaysia” the words “, the protection of the interest of purchasers”.

Amendment of section 2

3. Section 2 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) The Minister may by order published in the *Gazette* exempt any housing developer or housing

accommodation from any or all of the provisions of this Act and such exemption may be granted for such duration as may be specified in the order, and may be made subject to such limitations, restrictions or conditions as the Minister may specify in the order.”; and

(b) by inserting after subsection (2) the following subsection:

“(2A) The Minister may at any time by order published in the *Gazette*, revoke any exemption granted by him under subsection (2).”.

Amendment of section 3

4. Section 3 of the principal Act is amended—

(a) by substituting for the definition of “certificate of fitness for occupation” the following definition:

‘ “certificate of completion and compliance” means the certificate of completion and compliance given or granted under the Street, Drainage and Building Act 1974 [*Act 133*] and any by-laws made under that Act certifying that the housing accommodation has been completed and is safe and fit for occupation but does not include partial certificate of completion and compliance;’;

(b) by substituting for the definition of “housing accommodation” the following definition:

‘ “housing accommodation” includes any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises and such other type of accommodation as may be prescribed by the Minister from time to time to be a housing accommodation pursuant to section 3A;’; and

- (c) by substituting for the definition of “housing development” the following definition:

‘ “housing development” means to develop or construct or cause to be constructed in any manner whatsoever more than four units of housing accommodation and includes the collection of moneys 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 lots of land or building lots with the view of constructing more than four units of housing accommodation;’.

New section 3A

5. The principal Act is amended by inserting after section 3 the following section:

“Powers of the Minister to determine housing accommodation

3A. (1) The Minister may, from time to time, by order published in the *Gazette*, prescribe any type of accommodation to be a housing accommodation.

(2) In the event of any doubt as to whether a housing accommodation falls within the meaning of this Act, the Minister’s decision shall be final and shall not be questioned in any court.”.

Amendment of section 7

6. Section 7 of the principal Act is amended—

(a) in paragraph (b), by inserting after the words “branch office of the licensed housing developer” the words “and at any other place where a sale of housing accommodation is conducted,”;

(b) by substituting for paragraph (f) the following paragraph:

“(f) not later than the 21st day of January and the 21st day of July of each year or at such frequency as may be determined by the Controller from time to time or upon the request of the Controller, send to the Controller a correct and complete statement in writing made on oath or affirmation, 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 housing developer is engaged in, carries on or undertakes or causes to be undertaken until certificate of completion and compliance have been issued for all the housing accommodation in that housing development;”;

(c) in paragraph (g), by substituting for the words “certificate of fitness for occupation” the words “certificate of completion and compliance”;

(d) by substituting for paragraph (h) the following paragraph:

“(h) undertake the following—

(i) within twenty-one days from the date of receipt by the housing developer of the certificate of completion and compliance, submit such certificate to the Controller; and

(ii) within twenty-one days after the date of handing over of vacant possession to the first purchaser of the housing accommodation in the housing development, inform the Controller in writing of the handing over;”;

(e) by substituting for paragraph (i) the following paragraph:

“(i) inform the Controller of any refusal in the issuance of certificate of completion and compliance;”;

(f) in paragraph (j), by substituting for the words “certificates of fitness for occupation” the words “certificate of completion and compliance”; and

- (g) in paragraph (k), by inserting after the words “and the transfer of such titles to the purchasers” the words “at such frequency as may be determined by the Controller beginning from the date of the handing over of vacant possession to the first purchaser of the housing accommodation in the housing development until separate or strata titles for all the housing accommodation have been issued”.

Amendment of section 7A

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

- (a) in subsection (9), by substituting for the words “certificates of fitness for occupation” the words “certificate of completion and compliance”; and
- (b) in subsection (10), by substituting for the words “fifty thousand” the words “two hundred and fifty thousand”.

New section 7c

8. The principal Act is amended by inserting after section 7B the following section:

“Freezing of the Housing Development Account

7c. (1) If the Controller has reason to believe that a licensed housing developer is carrying on his business in a manner detrimental to the interest of the purchasers or is contravening any of the provision of this Act, the Controller may in writing order a freeze on the Housing Development Account and direct the bank or finance company, as the case may be, not to part with, deal in or otherwise permit any withdrawal of any moneys from the Housing Development Account until the order is revoked or varied or unless in accordance with any conditions as may be imposed by the Controller at his absolute discretion from time to time during the currency of the order.

(2) No bank or finance company, or director, officer or employee of the bank or finance company, as the case may be, shall be subject to any claim or demand by or liability

to any person in respect of anything done or omitted to be done in good faith in pursuance of or execution or intended execution of or in connection with the execution or intended execution of an order of the Controller under subsection (1).

(3) Any person who fails to comply with an order of the Controller under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand ringgit.”.

Amendment of section 8A

9. Subsection 8A(1) of the principal Act is amended—

(a) by inserting after the words “a licensed housing developer” the words “or the purchasers”;

(b) by substituting for paragraph (a) the following paragraph:

“(a) such application, duly made in accordance with subsection (2), is received by the Minister within six months after the execution of the first sale and purchase agreement in respect of that housing development or that phase of housing development;”

(c) by inserting after subsection (2) the following subsection:

“(2A) In the case of an application made by the purchasers under subsection (1), no licensed housing developer shall unreasonably withhold his written consent to the termination of the sale and purchase agreement.”; and

(d) in subsection (11), by substituting for the words “not exceeding fifty thousand ringgit” the words “which shall not be less than fifty thousand ringgit but which shall not exceed two hundred and fifty thousand ringgit”.

New section 10κ

10. The principal Act is amended by inserting after section 10J the following section:

“Penalty for obstruction and failure to provide translation

10κ. Any person who contravenes section 10c, subsection 10D(2) or section 10E shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than ten thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”.

Amendment of section 11

11. Paragraph 11(1)(c) of the principal Act is amended by deleting the words “with the concurrence of the Minister of Finance”.

Amendment of section 16c

12. Subsection 16c(1) of the principal Act is amended by substituting for paragraph (b) the following paragraph:

“(b) not less than five other members to be appointed by the Minister from amongst persons who are members of or who have held office in the Judicial and Legal Service or advocates and solicitors admitted and enrolled under the Legal Profession Act 1976 [*Act 166*], the Advocates Ordinance of Sabah [*Sabah Cap. 2*] or the Advocates Ordinance of Sarawak [*Sarawak Cap. 110*] and who have not less than seven years’ standing.”.

Amendment of section 16E

13. Section 16E of the principal Act is amended by substituting for paragraph (d) the following paragraph:

“(d) upon the member ceasing to be an advocate and solicitor under the Legal Profession Act 1976, the Advocates Ordinance of Sabah or the Advocates Ordinance of Sarawak.”.

Amendment of section 16M

14. Section 16M of the principal Act is amended by substituting for the word “twenty-five” the word “fifty”.

Amendment of section 16N

15. Section 16N of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the licensed housing developer which is brought by a homebuyer not later than twelve months from—

- (a) the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later;
- (b) the expiry date of the defects liability period as set out in the sale and purchase agreement; or
- (c) the date of termination of the sale and purchase agreement by either party and such termination occurred before the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later.”.

Amendment of section 16o

16. Subsection 16o(1) of the principal Act is amended by substituting for the word “twenty-five” the word “fifty”.

Amendment of section 16P

17. Subsection 16P(1) of the principal Act is amended by substituting for the word “twenty-five” the word “fifty”.

Amendment of section 16Y

18. Section 16Y of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) The Tribunal may at any time rectify or correct clerical mistake in any award or errors arising therein from any accidental slip or omission.”.

Amendment of section 16AC

19. Section 16AC of the principal Act is amended—

- (a) in paragraph (1)(b), by inserting after the words “Magistrate’s Court” the words “or a Sessions Court, as the case may be,”; and
- (b) by substituting for subsection (2) the following subsection:

“(2) For the purpose of paragraph (1)(b), in cases where the award made by the Tribunal has not been complied with, the Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Magistrate’s Court or the Sessions Court, as the case may be, having jurisdiction in the place to which the award relates or in the place where the award was made and the Court shall cause the copy to be recorded.”.

Amendment of section 16AD

20. Subsection 16AD(1) of the principal Act is amended—

- (a) by substituting for the word “therein” the words “by the Tribunal”; and
- (b) by substituting for the words “not exceeding five thousand ringgit” the words “which shall not be less than five thousand ringgit but which shall not exceed ten thousand ringgit”.

Amendment of section 18

21. Section 18 of the principal Act is amended by substituting for the word “fifty” the words “two hundred and fifty”.

Amendment of section 19

22. Section 19 of the principal Act is amended by substituting for the words “not exceeding fifty thousand ringgit” the words “which shall not be less than fifty thousand ringgit but which shall not exceed two hundred and fifty thousand ringgit”.

Amendment of section 20

23. Section 20 of the principal Act is amended by substituting for the words “not exceeding fifty thousand ringgit” the words “which shall not be less than fifty thousand ringgit but which shall not exceed two hundred and fifty thousand ringgit”.

Amendment of section 21

24. Section 21 of the principal Act is amended by substituting for the word “fifty” the words “two hundred and fifty”.

Amendment of section 22

25. Subsection 22(1) of the principal Act is amended by substituting for the words “not exceeding fifty thousand ringgit” the words “which shall not be less than fifty thousand ringgit but shall not exceed two hundred and fifty thousand ringgit”.

Amendment of section 22c

26. The principal Act is amended by substituting for section 22c the following section:

“**22c.** Notwithstanding anything contained in any written law or any rule of law, agreement, assignment or charge lawfully entered into between a homebuyer as defined in section 16A and his financier, a homebuyer shall be entitled on his own volition and in his own name to initiate, commence,

institute and maintain in any court or tribunal any action, suit or proceeding against a housing developer or any other person in respect of any matter arising out of the sale and purchase agreement entered into between the homebuyer and the housing developer provided the homebuyer's financier under a deed of absolute assignment is notified in writing either before or within fourteen days after the action, suit or proceeding against the housing developer has been filed before any court or tribunal.”.

New sections 22D, 22E and 22F

27. The principal Act is amended by inserting after section 22C the following sections:

“Assignment

22D. (1) For the avoidance of any doubt, an absolute assignment in writing, under the hand of the assignor of the housing accommodation, not purporting to be by way of charge only, of the proprietary right or interest in the housing accommodation and the legal chose in action in the sale and purchase agreement in respect of a housing accommodation, of which express notice in writing has been given to the housing developer by the assignor in the manner set out in subsection (2) shall be deemed to have been effectual in law to pass and transfer the proprietary right, interest, chose in action and all legal and other remedies for the same to the assignee, from the date of the receipt of such notice by the housing developer, and the concurrence of the housing developer shall not be required.

(2) Subject to subsection (8), every notice of assignment given to the housing developer pursuant to subsection (1) shall be delivered by the assignor or his solicitors to the housing developer at or after the completion of the sale and purchase between the assignor and the new purchaser of the housing accommodation and shall be accompanied by—

- (a) duly stamped sale and purchase agreement between the assignor and the new purchaser of the housing accommodation, if any;
- (b) duly executed deed of absolute assignment between the assignor and the new purchaser of the housing

accommodation together, if applicable, with a letter of undertaking from the new purchaser or the new purchaser's financier, as the case may be, to deliver the duly stamped deed of absolute assignment within fourteen days after the same has been stamped; and

- (c) full payment of all sums and outgoings due to the housing developer under the sale and purchase agreement.

(3) A housing developer shall keep and maintain an up-to-date, proper and accurate register of all purchasers of the housing accommodation until separate or strata titles for all the housing accommodation in the housing development have been issued by the appropriate authority and registered in the names of all the purchasers of the housing accommodation in that housing development.

(4) The housing developer shall provide all necessary and accurate confirmation of the records in the register whenever requested by a purchaser of the housing accommodation or his solicitors or his financier or his financier's solicitors subject to a payment of a fee not exceeding fifty ringgit or such amount as may be prescribed from time to time for meeting every request for confirmation in respect of all of the following:

- (a) full particulars of the housing accommodation;
- (b) the postal address of the housing accommodation;
- (c) the current purchaser of the housing accommodation;
- (d) the current chargee or assignee of the housing accommodation;
- (e) the total amount due to the developer under the sale and purchase agreement as at the date of the confirmation; and
- (f) such other matter as may be prescribed from time to time.

(5) Any person who requires any consent from a housing developer to any absolute assignment or assignment by way of charge in contravention of subsection (2) shall be guilty of

an offence and shall, on conviction, be liable to a fine which shall not be less than fifty thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(6) Any housing developer who—

- (a) requires any consent to any absolute assignment in contravention of subsection (1);
- (b) imposes any condition to any absolute assignment or assignment by way of charge including requiring the new purchaser to execute any additional agreement or make any other payment in contravention of this section;
- (c) fails to comply with subsection (3); or
- (d) fails or refuses to provide any confirmation in contravention of subsection (4) or imposes any condition or any other fee in respect of any matter arising from subsection (4),

shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than fifty thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(7) For the purpose of this section, references to “new purchaser” wherever appearing shall include a purchaser’s financier or any beneficiary under the estate of a deceased purchaser or an assignee under an absolute assignment whether with or without consideration.

(8) The expression “completion of the sale and purchase” in subsection (2) in relation to a deed of absolute assignment executed in favour of a purchaser’s financier or any beneficiary under the estate of a deceased purchaser or an assignee under an absolute assignment whether with or without consideration not in pursuance of a sale and purchase agreement shall mean the date of that deed of absolute assignment in which case paragraph (2)(a) shall not apply.

(9) This section shall apply to any housing accommodation where separate or strata title for the housing accommodation has not been issued by the appropriate authority.

Release of moneys by a stakeholder

22E. (1) Any stakeholder who releases any money to a housing developer or to any other person knowing that such an act is contrary to the provisions of the sale and purchase agreement shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than ten thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any person who knowingly and wilfully aids, abets, counsels, procures or commands the commission of an offence against subsection (1) shall be liable to be punished with the punishment provided for the offence.

Progress certification

22F. (1) Any architect or engineer, as the case may be, who issues a progress certification knowing that the works therein referred to have not been completed in accordance with the provisions of the sale and purchase agreement shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than ten thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any person who knowingly and willfully aids, abets, counsels, procures or commands the commission of an offence under subsection (1) shall be liable to be punished with the punishment provided for the offence.”.

Amendment of section 24

28. Subsection 24(2) of the principal Act is amended—

(a) in paragraph (d), by inserting after the word “construction” the words “or completion”;

- (b) in paragraph (g), by substituting for the words “five” and “three” the words “twenty” and “five” respectively;
- (c) in paragraph (i), by deleting the word “and” appearing at the end of that paragraph; and
- (d) by inserting after paragraph (i) the following paragraph:
 - “(ia) provide for an exemption from the application of this Act of such housing developer or housing accommodation as the Minister deems expedient and prescribe the form, limitations, restrictions or conditions of such exemption; and”.

Saving and transitional

29. (1) Any person who is undertaking any housing development erected on any land designated for or approved for commercial development and vacant possession of any housing accommodation in the housing development has not been handed over on the appointed date shall, at any time immediately after the appointed date but not later than six months after such date, apply for a licence under this Act.

(2) The provision of section 22c of the principal Act as amended by this Act shall be applicable to any agreement, assignment or charge lawfully entered into between a homebuyer and his financier before the appointed date.

EXPLANATORY STATEMENT

This Bill seeks to amend the Housing Development (Control and Licensing) Act 1966 (“Act 118”).

2. *Clause 1* seeks to provide for the short title and the date of the commencement of the proposed Act.

3. *Clause 2* seeks to amend the long title of Act 118 to state clearly and emphasize that the real purpose and intention of the Act includes the protection of the interest of purchasers.

4. *Clause 3* seeks to amend section 2 of Act 118 to explain the powers of exemption by the Minister and to introduce a new subsection (2A) to empower the Minister to revoke the exemption granted.

5. *Clause 4* seeks to amend certain terms used in the definitions in section 3 of Act 118 consequent upon the amendments proposed in this Bill. In particular, the term 'certificate of fitness for occupation' will be replaced by 'certificate of completion and compliance' so that it be in line with the amendments made to the Street, Drainage and Building Act 1974 [*Act 133*] and any by-laws made under that Act. The definition of 'housing accommodation' will include housing accommodation erected on any land designated or approved for commercial development.

6. *Clause 5* seeks to introduce a new section 3A into Act 118 to empower the Minister to determine by order any type of accommodation as housing accommodation and such decision shall be final and shall not be questioned in any court.

7. *Clause 6* seeks to amend section 7 of Act 118 to provide for additional duties of a licensed housing developer to ensure better protection of purchasers. References to 'certificate of fitness for occupation' are replaced by 'certificate of completion and compliance' for purposes of uniformity.

8. *Clause 7* seeks to amend section 7A of Act 118 to increase the minimum penalty under this section from a fine of fifty thousand ringgit to two hundred and fifty thousand ringgit.

9. *Clause 8* seeks to introduce a new section 7c into Act 118 to empower the Controller to order a freeze on the Housing Development Account in the event of a housing developer carrying on his business in a manner detrimental to the interest of the purchasers or in contravention of the Act.

10. *Clause 9* seeks to amend section 8A of Act 118 to confer the purchasers the right to terminate the sale and purchase agreement and to clarify the time period for such termination. This *clause* also seeks to set the minimum penalty at fifty thousand ringgit and to enhance the maximum penalty from fifty thousand ringgit to two hundred and fifty thousand ringgit.

11. *Clause 10* seeks to introduce a new section 10k into Act 118 to provide for penalty for obstruction and failure to provide translation to ensure compliance with section 10.

12. *Clause 11* seeks to amend section 11 of Act 118 to grant the Minister with the sole power of appointing a new company to assume control and carry on the business of the housing developer which is not meeting his obligations to the purchasers.

13. *Clause 12* seeks to amend section 16c of Act 118 to empower the Minister to appoint retired members of Judicial and Legal Services and advocates and solicitors from Sabah and Sarawak to become members of the Tribunal.

14. *Clause 13* seeks to amend section 16E of Act 118 consequent to the amendment proposed in section 16c.

15. *Clause 14* seeks to amend section 16M of Act 118 to increase the jurisdiction of the tribunal from twenty-five thousand ringgit to fifty thousand ringgit.

16. *Clause 15* seeks to amend section 16N of Act 118 to clarify the limitation of the tribunal's jurisdiction in respect of any claim and to set out when a claim can be brought by a homebuyer.
17. *Clause 16* seeks to amend section 16O of Act 118 consequent to the amendment proposed in section 16M.
18. *Clause 17* seeks to amend section 16P of Act 118 consequent to the amendment proposed in section 16M.
19. *Clause 18* seeks to amend section 16Y to provide the Tribunal with powers to rectify or correct clerical mistake in any award or errors arising therein from any accidental slip or omission.
20. *Clause 19* seeks to amend section 16AC of Act 118 consequent to the amendment proposed in section 16M and to limit the delivery of a copy of the Tribunal's award to the Magistrate's Court or Sessions Court only in cases of non-compliance.
21. *Clause 20* seeks to amend section 16AD of Act 118 to enable the Tribunal to determine the time period within which the award of the Tribunal is to be complied with and to provide for a minimum penalty of five thousand ringgit under the section as well as to increase the maximum penalty to ten thousand ringgit under the same section.
22. *Clauses 21, 22, 23, 24 and 25* seek to amend sections 18, 19, 20, 21 and 22 respectively of Act 118 to propose an increase in the penalties for various offences under Act 118.
23. *Clause 26* seeks to amend section 22c of Act 118. The new section 22c seeks to accord the right to initiate and maintain actions in cases of homebuyers with financiers against a housing developer, *etc.*, arising out of the sale and purchase agreement on condition homebuyer financiers be notified within specified time frame.
24. *Clause 27* seeks to introduce new sections 22D, 22E and 22F into Act 118 to deal with matters associated with the issue of assignment, release of money by a stakeholder and progress certification in the protection of the interest of the purchasers.
25. *Clause 28* seeks to amend section 24 of Act 118 to provide the Minister with powers to make regulations to exempt housing developer or housing accommodation from the application of the Act and to prescribe the form, limitations, restrictions or conditions of such exemption. This *clause* also seeks to increase the penalty for any act or omission in contravention of any regulations from a fine not exceeding five thousand ringgit to twenty thousand ringgit and a term of imprisonment from three to five years.
26. *Clause 29* contains saving and transitional provision as a consequence of the amendment to the definition of housing accommodation in section 3 of Act 118 as proposed in *clause 4* and pertaining to the amendment to section 22c of Act 118.

27. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2480]