

RESPONSE TO QUESTIONS BY LAW MINISTER K SHANMUGAM ON LAND TITLES (STRATA) (AMENDMENT) BILL 2010

1. Mr Speaker, Sir, I wish to thank the Members who have spoken on the Bill.
2. Members have generally been supportive of the Bill, but they had made some suggestions that raised some questions.
3. Before I address the specific issues raised, let me reiterate the Government's thinking in deciding on what should be the safeguards prescribed in the legislation. We are guided by two main considerations.
4. First, we seek to balance the interests of all owners. Those who are anti- en bloc sale want to have the sale process made more difficult; those who are pro-sale want the process made easier. Our task is to decide what would be a fair regime that will make the en bloc sale process more transparent to protect the interest of all strata unit owners, whether they are pro-sale or anti-sale. Neither side will be totally happy with the decision of the Government. But it is a matter of judgement and we have to try and strike a balance.
5. Second, the Government is guided by the principle that we should not micro-manage the process and prescribe too many requirements as they may not be applicable to every development. Some of the measures suggested by Members are not without merit. They may well be very useful for specific developments, and owners may wish to adopt them. But it does not follow that these requirements should be or can be prescribed for every en bloc sale. Doing so may introduce unnecessary rigidity and pose considerable difficulties for owners if the requirement does not make sense for their particular development. Hence our stance is not to be overly prescriptive. The point is that owners are free to adopt these measures if they think they are suitable for their particular circumstances. Thus, the ultimate choice is with the owners themselves on how the sale should be conducted.

Unanimous consent requirement

6. I think Ms Ellen Lee made a reference to unanimous consent. We should ask if unanimous consent is the best way to achieve the objectives of unlocking the value in the land, and giving owners a say on how the collective properties are being developed. For example, should one single owner in a 200 unit development hold up the entire development? Does that strike one as fair? So, in all these things, you try and strike a balance. We have set the consent level requirements at 80 per cent and 90 per cent. Mr. Hri Kumar says why not go even lower? Now I will come back to that later.

7. I do not think it is these rules or the fact that we allow these en bloc sales that is necessarily contributing to the increase in property prices. That is subject to a whole variety of factors which is not appropriate for us to go into here. But supposing we made it very difficult to do en bloc sales, what do you think will be the impact on supply? What do you think will be the impact on prices?

Social impact of en bloc sales

8. Ms Lee and Professor Paulin Straughan touched on the concepts of social impact of en bloc sales, particularly the impact on elderly owners.
9. For some elderly owners who have lived for a long period in strata units, I can understand how the process of selling and relocating may affect them emotionally. On the other hand, there may also be elderly owners who welcome the opportunity to monetize their investment and sell their apartment unit and perhaps move to another unit. We cannot decide on the relative merits between those who wish to sell and those who do not wish to sell. What we can do and have done is to provide for a framework to allow the issue of sale to be decided by the vast majority of owners and to put in place a process that is fair and transparent.
10. Ms Lee spoke about how en bloc sales are achieved at the personal costs to owners who have to sell their homes and downgrade their real assets. An en bloc sale can only take place if an overwhelming majority of the owners think the sale is beneficial to them. It will be odd if more than 80 per cent of owners vote for an en bloc sale which is disadvantageous to all of them. And the sale still has to pass the good faith test.

Residual Land Value

11. Ms Lee also asked if the Residual Land Value of the properties which results in “astronomical bidding price” by buyers is unlocking more value for the developer-buyers than the homeowners. If a transaction is fair, it should result in a win-win situation for the transacting parties. If buyers are prepared to pay very high prices, it must also benefit the homeowners who are selling their properties.
12. The legislation provides that the en bloc sale must be done through an open tender. This means that the price obtained should be the best price under the prevailing market conditions. But if sellers feel that even this “best price” is not high enough, and they are not benefiting adequately, they can choose not to sell.

Provide more information on en bloc process

13. Professor Straughan suggested that a Resource Unit can be established to help vulnerable homeowners, such as the elderly, physically handicapped and mentally challenged, affected by such en bloc sale efforts. She also suggested the publication of an information booklet on the en bloc sale process.
14. The Ministry of Law has been working to provide the public with information regarding en bloc sale regulations. For example, in 2009, arising from public feedback on the lack of understanding over apportionment methods, we have worked with the Singapore Institute of Surveyors and Valuers (SISV) to issue a set of guidelines on general apportionment methods which owners may consider. The guidelines illustrate how and when to apply these apportionment methods. The guidelines can be found on SISV's website.
15. I thank Professor Straughan for her suggestions. My Ministry will discuss with the STB and professional bodies such as the Law Society and the SISV to see how we can put out more information.

Has en bloc sales achieved the objective of creating more housing units?

16. Ms Lee also queried whether we have achieved the objective of creating more housing units in prime areas and rejuvenating older properties through en bloc sales. Let me share some statistics with the House.
17. Between 2005-2009, there were 462 en bloc sale transactions. Of these, almost half, or 217, are being redeveloped or have been redeveloped. These 217 developments originally had about 12,000 strata units – slightly less, 11,994. After redevelopment, the resulting new developments will have more than 26,000 strata units, more than doubling the number of strata units.
18. Specifically for example, the 152-unit Westpeak Condominium, sold in 2006, will be redeveloped into The Parc Condominium, with 659 units. Also sold in 2006, Le Marque and Century Ville, totalling 53 units, will be redeveloped into the 278-unit Cyan Condominium.

"Young" properties

19. Professor Straughan proposed that the STB should consider, among other factors, the age and state of repair of development in considering the application for en bloc sale. Mr Kumar asked if 10 years is too short a time to justify the need to re-develop.
20. The issue was discussed at length by the House when we were proposing amendments to the LT(S)A in 1999. The matter was then referred to a Select Committee, which eventually took the view that it

should ultimately be up to market forces that will determine whether an en bloc sale is economically viable. Demolishing younger buildings may not necessarily be a waste of resources if land potential can be better utilised through more intensive redevelopment. And, if the owners themselves, or a vast majority of them wish to do so, that is the litmus test.

21. That said, on the ground there has not been a rush to redevelop properties which are not too old. From 1999 until now, the STB had approved 160 applications for en bloc sales. Of these 160 cases, only one case involved a development less than 10 years old. It was nine years old at that time. The other 159 developments were more than 10 years old when they applied for an en bloc sale. [99 per cent were above 10 years old, 69 per cent (about 70 per cent) were above 20 years old; and about 34 per cent were above 30 years old]
22. Mr Kumar also asked if we have plans to reduce the consent level for buildings which are 30 or 40 years old. This point has been raised a number of times, by people who want the en bloc sale rules eased.
23. Mr Kumar said that the public interest in rebuilding such older developments should be given more weight. We also saw a slightly contrary view from Professor Straughan who focused on the impact on the elderly, and Ms Lee as well.
24. However, as of now, we see no compelling reasons to reduce the consent level. For older properties, the case for redevelopment is much stronger. And it really should not be difficult to achieve the 80 per cent consent level.
25. Ultimately, if you can't get the 80 per cent consent level, it means that enough people do not want to sell. There may well have people who have stayed there for a long period of time, and have great attachment to their properties. They may well fall into a category that Professor Straughan was talking about – older people – and if they do not want to sell, you do not force them to sell.
26. So yes, there are arguments both ways, and we never say never, but we do not see, at this stage, a reason to change the voting requirement.

Keep the requisition levels for en bloc sale EOGMs to 50 per cent after a failed attempt

27. Mr Kumar also suggests keeping the threshold at 50 per cent for subsequent attempts to convene an EOGM to form a Collective Sales Committee.
28. There is really no right and wrong level of threshold. We need to make a judgement call. Within a two-year period, if there were already two

previous en bloc attempts which have failed, I think the signal from the majority, or at least a significant minority, of the owners is quite clear. Those who are pushing for an en bloc sale should then respect the wishes of the majority that significant minority.

29. If we keep the threshold level at 50 per cent, this means that if only 50 per cent of the owners are keen on an en bloc sale, they can make further failed attempts within a two-year period even if it is clear that they cannot get the 80 per cent level for a sale. There can be no objection in principle to require that before you restart the entire process, you have to make sure that you are going to succeed. If it is a third attempt within two years, there can be no objection in principle to requiring them to show that 80 per cent of the people agree. And if they can't agree, that means the attempt is almost certainly likely to fail. Then why put everyone through the process?
30. Our point also is that common funds are used for this exercise. And Mr Kumar says that you can mandate that owners must pay out of their own pocket. Yes, we could do that, but there is the other aspect which I emphasize, which is that in a development, if owners have made their views extremely clear, and there is no realistic prospect of success, these owners should not be bothered again and again.
31. When the two-year period has lapsed, the consent level to convene an EOGM reverts to the lower 20 per cent or 25 per cent levels.

Voting out dissenting members from the Sale Committee

32. Mrs Mildred Tan voiced her concerns that the proposed amendment to allow a simple majority of Sale Committee members to vote out dissenting members from the Committee may result in a committee that is inherently biased towards an en bloc sale.
33. I think I need to clarify here, this provision can only be invoked after the Sale Committee has obtained the requisite 80 or 90 per cent owner consent levels and has made the en bloc sale application to the Strata Titles Board. As such, the provision will not diminish non-consenting owners' ability to participate in the en bloc sale process. It is only after the requisite 80 or 90 per cent consent level has been reached that the Sale Committee can vote out dissenting members. It is at this stage that a non-consenting Sale Committee member can choose to file his or her objections to the sale application directly to the STB. The Sale Committee which represents the majority of the owners who had consented to the sale should be allowed to expedite with the sale process without being slowed down by non-consenting members on the committee.
34. Mrs Tan has also suggested that there should be a minimum qualification standards stipulated for Sale Committee members. I appreciate the intent behind this suggestion, but again, I think we should not be micro managing these issues. The owners should be

free to decide who they would like to elect to represent them on the Sale Committee.

Independent report on appropriate apportionment method

35. Ms Lee proposed that there should be requirements for an independent property appraiser to recommend an appropriate method to apportion sale proceeds among owners, prior to owners approving the terms of the Collective Sale Agreement.
36. Currently, the Act provides for an independent report on the method of distribution. This report, together with some other documents, is required to be sent to all owners before the en bloc sale application is made to the STB.
37. Beyond that, if owners feel that such a report would be useful for them to better understand the proposed en bloc sale, prior to signing the CSA, they can always require the Sale Committee to provide such a report. Owners have the ultimate say – they can ask for what they think is necessary, for the process, or for them to participate in the process.
38. If owners wish to find out more about apportionment methods, the SISV has issued a set of guidelines to recommend general apportionment methods. The guidelines also illustrate how and when to apply these apportionment methods. They can be found on SISV's website.

Valuation report prior to signing of the Collective Sale Agreement

39. With regard to the requirement for a valuation report, the Sale Committee has to obtain a valuation report on the date of the close of the public tender or public auction. This is because we believe that this is the single most important juncture in the en bloc sale process where a valuation report will ensure that the development is not sold below prevailing market rates.
40. Beyond that, there is no one-size-fits-all solution for the provision of valuation reports to guide owners when they are signing the CSA. Ultimately, it depends on the risk appetite and comfort level of different owners. Furthermore, valuation reports have a shelf life of a few weeks to several months depending on the volatility of the property market. Hence, it is best to leave it to the owners to jointly decide on the number and frequency of valuations to be carried out. We do not mandate that it should only be given at that point in time. We mandate that it should be given at such a point in time and all other points in time – it is up to the owners to decide if they want further valuations at whatever cost is appropriate.

Provide Agent's Business Proposals to owners

41. Similarly, on Ms Lee's other proposal for the appointed property consultant or agent to provide their business proposals that they prepare for prospective buyers, it is best to leave these matters to the owners to request for such information if they consider it appropriate. It may be appropriate for some developments, it may not be appropriate for others.
42. At the end of the day owners are making choices with respect to their properties which involve millions of dollars. You expect them to know what they want, and what sort of sale requirements they wish to impose. The Government's role is just to prescribe certain minimum standards of conduct and to make sure that the whole process is fair, transparent.

Reaffirm the Collective Sale Agreement prior to signing of the Sale and Purchase Agreement

43. Ms Lee also proposed that there should be a mandatory requirement for a Sale Committee to seek reaffirmation from the owners before the award of a Sale tender. A Sale Committee has to act in accordance with the mandate specified in its CSA. Thus, it really depends on what mandate is given to the Sale Committee. If the owners empower to Sale Committee to make the decision for award of tender within certain prescribed parameters, without the need for reaffirmation, then it is not the Government's business to intercede and tell the owners how they should run the process.
44. Likewise, there is nothing in the legislation, either in the past or going forward, to prevent owners from specifying that they want the Sale Committee to seek such a reaffirmation from the owners before the tender is awarded. This can be provided in the CSA if the majority wants.

Conclusion

45. Mr Speaker sir, this Bill represents another step towards refining the en bloc sale regime in Singapore.
46. The Ministry will continue to review the Act in accordance with the state of the en bloc market, and the experience that we get, and we will make further refinements if necessary.