

Housing Development (Control and Licensing) Act 1966

Housing Development (Control and Licensing) 1

LAWS OF MALAYSIA

REPRINT

Act 118

HOUSING DEVELOPMENT

(CONTROL AND LICENSING)

ACT 1966

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LAWS OF MALAYSIA

Act 118

HOUSING DEVELOPMENT (CONTROL AND

LICENSING) ACT 1966

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LAWS OF MALAYSIA

Act 118

HOUSING DEVELOPMENT (CONTROL AND

LICENSING) ACT 1966

An Act to provide for the control and licensing of the business of housing development in Peninsular Malaysia and for matters connected therewith.

[29 August 1969, P. U. (B) 212/1969]

PART I

PRELIMINARY

Short title and application

1. (1) This Act may be cited as the Housing Development (Control and Licensing) Act 1966.*

(2) (Omitted).

(3) This Act shall apply only in Peninsular Malaysia. Saving and exemption

2. (1) (Deleted by Act A1142). (2) The Minister may by notification published in the Gazette exempt any housing developer from any or all of the provisions of this Act.

(3) The provisions of this Act 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. * NOTE--Where, on or after 1 December 2002, a reference is made in any written law to the "Housing Developers (Control and Licensing) Act 1966", such reference shall be construed as a reference to the "Housing Development (Control and Licensing) Act 1966"?see section 5 Act A1142. 8 Laws of Malaysia ACT 118

Interpretation

3. In this Act, unless the context otherwise requires-- "bank" means any bank licensed 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 the certificate of fitness for occupation given or granted under the Street, Drainage and Building Act 1974 [Act 133] and any by-laws made under that Act;

"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 appointed under section 4;

"Deputy Controller" means the Deputy Controller of Housing appointed under section 4;

"finance company" means any finance company licensed under the Banking and Financial Institutions Act 1989;

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

"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 but does not include an accommodation erected on any land designated for or approved for commercial development;

"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;

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"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 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 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;

"Housing Development Account" means an account opened and maintained by a licensed housing developer pursuant to section 7A; "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 "building" in accordance with the National Land Code 1965 [Act 56 of 1965];

"Inspector" means an inspector appointed under section 4; "licence" means a licence granted under section 5;

"licensed housing developer" means any housing developer licensed under section 5 to engage in or carry on or undertake a housing development and includes the holder of any power of attorney of such housing developer duly created under the Powers of Attorney Act 1949 [Act 424];

"local authority" includes any person or body of persons appointed or authorized under any written law to exercise and perform the powers and duties which are conferred and imposed on a local authority under any written law;

"prescribed" means prescribed by regulations made under this Act, and where no

mode is mentioned means prescribed from time to time by order published in the Gazette;

"purchaser" means any person who purchases housing accommodation or who has any dealing with a licensed housing developer in respect of the acquisition of housing accommodation; "stakeholder" means any solicitor holding moneys as stakeholder for payment to a housing developer pursuant to sale and purchase agreements in respect of a housing development which the housing developer is engaged in, carries on or undertakes or causes to be undertaken;

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"Tribunal" means the Tribunal for Homebuyer Claims established under section 16B.

Appointment of Controller, Deputy Controllers, Inspectors and other officers and servants

4. (1) For the purpose of this Act, the Minister may appoint a Controller of Housing and such number of Deputy Controllers of Housing, Inspectors of Housing and other officers and servants as the Minister may deem fit from amongst members of the public service.

(2) The Controller and Deputy Controllers shall have and may exercise any of the powers conferred on an Inspector by or under this Act.

(3) The Controller may, in writing, delegate all or any of his powers or functions under this Act, except his power of delegation, to any Deputy Controller, Inspector, officer or servant appointed under subsection (1).

(4) Without prejudice to subsection (2), the Controller may, in writing, delegate any of his powers and functions under this Act in respect of the investigation of offences under this Act and the enforcement of this Act to any public officer or officer of a local authority.

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

PART II

LICENSING OF 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, undertaken or caused to be undertaken except by a housing developer in possession of a licence issued under this Act. Housing Development (Control and Licensing) 11

(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 indicating the carrying on of the business of housing development. (3) A housing developer who desires to engage in or carry out or undertake or cause to be undertaken a housing development shall 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 said Schedule. (4) Upon receiving an application for a licence under this section, the Controller may grant the licence applied for or refuse to grant such a licence; and in granting such a licence the Controller may impose thereon such conditions (including the period during which the licence shall be valid) as he may deem fit and proper. (4A) No application for a licence under this section shall be considered unless the prescribed fees have been paid to the Controller. (4B) There shall be charged and paid to the Controller on the grant of a licence and at such intervals after such grant during the period of validity of the licence such fees as may be prescribed. (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 condition, impose thereon such conditions as the Controller may deem fit for carrying out the provisions of this Act. 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 and makes a deposit with the Controller of not less than two 12 Laws of Malaysia ACT 118

hundred thousand ringgit in cash or in such other form as the Minister may determine, if the application is made by a company; or

(b) unless the applicant makes a deposit with the Controller of not less than two 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; (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;

(d) unless no one who is convicted of an offence involving fraud or dishonesty or who is an undischarged bankrupt is holding office as director, manager or secretary of the applicant or other similar office or position, if the application is made by a company, or is holding office as president, secretary or treasurer of the applicant or other similar office or position, if the application is made by a society; (e) unless, at the time the application is made, the applicant or any member or partner of the applicant, if the applicant is a body of persons or firm, or a director, manager or secretary of the applicant, if the applicant is a company, has not, due to a conviction for an offence under this Act, been sentenced to a fine exceeding ten thousand ringgit or to imprisonment (other than imprisonment in default of a fine not exceeding ten thousand ringgit);

(f) unless, at the time the application is made, a person who had been a director of or had been directly concerned in the management of the business of a licensed housing developer which has been wound up by a court is not a director or is not directly concerned in the management of the business of the applicant; and

(g) if the registration of the applicant's architect or engineer has been cancelled and has not been reinstated under the Architects Act 1967 [Act 117] or the Registration of Engineers Act 1967 [Act 138] at the time the application is made.

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

(2) The Minister may in his absolute discretion waive any or all of the conditions set out in paragraph (1) (a), (b) or (d) or substitute any or all of the said conditions for such other conditions as he may consider fit and proper.

Controller to keep deposit

6A. Subject to any direction of the Minister, the Controller shall keep the

deposit made under paragraphs 6(1)(a) and (b) until the expiry of the defect liability period of the housing development.

Controller may forfeit deposit

6B. 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 Act; or (d) has ceased to carry on housing development in Peninsular Malaysia,

the Controller may, after having given the licensed developer an opportunity to submit reasons within a specified time on why the deposit under paragraph 6(1)(a) or (b) should not be forfeited, forfeit the whole or a part of the deposit.

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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 documents submitted to the Controller under subsection 5(3) furnish to the Controller written particulars of the alterations;

(b) exhibit at all times in a conspicuous position 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 Peninsular Malaysia such

accounting and other records as will sufficiently 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, shall cause these records to be kept in such manner as to enable them to be conveniently and properly audited; (d) every year appoint an auditor in the manner required under section 9;

(e) within six months after the close of the financial year of the licensed housing developer in question send to the Controller and also publish in the Gazette 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;

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(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 housing developer is engaged in, carries on or undertakes or causes to be undertaken;

(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;

(h) inform the Controller of the handing over of vacant possession of the housing accommodation in the housing development to the purchasers and submit a certified true copy of his architect's certificate certifying that the construction of the housing accommodation has been duly completed and that water and electricity supplies are ready for connection to the housing accommodation;

(i) inform the Controller if the appropriate authority has refused to accept the submission of any document relating to the issuance of certificates of fitness for occupation and submit the refusal letter from the appropriate authority to the Controller;

(j) ensure that the development of the housing accommodation has been carried out in accordance with any requirements prescribed under any law regulating buildings and has exercised all such diligence as may be required for the issuance of certificates of fitness for occupation and for the issuance and transfer of the titles to the housing accommodation to the purchasers; and

(k) inform the Controller of the progress in the issuance of separate or strata titles for the housing accommodation and the transfer of such titles to the purchasers. Licensed housing developer to open and maintain Housing Development Account

7A. (1) Subject to subsection (9), every licensed housing developer shall open and maintain a Housing Development Account with a bank or finance company for each housing development undertaken by the licensed housing developer.

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(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 housing accommodation in the housing development and any other sum of money which are required by regulations made under this Act 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 authorized by regulations made under this Act.

(5) Subject to paragraph (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 an 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 event referred to in subsection (5)--

(a) the moneys in the Housing Development Account and moneys held by the stakeholder shall vest in the official receiver, trustee in bankruptcy or liquidator as the case may be, to be applied for all or any of the purposes for which moneys in the Housing Development Account and moneys held by the stakeholder are authorized by regulations made under this Act to be withdrawn; and

(b) any moneys remaining in the Housing Development Account and 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 Housing Development (Control and Licensing) 17

the sale and purchase agreements in respect of the housing development have been fully discharged and fulfilled, shall be held by the official receiver, trustee in bankruptcy or liquidator, as the case may be, as money belonging to the licensed housing developer to be applied in accordance with the law relating to bankruptcy of or the winding-up of a company.

(7) Notwithstanding any other written law to the contrary, all moneys in the Housing Development Account and 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 Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983, the Minister may, if he thinks necessary, appoint an approved company auditor to investigate the books, accounts and transactions of a Housing Development Account and the licensed housing developer shall pay all expenses incurred hereto.

(9) This section shall not apply to any housing development carried on by a licensed housing developer where all the housing accommodation in the housing development will not be offered for sale and purchase before the completion of the housing development and the issuance of certificates of fitness for occupation. (10) Any 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 which shall not be less than fifty thousand ringgit but which shall not exceed five hundred thousand ringgit and shall also be liable to imprisonment for a term not exceeding three years or to both.

Licensed housing developer for the purpose of sections 8, 8A, 11 and 12

7B. For the purpose of sections 8, 8A, 11 and 12, "licensed housing developer" includes any housing developer whose licence has expired.

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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 Act.

Statutory termination of sale and purchase agreements 8A. (1) Notwithstanding anything contained in any agreement, a licensed housing developer may 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 of a housing development which the 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 or phase 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 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 purchasers who have agreed to terminate the sale and purchase agreements and such consent shall have been duly executed by the licensed housing developer and Housing Development (Control and Licensing) 19

the purchaser, as the case may be, and witnessed by his solicitors or a Commissioner for Oaths not earlier than one month before the date of the application; 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 and proper. (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 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 or the phase of a housing development which is the subject of 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 decision. (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.

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(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 housing developer. (11) Any person who fails to comply with this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and to a further fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.

Audit

9. (1) Subject to subsection (2), every licensed housing developer shall every year or as often as the need arises appoint a person approved by the Minister to be his auditor; and where a licensed housing developer fails to make the appointment or fails to appoint another auditor in place of an auditor who has resigned his office or dies or whose appointment has been terminated, the Minister may appoint any person who in his opinion is or are fit and proper to be an auditor for the licensed housing developer in question and fix remunerations which shall be paid to the auditor so appointed and such

remunerations shall be paid by the licensed housing developer for whom the auditor is or are so appointed.

(2) No person having an interest in the business of a licensed housing developer either as a shareholder or otherwise; and no director, officer, employee or agent of a licensed housing developer shall be eligible for appointment as an auditor of the housing developer; and where any person who is appointed as an auditor of a licensed housing developer shall after his appointment acquire an interest in the business of the licensed housing developer or become a director, an officer, employee or agent of the licensed housing developer, he shall forthwith cease to be an auditor of that licensed housing developer.

(3) Every auditor 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 auditor is appointed and shall state in every such report whether or not in his 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; Housing Development (Control and Licensing) 21

(b) the accounting and the records examined by him are properly kept; and

(c) if the auditor has called for an explanation or information from the officers or agents of the licensed housing developer, such explanation or information has been satisfactory. (4) Every auditor 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 he desires 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.

(5) In addition to the duties and powers under this section, every auditor 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.

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 an Inspector may from time to time under conditions of secrecy investigate the commission of any offence under this Act or investigate into the affairs of or into the accounting or other records of any housing developer.

(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 purchasers; or has assets insufficient to meet his liabilities or is contravening any of the provisions of this Act; or

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(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 by Act A1142).

Powers of entry, search and seizure

10A. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that any premises have been used or are about to be used for, or there is in or on any premises evidence necessary to establish, the commission of an offence under this Act, the Magistrate may issue a warrant authorizing an Inspector to whom it is directed, at any reasonable time by day or night and with or without assistance--

(a) enter any premises and there search for, seize and detain any property, book or other document;

(b) inspect, make copies of, or take extracts from, any book or other document so seized and detained;

(c) take possession of, and remove from the premises, any property, book or other document so seized and detained; (d) search any person who is in, or on, such premises, and for the purpose of such search detain such person and

remove him to such place as may be necessary to facilitate such search, and seize and detain any property, book or other document found on such person;

(e) break open, examine, and search, any article, container or receptacle; or

(f) stop, detain or search any conveyance.

(2) An Inspector authorized under subsection (1) may, if it is necessary so to do--

(a) break open any outer or inner door of such premises and enter such premises and every part of such premises; (b) remove by force any obstruction to such entry, search, seizure, detention or removal; or

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(c) detain all or any persons found on any premises, or in any conveyance, searched under subsection (1) until such premises or conveyance have been searched.

(3) If an Inspector has reasonable cause to suspect by reason of delay in obtaining a search warrant under subsection (1) that-- (a) the investigation would be adversely affected; or (b) evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed,

he may enter the premises and exercise in, and in respect of the premises, all the powers referred to in subsections (1) and (2) in as full and ample a manner as if he were authorized to do so by a warrant under subsection (1).

(4) A list of all things seized in the course of a search made under this section and of the places in which they are respectively found shall be prepared by the Inspector conducting the search and signed by him.

(5) The occupant of the premises entered under subsection (1), or some person on his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under subsection (4) shall immediately be delivered to such occupant or person.

(6) An Inspector shall, unless otherwise ordered by any court-- (a) on the close of investigations or any proceedings arising therefrom; or

(b) with the prior written consent of the Controller for the Inspector to act on his behalf for this purpose at any time before the close of investigations, release any property, book or other document seized, detained or removed by

him or any other Inspector, to such person as he determines to be lawfully entitled to the property, book or other document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.

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(7) A record in writing shall be made by the Inspector effecting any release of any property, book or other document under subsection (6) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release. (8) Where the Inspector is unable to determine the person who is lawfully entitled to the property, book or other document or where there is more than one claimant to such property, book or other document, the Inspector shall report the matter to a Magistrate who shall then deal with the property, book or other document as provided for in subsections 413(2), (3) and (4) and sections 414, 415 and 416 of the Criminal Procedure Code [Act 593]. Search of person

10B. (1) An Inspector may search any person whom he has reason to believe has on his person any property, book or other document, or other article necessary, in his opinion, for the purpose of an investigation into any offence under this Act, and for the purpose of such search may detain such person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorization of a Magistrate, and may remove him in custody to such place as may be necessary to facilitate such search.

(2) An Inspector making a search of a person under subsection (1) may seize, detain, or take possession of any property, book or other document, or article, found upon such person for the purpose of the investigation being carried out by him.

(3) No female person shall be searched under this section or under section 10A except by another female person and with strict regard for decency.

Obstruction to exercise of powers by an Inspector 10C. No person shall--

(a) refuse any Inspector exercising his powers under section 10A or 10B access to any premises or any part of such premises, or fail to submit to the search of his person; (b) assault, obstruct, hinder or delay such Inspector in effecting any entrance which he is entitled to effect;

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(c) fail to comply with any lawful demands of any Inspector in the execution of his duties under section 10A or 10B; (d) refuse to give to an Inspector any information which may reasonably be required of him and which he has it in his power to give;

(e) fail to produce to, or conceal or attempt to conceal from, an Inspector, any property, book, other document, or article in relation to which an Inspector has reasonable grounds for suspecting that an offence has been or is being committed under this Act;

(f) rescue or endeavour to rescue any thing which has been duly seized;

(g) furnish to the Inspector as true any information which he knows or has reason to believe to be false; or

(h) before or after any seizure, break or otherwise destroy any thing to prevent the seizure or the securing of the thing.

Requirement to provide translation

10D. (1) Where an Inspector finds, seizes, detains, or takes possession of any book or other document in the exercise of any power under this Act, and such book or other document or any part of it is in a language other than the national language or the English language, or in any sign or code, the Inspector may orally or in writing require the person who had the possession, custody or control of such book or other document, to furnish to the Inspector a translation in the national language of such book or other document within such period as, in the opinion of the Inspector, would be reasonable having regard to the length of the book or other document, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation, or knowingly make a translation under that subsection which is not accurate, faithful and true.

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Power to examine persons

10E. (1) Where an Inspector suspects any person to have committed an offence under this Act, he may, if in his opinion it is reasonably necessary to do so for the purposes of investigating into such offence--

(a) order any person orally or in writing to attend before the Inspector for the purpose of being examined orally by the Inspector in relation to any

matter which may, in the opinion of the Inspector, assist in the investigation into the offence;

(b) order any person orally or in writing to produce before the Controller or the Inspector books, other documents, property, articles, or things which may, in the opinion of the Controller or the Inspector, assist in the investigation into the offence; or

(c) by written notice require any person to furnish a statement in writing made on oath or affirmation setting out in the notice all such information which may be required under the notice, being information which, in the opinion of the Controller, would be of assistance in the investigation into the offence.

(2) A person to whom an order under paragraph (1) (a) or (b), or a written notice under paragraph (1) (c), has been given shall comply with the terms of such order or written notice, as the case may be, and, in particular--

(a) a person to whom an order under paragraph (1) (a) has been given shall attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the Inspector until the examination is completed, and shall during such

examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him;

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(b) a person to whom an order has been given under paragraph (1) (b) shall not conceal, hide, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any book, other document, property, article, or thing specified in the order, or alter or deface any entry in any such book or other document, or cause such act to be done, or assist or conspire to do the act; and

(c) a person to whom a written notice has been given under paragraph (1) (c) shall, in his statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained

by him, and shall not fail to furnish or disclose the information on the ground that it tends to incriminate him.

(3) A person to whom an order or a notice is given under subsection (1) shall comply with such order or notice and with the provisions of subsection (2) in relation to the order or notice, notwithstanding the provisions of any written law, whether enacted before or after the commencement of this Act, or of any oath, undertaking or requirement of secrecy, to the contrary, or of any obligation under any contract, agreement or arrangement, whether express or implied, to the contrary.

(4) Where any person discloses any information or produces any property, book, other document, article, or thing, pursuant to subsections (1) and (2), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or employee the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise. (5) An Inspector may seize, take possession of and retain for such duration as he deems necessary, any property, book, other document, article or thing produced before him in the course of an investigation under subsection (1), or search the person who is being examined by him under paragraph (1) (a), or who produces anything to him under paragraph (1) (b), for ascertaining whether anything relevant to the investigation is concealed, upon such person or is otherwise upon such person.

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(6) An examination under paragraph (1) (a) shall be reduced into writing by the Inspector and shall be read to and signed by the person being examined, and where such person refuses to sign the record, the Inspector shall endorse on the record under his hand the fact of such refusal and the reasons for such refusal, if any, stated by the person examined.

(7) The record of an examination under paragraph (1) (a), or a written statement on oath or affirmation made pursuant to paragraph (1) (c), or any property, book, other document, article or thing produced under paragraph (1) (b) or in the course of an examination under paragraph (1) (a) or under a written statement on oath or affirmation made pursuant to paragraph (1) (c), shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court--

(a) for, or in relation to, an offence under this Act; or (b) for, or in relation to, any other matter under this Act, regardless whether such proceedings are against the person who was examined, or who produced the

property, book, other document, article or thing, or who made the written statement on oath or affirmation, or against any other person.

Specific persons in respect of whom powers of investigation may be exercised

10F. The powers of investigation conferred by this Act on an Inspector, may be exercised by him against--

(a) any past or present business associate; or

(b) any person who is or was concerned in the

control or management, in whole or in part of the affairs,

of the person suspected to have committed an offence under this Act.

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Assistance to police or other public officer

10G. The Controller may on his own initiative, or on the request of an Inspector--

(a) supply to a police officer or any other public officer a copy of any book or other document seized, detained or taken possession of under section 10A or 10B, or of any record of examination under paragraph 10E(1) (a), or of any written statement on oath or affirmation made under paragraph 10E(1) (c), or of any book or other document produced under paragraph 10E(1) (b), or otherwise in the course of any examination under paragraph 10E(1) (a), or under any written statement on oath or affirmation made pursuant to paragraph 10E(1) (c), and such police officer or other public officer may make such use of such copy of such record, statement, book or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or (b) allow a police officer or any other public officer to have access to and inspect any property, book, other document, article or thing which had been produced before, or seized, detained or taken possession of, by an Inspector under this Act, and such police or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

Protection of informers

10H. (1) Except as provided in subsection (3), no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or to state any matter which may lead to his discovery.

(2) If any books, documents, records or papers which are in evidence or are liable to inspection in any civil or criminal proceedings contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery. 30 Laws of Malaysia ACT 118

(3) If on trial for any offence under this Act the court after full inquiry into the case believes that the informer willfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties to the proceeding without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure, concerning the informer.

Authority to act

10I. An Inspector when acting under this Part shall on demand declare his office and produce to the person against whom he is acting such written authorization as the Controller may direct to be carried by such Inspector.

Limitation on the powers of an Inspector

10J. No Inspector shall be entitled to exercise any of the powers under this Part without prior written authorization from the Controller. PART V

POWERS OF MINISTER

Powers of the Minister to give directions for the purpose of safeguarding the 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 obligations 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 circumstance;

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(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) with the concurrence of the Minister of Finance 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) certify that the licensed housing developer has abandoned the housing development;

(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 Act.

(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 persons as may be specified by the Minister in carrying out such direction or decision of the Minister shall be paid from the Housing Development Account of the housing development 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 paragraph (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 paragraph (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 Act, and any such direction shall be made in writing and shall be binding on the licensed housing developer to whom the direction is made.

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 Act; or (d) has ceased to carry on housing development in Peninsular Malaysia,

the Controller may subject to 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.

Controller to report the conduct of an architect or engineer 13A. Where the Controller is satisfied that the conduct of an architect or engineer of a housing developer has prejudiced the interest of the purchaser of the licensed housing developer, the Controller may report such conduct of the architect or engineer to his respective professional body.

Transfer or assignment of a licence

13B. No licence or any right to the licence issued to a housing developer under this Act shall be transferred or assigned and any such transfer or assignment shall be void.

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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 subsection 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, cooperative 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.

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

16. An applicant applying under subsection 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 subsection 5(5);

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(c) in refusing to give approval to an arrangement or agreement proposed to be entered into by a licensed housing developer under section 8, or in approving the same but subject to conditions being imposed thereon; or

(d) in revoking or suspending his licence under section 13, 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. PART VI

TRIBUNAL FOR HOMEBUYER CLAIMS

Meaning of "homebuyer"

16A. For the purpose of this Part, "homebuyer" means a purchaser and includes a person who has subsequently purchased a housing accommodation from the first purchaser of the housing accommodation.

Establishment of Tribunal for Homebuyer Claims

16B. A tribunal to be known as the "Tribunal for Homebuyer Claims" is established.

Membership of Tribunal

16C. (1) The Tribunal shall consist of the following members: (a) a Chairman and a Deputy Chairman to be appointed by the Minister from amongst members of the Judicial and Legal Service; and

(b) not less than five other members to be appointed by the Minister from amongst persons who are members of the Judicial and Legal Service or advocates and solicitors of the High Court in Malaya and have practised for not less than seven years.

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(2) The members referred to in paragraph (1) (b)— (a) shall hold office for a term not exceeding three years; and

(b) shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

Temporary exercise of functions of Chairman

16D. 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

16E. 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 the expiry of his term of office; or

(d) upon the member ceasing to be a member of the Judicial and Legal Service or an advocate and solicitor of the High Court in Malaya.

Revocation of appointment

16F. The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 16C(1) (b)-- (a) if his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;

(b) if he has become incapable of properly carrying out his duties as a member of the Tribunal;

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(c) if there has been proved against him, or he has been convicted on, a charge 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 Act; or

(iv) any other offence punishable with imprisonment for more than two years;

(d) if he is adjudicated a bankrupt;

(e) if he has been found or declared to be of unsound mind or 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

16G. A member of the Tribunal appointed under paragraph 16C(1) (b) may at any time resign his office by giving three months' written notice to the Minister.

Filling of vacancy

16H. Where a member ceases to be a member of the Tribunal, the Minister may

appoint another person to fill the vacancy. Remuneration

16I. (1) The members of the Tribunal appointed under paragraph 16C(1) (a) shall be paid such fixed allowances and other allowances as the Minister may determine.

(2) The members of the Tribunal appointed under paragraph 16C(1) (b) shall be paid--

(a) a daily sitting allowance during the sitting of the Tribunal; and

(b) such lodging, travelling and subsistence allowances, Housing Development (Control and Licensing) 37

as the Minister may determine.

(3) The remuneration provided for in subsections (1) and (2) shall be charged on the Consolidated Fund.

Secretary to Tribunal and other officers

16J. (1) There shall be appointed a Secretary to the Tribunal and such number of officers as may be necessary for carrying out the functions of the Tribunal.

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

(3) For the purposes of this Act, the Secretary to the Tribunal shall be deemed to be an officer of the Tribunal. Sittings of Tribunal

16K. (1) The jurisdiction of the Tribunal shall be exercised by any of the following persons sitting alone:

(a) the Chairman of the Tribunal;

(b) the Deputy Chairman of the Tribunal; or

(c) any member of the Tribunal determined by the Chairman. (2) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine. (3) If the person presiding over any proceedings in respect of a claim dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the claim shall be heard afresh by another member of the Tribunal, unless the parties agree that the claim be continued by another member of the Tribunal.

(4) Where the term of appointment of any member of the Tribunal under this section expires during the pendency of any proceedings in respect of a claim, the term of his appointment shall be deemed to be extended until the final disposal of the claim. 38 Laws of Malaysia ACT 118

Commencement of proceedings

16L. A homebuyer may lodge with the Tribunal a claim in the prescribed form together with the prescribed fee claiming for any loss suffered or any matter concerning his interests as a homebuyer under this Act.

Jurisdiction of Tribunal

16M. (1) Subject to sections 16N and 16O, the Tribunal shall have jurisdiction to determine a claim lodged under section 16L where the total amount in respect of which an award of the Tribunal is sought does not exceed twenty-five thousand ringgit. (2) Subject to subsection (1), a respondent to a claim may raise a debt or liquidated demand as--

(a) a defence; or

(b) a counterclaim.

(3) Where a respondent raises a debt or liquidated demand under subsection (2) and the debt or demand is proved the Tribunal shall--

(a) give effect to the defence; or

(b) hear and determine the counterclaim notwithstanding that the original claim is withdrawn, abandoned or struck out. (4) Any claim lodged with the Tribunal may include loss or damage of a consequential nature.

Limitation of jurisdiction

16N. (1) Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim-- (a) for the recovery of land, or any estate or interest in land; and

(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 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 the date of issuance of the certificate of fitness for occupation for the housing accommodation or the expiry date of the defects liability period as set out in the sale and purchase agreement.

(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 homebuyer and the licensed housing developer at the time when the cause of action accrues if there exists a previous dealing between the homebuyer and the licensed housing developer in respect of the acquisition of the housing accommodation.

(4) Nothing in this section shall be deemed to authorize the Tribunal to deal with a claim arising from personal injury or death. (5) For the purposes of subsection (1), "land" does not include fixtures.

Extension of jurisdiction by agreement

160. (1) Notwithstanding that the amount or value of the subject matter claimed or in issue exceeds twenty-five thousand ringgit, the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim.

(2) An agreement may be made under subsection (1)— (a) before a claim is lodged under section 16L; or (b) where a claim has been lodged under section 16L, at any time before the Tribunal has recorded an agreed settlement in respect of the claim under subsection 16T(3) or has determined the claim under section 16Y, as the case may be.

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Abandonment to bring claim within jurisdiction

16P. (1) A claimant may abandon so much of a claim as exceeds twenty-five thousand ringgit in order to bring the claim within the jurisdiction of the Tribunal.

(2) Where a part of a claim has been abandoned under subsection (1), the Tribunal's record of an agreed settlement under subsection 16T(3) or the Tribunal's award under section 16Y, as the case may be, in relation to the claim shall operate to discharge the person-- (a) who is a party to that agreed settlement; or

(b) against whom the claim is brought and the subsequent award is made, from liability in respect of the amount so abandoned. Cause of action not to be split

16Q. Claims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal. Exclusion of jurisdiction of court

16R. (1) Where a claim is lodged with the Tribunal and the claim is within the Tribunal's jurisdiction, the issues in dispute in that claim, whether as shown in the initial claim or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless--

(a) the proceedings before the court were commenced before the claim was lodged with the Tribunal; or

(b) the claim before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1) (a) applies, the issues in dispute in the claim to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the claim before the court is withdrawn, abandoned or struck out.

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Notice of claim and hearing

16S. Upon a claim being lodged under section 16L, the Secretary to the Tribunal shall give notice of the details of the day, time and place of hearing in the prescribed form to the claimant and the respondent.

Negotiation for settlement

16T. (1) The Tribunal shall, as regards every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the claim.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factors that, in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement. (3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall then take effect as if it were an award of the Tribunal. (4) Where--

(a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the claim; or

(b) the parties are unable to reach an agreed settlement in relation to the claim,

the Tribunal shall proceed to determine the dispute. Right to appear at hearings

16U. (1) At the hearing of a claim every party shall be entitled to attend and be heard.

(2) No party shall be represented by an advocate and solicitor at a hearing unless in the opinion of the Tribunal the matter in question involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate and solicitor; but if one party is subsequently allowed to be represented by an advocate and solicitor then the other party shall also be so entitled.

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(3) Subject to subsection (2) but notwithstanding section 37 of the Legal Profession Act 1976 [Act 166]--

(a) a corporation or an unincorporated body of persons may be represented by a full-time paid employee of the corporation or body;

(b) a minor or any other person under a disability may be represented by his next friend or guardian ad litem. (4) Where a party is represented as permitted under subsection (3), the Tribunal may impose such conditions as it

considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

Proceedings to be public

16v. All proceedings before the Tribunal shall be open to the public.

Evidence

16W. (1) The Tribunal may--

- (a) procure and receive all such evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses, as the Tribunal thinks necessary to procure, receive or examine;
- (b) require the production before it of books, papers, documents, records and things;
- (c) administer such oath, affirmation or statutory declaration as the case may require;
- (d) seek and receive such other evidence and make such other inquiries as it thinks fit;
- (e) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations; (f) receive expert evidence; and
- (g) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claim.

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(2) A summons issued under this section shall be served and enforced as if it were a summons issued by a subordinate court. Tribunal may act in absence of party

16X. 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. Awards of the Tribunal

16Y. (1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the

Tribunal commences.

(2) An award of the Tribunal under subsection (1) may require one or more of the following:

- (a) that a party to the proceedings pay money to any other party;
- (b) that the price or other consideration paid by the homebuyer or any other person be refunded to the homebuyer or that person;
- (c) that a party comply with the sale and purchase agreement; (d) that money be awarded to compensate for any loss or damage suffered by the claimant;
- (e) that the contract be varied or set aside, wholly or in part; (f) that costs to or against any party be paid;
- (g) that interest be paid on any sum or monetary award at a rate not exceeding eight per centum per annum, unless it has been otherwise agreed between the parties; (h) that the claim is dismissed.

(3) Nothing in paragraph (2) (d) or (f) shall be deemed to empower the Tribunal to award any damages for any non-pecuniary loss or damage.

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Reference to a Judge of the High Court on a question of law 16Z. (1) Before the Tribunal makes an award under section 16Y, it may, in its discretion, refer to a Judge of the High Court a question of law--

- (a) which arose in the course of the proceedings; (b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference; and
- (c) the determination of which by the Tribunal raises, in the opinion of the Tribunal, sufficient doubt to merit such reference.

(2) If the Tribunal refers any question of law under subsection (1) for the decision of a Judge of the High Court, it shall make its award in conformity with such decision.

(3) A Federal Counsel authorized by the Attorney General for the purpose may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court under this section. Reasons for decision

16AA. The Tribunal shall in all proceedings give its reasons for its award in

the proceedings.

Orders and settlement to be recorded in writing

16AB. The Tribunal shall make or cause to be made a written record of the terms of--

(a) every agreed settlement reached by the parties under subsection 16T(3); and

(b) every award made by it under section 16Y.

Decisions of Tribunal to be final

16AC. (1) Every agreed settlement recorded by the Tribunal under subsection 16T(3) and every award made by the Tribunal under section 16Y--

(a) shall be final and binding on all parties to the proceedings; and

(b) shall be deemed to be an order of a Magistrate's Court and be enforced accordingly by any party to the proceedings; Housing Development (Control and Licensing) 45

(2) For the purpose of paragraph (1) (b), the Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Magistrate's Court 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.

Criminal penalty for failure to comply

16AD. (1) Any person who fails to comply with an award made by the Tribunal within the period specified therein commits 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. Procedure where no provision is made

16AE. Subject to this Act and to any regulations, the Tribunal shall adopt such procedure as it thinks fit and proper. Want of form

16AF. No proceedings of the Tribunal or award or other document of the Tribunal shall be set aside or quashed for want of form. Disposal of

documents, etc.

16AG. (1) The Tribunal may, at the conclusion of the proceedings before it, 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. (2) Where no person has taken delivery of the document, record, material or other property referred to in subsection (1) after a period of six months, the ownership in the document, record, material or other property shall be deemed to have passed to and become vested in the Government.

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Act or omission done in good faith

16AH. 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 authorized to act for 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 Act.

Regulations in respect of the Tribunal

16AI. (1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal. (2) Without prejudice to the generality of subsection (1), regulations may be made for--

(a) prescribing the responsibilities of members of the Tribunal; (b) prescribing the procedure of the Tribunal;

(c) prescribing the forms to be used in proceedings under this Part;

(d) prescribing and imposing fees and providing for the manner for collecting and disbursing such fees;

(e) prescribing anything required to be prescribed under this Part.

PART VII

Indemnity and protection against suit and proceedings

17. 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 Act; and all Housing Development (Control and Licensing) 47

actions which may lawfully be brought in respect of anything done, ordered or omitted to be done pursuant to this Act shall be instituted within six months from the date of the act or omission complained of, and not afterwards.

Offences relating to a licence under section 5

18. Any housing developer who-- (a) in contravention of subsection 5(1) engages in, carries out, or undertakes housing development without having been duly licensed under that section;

(b) in contravention of subsection 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 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 section 5,

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 five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Offences by a housing developer

19. 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 by Act A1142);

(c) after the Minister has, pursuant to paragraph 11(1) (c), directed a company to assume control of and carry on the business of the housing developer, in

contravention of subsection 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;

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(cc) fails to comply with any direction given by the Minister under paragraph 11(1) (a), (b), (d) or (e); 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 not exceeding five hundred ringgit for every day during which the offence is continued after the conviction. Offences by a director of or a person connected with the business of a licensed housing developer in certain cases

20. Any person who-- (a) in contravention of subsection 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 subsection 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

21. Any housing developer guilty of an offence against this Act 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

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

22. (1) Where any offence against any provision of this Act has been committed by a housing developer, any person who at the time of the omission 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 Act 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.

Public servants and public officers

22A. The Controller, every Deputy Controller, every Inspector and all members and officers of the Tribunal shall be deemed to be public servants for the purposes of the Penal Code [Act 574], and to be public officers for the purposes of the Criminal Procedure Code or any other written law which the Minister may from time to time prescribe.

Application of Public Authorities Protection Act 1948 22B. The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the Minister, Controller, any Deputy Controller, any Inspector, the Tribunal or any member or officer of the Tribunal in respect of any act, neglect or default done or committed by him in such capacity.

Right to initiate and maintain actions

22C. Notwithstanding anything contained in any written law or any rule of law, a homebuyer as defined in section 16A 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 purchaser and that housing developer unless a contrary intention is expressed in any agreement, assignment or charge between the homebuyer and his financier in which case the prior written consent of his financier must first be obtained before he exercises any of his rights under this section.

Prosecution

23. No prosecution for any offence under this Act shall be instituted save by or under the direction of or with the consent of the Public Prosecutor.

Power to compound

23A. (1) The Controller may compound any offence against this Act or any regulations made under this Act which has been prescribed under paragraph 24(2) (i) to be a compoundable offence by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence.

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(2) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of the compounded offence.

(3) Any moneys paid to the Controller under this section shall be paid into and form part of the Consolidated Fund. Powers to make regulations

24. (1) Subject to this section, the Minister may make regulations for the purpose of carrying into effect the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing power, the

regulations 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 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 Act 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) prescribe the fees which are payable under this Act; (g) prescribe that any act or omission in contravention of any of the regulations shall be an offence and provide for the penalties therefor either by way of fine or imprisonment or both: 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 Act;

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- (h) prescribe the moneys which shall be paid into or withdrawn from the Housing Development Account and the conditions for such withdrawals;
- (i) prescribe offences which may be compounded and the forms to be used in and the method and the procedure for compounding such offences; and
- (j) provide for any matter which under this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed to give effect to this Act. (3) A copy of all regulations made under this section shall be published in the Gazette and laid before each House of Parliament as soon as possible after they have been made.

SCHEDULE

[Subsection 5(3)]

(1) (2) (3)

Applicant Documents to be By whom document
submitted to be verified

Person 1. A copy of the latest audited That person himself balance-sheet, if
any, relating

to all housing developments

undertaken by that person

Body of 1. A copy of an agreement Any of the persons persons between or
amongst persons forming that body forming that body

2. A copy of the latest audited balance-sheet, if any, relating

to all housing developments

undertaken by that body of

persons

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Company 1. A copy of memorandum of A director, managing association director,
general

manager, secretary

2. A copy of articles of association or any senior officer of the company

3. A copy of the latest audited balance-sheet

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Firm 1. A copy of the partnership A partner

agreement

2. A copy of the latest audited balance-sheet

Society 1. A copy of the rules or President or secretary by-laws of the

society

2. A copy of the latest audited balance-sheet

(1) (2) (3)

Applicant Documents to be By whom document

submitted to be verified

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LAWS OF MALAYSIA

Act 118

HOUSING DEVELOPMENT (CONTROL AND

LICENSING) ACT 1966

LIST OF AMENDMENTS

Amending law Short title In force from

Ord. 41/1970 Emergency (Essential Powers) 23-07-1970 (P. U. (A) 259/70)
Ordinance No. 41, 1970

Act A116 Housing Developers (Control 04-04-1972
and Licensing) (Amendment)

Act 1972

Act 160 Malaysian Currency (Ringgit) 29-08-1975

Act 1975

Act A402 Housing Developers (Control 10-06-1977
and Licensing) (Amendment)

Act 1977

Act A703 Housing Developers (Control 01-12-1988

1988 and Licensing) (Amendment)

Act

Act A996 Interpretation (Amendment) 24-07-1997

Act 1997

Act A1142 Housing Development (Control 01-12-2002 and Licensing) (Amendment)

Act 2002

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Act 118

HOUSING DEVELOPMENT (CONTROL AND

LICENSING) ACT 1966

LIST OF SECTIONS AMENDED

Section Amending authority In force from

Long title Act A996 24-07-1997

Part I Act A1142 01-12-2002

1 Act A996 24-07-1997

Act A1142 01-12-2002

2 P.U. (A) 259/1970 23-07-1970

Act A116 04-04-1972

Act A1142 01-12-2002

3 P.U. (A) 259/1970 23-07-1970

Act A116 04-04-1972

Act A703 01-12-1988

Act A1142 01-12-2002

4 Act A1142 01-12-2002

Part II Act A1142 01-12-2002

5 Act A703 01-12-1988

Act A1142 01-12-2002

6 P.U. (A) 259/1970 23-07-1970

Act A116 04-04-1972

Act 160 29-08-1975

Act A1142 01-12-2002

6A Act A1142 01-12-2002

6B Act A996 24-07-1997

Act A1142 01-12-2002

Part III Act A1142 01-12-2002

7 Act A996 24-07-1997

Act A1142 01-12-2002

7A Act A703 01-12-1988

Act A1142 01-12-2002

7B Act A1142 01-12-2002

8 Act A1142 01-12-2002

8A Act A1142 01-12-2002

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9 P.U. (A) 259/1970 23-07-1970

Act A116 04-04-1972

Part IV Act A1142 01-12-2002

10 Act A703 01-12-1988

Act A1142 01-12-2002

10A-10J Act A1142 01-12-2002

Part V Act A1142 01-12-2002

11 Act A1142 01-12-2002

13 Act A996 27-07-1997

13A-13B Act A1142 01-12-2002

16 P.U. (A) 259/1970 23-07-1970

Act A116 04-04-1972

16A-16Z Act A1142 01-12-2002

16AA-16AI Act A1142 01-12-2002

Part VII Act A1142 01-12-2002

18 Act A703 01-12-1988

Act A1142 01-12-2002

19 Act A402 10-06-1977

Act A703 01-12-1988

Act A1142 01-12-2002

20 Act A1142 01-12-2002

21 Act A703 01-12-1988

Act A1142 01-12-2002

22 Act 160 29-08-1975

Act A1142 01-12-2002

22A-22C Act A1142 01-12-2002

23 Act A703 01-12-1988

23A Act A1142 01-12-2002

24 Act A703 01-12-1988

Act A1142 01-12-2002

Section Amending authority In force from

DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA



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